

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

In Re:	§	
Highland Capital Management, L.P.	§	Case No.: 19-34054-sgj11
	§	Chapter No.: 11
Debtor(s)	§	Civil Case No.: 3:21-CV-01295-X
	§	
The Dugaboy Investment Trust and Get Good Trust	§	
Appellant(s)	§	
	§	
vs.	§	
Highland Capital Management, L.P.	§	
Appellee(s)	§	
	§	
	§	
	§	
	§	
	§	

**TRANSMITTAL AND CERTIFICATION OF RECORD ON APPEAL**

Pursuant to Federal Rules of Bankruptcy Procedure 8010, the appeal filed on 6/2/2021 regarding [2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document # 2199) Entered on 5/27/2021 by The Dugaboy Investment Trust and Get Good Trust in the above styled bankruptcy case is hereby transmitted to the U.S. District Court for the Northern District of Texas.

This record on appeal contains all items listed on the attached index, and is in compliance with Rule 8010 of the Federal Rules of Bankruptcy Procedure.

All further pleadings or inquiries regarding this matter should be directed to the U.S. District Clerk's Office until such time as the appeal is fully processed in the U.S. District Court.

The above referenced record was delivered to the U.S. District Clerk's Office on September 14, 2021.

DATED: 9/14/21

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

by: /s/J. Blanco, Deputy Clerk



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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**MINI RECORD**

**VOLUME 1**

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

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**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Vol. 3  
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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): \_\_\_\_

*The Dugaboy Investment Trust and Get Good Trust*

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

Plaintiff

Defendant

Other (describe)

\_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

Debtor

☒ Creditor

Trustee

Other (describe)

\_\_\_\_\_

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: *Order Approving Debtor's Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*



2. State the date on which the judgment, order, or decree was entered: May 27, 2021

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. ***Party/Appellee:*** Debtor: Highland Capital Management, L.P.

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffery N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
Gregory V. Demo  
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And

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2. ***Party/Appellants:*** Creditor: The Dugaboy Investment Trust and Get Good Trust

Attorney:

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**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

**Not applicable.**

May 27, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*

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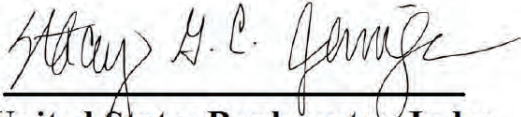
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 27, 2021

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER APPROVING DEBTOR'S SETTLEMENT  
WITH UBS SECURITIES LLC AND UBS AG LONDON BRANCH  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] (the "Motion"),<sup>2</sup> filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"); and this Court having considered (a) the Motion; (b) the

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

*Declaration of Robert J Feinstein in Support of the Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2200] (the "Feinstein Declaration"), and the exhibits annexed thereto including the Settlement Agreement attached as **Exhibit "1"** (the "Settlement Agreement"); (c) the arguments and law cited in the Motion; (d) the *Limited Preliminary Objection to Debtor's Motion for Entry of an Order Approving Settlement with UBS and Authorizing Actions Consistent Therewith* [Docket No. 2268] (the "Trusts' Preliminary Objection"), filed by The Dugaboy Investment Trust and the Get Good Trust (collectively the "Trusts"); (e) the *Supplemental Opposition to Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2293] (the "Trusts' Supplemental Opposition"), filed by the Trusts; (f) *James Dondero's Objection Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2295] (the "Dondero Objection" and collectively, with the Trusts' Preliminary Objection and the Trusts' Supplemental Opposition, the "Objections"), filed James Dondero; (g) the *Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2308] (the "Debtor's Reply"), filed by the Debtor; (h) UBS's *Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2310]; (i) the testimonial and documentary evidence admitted into evidence during the hearing held on May 21, 2021 (the "Hearing"), including assessing the credibility of the witness; and (j) the arguments made during the Hearing; and this Court having jurisdiction over

this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) that the settlement is the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the Motion are overruled.
3. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

4. The Debtor, UBS, and all other parties are authorized to take any and all actions necessary and desirable to implement the terms of the Settlement Agreement without need of further approval or notice.

5. The Court finds that the Debtor, in its capacity as investment manager of Multi-Strat, exercised sound business judgment in causing Multi-Strat to enter into the Settlement Agreement. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtor, in its capacity as investment manager of Multi-Strat, is authorized to cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court and otherwise to cause Multi-Strat to take any and all actions necessary and desirable to implement the terms of the Settlement Agreement without need of further approval or notice.

6. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

## **EXHIBIT 1**

000008

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat,” and together with its general partner and its direct and indirect wholly-owned subsidiaries, the “MSCF Parties”), (iii) Strand Advisors, Inc. (“Strand”), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, “UBS”).

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## R E C I T A L S

**WHEREAS**, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO Fund, the “Funds”) related to a securitization transaction (the “Knox Agreement”);

**WHEREAS**, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

**WHEREAS**, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the “State Court”) against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the “2009 Action”);

**WHEREAS**, UBS’s lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. (“HFP”), Highland Credit Strategies Master Funds, L.P. (“Credit-Strat”), Highland Crusader Offshore Partners, L.P. (“Crusader”), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

**WHEREAS**, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”);

**WHEREAS**, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the “State Court Action”), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

**WHEREAS**, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;



**WHEREAS**, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

**WHEREAS**, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of \$105,647,679 (the "Transferred Assets") and purported face value of over \$300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

**WHEREAS**, Sentinel treated the Transferred Assets as payment for a \$25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

**WHEREAS**, the Insurance Policy purports to provide coverage to the Funds for up to \$100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

**WHEREAS**, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

**WHEREAS**, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

**WHEREAS**, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

**WHEREAS**, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

**WHEREAS**, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

**WHEREAS**, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

**WHEREAS**, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately \$32,823,423.50 (the "Sentinel Redemption");

**WHEREAS**, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of \$1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

**WHEREAS**, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

**WHEREAS**, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

**WHEREAS**, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

**WHEREAS**, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

**WHEREAS**, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for \$1,039,957,799.40;

**WHEREAS**, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

**WHEREAS**, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

**WHEREAS**, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

**WHEREAS**, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

**WHEREAS**, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

**WHEREAS**, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of \$94,761,076 [Docket No. 1518];

**WHEREAS**, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

**WHEREAS**, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

**WHEREAS**, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

**WHEREAS**, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## **A G R E E M E N T**

**1. Settlement of Claims.** In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;<sup>1</sup> and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

(b) Multi-Strat will pay UBS the sum of \$18,500,000 (the “Multi-Strat Payment”) as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the “HCMLP Excluded Employees”); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor’s actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities’ holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the



MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of \$3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and

(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

## **2. Definitions.**

(a) “Agreement Effective Date” shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) “HCMLP Parties” shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) “Order Date” shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) “UBS Parties” shall mean UBS Securities LLC and UBS AG London Branch.

## **3. Releases.**

(a) **UBS Releases.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys’ fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the “UBS Released Claims”), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities’ past, present or future subsidiaries and feeders funds (the “UBS Unrelated Investments”); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

**4. No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

**5. UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly



attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

**6. Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

**7. Representations and Warranties.**

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.

**8. No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

**9. Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

**10. Notice.** Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

**HCMLP Parties or the MSCF Parties**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Telephone No.: 972-628-4100  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
E-mail: jpomerantz@pszjlaw.com

**UBS**

UBS Securities LLC  
UBS AG London Branch  
Attention: Elizabeth Kozlowski, Executive Director and Counsel  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-9007  
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC  
UBS AG London Branch  
Attention: John Lantz, Executive Director  
1285 Avenue of the Americas  
New York, NY 10019

Telephone No.: 212-713-1371  
E-mail: john.lantz@ubs.com

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

Latham & Watkins LLP  
Attention: Andrew Clubok  
Sarah Tomkowiak  
555 Eleventh Street, NW, Suite 1000  
Washington, D.C. 20004-1304  
Telephone No.: 202-637-3323  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

**11. Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

**13. No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

**14. Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

**15. Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

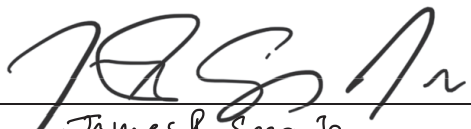
Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

**16. Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

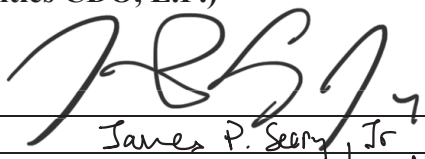
*[Remainder of Page Intentionally Blank]*

IT IS HEREBY AGREED.

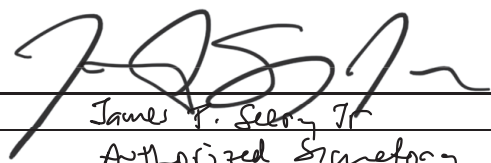
**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

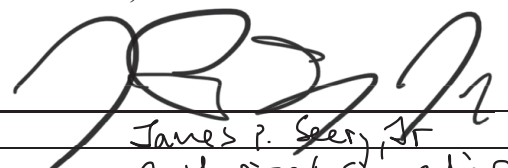
**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P. (f/k/a Highland Credit  
Opportunities CDO, L.P.)**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

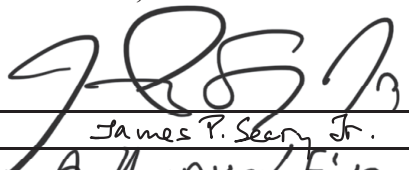
**HIGHLAND CREDIT OPPORTUNITIES CDO,  
Ltd.**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, L.P.**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

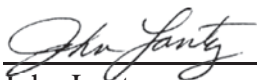
**STRAND ADVISORS, INC.**

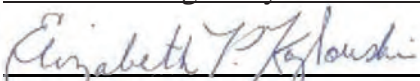
By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

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EXECUTION VERSION


**UBS SECURITIES LLC**

By:   
Name: John Lantz  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

**UBS AG LONDON BRANCH**

By:   
Name: William Chandler  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

## **APPENDIX A**

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled “Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets” (the “Tax Memo”), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the \$105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero’s relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor’s settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

SEALEDEXH, APPEAL, DirectAppeal, 5thCircuitAppeal, SealedDocument, FUNDS, TRANSIN,  
REFORM, ClaimsAgent, EXHIBITS, COMPLEX

**U.S. Bankruptcy Court  
Northern District of Texas (Dallas)  
Bankruptcy Petition #: 19-34054-sgj11**

*Assigned to:* Stacey G. Jernigan  
Chapter 11  
Voluntary  
Asset  
Show Previous Cases

*Date filed:* 10/16/2019  
*Date Plan Confirmed:* 02/22/2021  
*Date transferred:* 12/04/2019  
*Plan confirmed:* 02/22/2021  
*341 meeting:* 01/09/2020  
*Deadline for filing claims:* 04/08/2020  
*Deadline for filing claims (govt.):* 04/13/2020

**Debtor**  
**Highland Capital Management, L.P.**  
300 Crescent Court  
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Dallas, TX 75201  
DALLAS-TX

represented by **Zachery Z. Annable**  
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**Eric Thomas Haitz**

000025



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*TERMINATED: 12/09/2019*

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**United States Trustee**  
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214-767-8967

represented by **Lisa L. Lambert**  
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**Official Committee of Unsecured Creditors**

represented by **Sean M. Beach**  
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**Penny Packard Reid**

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 Wilmington, DE 19801  
 302-571-6600  
 Email: [sbeach@ycst.com](mailto:sbeach@ycst.com)

Filing Date	Docket Text
12/04/2019	<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)
12/04/2019	<u>2</u> DOCKET SHEET filed in 19-12239 in the U.S. Bankruptcy Court for Delaware . (Okafor, M.)
12/04/2019	<u>3</u> Chapter 11 Voluntary Petition . Fee Amount \$1717. Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Creditor Matrix) [ORIGINALLY FILED AS DOCUMENT #1 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>4</u> Motion to Pay Employee Wages /Motion of the Debtors for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue

000029

	Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #2 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>5</u> Motion to Pay Critical Trade Vendor Claims /Motion of the Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #3 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>6</u> Motion to Extend Deadline to File Schedules or Provide Required Information Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #4 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>8</u> **WITHDRAWN** – 10/29/2019. SEE DOCKET # 72. Motion to Approve Use of Cash Collateral /Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Order)(O'Neill, James) Modified on 10/30/2019 (DMC)[ORIGINALLY FILED AS DOCUMENT #6 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>9</u> Application to Appoint Claims/Noticing Agent KURTZMAN CARSON CONSULTANTS, LLC Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Engagement Agreement # <u>2</u> Exhibit B – Gershbein Declaration # <u>3</u> Exhibit C – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #7 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>10</u> Motion to File Under Seal/Motion of the Debtor for Entry of Interim and Final Orders Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #8 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>11</u> Affidavit/Declaration in Support of First Day Motion /Declaration of Frank Waterhouse in Support of First Day Motions Filed By Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #9 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>12</u> Notice of Hearing on First Day Motions (related document(s)2, 3, 5, 6, 7, 8, 9 [ON DELAWARE DOCKET]) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #11 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE



	DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>13</u> Notice of Hearing // Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Exhibit A) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #12 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>14</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #13 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>15</u> Notice of appearance Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #14 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>16</u> Motion to Appear pro hac vice of Marshall R. King of Gibson, Dunn & Crutcher LLP. Receipt Number 2757354, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #15 ON 10/1/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>17</u> Motion to Appear pro hac vice of Michael A. Rosenthal of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #16 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>18</u> Motion to Appear pro hac vice of Alan Moskowitz of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) ) [ORIGINALLY FILED AS DOCUMENT #17 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>19</u> Motion to Appear pro hac vice of Matthew G. Bouslog of Gibson, Dunn & Crutcher LLP. Receipt Number 2581894, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #18 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>20</u> Notice of Appearance and Request for Notice by Louis J. Cisz filed by Interested Party California Public Employees Retirement System (CalPERS) . (Okafor, M.) [ORIGINALLY FILED AS DOCUMENT #19 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>21</u> Motion to Appear pro hac vice (Jeffrey N. Pomerantz). Receipt Number 2564620, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #20 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>22</u> Motion to Appear pro hac vice (Maxim B. Litvak). Receipt Number 2564620, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS

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	DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>23</u> Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>24</u> Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>25</u> Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>26</u> Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>27</u> Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>28</u> Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>29</u> Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>30</u> Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>31</u> Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>32</u> Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>33</u> Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>34</u> Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>35</u> Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>36</u> Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>37</u> Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>38</u> Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>39</u> Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>40</u> Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # <u>1</u> Agreement)) (NAB) Modified Text on 10/21/2019 (LB) [ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>41</u> Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	<u>42</u> Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>43</u> Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>44</u> Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>45</u> Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County , Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	<u>46</u> Notice of hearing/ <i>scheduling conference</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1</u> Order transferring case number 19–12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	<u>47</u> Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s) <u>2</u> , <u>39</u> ) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit <u>1</u> # <u>2</u> Exhibit <u>2</u> ) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>48</u> Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002–1(F) (related document(s) <u>7</u> , <u>43</u> ) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit <u>1</u> # <u>2</u> Exhibit <u>2</u> ) (Attachments: # <u>1</u> Exhibit <u>1</u> # <u>2</u> Exhibit <u>2</u> ) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.).
12/04/2019	<u>49</u> Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s) <u>4</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # <u>1</u> Exhibit <u>1</u> ) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>50</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s) <u>3</u> , <u>40</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit <u>1</u> # <u>2</u> Exhibit <u>2</u> ) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>51</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s) <u>5</u> , <u>42</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # <u>1</u> Exhibit <u>1</u> # <u>2</u> Exhibit <u>2</u> ) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR



	THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>52</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (related document(s)8, 44) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>53</u> Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # <u>1</u> Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>54</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo [Docket No. 32]; (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)
12/04/2019	<u>55</u> Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # <u>1</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)

12/04/2019	<u>56</u> Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>57</u> Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>58</u> Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>59</u> Notice of Appearance and Request for Notice by Michael I. Baird filed by Interested Party Pension Benefit Guaranty Corporation . (Attachments: # <u>1</u> Certification of United States Government Attorney # <u>2</u> Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>60</u> Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>61</u> Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>62</u> Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>63</u> Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>64</u> Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>65</u> Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>66</u> Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	

	<u>67</u> Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Form of Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A # <u>3</u> Exhibit B # <u>4</u> Exhibit C – Proposed Order # <u>5</u> 2016 Statement # <u>6</u> Declaration Frank Waterhouse # <u>7</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>69</u> **WITHDRAWN per #437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Hurst Declaration # <u>3</u> Exhibit B – Proposed Order # <u>4</u> 2016 Statement # <u>5</u> Declaration Frank Waterhouse # <u>6</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>70</u> Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # <u>1</u> Notice # <u>2</u> Rule 2016 Statement # <u>3</u> Declaration of Jeffrey N. Pomerantz in Support # <u>4</u> Declaration of Frank Waterhouse # <u>5</u> Proposed Form of Order # <u>6</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>71</u> Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>72</u> Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>73</u> Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by



	11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Gershbein Declaration # <u>4</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>74</u> Application/Motion to Employ/Retain Development Specialists, Inc. as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Engagement Letter # <u>3</u> Exhibit B – Sharp Declaration # <u>4</u> Exhibit C – Proposed Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – OCP List # <u>4</u> Exhibit C – Form of Declaration of Disinterestedness # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>76</u> **WITHDRAWN by # <u>360</u> ** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Appendix I # <u>3</u> Appendix II # <u>4</u> Proposed Form of Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>77</u> Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>78</u> Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>79</u> Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311–27677, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>80</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>81</u> Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>82</u> Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>83</u> Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>84</u> Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # <u>1</u> Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>85</u> Motion to Change Venue/Inter-district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E – Certificate of Service) (Guzina, Bojan)[ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>86</u> Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>87</u> Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>88</u> Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>89</u> Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>90</u> Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]

	(Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>91</u> Notice of Appearance. The party has consented to electronic service. Filed by INTEGRATED FINANCIAL ASSOCIATES, INC. (Carlyon, Candace) [ORIGINALLY FILED AS DOCUMENT #92 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>92</u> Order Approving Motion for Admission pro hac vice Patrick C. Maxcy(Related Doc # 90) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #93 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>93</u> Order Approving Motion for Admission pro hac vice Lauren Macksoud(Related Doc # 91) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #94 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>94</u> HEARING CANCELLED. Notice of Agenda of Matters not going forward. The following hearing has been cancelled. Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #95 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>95</u> Notice of Appearance. The party has consented to electronic service. Filed by BET Investments, II, L.P.. (Attachments: # <u>1</u> Certificate of Service) (Kurtzman, Jeffrey) (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #96 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>96</u> Certification of Counsel Regarding Order Scheduling Omnibus Hearing Date Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Proposed Form of Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #97 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>98</u> Order Scheduling Omnibus Hearings. Omnibus Hearings scheduled for 12/17/2019 at 11:00 AM US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Signed on 11/7/2019. (CAS) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #98 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>101</u> Exhibit(s) // Notice of Filing of Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #99 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>102</u> Affidavit/Declaration of Service for service of [Signed] Order Scheduling Omnibus Hearing Date [Docket No. 98] (related document(s)98) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #100 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>103</u> Notice of Deposition – Notice to Take Rule 30(b)(6) Deposition Upon Oral Examination of the Debtor, Highland Capital Management, L.P. Filed by Official

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	Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>104</u> Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>106</u> Notice of Service – Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>107</u> Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # <u>1</u> Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>108</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>110</u> Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>111</u> Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>112</u> Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>113</u> Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>114</u> Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>115</u> Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

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	<u>116</u> Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>117</u> Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>118</u> Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>119</u> Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>120</u> Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>121</u> Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # <u>1</u> Exhibit A # <u>2</u> Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>122</u> Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>123</u> Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>124</u> **WITHDRAWN per # <u>456</u> ** Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)

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	12/05/2019)
12/04/2019	<u>125</u> Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>126</u> Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>128</u> [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>130</u> Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>131</u> Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>132</u> Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

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	<u>133</u> Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>134</u> Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>135</u> Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # <u>1</u> Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>136</u> Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>137</u> Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>138</u> Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>139</u> Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>140</u> Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>141</u> ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order

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	Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>142</u> ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>143</u> ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENT OF FINANCIAL AFFAIRS, AND (II) GRANTING RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>144</u> Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>145</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>146</u> Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>147</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>148</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s) 136, 137, 138) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>149</u> Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s) 86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>150</u> Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>151</u> Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>152</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>153</u> Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>154</u> Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta-e Discovery, LLC . (Moldovan, Joseph)[ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>156</u> Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>158</u> Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311-27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>159</u> Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>162</u> Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>163</u> Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR

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	THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>164</u> Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #158 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>165</u> Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Nunc Pro Tunc to Petition Date (related document(s)69, 70, 116, 120) Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #159 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>166</u> Omnibus Reply of the Debtor in Support of: (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)5, 75, 77) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Redline Order Approving Ordinary Course Protocols Motion # <u>2</u> Exhibit B – Redline Order Approving Cash Management Motion # <u>3</u> Exhibit C – Redline Order Approving DSI Retention Motion # <u>4</u> Exhibit D – Summary of Intercompany Transactions) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #160 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>168</u> Certificate of Service of 1) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue; 2) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date, and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP; and 3) Omnibus Reply of the Debtor in Support of: (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)158, 159, 160) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #161 ON 11/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>169</u> Exhibit(s) // Notice of Filing of Second Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #162 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>170</u> Certification of Counsel Regarding Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P..(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #163 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>171</u> **WITHDRAWN** – 11/26/2019. SEE DOCKET # 165. Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate

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	Certain Professionals Utilized by the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) Modified on 11/26/2019 (DMC). [ORIGINALLY FILED AS DOCUMENT #164 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>172</u> Notice of Withdrawal of Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)164) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>173</u> Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>174</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>175</u> FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>178</u> Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014–1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE(Okafor, M.) (Entered: 12/05/2019)



12/04/2019	<u>179</u> Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Declaration of John Dempsey in Support # <u>4</u> Exhibit C – Highland Key Employee Incentives # <u>5</u> Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>181</u> Certificate of Service and Service List for service of Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief [Docket No. 170] (related document(s)170) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #174 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>182</u> Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)167) Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #175 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>183</u> ORDER PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, RULE 2414 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL RULE 2014-1 AUTHORIZING THE EMPLOYMENT AND RETENTION OF PACHULSKI TANG ZIEHL & JONES LLP AS COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 71) Order Signed on 12/2/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #176 ON 12/02/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>184</u> Certification of Counsel Regarding Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #182 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>185</u> Affidavit/Declaration of Service for service of (1) [Signed] Final Order (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 168]; (2) [Signed] Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [Docket No. 169]; and (3) [Signed] Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date [Docket No. 176] (related document(s)168, 169, 176) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #183 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

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	12/05/2019)
12/04/2019	<u>186</u> ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (related document(s)86) Order Signed on 12/4/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #184 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>187</u> Certificate of Service re: 1) Notice of Chapter 11 Bankruptcy Case; and 2) [Corrected] Notice of Chapter 11 Bankruptcy Case (related document(s)67, 79) Filed by Kurtzman Carson Consultants LLC. (Kass, Albert) ( [ORIGINALLY FILED AS DOCUMENT #185 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/05/2019	<u>97</u> Motion to appear pro hac vice for Bojan Guzina. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228141, amount \$ 100.00 (re: Doc# <u>97</u> ). (U.S. Treasury)
12/05/2019	<u>99</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Wylie ISD, Garland ISD, City of Garland. (Reece, Linda)
12/05/2019	<u>100</u> Motion to appear pro hac vice for Matthew A. Clemente. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	<u>105</u> Motion to appear pro hac vice for Alyssa Russell. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>100</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>105</u> ). (U.S. Treasury)
12/05/2019	<u>109</u> Motion to appear pro hac vice for Ira D. Kharasch. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228644, amount \$ 100.00 (re: Doc# <u>109</u> ). (U.S. Treasury)
12/05/2019	<u>129</u> Notice of Appearance and Request for Notice by Laurie A. Spindler filed by City of Allen, Allen ISD, Dallas County, Grayson County, Irving ISD, Kaufman County, Tarrant County. (Spindler, Laurie)
12/05/2019	<u>155</u> Notice of Appearance and Request for Notice by Mark A. Platt filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Platt, Mark)
12/05/2019	<u>157</u> Motion to appear pro hac vice for Marc B. Hankin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	<u>160</u> Motion to appear pro hac vice for Richard Levin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u>

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	Addendum) (Platt, Mark)
12/05/2019	<u>161</u> Motion to appear pro hac vice for Terri L. Mascherin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>157</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>160</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>161</u> ). (U.S. Treasury)
12/05/2019	<u>167</u> Motion to appear pro hac vice for Gregory V. Demo. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27230422, amount \$ 100.00 (re: Doc# <u>167</u> ). (U.S. Treasury)
12/05/2019	<u>188</u> Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/06/2019	<u>189</u> Motion to appear pro hac vice for Jeffrey N. Pomerantz. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27233957, amount \$ 100.00 (re: Doc# <u>189</u> ). (U.S. Treasury)
12/06/2019	<u>190</u> Amended Motion to appear pro hac vice for Jeffrey N. Pomerantz. (related document: <u>189</u> ) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	<u>191</u> Motion to appear pro hac vice for John A. Morris. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27233983, amount \$ 100.00 (re: Doc# <u>191</u> ). (U.S. Treasury)
12/06/2019	<u>192</u> INCORRECT ENTRY – Incorrect Event Used; Refiled as Document <u>220</u> . Motion to withdraw as attorney (Eric T. Haitz) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric) Modified on 12/9/2019 (Dugan, S.). Modified on 12/9/2019 (Dugan, S.).
12/06/2019	193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Edmond, Michael)
12/06/2019	194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs,

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	introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.) (Edmond, Michael)
12/06/2019	<u>195</u> Request for transcript regarding a hearing held on 12/6/2019. The requested turn-around time is hourly. (Edmond, Michael)
12/06/2019	<u>196</u> Order granting motion to appear pro hac vice adding Bojan Guzina for Official Committee of Unsecured Creditors (related document # <u>97</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document # <u>100</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document # <u>105</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document # <u>109</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document # <u>160</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document # <u>161</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document # <u>167</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document # <u>157</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>204</u> INCORRECT ENTRY: DRAFT OF MOTION. SEE DOCUMENT 206. Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT</i>

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	<i>AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/06/2019	<u>206</u> Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u> ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>220</u> Withdrawal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>41</u> Notice of appearance and request for notice). (Dugan, S.) (Entered: 12/09/2019)
12/08/2019	<u>207</u> Transcript regarding Hearing Held 12/6/19 RE: Status and scheduling conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/9/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Palmer Reporting Services, Telephone number PalmerRptg@aol.com, 800-665-6251. (RE: related document(s) <u>193</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.,) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , <u>194</u> Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.)). Transcript to be made available to the public on 03/9/2020. (Palmer, Susan)
12/08/2019	<u>208</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document <u>100</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>209</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document <u>105</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>210</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document <u>109</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>211</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee

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	of the Highland Crusader Fund (related document <u>160</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>212</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document <u>161</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>213</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document <u>167</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>214</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document <u>157</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/09/2019	<u>215</u> Acknowledgment of split/transfer case received FROM another district, Delaware, Delaware division, Case Number 19–12239. (Okafor, M.)
12/09/2019	<u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document # <u>190</u> ) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document # <u>191</u> ) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # <u>1</u> Declaration # <u>2</u> Proposed Order) (Crooks, David)
12/09/2019	<u>219</u> Notice of Appearance and Request for Notice by Charles Martin Persons Jr. filed by Creditor Committee Official Committee of Unsecured Creditors. (Persons, Charles)
12/09/2019	Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27240994, amount \$ 181.00 (re: Doc# <u>218</u> ). (U.S. Treasury)
12/09/2019	<u>221</u> Notice of Appearance and Request for Notice by Brian Patrick Shaw filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Shaw, Brian)
12/09/2019	<u>222</u> Motion to appear pro hac vice for Dennis M. Twomey. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/09/2019	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 27241671, amount \$ 100.00 (re: Doc# <u>222</u> ). (U.S. Treasury)
12/09/2019	<u>223</u> Certificate of service re: <i>1) Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019; and 2) [Amended] Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving</i>

	<p><i>the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u>) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/10/2019	<p><u>224</u> Certificate Certificate of Conference filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181,). (Crooks, David)</p>
12/10/2019	<p><u>225</u> Certificate of service re: Certificate of Service filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s)<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181,, <u>224</u> Certificate (generic)). (Attachments: # <u>1</u> Service List) (Crooks, David)</p>
12/10/2019	<p><u>226</u> Application to employ Young Conaway Stargatt &amp; Taylor, LLP as Attorney (<i>Co-Counsel</i>) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</p>
12/10/2019	<p><u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).</p>
12/10/2019	<p><u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)</p>
12/10/2019	<p><u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020. (Neary, William)</p>
12/10/2019	<p><u>230</u> Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
12/10/2019	<p><u>231</u> Notice of Appearance and Request for Notice by Zachery Z. Annable filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>



12/11/2019	<u>232</u> Joint Motion to continue hearing on (related documents 194 Hearing held, Hearing set/continued). <i>Joint Motion to Continue Status Conference</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order # <u>2</u> Service List) (Hayward, Melissa)
12/11/2019	<u>233</u> Motion to appear pro hac vice for Michael I. Baird. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Attachments: # <u>1</u> Certificate of Service) (Baird, Michael)
12/11/2019	<u>234</u> Order granting joint motion to continue hearing on (related document # <u>232</u> ) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	<u>236</u> Motion to appear pro hac vice for Lauren Macksoud. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27250084, amount \$ 100.00 (re: Doc# <u>236</u> ). (U.S. Treasury)
12/11/2019	<u>237</u> Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27250165, amount \$ 100.00 (re: Doc# <u>237</u> ). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (0.00). Receipt Number KF – No Fee Due, amount \$ 0.00 (re: Doc <u>233</u> ). (Floyd)
12/11/2019	<u>238</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document <u>190</u> ) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	<u>239</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document <u>191</u> ) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	<u>240</u> Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	<u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/12/2019	<u>242</u> Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # <u>233</u> ) Entered on 12/12/2019. (Okafor, M.)

12/12/2019	<u>243</u> BNC certificate of mailing. (RE: related document(s) <u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/12/2019	<u>244</u> BNC certificate of mailing. (RE: related document(s) <u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/13/2019	<u>245</u> Certificate of service re: <i>1) Application of the Official Committee of Unsecured Creditors to Retain and Employ Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel, Nunc Pro Tunc to November 8, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (Co-Counsel) Nunc Pro Tunc Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/13/2019	<u>246</u> Certificate of service re: <i>1) First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/13/2019	<u>247</u> Schedules: Schedules A/B and D–H with Summary of Assets and Liabilities (with Declaration Under Penalty of Perjury for Non-Individual Debtors.). Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding schedules) (Hayward, Melissa)
12/13/2019	<u>248</u> Statement of financial affairs for a non-individual . Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding SOFA) (Hayward, Melissa)
12/13/2019	<u>249</u> BNC certificate of mailing – meeting of creditors. (RE: related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.) No. of Notices: 8. Notice Date 12/13/2019. (Admin.)
12/13/2019	<u>250</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>234</u> Order granting joint motion to continue hearing on (related document <u>232</u> ) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019.) No. of Notices: 1. Notice Date 12/13/2019. (Admin.)
12/16/2019	<u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document # <u>236</u> ) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	<u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document # <u>237</u> ) Entered on 12/16/2019. (Dugan, S.)

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12/16/2019	<u>253</u> Order rescheduling status conference (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Status Conference to be held on 12/18/2019 at 10:30 AM at Dallas Judge Jernigan Ctrm. Entered on 12/16/2019 (Dugan, S.)
12/17/2019	<u>254</u> Notice of Appearance and Request for Notice by Jason Patrick Kathman filed by Creditor Patrick Daugherty. (Kathman, Jason)
12/18/2019	<u>255</u> Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/18/2019	Hearing held on 12/18/2019. (RE: related document(s) <u>1</u> Status/Scheduling Conference; Order transferring case number 19–12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Pomerantz and I. Kharasch for Debtor; M. Hayward, local counsel for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; M. Platt and T. Mascherin and M. Hankin (each telephonically) for Redeemer Committee; L. Spindler for taxing authorities; A. Chiarello and R. Patel (telephonically) for Acis; L. Lambert for UST; P. Maxcy (telephonically) for Jeffries. Nonevidentiary status conference. Court heard reports regarding continued negotiations between Debtor and UCC regarding a proposed management structure for Debtor and ordinary course protocols. Debtor expects to file a motion for approval of same (if agreements reached) by 12/27/19 for a 1/9/20 hearing. Otherwise, UCC will file a motion for a chapter 11 trustee (which, if filed, will be filed 12/30/19 and set 1/20/20–1/21/20). Scheduling order to be submitted. Also, US Trustee announced intention to move for a Chapter 11 Trustee.) (Edmond, Michael)
12/18/2019	<u>256</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document <u>236</u> ) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/18/2019	<u>257</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document <u>237</u> ) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/19/2019	<u>258</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Dechert LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Demo, Gregory)
12/19/2019	<u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.). (Hayward, Melissa)
12/19/2019	<u>260</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (ASW Law Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/19/2019	<u>261</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/20/2019	

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	<u>262</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s) certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
12/20/2019	<u>263</u> Certificate of service re: <i>Supplemental Declaration of Bojan Guzina in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>255</u> Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T).</i> filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/20/2019	<u>264</u> Certificate of service re: <i>Supplement to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>259</u> Support/supplemental document <i>to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2019	<u>265</u> Objection to (related document(s): <u>176</u> Document) <i>Limited Objection of The Official Committee of Unsecured Creditors to the Retention of Harder LLP as Ordinary Course Professional</i> filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/23/2019	<u>266</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/23/2019	<u>267</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/23/2019	<u>268</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/23/2019	<u>269</u> Agreed scheduling Order (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)
12/23/2019	<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
12/23/2019	<u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee (Lambert, Lisa)

12/23/2019	<u>272</u> Trustee's Objection to <i>Motion to Seal Official Committee's Omnibus Objection and Supporting Exhibits</i> (RE: related document(s) <u>127</u> Document) (Lambert, Lisa)
12/23/2019	<u>273</u> Motion for leave to <i>Extend Deadline to Object to Motion for Relief of Stay of PensionDanmark</i> (related document(s) <u>218</u> Motion for relief from stay) Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/6/2020. (Hoffman, Juliana)
12/24/2019	<u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/25/2019	<u>277</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>269</u> Agreed scheduling Order (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)) No. of Notices: 1. Notice Date 12/25/2019. (Admin.)
12/26/2019	<u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim &amp; Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/26/2019	<u>279</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 3) <i>Declaration of Marc D. Katz</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>266</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>267</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>268</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/27/2019	<u>280</u> Motion for protective order. <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/27/2019	<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Hayward, Melissa)
12/27/2019	<u>282</u> Support/supplemental document to the <i>Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
12/27/2019	

	<u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
12/28/2019	<u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/28/2019	<u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/30/2019	<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. (Pomerantz, Jeffrey)
12/30/2019	<u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , (Hayward, Melissa)
12/31/2019	<u>288</u> Certificate No Objection to Retention of Sidley Austin LLP filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/31/2019	<u>289</u> Debtor-in-possession monthly operating report for filing period November 1, 2019 to November 30, 2019 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/31/2019	<u>290</u> Certificate No Objection to Retention of FTI Consulting, Inc. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i> ). (Hoffman, Juliana)
12/31/2019	<u>291</u> Order granting motion for expedited hearing (Related Doc# <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30

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	AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019. (Whitaker, Sheniqua)
01/02/2020	<u>292</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration Alexander G. McGeoch in Support of Hunton Andrews Kurth LLP as Ordinary Course Professional</i> ; 3) <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>293</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim &amp; Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>294</u> Certificate Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney ( <i>Co-Counsel</i> ) <i>Nunc Pro Tunc</i> ). (Hoffman, Juliana)
01/02/2020	<u>295</u> Notice of Appearance and Request for Notice by Edwin Paul Keiffer filed by Interested Party Hunter Mountain Trust. (Keiffer, Edwin)
01/02/2020	<u>296</u> Certificate of service re: <i>Documents Served on December 27, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors, <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>282</u> Support/supplemental document to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, <i>Nunc Pro Tunc</i> as of the Petition Date filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>297</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>291</u> Order granting motion for expedited hearing (Related Doc <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
01/03/2020	<u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)
01/03/2020	

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	<u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/8/2020. (Hoffman, Juliana)
01/03/2020	<u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document # <u>222</u> ) Entered on 1/3/2020. (Okafor, M.)
01/03/2020	<u>301</u> Order granting the joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (related document # <u>273</u> ). The Committee and the Debtor shall have until January 6, 2020 to object to PensionDanmarks Stay Relief Motion Entered on 1/3/2020. (Okafor, M.)
01/05/2020	<u>302</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)) No. of Notices: 45. Notice Date 01/05/2020. (Admin.)
01/05/2020	<u>303</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document <u>222</u> ) Entered on 1/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/05/2020. (Admin.)
01/06/2020	<u>304</u> Order granting <u>299</u> joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (Re: related document(s) <u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave)) Entered on 1/6/2020. (Okafor, M.)
01/06/2020	<u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Annable, Zachery)
01/06/2020	<u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Annable, Zachery)
01/06/2020	<u>307</u> Trustee's Objection to <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> (RE: related document(s) <u>280</u> Motion for protective order) (Lambert, Lisa)
01/06/2020	<u>308</u> Motion to appear pro hac vice for Asif Attarwala. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>309</u> Motion to appear pro hac vice for Kimberly A. Posin. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)

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01/06/2020	<u>310</u> Motion to appear pro hac vice for Andrew Clubok. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>311</u> Motion to appear pro hac vice for Kuan Huang. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>308</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>309</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>310</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>311</u> ). (U.S. Treasury)
01/06/2020	<u>312</u> Response opposed to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Jefferies LLC. (Attachments: # <u>1</u> Exhibit A) (Doherty, Casey)
01/06/2020	<u>313</u> Trustee's Objection to <i>Motion to Approve Joint Agreement</i> (RE: related document(s) <u>281</u> Motion to compromise controversy) (Lambert, Lisa)
01/06/2020	<u>314</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/06/2020	<u>315</u> Certificate of service re: <i>1) Notice of Hearing on Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to held on January 9, 2020 at 9:30 a.m. (CT); and 2) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be held on January 9, 2020 at 9:30 a.m. (CT)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P., <u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00

	AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2020	<u>316</u> Certificate of service re: <i>1) Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from November 1, 2019 Through November 30, 2019; 2) Notice of Hearing re: Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; to be Held on January 9, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. filed by Debtor Highland Capital Management, L.P., <u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/07/2020	<u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document # <u>308</u> ) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	<u>318</u> Order granting motion to appear pro hac vice adding Kimberly A. Posin for UBS AG London Branch and UBS Securities LLC (related document # <u>309</u> ) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	<u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u> ) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).
01/07/2020	<u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document # <u>311</u> ) Entered on 1/7/2020. (Okafor, M.)
01/07/2020	<u>321</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Annable, Zachery)
01/07/2020	<u>322</u> Certificate of service re: Certificate of Service filed by Interested Party Jefferies LLC (RE: related document(s) <u>312</u> Response). (Doherty, Casey)
01/07/2020	<u>323</u> Notice of Appearance and Request for Notice ( <i>Amended</i> ) by Joseph E. Bain filed by Creditor Issuer Group. (Bain, Joseph)
01/07/2020	<u>324</u> ***WITHDRAWN per docket # <u>467</u> ** Objection to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) <i>Limited Objection to Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> filed by Creditor Issuer Group. (Bain, Joseph) Modified on 2/24/2020 (Ecker, C.).

01/08/2020	<u>325</u> Motion to appear pro hac vice for James T. Bentley. Fee Amount \$100 Filed by Creditor Issuer Group (Anderson, Amy)
01/08/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27331269, amount \$ 100.00 (re: Doc# <u>325</u> ). (U.S. Treasury)
01/08/2020	<u>326</u> Notice of Compliance with Local Bankruptcy Rule 2090-4 filed by Creditor Issuer Group. (Anderson, Amy)
01/08/2020	<u>327</u> Declaration re: ( <i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Annable, Zachery)
01/08/2020	<u>328</u> Agreed Notice of hearingwith PensionDanmark and Highland Capital Management, L.P. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u> , (Hoffman, Juliana)
01/08/2020	<u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.).
01/08/2020	<u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.).
01/08/2020	<u>331</u> Certificate of service re: <i>Order Regarding Request for Expedited Hearing; to be Held on January 9, 2020 at 9:30 a.m. (Prevailing Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>291</u> Order granting motion for expedited hearing (Related Doc <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019.). (Kass, Albert)
01/08/2020	<u>332</u> Certificate of service re: <i>1) Amended Notice of Hearing on Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to be Held on January 21, 2020 at 9:30 a.m. (Central Time); 2) Amended Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM

	Dallas Judge Jernigan Ctrm for <u>180</u> , filed by Debtor Highland Capital Management, L.P., <u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/09/2020	<u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document # <u>325</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document # <u>206</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>335</u> Court admitted exhibits date of hearing 01/09/2020. DEBTOR EXHIBIT 1 ADMITTED. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) (Jeng, Hawaii)
01/09/2020	<u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document # <u>205</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>337</u> Order granting application to employ Young Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co–Counsel) (related document <u>226</u> ) Entered on 1/9/2020. (Okafor, M.) Modified to correct Firm name on 1/13/2020 (Ecker, C.).
01/09/2020	<u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Hayward, Melissa)
01/09/2020	<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( (related document # <u>281</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Melissa S. Hayward # <u>2</u> Proposed Order) (Annable, Zachery)
01/09/2020	<u>341</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document <u>308</u> ) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/09/2020. (Admin.)
01/09/2020	Hearing held on 1/9/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M.

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	Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.) (Edmond, Michael) (Entered: 01/10/2020)
01/10/2020	<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document # <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)
01/10/2020	<u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. (Hoffman, Juliana)
01/10/2020	<u>344</u> Certificate of service re: <i>Documents Served on January 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>327</u> Declaration re: ( <i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). filed by Debtor Highland Capital Management, L.P., <u>328</u> Agreed Notice of hearingwith <i>PensionDanmark and Highland Capital Management, L.P.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/10/2020	<u>345</u> Certificate of service re: <i>Documents Served on January 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document <u>206</u> ) Entered on 1/9/2020. (Okafor, M.), <u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document <u>205</u> ) Entered on 1/9/2020. (Okafor, M.), <u>337</u> Order granting application to employ Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u> ) Entered on 1/9/2020. (Okafor, M.), <u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). filed by Debtor Highland Capital Management, L.P., <u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Melissa S. Hayward # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass,



	Albert)
01/10/2020	<u>346</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u> ) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/10/2020	<u>347</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document <u>311</u> ) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/11/2020	<u>348</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document <u>325</u> ) Entered on 1/9/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/11/2020. (Admin.)
01/12/2020	<u>349</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/12/2020. (Admin.)
01/13/2020	<u>350</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/13/2020	<u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/13/2020	<u>352</u> DOCKET IN ERROR: Request for transcript regarding a hearing held on 1/9/2020. The requested turn–around time is daily. (Edmond, Michael) Modified on 1/21/2020 REQUEST WAS CANCELLED THE SAME DATE AS REQUESTED OF 1/13/2020. (Edmond, Michael).
01/13/2020	<u>353</u> Objection to (related document(s): <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> ) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
01/14/2020	<u>354</u> Notice ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order)). (Attachments: # <u>1</u> Exhibit A—Final Term Sheet) (Annable, Zachery)
01/14/2020	<u>355</u> Certificate of service re: <i>Summary and First Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from October 29, 2019 to and Including November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>343</u> Application for compensation <i>First</i>

	<i>Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
01/14/2020	<i><u>356</u> Certificate of service re: Debtor's Motion for Entry of an Order Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
01/14/2020	<i><u>357</u> Witness and Exhibit List in Connection with Motion to Appoint a Chapter 11 Trustee filed by U.S. Trustee United States Trustee (RE: related document(s)<u>271</u> Trustee's Motion to appoint trustee). (Lambert, Lisa)</i>
01/14/2020	<i><u>358</u> Witness and Exhibit List in connection with Motion to Seal and Joint Motion for an Agreed Protective Order filed by U.S. Trustee United States Trustee (RE: related document(s)<u>10</u> Motion to file document under seal., <u>280</u> Motion for protective orderJoint Motion for Entry of an Order Approving the Agreed Protective Order). (Lambert, Lisa)</i>
01/15/2020	<i><u>359</u> Agreed Motion to continue hearing on (related documents <u>218</u> Motion for relief from stay) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</i>
01/15/2020	<i><u>360</u> Withdrawal of Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>76</u> Motion by Highland Capital Management, L.P..). (Hayward, Melissa)</i>
01/15/2020	<i><u>361</u> Order granting motion to continue hearing on (related document # <u>359</u>) (related documents Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181,.). It is hereby ORDERED that a hearing on the Stay Relief Motion shall be continued to a later date provided by the Court and mutually acceptable to the Parties. Entered on 1/15/2020. (Okafor, M.)</i>
01/15/2020	<i><u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</i>
01/15/2020	<i><u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank</i>

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	<p>Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to maintain bank accounts.), <u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, (Annable, Zachery)</p>
01/15/2020	<p><u>364</u> Objection to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
01/16/2020	<p><u>365</u> Certificate of service re: Objection to First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel for the Period From October 16, 2019 Through November 30, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>366</u> Amended Witness and Exhibit List in Connection with Motion to Appoint a Chapter 11 Trustee filed by U.S. Trustee United States Trustee (RE: related document(s)<u>357</u> List (witness/exhibit/generic)). (Lambert, Lisa)</p>
01/16/2020	<p><u>367</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel, <u>69</u> Application to employ Lynn Pinker Cox &amp; Hurst LLP as Special Counsel). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable,</p>

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	Zachery)
01/17/2020	<u>369</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)
01/17/2020	<u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)( <i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/17/2020	<u>371</u> Order granting joint motion to continue hearing on (related document # <u>370</u> ) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.)
01/17/2020	<u>372</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>362</u> Response). (Annable, Zachery)
01/19/2020	<u>373</u> Amended Notice ( <i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/20/2020	<u>374</u> Amended Notice ( <i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice ( <i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/21/2020	<u>375</u> Certificate of service re: ( <i>Supplemental</i> ) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m. Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and

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	A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	<u>376</u> Certificate of service re: <i>Notice of Final Term Sheet</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>354</u> <i>Notice (Notice of Final Term Sheet)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). (Attachments: # 1 Exhibit A—Final Term Sheet) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	<u>377</u> Certificate of service re: 1) <i>Objection of the Debtor to United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee</i> ; and 2) <i>Notice of Hearing</i> ;

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	<p>to be Held on January 21, 2020 at 9:30 a.m. (Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to maintain bank accounts.), <u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s)<u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson</p>

	and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.) (Edmond, Michael)
01/21/2020	<u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. (Hoffman, Juliana)
01/21/2020	<u>383</u> Court admitted exhibits date of hearing January 21, 2020 (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by Lisa Lambert representing the U.S. Trustee) (Court Admitted U.S. Trustee's Exhibits #4, #5, #7, #8, #9, #10 and Took Judicial Notice of Exhibit #11) (Edmond, Michael) (Entered: 01/22/2020)
01/22/2020	<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document # <u>7</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document # <u>177</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document # <u>180</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>382</u> Agreed Order Granting Motion for Protective Order (related document # <u>280</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>384</u> Declaration re: <i>Notice / Declaration of Conor P. Tully in Support of the Retention of FTI Consulting, Inc.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i> ). (Hoffman, Juliana)
01/22/2020	<u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as</i>

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	<i>Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019 for Highland C).</i> (Annable, Zachery)
01/22/2020	<u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). (Annable, Zachery)
01/22/2020	<u>387</u> Request for transcript regarding a hearing held on 1/21/2020. The requested turn-around time is hourly. (Edmond, Michael) (Entered: 01/23/2020)
01/23/2020	<u>388</u> Certificate of service re: First Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019 filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>384</u> Declaration). (Hoffman, Juliana)
01/23/2020	<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. (Hoffman, Juliana)
01/23/2020	<u>390</u> Supplemental Notice of the Young Conaway Stargatt & Taylor, LLP Final Fee Application filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). (Hoffman, Juliana)
01/23/2020	<u>391</u> Certificate of service re: Final Fee Application <i>on behalf of Young Conaway Stargatt &amp; Taylor, LLP</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Perio). (Hoffman, Juliana)
01/24/2020	<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. (Pomerantz, Jeffrey)
01/24/2020	<u>393</u> Transcript regarding Hearing Held 01/21/2020 (140 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/23/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.), Hearing

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held on 1/21/2020. (RE: related document(s)7 Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: 1 Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)280 Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)127 Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L.

	Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.)). Transcript to be made available to the public on 04/23/2020. (Rehling, Kathy)
01/24/2020	<u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)
01/24/2020	<u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/24/2020	<u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) ( <i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016–1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/24/2020	<u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Email Correspondence) (Annable, Zachery)
01/24/2020	<u>398</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u> ) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/24/2020. (Admin.)
01/24/2020	<u>399</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u> ) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 44. Notice Date 01/24/2020. (Admin.)
01/27/2020	<u>400</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/27/2020	<u>401</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	<u>402</u> Certificate of service re: <i>Documents Served on January 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>369</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16,</i>

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	<p>2019, Through November 30, 2019) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P., <u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)(<i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>371</u> Order granting joint motion to continue hearing on (related document <u>370</u>) (related documents Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox &amp; Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.), <u>372</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>362</u> Response). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/27/2020	<p><u>403</u> Certificate of service re: <i>Documents Served on or before January 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>)) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P., <u>374</u> Amended Notice (<i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>)) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>)) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P., <u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35.</i> Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
01/27/2020	<p><u>404</u> Certificate of service re: <i>Documents Served on January 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u>) Entered on 1/22/2020. (Okafor, M.), <u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document <u>177</u>) Entered on 1/22/2020. (Okafor, M.), <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u>) Entered on 1/22/2020. (Okafor, M.), <u>382</u> Agreed Order Granting Motion for Protective Order (related document <u>280</u>) Entered on 1/22/2020. (Okafor, M.), <u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the</i></p>

	<i>Debtor for the Period From October 16, 2019 Through October 31, 2019 for Highland C).</i> filed by Debtor Highland Capital Management, L.P., <u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019 for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1).</i> filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	<u>405</u> Debtor-in-possession monthly operating report for filing period 10/16/2019 to 10/31/2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/27/2020	<u>406</u> Notice ( <i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Updated OCP List # <u>2</u> Exhibit 2—Blackline OCP List) (Annable, Zachery)
01/27/2020	<u>407</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
01/27/2020	<u>408</u> Notice of hearing( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> )) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/28/2020	<u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document and <u>127</u> Motion ). Entered on 1/28/2020 (Okafor, M.). Modified linkage on 2/11/2020 (Okafor, M.).
01/28/2020	<u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc# <u>396</u> )(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , Entered on 1/28/2020. (Okafor, M.)
01/28/2020	<u>411</u> Notice of Appearance and Request for Notice by Shawn M. Christianson Filed by Creditor Oracle America, Inc.. (Christianson, Shawn)
01/28/2020	<u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , (Annable, Zachery)
01/29/2020	<u>413</u> Certificate of service re: 1) <i>First and Final Application of Young Conaway Stargatt &amp; Taylor, LLP as Co- Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> ; 2) <i>Notice of First and Final Application of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> Filed by Claims Agent Kurtzman Carson

	<p>Consultants LLC (related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>390</u> Supplemental Notice of the Young Conaway Stargatt &amp; Taylor, LLP Final Fee Application filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
01/29/2020	<p><u>414</u> Certificate of service re: <i>Documents Served on January 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. filed by Debtor Highland Capital Management, L.P., <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland), <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) (<i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/30/2020	<p><u>415</u> Certificate of service re: <i>Documents Served on January 27, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>406</u> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Updated OCP List # 2 Exhibit 2—Blackline OCP List) filed by Debtor Highland Capital Management, L.P., <u>407</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>408</u> Notice of hearing(<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P.).</p>



	(Kass, Albert)
01/30/2020	<u>416</u> Certificate of service re: <i>Documents Served on January 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document). Entered on 1/28/2020 (Okafor, M.), <u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc <u>396</u> )(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , Entered on 1/28/2020. (Okafor, M.), <u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/31/2020	<u>417</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
01/31/2020	<u>418</u> Debtor—in—possession monthly operating report for filing period December 1, 2019 to December 31, 2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/31/2020	<u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/31/2020	<u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # <u>1</u> Exhibit A Fee Statement # <u>2</u> Exhibit B Expense Detail) (Hoffman, Juliana)
01/31/2020	<u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Form of Bar Date Notice # <u>2</u> Exhibit B—Form of Publication Notice # <u>3</u> Exhibit C—Proposed Order) (Annable, Zachery)
01/31/2020	<u>422</u> Motion for expedited hearing(related documents <u>421</u> Motion for leave) ( <i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/02/2020	<u>423</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period:

	10/29/2019 to 11/30/2019, Fee: \$7). (Hoffman, Juliana)
02/03/2020	<u>424</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/04/2020	<u>425</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associate</i> ). (Hayward, Melissa)
02/04/2020	<u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , (Annable, Zachery)
02/05/2020	<u>427</u> Order granting motion for expedited hearing (Related Doc# <u>422</u> )(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , Entered on 2/5/2020. (Okafor, M.)
02/05/2020	<u>428</u> Order denying motion to appoint trustee. (related document # <u>271</u> ) Entered on 2/5/2020. (Okafor, M.)
02/06/2020	<u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)
02/06/2020	<u>430</u> Certificate of service re: <i>Documents Served on January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>417</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # 1 Exhibit A Fee Statement # 2 Exhibit B Expense Detail) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>422</u> Motion for expedited hearing(related



	documents <u>421</u> Motion for leave) ( <i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/06/2020	<u>431</u> Certificate of service re: <i>Notice of Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/06/2020	<u>432</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/07/2020	<u>433</u> Clerk's correspondence requesting an order or a notice of hearing from attorney for debtor. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)) Responses due by 2/14/2020. (Ecker, C.)
02/10/2020	<u>434</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure)). (Hayward, Melissa)
02/10/2020	<u>435</u> Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document # <u>340</u> ) Entered on 2/10/2020. (Okafor, M.)
02/10/2020	<u>436</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/10/2020	<u>437</u> Notice ( <i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN

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	U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/10/2020	<u>438</u> **WITHDRAWN by document # <u>443</u> ** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u> , (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.).
02/11/2020	<u>439</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>67</u> Motion by Highland Capital Management, L.P.). (Annable, Zachery)
02/12/2020	<u>440</u> Certificate of service re: <i>1) Order Granting Motion for Expedited Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof; to be Held on February 19, 2020 at 9:30 a.m. (Central Time); 2) Order Denying United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>427</u> Order granting motion for expedited hearing (Related Doc <u>422</u> )(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , Entered on 2/5/2020. (Okafor, M.), <u>428</u> Order denying motion to appoint trustee. (related document <u>271</u> ) Entered on 2/5/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	<u>441</u> Certificate of service re: <i>Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	<u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. (Hoffman, Juliana)
02/12/2020	<u>443</u> Notice ( <i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u> ,). (Annable, Zachery)
02/12/2020	<u>444</u> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>378</u> Application for compensation <i>First</i>

	<i>Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$32). (Hoffman, Juliana)</i>
02/13/2020	<p><u>445</u> Certificate of service re: 1) <i>Order Authorizing and Approving Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i>; 2) <i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>; and 3) <i>Notice of Hearing re: First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019; to be Held on March 11, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>435</u> Order granting application to employ Hayward &amp; Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document <u>340</u>) Entered on 2/10/2020. (Okafor, M.), <u>437</u> Notice (<i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>438</u> **WITHDRAWN by document <u>443</u>** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u>, (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/13/2020	<u>446</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Chiarello, Annmarie)
02/13/2020	<u>447</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period). (Annable, Zachery)
02/13/2020	<u>448</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> )). (Annable, Zachery)
02/13/2020	<u>449</u> Certificate of service re: 1) <i>Second Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2019 to and Including December 31, 2019</i> ; 2) <i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>442</u> Application for compensation



	<p><i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, Financial Advisor FTI Consulting, Inc., <u>443</u> Notice (<i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u>),. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/14/2020	<p><u>450</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Perio). (Hoffman, Juliana)</p>
02/14/2020	<p><u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # <u>1</u> Exhibit 1 (Arb Award) # <u>2</u> Exhibit 2 (Rule 11) # <u>3</u> Exhibit 3 (Terry Declaration)) (Shaw, Brian)</p>
02/14/2020	<p>Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27457656, amount \$ 181.00 (re: Doc# <u>451</u>). (U.S. Treasury)</p>
02/14/2020	<p><u>452</u> Notice of hearing filed by Jennifer G. Terry, Joshua Terry (RE: related document(s)<u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # 1 Exhibit 1 (Arb Award) # 2 Exhibit 2 (Rule 11) # 3 Exhibit 3 (Terry Declaration))). Preliminary hearing to be held on 3/11/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Shaw, Brian)</p>
02/14/2020	<p><u>453</u> Objection to (related document(s): <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i>) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)</p>
02/14/2020	<p><u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel). (Annable, Zachery)</p>
02/17/2020	<p><u>455</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
02/18/2020	<p><u>456</u> Notice of Withdrawal of Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>124</u> Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP and Lynn Pinker Cox &amp; Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED</p>

	AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hoffman, Juliana)
02/18/2020	<u>457</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/). (Annable, Zachery)
02/19/2020	<u>458</u> Order granting first and final application for compensation (related document # <u>389</u> ) granting for Young Conaway Stargatt & Taylor, LLP as co-counsel for Official Committee of Unsecured Creditors, fees awarded: \$272300.00, expenses awarded: \$8855.56 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document # <u>67</u> ) Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>462</u> Court admitted exhibits date of hearing February 19, 2020 (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P., (Court Admitted Debtors/Plaintiffs Exhibits #1, #2, #3, #4, #5, #6, #7 #8, & #9; Also Admitted Defendant/Respondent Exhibits #16 & #27 only). (Edmond, Michael)
02/19/2020	<u>463</u> Request for transcript regarding a hearing held on 2/19/2020. The requested turn-around time is hourly (Jeng, Hawaii)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted.(Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors



	Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>421</u> Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.) (Edmond, Michael) (Entered: 02/25/2020)
02/20/2020	<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. (Pomerantz, Jeffrey)
02/20/2020	<u>465</u> Application for compensation ( <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A December 2019 Fee Statement) (Annable, Zachery)
02/21/2020	<u>466</u> Notice ( <i>Notice of Debtor's Amended Operating Protocols</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( (related document <u>281</u> ) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Amended Operating Protocols # <u>2</u>

	Exhibit B—Redline of Amended Operating Protocols) (Annable, Zachery)
02/21/2020	<u>467</u> Withdrawal of Limited Objection to Motion of the Debtor for Approval of Settlement with The Official Committee Of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course filed by Creditor Issuer Group (RE: related document(s) <u>324</u> Objection). (Bain, Joseph)
02/21/2020	<u>468</u> Certificate of service re: Objection to Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel for the Period From December 1, 2019 through December 31, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i> ). (Chiarello, Annmarie)
02/21/2020	<u>469</u> Certificate of service re: <i>Debtor's Witness and Exhibit List in Connection with its Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date Filed</i> by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>470</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>455</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> )) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>471</u> Certificate of service re: <i>1) Order Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Order Granting Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(D) and Local Rule 3016–1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 3) Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.), <u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.), <u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document <u>67</u> ) Entered on 2/19/2020. (Okafor, M.)). (Kass, Albert)
02/23/2020	<u>472</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 12/1/2019 to 12/31/2019, Fee). (Hoffman, Juliana)
02/24/2020	<u>473</u> Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document # <u>218</u> ) Entered on 2/24/2020. (Okafor, M.)
02/24/2020	<u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain</i>

	<i>"Related Entities")</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
02/24/2020	<u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
02/24/2020	<u>476</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/25/2020	<u>477</u> Order granting motion for expedited hearing (Related Doc# <u>475</u> )(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u> , Entered on 2/25/2020. (Okafor, M.)
02/25/2020	<u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> )) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u> , (Annable, Zachery)
02/26/2020	<u>479</u> Transcript regarding Hearing Held 02/19/2020 (188 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 2/19/2020. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted., Hearing held on 2/19/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer



	<p>Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.), Hearing held on 2/19/2020. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.), Hearing held on 2/19/2020. (RE: related document(s)<u>421</u> Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.,) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.), Hearing held on 2/19/2020. (RE: related document(s)<u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.)). Transcript to be made available to the public on 05/26/2020. (Rehling, Kathy)</p>
02/26/2020	<p><u>480</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i>; 2) <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 1, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. filed by Debtor Highland Capital Management, L.P., <u>465</u> Application for compensation (<i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A December 2019 Fee Statement)). (Kass, Albert)</p>
02/26/2020	<p><u>481</u> Certificate of service re: <i>Notice of Debtor's Amended Operating Protocols</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>466</u> Notice (<i>Notice of Debtor's Amended Operating Protocols</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( (related document <u>281</u>) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Amended Operating Protocols # 2 Exhibit B—Redline of Amended Operating Protocols) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

02/26/2020	<u>482</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>473</u> Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document <u>218</u> ) Entered on 2/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 02/26/2020. (Admin.)
02/27/2020	<u>483</u> Application to employ Deloitte Tax LLP as Other Professional ( <i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Crawford Declaration # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
02/28/2020	<u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> )). (Annable, Zachery)
02/28/2020	<u>485</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—OCP Tracking Report) (Annable, Zachery)
03/02/2020	<u>486</u> Response opposed to (related document(s): <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party California Public Employees Retirement System (CalPERS). (Attachments: # <u>1</u> Exhibit A – Purchase and Sale Agreement # <u>2</u> Exhibit B – Assignment and Assumption Agreement) (Shriro, Michelle)
03/02/2020	<u>487</u> Objection to (related document(s): <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/02/2020	<u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document # <u>421</u> ) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)
03/02/2020	<u>489</u> Joinder by Acis Capital Management, L.P. and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>487</u> Objection). (Enright, Jason)
03/02/2020	<u>490</u> Motion to appear pro hac vice for Louis J. Cisz, III. Fee Amount \$100 Filed by Interested Party California Public Employees Retirement System (CalPERS) (Shriro, Michelle)
03/02/2020	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 27511024, amount \$ 100.00 (re: Doc# <u>490</u> ). (U.S. Treasury)



03/02/2020	<p><u>491</u> Certificate of service re: 1) <i>Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; 2) <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>492</u> Certificate of service re: 1) <i>Order Granting Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; 2) <i>Notice of Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; to be Held on March 4, 2020 at 1:30 p.m. (Prevailing Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>477</u> Order granting motion for expedited hearing (Related Doc<u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, Entered on 2/25/2020. (Okafor, M.), <u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>493</u> Certificate of service re: 1) <i>Witness and Exhibit List for March 4, 2020 Hearing</i>; 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). filed by Debtor Highland Capital Management, L.P., <u>485</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A—OCP Tracking Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)(<i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
03/02/2020	<p><u>495</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>487</u> Objection). (Hoffman, Juliana)</p>

03/02/2020	<u>496</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> )). (Enright, Jason)
03/03/2020	<u>497</u> Debtor-in-possession monthly operating report for filing period January 1, 2020 to January 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2020	<u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/04/2020	<u>499</u> Reply to (related document(s): <u>487</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/04/2020	<u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document # <u>490</u> ) Entered on 3/4/2020. (Okafor, M.)
03/04/2020	<u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. (Hoffman, Juliana)
03/04/2020	Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.) (Edmond, Michael) (Entered: 03/05/2020)
03/04/2020	<u>504</u> Court admitted exhibits date of hearing March 4, 2020 (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) Filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, & #12) (Edmond, Michael) (Entered: 03/05/2020)
03/05/2020	<u>502</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12). (Hoffman, Juliana)
03/05/2020	<u>503</u> Request for transcript regarding a hearing held on 3/4/2020. The requested turn-around time is daily (Jeng, Hawaii)
03/06/2020	<u>505</u> Notice of Appearance and Request for Notice by John Y. Bonds III filed by Interested Party James Dondero. (Bonds, John)

03/06/2020	<u>506</u> Notice of Appearance and Request for Notice by Bryan C. Assink filed by Interested Party James Dondero. (Assink, Bryan)
03/06/2020	<u>507</u> Motion to appear pro hac vice for Jeffrey Bjork. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana) Modified to correct attorney name on 3/6/2020 (Ecker, C.).
03/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27531772, amount \$ 100.00 (re: Doc# <u>507</u> ). (U.S. Treasury)
03/06/2020	<u>508</u> Witness and Exhibit List filed by Jennifer G. Terry, Joshua Terry (RE: related document(s) <u>451</u> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)
03/06/2020	<u>509</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document <u>490</u> ) Entered on 3/4/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/06/2020. (Admin.)
03/10/2020	<u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document # <u>507</u> ) Entered on 3/10/2020. (Okafor, M.)
03/11/2020	<u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	<u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc # <u>474</u> ) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document # <u>68</u> ) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	Hearing held on 3/11/2020. (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (Appearances: M. Hayward for Debtor; B Shaw for Movants; J. Hoffman for UCC; M. Platt (and M. Hankin telephonically) for Redeemer Committee; J. Bonds for J. Dondero; A. Anderson for certain Issuers. Evidentiary hearing. Motion granted. Counsel to upload order.)(Edmond, Michael)
03/11/2020	<u>515</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI January 2020 Staffing Report) (Annable, Zachery)

03/11/2020	<u>516</u> Court admitted exhibits date of hearing March 11, 2020 (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (COURT ADMITTED PLAINTIFF EXHIBIT'S #M1, #M2 & #M3). (Edmond, Michael)
03/12/2020	<u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. (Hoffman, Juliana)
03/12/2020	<u>518</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document <u>507</u> ) Entered on 3/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/12/2020. (Admin.)
03/13/2020	<u>519</u> Order granting motion for relief from stay by Jennifer G. Terry , Joshua Terry (related document # <u>451</u> ) Entered on 3/13/2020. (Okafor, M.)
03/13/2020	<u>520</u> BNC certificate of mailing. (RE: related document(s) <u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>521</u> BNC certificate of mailing. (RE: related document(s) <u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>522</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u> ) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>523</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u> ) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/14/2020	<u>524</u> Certificate of service re: <i>Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document <u>421</u> ) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)). (Kass, Albert)
03/14/2020	<u>525</u> Certificate of service re: <i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)( <i>Debtor's Limited</i>



	<i>Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/14/2020	<u>526</u> Certificate of service re: <i>Third Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
03/16/2020	<u>527</u> Notice of Appearance and Request for Notice by David G. Adams filed by Creditor United States (IRS). (Adams, David)
03/16/2020	<u>528</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland C). (Annable, Zachery)
03/17/2020	<u>529</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>465</u> Application for compensation ( <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i> ) for Hayward). (Annable, Zachery)
03/17/2020	<u>530</u> Certificate of service re: <i>Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>531</u> Certificate of service re: 1) <i>Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain Related Entities</i> ; 2) <i>Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date</i> ; 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 Through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u> ) Entered on 3/11/2020. (Bradden, T.), <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u> ) Entered on 3/11/2020. (Bradden, T.), <u>515</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI January 2020 Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>532</u> Certificate of service re: <i>Third Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28,



	Expenses: \$79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/18/2020	<u>533</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2020	<u>534</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2020	<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. (Pomerantz, Jeffrey)
03/19/2020	<u>536</u> Application for compensation ( <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—January 2020 Invoice) (Annable, Zachery)
03/19/2020	<u>537</u> Notice of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
03/20/2020	<u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	

	<u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020</i> , Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. (Hoffman, Juliana)
03/22/2020	<u>543</u> Stipulation by Highland Capital Management, L.P., UBS AG London Branch, UBS Securities LLC and. filed by Debtor Highland Capital Management, L.P., Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>488</u> Order on motion for leave). (Manns, Ryan)
03/23/2020	<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. (Hoffman, Juliana)
03/23/2020	<u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
03/23/2020	<u>546</u> Certificate of service re: <i>(Supplemental) Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/25/2020	<u>547</u> Joint Stipulation and Order Extending Bar Date for UBS Securities LLC and UBS AG London Branch (RE: related document(s) <u>543</u> Stipulation filed by Debtor Highland Capital Management, L.P., Interested Party UBS Securities LLC, Interested Party UBS AG London Branch). Entered on 3/25/2020 (Okafor, M.)
03/25/2020	<u>548</u> Agreed Order Extending the Deadline to Object to the Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief (Related documents # <u>545</u> Motion to extend and <u>483</u> Application to employ Deloitte Tax LLP) Entered on 3/25/2020. (Okafor, M.)
03/26/2020	<u>549</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020</i> , Fee: \$569). (Hoffman, Juliana)
03/26/2020	<u>550</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>483</u> Application to employ Deloitte Tax LLP as Other Professional <i>(Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date;)</i> ). (Annable, Zachery)
03/27/2020	<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document # <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)

03/27/2020	<p><u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). (Annable, Zachery)</p>
03/27/2020	<p><u>553</u> Certificate of service re: 1) <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 Through February 29, 2020</i>; 2) <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i>; and 3) <i>Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. filed by Debtor Highland Capital Management, L.P., <u>536</u> Application for compensation (<i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—January 2020 Invoice), <u>537</u> Notice of Filing of <i>Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/27/2020	<p><u>554</u> Certificate of service re: <i>Documents Served on or Before March 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official</i></p>



	Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/27/2020	<u>555</u> Certificate of service re: 1) <i>Fourth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from February 1, 2020 to and Including February 29, 2020</i> ; 2) <i>Agreed Motion to Extend Objection Deadline for the Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. filed by Financial Advisor FTI Consulting, Inc., <u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/31/2020	<u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.)
03/31/2020	<u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/02/2020	<u>558</u> Debtor-in-possession monthly operating report for filing period 02/01/2020 to 02/29/2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/02/2020	<u>559</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.)
04/03/2020	<u>561</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00.). (Hoffman, Juliana)
04/03/2020	<u>562</u> Notice of hearing( <i>Notice of May 26, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>563</u> Notice of hearing( <i>Notice of June 15, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>564</u> Certificate of service re: 1) <i>Agreed Order: (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i> ; 2) <i>Stipulation by and Between the Debtor and</i>



	<i>Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.), <u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>565</u> Certificate of service re: 1) <i>Order Approving Stipulation Permitting Brown Rudnick LLP to File a Proof of Claim After the General Bar Date</i> ; 2) <i>Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.), <u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/06/2020	<u>566</u> Declaration re: ( <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
04/06/2020	<u>567</u> Notice ( <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)
04/07/2020	<u>568</u> Notice of hearing( <i>Notice of July 8, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/07/2020	<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020. (Hoffman, Juliana)
04/07/2020	<u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. (Hoffman, Juliana)
04/08/2020	<u>571</u> Transcript regarding Hearing Held 03/04/20 RE: Motion hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber J&J Court Transcribers, Inc., Telephone number 609-586-2311. (RE: related document(s) Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J.

	<p>Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shiro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.)). Transcript to be made available to the public on 07/7/2020. (Bowen, James)</p>
04/08/2020	<p><u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)<u>488</u> Order on motion for leave). (Bain, Joseph)</p>
04/09/2020	<p><u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—February 2020 Fee Statement) (Annable, Zachery)</p>
04/09/2020	<p><u>574</u> Certificate No Objection Regarding Fifth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From February 1, 2020 Through February 29, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nat). (Pomerantz, Jeffrey)</p>
04/10/2020	<p><u>575</u> Certificate of service re: 1) <i>Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims</i>; 2) <i>Notice of May 26, 2020 Omnibus Hearing Date; to be Held on May 26, 2020 at 9:30 a.m. (Central Time)</i>; and 3) <i>Notice of June 15, 2020 Omnibus Hearing Date; to be Held on June 15, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.), <u>562</u> Notice of hearing(<i>Notice of May 26, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>563</u> Notice of hearing(<i>Notice of June 15, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/10/2020	<p><u>576</u> Certificate of service re: 1) <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>; and 2) <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>566</u> Declaration re: (<i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>567</u> Notice (<i>Notice</i></p>

	<i>of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	<u>577</u> Certificate of service re: 1) <i>Summary Sheet and First Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020;</i> and 2) <i>Summary Sheet and First Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47.</i> Filed by Objections due by 4/28/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09.</i> Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
04/10/2020	<u>578</u> Certificate of service re: <i>Notice of July 8, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>568</u> Notice of hearing( <i>Notice of July 8, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	<u>579</u> Certificate of service re: <i>Joint Stipulation and [Proposed] Order Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s) <u>488</u> Order on motion for leave). filed by Creditor Issuer Group). (Kass, Albert)
04/10/2020	<u>580</u> Objection to (related document(s): <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
04/11/2020	<u>581</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin</i>



	<i>LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: &amp;#0).</i> (Hoffman, Juliana)
04/13/2020	<u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # <u>1</u> Proposed Order) (Skolnekovich, Nicole)
04/14/2020	<u>583</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62.). (Hoffman, Juliana)
04/14/2020	<u>584</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>536</u> Application for compensation ( <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> ) for Hayward & Associates PLLC). (Annable, Zachery)
04/14/2020	<u>585</u> Notice of Appearance and Request for Notice Filed by Creditor American Express National Bank. (Bharatia, Shraddha)
04/14/2020	<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. (Pomerantz, Jeffrey)
04/15/2020	<u>587</u> Certificate of service re: <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>573</u> Application for compensation ( <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—February 2020 Fee Statement) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
04/15/2020	<u>588</u> Certificate of service re: Omnibus Limited Objection to Applications for Compensation and Reimbursement of Expense of Foley Gardere, Foley & Lardner LLP as Special Counsel for the Period From October 16, 2019 Through February 29, 2020 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November, 539 Amended application for compensation Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through, 540 Application for compensation Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> 541 Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ). (Chiarello, Annmarie)
04/15/2020	



	<u>589</u> Notice of hearing filed by Interested Party Hunton Andrews Kurth LLP (RE: related document(s) <u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 5/7/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>582</u> , (Skolnekovich, Nicole)
04/15/2020	<u>590</u> Motion to reclaim funds from the registry[ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Proposed Order # <u>11</u> Service List) (Kane, John)
04/17/2020	<u>591</u> Certificate of service re: <i>1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/17/2020	<u>592</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for March 2020) (Annable, Zachery)
04/17/2020	<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # <u>1</u> Exhibit 1 (Draft Motion Show Cause Motion) # <u>2</u> Exhibit 2 (DAF Complaint 1st case) # <u>3</u> Exhibit 3 (DAF Dismissal first case) # <u>4</u> Exhibit 4 (DAF Complaint 2nd case) # <u>5</u> Exhibit 5 (DAF Dismissal 2nd Case) # <u>6</u> Proposed Order) (Shaw, Brian)
04/17/2020	Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27675692, amount \$ 181.00 (re: Doc# <u>593</u> ). (U.S. Treasury)
04/20/2020	<u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. (Hoffman, Juliana)
04/21/2020	<u>595</u> Certificate of service re: <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>586</u> <i>Application for compensation Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/21/2020	<u>596</u> Certificate of service re: <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>594</u> <i>Application for compensation Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

04/21/2020	<u>597</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>592</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for March 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/22/2020	Receipt Number 00338531, Fee Amount \$3,601,018.59 (RE: Related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd,K) (Entered: 08/10/2020)
04/23/2020	Receipt Number 00338532, Fee Amount \$898,075.53 (RE: related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
04/24/2020	<u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A March 2020 Invoice) (Annable, Zachery)
04/24/2020	<u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Deloitte Tax Engagement Letters) (Annable, Zachery)
04/28/2020	<u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
04/28/2020	<u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
04/28/2020	<u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)
04/28/2020	<u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ; and 2) <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020</i>

	<i>through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2020	<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Alexander McGeoch # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
04/28/2020	<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Timothy Silva # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
04/28/2020	<u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/28/2020	<u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	<u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	<u>609</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A Fee Statements) (Annable, Zachery)
04/28/2020	<u>610</u> Notice of hearing <i>Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020.,



	<p><u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020., <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>569</u> and for <u>607</u> and for <u>609</u> and for <u>570</u> and for <u>602</u> and for <u>608</u>, (Pomerantz, Jeffrey)</p>
04/28/2020	<p><u>611</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, (Annable, Zachery)</p>
04/28/2020	<p><u>612</u> Certificate of service re: (<i>Supplemental</i>) 1) <i>Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/29/2020	<p><u>613</u> Clerk's correspondence requesting a notice of hearing from attorney for debtor. (RE: related document(s)<u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)) Responses due by 5/13/2020. (Ecker, C.)</p>
04/29/2020	<p><u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor</p>



	Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.)
04/29/2020	<u>615</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s) <u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/30/2020	<u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)
05/01/2020	<u>617</u> Response unopposed to (related document(s): <u>593</u> Motion for relief from stay Fee amount \$181, filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/05/2020	<u>618</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/05/2020	<u>619</u> Certificate of service re: <i>Documents Served on April 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ; and 2) <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's</i>

*Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date*) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order) filed by Debtor Highland Capital Management, L.P., 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (*Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date*) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order) filed by Debtor Highland Capital Management, L.P., 606 Motion to extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. filed by Debtor Highland Capital Management, L.P., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. filed by Consultant Mercer (US) Inc., 609 Application for compensation (*Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements) filed by Other Professional Hayward & Associates PLLC, 610 Notice of hearing *Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., 609 Application for compensation (*Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward &

	<p>Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>569</u> and for <u>607</u> and for <u>609</u> and for <u>570</u> and for <u>602</u> and for <u>608</u>, filed by Debtor Highland Capital Management, L.P., <u>611</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/05/2020	<p><u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). (Attachments: # <u>1</u> Exhibit A—Employee Letter) (Annable, Zachery)</p>
05/05/2020	<p><u>621</u> Certificate of No Objection Regarding Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward &amp;). (Annable, Zachery)</p>
05/05/2020	<p><u>622</u> Certificate No Objection Regarding Sixth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Po). (Pomerantz, Jeffrey)</p>
05/06/2020	<p><u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document # <u>582</u>) Entered on 5/6/2020. (Okafor, M.)</p>
05/06/2020	<p><u>624</u> Objection to (related document(s): <u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>] filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
05/06/2020	<p><u>625</u> Certificate of service re: Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>624</u> Objection). (Hoffman, Juliana)</p>
05/06/2020	<p><u>626</u> Certificate of service re: 1) <i>Order Approving Second Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim after the General Bar Date</i>; and 2) <i>Agreed Motion to Extend by Sixty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.), <u>615</u></p>



	Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s) <u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/06/2020	<u>627</u> Certificate of service re: <i>Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Property Lease by Sixty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)). (Kass, Albert)
05/08/2020	<u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)
05/12/2020	<u>629</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,). (Hoffman, Juliana)
05/13/2020	<u>630</u> Reply to (related document(s): <u>624</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Service List) (Kane, John)
05/13/2020	<u>631</u> Certificate of service re: <i>1) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020; and 2) Joint Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors Modifying the Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>618</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Attachments: # <u>1</u> Exhibit A—Employee Letter) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2020	<u>632</u> Certificate of service re: <i>Stipulation and Agreed Order Permitting Hunton Andrew Kurth LLP to Apply Prepetition Retainer</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document <u>582</u> ) Entered on 5/6/2020. (Okafor, M.) filed by Interested Party Hunton Andrews Kurth LLP). (Kass, Albert)
05/13/2020	<u>633</u> Certificate of service re: <i>Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)). (Kass, Albert)



05/14/2020	<u>634</u> Debtor-in-possession monthly operating report for filing period March 1, 2020 to March 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/15/2020	<u>635</u> Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry[ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). Hearing to be held on 6/30/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>590</u> , (Attachments: # <u>1</u> Service List) (Kane, John)
05/19/2020	<u>636</u> Notice of Appearance and Request for Notice by Martin A. Sosland filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/19/2020	<u>637</u> Notice of Appearance and Request for Notice by Candice Marie Carson filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Carson, Candice)
05/19/2020	<u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
05/19/2020	<u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>641</u> Objection to (related document(s): <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
05/20/2020	<u>642</u> Trustee's Objection to <i>Foley &amp; Lardner, LLP's First Interim Application for Fees and Expenses</i> (RE: related document(s) <u>602</u> Application for compensation) (Lambert, Lisa)
05/20/2020	<u>643</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Asso). (Annable, Zachery)
05/20/2020	<u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K) (Sosland, Martin)
05/20/2020	<u>645</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief</i>

	<i>From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>644</u> , (Sosland, Martin)
05/20/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27774088, amount \$ 181.00 (re: Doc# <u>644</u> ). (U.S. Treasury)
05/20/2020	<u>646</u> Order approving third stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/20/2020 (Okafor, M.)
05/20/2020	<u>647</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25) (Chiarello, Annmarie)
05/21/2020	<u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. (Pomerantz, Jeffrey)
05/22/2020	<u>649</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i> ). (Annable, Zachery)
05/22/2020	<u>650</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (). (Annable, Zachery)
05/22/2020	<u>651</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,</i> ). (Hoffman, Juliana)
05/22/2020	<u>652</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09.</i> ). (Hoffman, Juliana)
05/22/2020	<u>653</u> Declaration re: ( <i>Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain</i>

	<i>Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
05/22/2020	<u>654</u> Witness and Exhibit List for May 26, 2020 Hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> ), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> , <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20, 608</i> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer (, 609</i> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)
05/22/2020	<u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.)
05/22/2020	<u>656</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>609</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)
05/22/2020	<u>657</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time)). (Annable, Zachery)
05/22/2020	<u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/23/2020	<u>659</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> ). (Annable, Zachery)
05/25/2020	<u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for</i>

	<i>Hearing on May 26, 2020 at 9:30 a.m. (Central Time))</i> filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)
05/26/2020	<u>661</u> Order granting application for compensation (related document # <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>662</u> Order granting application for compensation (related document # <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>663</u> Order granting application for compensation (related document # <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>664</u> Order granting application for compensation (related document # <u>608</u> ) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>665</u> Amended Order granting application for compensation (related document # <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>666</u> Amended Order granting application for compensation (related document # <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>667</u> Order granting application for compensation (related document # <u>609</u> ) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document # <u>605</u> ) Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>670</u> Order granting application for compensation (related document # <u>602</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	<u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition



	Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	674 Hearing held on 5/26/2020. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order. (Edmond, Michael) (Entered: 05/27/2020)
05/27/2020	<u>671</u> Request for transcript (ruling only) regarding a hearing held on 5/26/2020. The requested turn-around time is daily (Jeng, Hawaii)
05/28/2020	<u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. (Hoffman, Juliana)
05/28/2020	<u>676</u> Transcript regarding Hearing Held 05/26/2020 (7 pgs.) RE: Fee Applications, Applications to Employ Nunc Pro Tunc, Motion to Extend Exclusivity Period (Excerpt: 10:00–10:06 a.m. Only). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.), <u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), <u>674</u> Hearing held on 5/26/2020. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order.). Transcript to be made available to the public on 08/26/2020. (Rehling, Kathy)

05/28/2020	<u>677</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>663</u> Order granting application for compensation (related document <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 05/28/2020. (Admin.)
06/01/2020	<u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
06/01/2020	<u>679</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for April 2020) (Annable, Zachery)
06/01/2020	<u>680</u> Certificate of service re: <i>1) Third Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date; 2) Summary Sheet and Sixth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020; and 3) Summary Sheet and Fifth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2020 to and Including March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/01/2020	<u>681</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing [Attached hereto as Exhibit B]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<u>682</u> Certificate of service re: <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's

	Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<p><u>683</u> Certificate of service re: <i>Documents Served on May 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>653</u> Declaration re: (<i>Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>654</u> Witness and Exhibit List for May 26, 2020 Hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>, <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i>, <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (, <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's At). filed by Debtor Highland Capital Management, L.P., <u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.), <u>658</u> Notice (Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/02/2020	<p><u>684</u> Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)) Responses due by 6/9/2020. (Ecker, C.)</p>
06/02/2020	<p><u>685</u> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s)<u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)</p>
06/02/2020	<p><u>686</u> Debtor-in-possession monthly operating report for filing period April 1, 2020 to April 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>



06/03/2020	<u>687</u> Response opposed to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
06/03/2020	<u>688</u> Support/supplemental document( <i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>687</u> Response). (Attachments: # <u>1</u> Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # <u>2</u> Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # <u>3</u> Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # <u>4</u> Exhibit 4—NY D.I. 411: March 13, 2017 Decision # <u>5</u> Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # <u>6</u> Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # <u>7</u> Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # <u>8</u> Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # <u>9</u> Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # <u>10</u> Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # <u>11</u> Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # <u>12</u> Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only)) (Annable, Zachery)
06/03/2020	<u>689</u> Motion to file document under seal.( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Protective Order Filed in State Court Litigation) (Annable, Zachery)
06/03/2020	<u>690</u> Objection to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
06/03/2020	<u>691</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
06/03/2020	<u>692</u> Objection to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)Redacted Version ( <i>Pending Ruling on Motion to Seal at D.I. 691</i> ) of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A (slip sheet, pending ruling on motion to seal) # <u>2</u> Exhibit Exhibit B slip sheet (pending ruling on motion to seal) # <u>3</u> Exhibit Exhibit C slip sheet (pending ruling on motion to seal) # <u>4</u> Exhibit Exhibit D slip sheet (pending ruling on motion to seal) # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet (pending ruling on motion to seal) # <u>9</u> Exhibit Exhibit I slip sheet (pending ruling on motion to seal) # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit L # <u>12</u> Exhibit Exhibit M # <u>13</u> Exhibit Exhibit N) (Platt, Mark)
06/03/2020	<u>693</u> Support/supplemental document <i>Exhibit K</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>692</u> Objection). (Platt, Mark)
06/03/2020	<u>694</u> Joinder by filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>692</u> Objection). (Shaw, Brian)



06/04/2020	<u>695</u> Motion to appear pro hac vice for Robert J. Feinstein. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27814231, amount \$ 100.00 (re: Doc# <u>695</u> ). (U.S. Treasury)
06/04/2020	<u>696</u> Amended Motion to file document under seal.AMENDED MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
06/04/2020	<u>697</u> Certificate of service re: <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> )) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> )) filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2020	<u>698</u> Certificate of service re: <i>Documents Served on May 26, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>661</u> Order granting application for compensation (related document <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>662</u> Order granting application for compensation (related document <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>663</u> Order granting application for compensation (related document <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.), <u>664</u> Order granting application for compensation (related document <u>608</u> ) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.), <u>665</u> Amended Order granting application for compensation (related document <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>666</u> Amended Order granting application for compensation (related document <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>667</u> Order granting application for compensation (related document <u>609</u> ) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.), <u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.), <u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document <u>605</u> ) Entered on 5/26/2020. (Ecker, C.), <u>670</u> Order granting application for compensation (related document <u>602</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)). (Kass, Albert)
06/04/2020	<u>699</u> Certificate of service re: <i>Summary Sheet and Sixth Monthly Application of FTI Consulting for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)

06/04/2020	<u>700</u> Motion to redact/restrict Restrict From Public View (related document(s): <u>692</u> ) (Fee Amount \$25) Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark)
06/04/2020	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] ( 25.00). Receipt number 27815698, amount \$ 25.00 (re: Doc# <u>700</u> ). (U.S. Treasury)
06/04/2020	<u>701</u> Objection to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)Redacted Version of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Exhibit Exhibit D # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet # <u>9</u> Exhibit Exhibit I slip sheet # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit K # <u>12</u> Exhibit Exhibit L # <u>13</u> Exhibit Exhibit M # <u>14</u> Exhibit Exhibit N) (Platt, Mark)
06/04/2020	<u>702</u> Notice of Appearance and Request for Notice by Thomas M. Melsheimer filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent. (Melsheimer, Thomas)
06/04/2020	<u>703</u> Motion to appear pro hac vice for David Neier. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Melsheimer, Thomas)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27816362, amount \$ 100.00 (re: Doc# <u>703</u> ). (U.S. Treasury)
06/05/2020	<u>704</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/05/2020	<u>705</u> Order granting motion to appear pro hac vice adding David Neier for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>703</u> ) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>706</u> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document # <u>695</u> ) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>707</u> Certificate of service re: 1) <i>Fourth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>679</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ

	Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for April 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/05/2020	<u>708</u> Certificate of service re: <i>Order Approving Fourth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>685</u> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)). (Kass, Albert)
06/05/2020	<u>709</u> Certificate of service re: 1) <i>Debtor's Objection to UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> ; 2) <i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ; and 3) <i>Debtor's Motion for Entry of an Order Authorizing Filing Under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>687</u> Response opposed to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>688</u> Support/supplemental document( <i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>687</u> Response). (Attachments: # 1 Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # 2 Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # 3 Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # 4 Exhibit 4—NY D.I. 411: March 13, 2017 Decision # 5 Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # 6 Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # 7 Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # 8 Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # 9 Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # 10 Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # 11 Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # 12 Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only)) filed by Debtor Highland Capital Management, L.P., <u>689</u> Motion to file document under seal.( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Protective Order Filed in State Court Litigation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/07/2020	<u>710</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>706</u> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document <u>695</u> ) Entered on 6/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/07/2020. (Admin.)
06/08/2020	<u>711</u> Order granting motion to seal documents (related document # <u>696</u> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<u>712</u> Certificate of No Objection filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>593</u> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)
06/08/2020	<u>713</u> Order granting Motion to Redact (Related Doc # <u>700</u> ) Entered on 6/8/2020. (Okafor, M.)

06/08/2020	<b><u>714</u> SEALED document regarding: Redeemer Committee's Objection to UBS's Motion for Relief From The Automatic Stay (unredacted version) per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>715</u> SEALED document regarding: Exhibit A, Original Synthetic Warehouse Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>716</u> SEALED document regarding: Exhibit B, Original Engagement Ltr. per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>717</u> SEALED document regarding: Exhibit C, Original Cash Warehouse Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>718</u> SEALED document regarding: Exhibit D, Expert Report of Louis G. Dudney per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>719</u> SEALED document regarding: Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>720</u> SEALED document regarding: Exhibit H, UBS and Crusader Fund Settlement Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>721</u> SEALED document regarding: Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>722</u> Order granting motion to seal documents (related document # <u>689</u>)</b> Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<b><u>723</u> SEALED document regarding: Appendix B of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>722</u> Order on motion to seal). (Annable, Zachery)
06/08/2020	<b><u>724</u> Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</b> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>704</u> Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2020	



	<u>725</u> Motion to appear pro hac vice for Sarah Tomkowiak. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
06/10/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27830926, amount \$ 100.00 (re: Doc# <u>725</u> ). (U.S. Treasury)
06/10/2020	<u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
06/10/2020	<u>727</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.). (Hoffman, Juliana)
06/10/2020	<u>728</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66.). (Hoffman, Juliana)
06/10/2020	<u>729</u> Notice of Subpoena of Highland Capital Management, L.P. filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/11/2020	<u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27834758, amount \$ 100.00 (re: Doc# <u>730</u> ). (U.S. Treasury)
06/11/2020	<u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document # <u>725</u> ) Entered on 6/11/2020. (Okafor, M.)
06/11/2020	<u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.).
06/11/2020	<u>733</u> Motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Reply # <u>3</u> Exhibit 1 # <u>4</u> Exhibit 2 # <u>5</u> Exhibit 3 # <u>6</u> Exhibit 4 # <u>7</u> Exhibit 5 # <u>8</u> Exhibit 6 # <u>9</u> Exhibit 7 # <u>10</u> Exhibit 8 # <u>11</u> Exhibit 9 # <u>12</u> Exhibit 10 # <u>13</u> Exhibit 11 # <u>14</u> Exhibit 12 # <u>15</u> Exhibit 13 # <u>16</u> Exhibit 14) (Sosland, Martin)
06/11/2020	<u>734</u> INCORRECT EVENT USED: See # <u>746</u> for correction. Motion for leave to File Documents Under Seal with UBS's Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document(s) <u>733</u> Motion for leave) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – State Court Protective Stipulation) (Sosland, Martin) Modified on 6/15/2020 (Ecker, C.).

06/11/2020	<u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.) (Entered: 06/15/2020)
06/12/2020	<u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)
06/12/2020	<u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document # <u>730</u> ) Entered on 6/12/2020. (Okafor, M.)
06/12/2020	<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
06/12/2020	<u>738</u> Certificate of No Objection Regarding Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan). (Annable, Zachery)
06/12/2020	<u>739</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>740</u> Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u> , (Annable, Zachery)
06/12/2020	<u>742</u> Witness and Exhibit List <i>for June 15, 2020 Hearing</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181,. (Sosland, Martin)
06/12/2020	<u>743</u> Amended Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND FIRST AMENDED WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>740</u> List (witness/exhibit/generic)). (Platt, Mark)
06/13/2020	

	<u>744</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document <u>725</u> ) Entered on 6/11/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/13/2020. (Admin.)
06/14/2020	<u>745</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u> ) Entered on 6/12/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/14/2020. (Admin.)
06/15/2020	<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
06/15/2020	<u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u> , (Annable, Zachery)
06/15/2020	<u>754</u> Hearing held on 6/15/2020. (RE: related document(s) <u>644</u> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 06/17/2020)
06/15/2020	<u>770</u> Court admitted exhibits date of hearing June 15, 2020 (RE: related document(s) <u>644</u> Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC., (COURT ADMITTED ALL EXHIBIT'S TO ALL THE ATTACHED OBJECTOR'S OBJECTION ALL EXCEPT FOR EXHIBIT #D (EXPERT REPORT OF LOUIS G. DUDLEY; THAT IS FILED UNDER SEAL); ON THE REDEEMER COMMITTEE OBJECTION; THE FOLLOWING EXHIBIT'S ATTACHED TO THE MOTION OF UBS'S MOTION TO LIFT STAY ALL ADMITTED; # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K; ALSO PLEASE SEE WITNESS AND EXHIBIT LIST OF DEBTOR; CREDITOR UBS AND REDEEMER COMMITTEE) (Edmond, Michael) (Entered: 06/23/2020)
06/16/2020	<u>749</u> ENTER AN ERROR; NO PDF ATTACHED: Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily (Edmond, Michael) Modified on 6/16/2020 (Edmond, Michael).
06/16/2020	<u>750</u> Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily. (Edmond, Michael)
06/16/2020	<u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020.

	(Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
06/16/2020	<u>752</u> Notice of hearing( <i>Notice of August 6, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/16/2020	<u>753</u> Notice of hearing ( <i>Notice of July 14, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/17/2020	<u>755</u> Transcript regarding Hearing Held 06/15/2020 (127 pages) RE: Motion for Relief from the Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>754</u> Hearing held on 6/15/2020. (RE: related document(s) <u>644</u> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.)). Transcript to be made available to the public on 09/15/2020. (Rehling, Kathy)
06/17/2020	<u>756</u> Certificate of service re: <i>1) WebEx Meeting Invitation to participate electronically in the hearing on Monday, June 15, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)). (Kass, Albert)
06/17/2020	<u>757</u> Certificate of service re: <i>Fifth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	<u>758</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice of Alan J. Kornfeld to Represent Highland Capital Management, L.P.; and 2) Order Approving Fifth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.)). (Kass, Albert)
06/17/2020	<u>759</u> Certificate of service re: <i>Documents Served on June 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u> ) Entered on 6/12/2020. (Okafor, M.), <u>737</u> Motion to extend or limit



	<p>the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>739</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/17/2020	<p><u>760</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i>; and 2) <i>Notice of Hearing Regarding Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i>; to be Held on July 8, 2020 at 1:30 p.m. (Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/17/2020	<p><u>761</u> Certificate of service re: 1) <i>Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i>; 2) <i>Notice of August 6, 2020 Omnibus Hearing Date</i>; and 3) <i>Notice of July 14, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>752</u> Notice of hearing(<i>Notice of August 6, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>753</u> Notice of hearing (<i>Notice of July 14, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/18/2020	<p><u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)</p>

06/18/2020	<u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document # <u>604</u> ) Entered on 6/18/2020. (Bradden, T.)
06/18/2020	<u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document # <u>593</u> ) Entered on 6/18/2020. (Bradden, T.)
06/19/2020	<u>765</u> Order denying motion for relief from stay by Interested Parties UBS AG London Branch , UBS Securities LLC (related document # <u>644</u> ) Entered on 6/19/2020. (Okafor, M.)
06/20/2020	<u>766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document <u>593</u> ) Entered on 6/18/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 06/20/2020. (Admin.) (Entered: 06/21/2020)
06/22/2020	<u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. (Hoffman, Juliana)
06/22/2020	<u>768</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95.). (Hoffman, Juliana)
06/22/2020	<u>769</u> Certificate of service re: 1) <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Foley Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020</i> ; and 2) <i>Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document <u>604</u> ) Entered on 6/18/2020. (Bradden, T.)). (Kass, Albert)
06/23/2020	<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. (Annable, Zachery)
06/23/2020	<u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
06/23/2020	<u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. (Pomerantz, Jeffrey)

06/23/2020	<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/23/2020	<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/23/2020	<u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u> , (Annable, Zachery)
06/23/2020	<u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u> , (Annable, Zachery)
06/24/2020	<u>778</u> Certificate of service re: <i>Summary Sheet and Seventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75.</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
06/24/2020	<u>779</u> Certificate of service re: <i>Documents Served on 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. filed by Debtor Highland Capital Management, L.P., <u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , filed by Debtor Highland Capital Management, L.P., <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. filed by Debtor Highland Capital Management, L.P., <u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial</i>



	<p><i>Advisory and Restructuring–Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u>, filed by Debtor Highland Capital Management, L.P., <u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring–Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2020	<p><u>780</u> Notice of Subpoena of David Klos filed by Creditor CLO Holdco, Ltd.. (Kane, John)</p>
06/26/2020	<p><u>781</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)</p>
06/26/2020	<p><u>782</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>590</u> Motion to reclaim funds from the registry/<i>Motion for Remittance of Funds Held in Registry of Court</i>). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 1–A # <u>3</u> Exhibit 1–B # <u>4</u> Exhibit 1–C # <u>5</u> Exhibit 1–D # <u>6</u> Exhibit 1–E # <u>7</u> Exhibit 1–F # <u>8</u> Exhibit 1–G # <u>9</u> Exhibit 1–H # <u>10</u> Exhibit 1–I # <u>11</u> Exhibit 2 # <u>12</u> Exhibit 3 # <u>13</u> Exhibit 4 # <u>14</u> Exhibit 5 # <u>15</u> Exhibit 6 # <u>16</u> Exhibit 7 # <u>17</u> Exhibit 8 # <u>18</u> Exhibit 9 # <u>19</u> Exhibit 10 # <u>20</u> Exhibit 11 # <u>21</u> Exhibit 12 # <u>22</u> Exhibit 13 # <u>23</u> Exhibit 14 # <u>24</u> Exhibit 15 # <u>25</u> Exhibit 16) (Kane, John)</p>
06/26/2020	<p><u>783</u> <b>SEALED document regarding: Exhibit 11 – AROF MUFG Bank Statement June 2018, Highland_PEO–032620 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>
06/26/2020	<p><u>784</u> <b>SEALED document regarding: Exhibit 12 – GG and HCM Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>
06/26/2020	<p><u>785</u> <b>SEALED document regarding: Exhibit 13 – GG and HCM Amendment to Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>
06/26/2020	<p><u>786</u> <b>SEALED document regarding: Exhibit 14 – Exercise of Discretion by Trustee The Get Good Nonexempt Trust (Fully Executed) dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>
06/26/2020	<p><u>787</u> <b>SEALED document regarding: Exhibit 15 – Dynamic Income CLO Holdco Side Letter (\$2M Subscription) dated January 10, 2017 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order). (Kane, John)</p>



06/26/2020	<b><u>788</u> SEALED document regarding: Exhibit 16 – Highland Capital Management, L.P. December 31, 2016 Final Opinion per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/27/2020	<u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ]). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
06/29/2020	<u>790</u> COURTS NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON June 30, 2020 at 09:30 AM; (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Proposed Order # <u>11</u> Service List)). (Edmond, Michael)
06/30/2020	<u>791</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Timothy Silva # <u>2</u> Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>793</u> Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Proposed Order # <u>11</u> Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion). (Edmond, Michael)
06/30/2020	<u>794</u> Court admitted exhibits date of hearing June 30, 2020 (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] filed by Creditor CLO Holdco, Ltd. (COURT ADMITTED MOVANT'S CLO HOLDCO, LTD., EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 & #16; ALSO ADMITTED DEFENDANT'S UNSECURED CREDITOR'S COMMITTEE EXHIBIT'S #1, #2 & #3) (Edmond, Michael)
06/30/2020	<u>795</u> Application for compensation ( <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the</i>

	<i>Debtor for the Period from April 1, 2020 through April 30, 2020)</i> for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A April 2020 Invoice) (Annable, Zachery)
07/01/2020	<u>796</u> Request for transcript regarding a hearing held on 6/30/2020. The requested turn-around time is daily. (Edmond, Michael)
07/01/2020	<u>797</u> Certificate of service re: <i>re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 Through May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>781</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2020	<u>798</u> Certificate of service re: <i>re: The Official Committee of Unsecured Creditors' Witness and Exhibit List for the June 30, 2020 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ]). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/01/2020	<u>799</u> Certificate of service re: <i>Cover Sheet and Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>795</u> Application for compensation ( <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A April 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
07/02/2020	<u>800</u> Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/02/2020	<u>801</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2020	<u>802</u> Transcript regarding Hearing Held 06/30/2020 (100 pages) RE: Motion for Remittance of Funds (590). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>793</u> Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance</i>

	<p>of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion).). Transcript to be made available to the public on 09/30/2020. (Rehling, Kathy)</p>
07/02/2020	<p><u>803</u> BNC certificate of mailing. (RE: related document(s)<u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/02/2020. (Admin.)</p>
07/03/2020	<p><u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
07/06/2020	<p><u>805</u> Notice of hearing (<i>Notice of September 10, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)</p>
07/07/2020	<p><u>806</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i>; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i>; and 3) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>801</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/07/2020	<p><u>807</u> Certificate of service re: <i>Statement of the Official Committee of Unsecured Creditors in Response to the Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital</p>



	Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/08/2020	<u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. (Montgomery, Paige)
07/08/2020	<u>809</u> Certificate of service re: <i>Notice of September 10, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>805</u> Notice of hearing ( <i>Notice of September 10, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2020	812 Hearing held on 7/8/2020. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day extension). Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)
07/08/2020	813 Hearing held on 7/8/2020. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)
07/09/2020	<u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
07/09/2020	<u>811</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i> ). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
07/09/2020	<u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
07/09/2020	<u>815</u> Request for transcript regarding a hearing held on 7/8/2020. The requested turn-around time is hourly. (Edmond, Michael)
07/09/2020	<u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>459</u> O) Entered on 7/9/2020. (Okafor, M.)



07/10/2020	<p><u>817</u> Transcript regarding Hearing Held 07/08/2020 (58 pages) RE: Motions to Extend Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/8/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 812 Hearing held on 7/8/2020. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day extension). Debtors counsel to upload order.), 813 Hearing held on 7/8/2020. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.)). Transcript to be made available to the public on 10/8/2020. (Rehling, Kathy)</p>
07/10/2020	<p><u>818</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s) <u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere,). (O'Neil, Holland)</p>
07/10/2020	<p><u>819</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere). (O'Neil, Holland)</p>
07/10/2020	<p><u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.)</p>
07/10/2020	<p><u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc # <u>474</u>) Entered on 7/10/2020. (Okafor, M.)</p>
07/10/2020	<p><u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, 775 Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct.</i>) (Annable, Zachery)</p>
07/13/2020	<p><u>823</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/13/2020	

	<p><u>824</u> Certificate of service re: <i>Documents Served on July 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>811</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>) (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>459</u> O) Entered on 7/9/2020. (Okafor, M.)). (Kass, Albert)</p>
07/13/2020	<p><u>825</u> Order denying motion to reclaim funds from the registry (Related Doc # <u>590</u>) Entered on 7/13/2020. (Okafor, M.)</p>
07/13/2020	<p><u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i>, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) ). (Annable, Zachery)</p>
07/13/2020	<p><u>827</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management, L.P. and Acis Capital Management GP, LLC.. Filed by Interested Party James Dondero. (Assink, Bryan)</p>
07/13/2020	<p><u>828</u> Certificate of service re: 1) <i>Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016–1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan</i>; 2) <i>Agreed Order Regarding Deposit of Funds into the Registry of the Court</i>; and 3) <i>Debtors Witness and Exhibit List with Respect to (A) the Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services Nunc Pro Tunc to March 15</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.), <u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc <u>474</u>) Entered on 7/10/2020. (Okafor, M.), <u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr</i>, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct</i>). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

07/14/2020	<u>829</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$34). (Hoffman, Juliana)
07/14/2020	<u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. (Hoffman, Juliana)
07/14/2020	<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F) (Hoffman, Juliana)
07/14/2020	<u>832</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
07/14/2020	<u>833</u> Request for transcript regarding a hearing held on 7/14/2020. The requested turn-around time is daily. (Edmond, Michael)
07/14/2020	<u>836</u> Court admitted exhibits date of hearing July 14, 2020 (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P., And <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020 filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6 & #7) (Edmond, Michael) (Entered: 07/15/2020)
07/14/2020	<u>862</u> Hearing held on 7/14/2020. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/14/2020	<u>863</u> Hearing held on 7/14/2020. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)



07/15/2020	<u>834</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan P). (Annable, Zachery)
07/15/2020	<u>835</u> Motion to appear pro hac vice for James A. Wright III. Fee Amount \$100 Filed by Interested Parties NexPoint Real Estate Strategies Fund, Highland Global Allocation Fund, Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., Highland Total Return Fund, Highland Fixed Income Fund, Highland Socially Responsible Equity Fund, Highland Small-Cap Equity Fund, Highland Funds II and its series, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland/iBoxx Senior Loan ETF, Highland Healthcare Opportunities Fund, Highland Funds I and its series, NexPoint Advisors, L.P., Highland Capital Management Fund Advisors, L.P. (Varshosaz, Artoush)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27927823, amount \$ 100.00 (re: Doc# <u>835</u> ). (U.S. Treasury)
07/15/2020	<u>837</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.)</i> filed by John Honis, Rand PE Fund Management, LLC, Rand PE Fund I, LP, Rand Advisors, LLC, Hunter Mountain Investment Trust, Beacon Mountain, LLC, Atlas IDF, LP, Atlas IDF, GP, LLC. (Keiffer, Edwin)
07/15/2020	<u>838</u> INCORRECT ENTRY: Attorney to amend and refile. Motion to appear pro hac vice for Stephen G. Topetzes. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush) MODIFIED on 7/16/2020 (Ecker, C.).
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27928069, amount \$ 100.00 (re: Doc# <u>838</u> ). (U.S. Treasury)
07/15/2020	<u>839</u> Response opposed to (related document(s): <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.)</i> filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/15/2020	<u>840</u> INCORRECT ENTRY: FILED WITHOUT EXHIBITS. Notice of Appearance and Request for Notice by Paul Richard Bessette filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul) Modified on 7/15/2020 (Rielly, Bill).
07/15/2020	<u>841</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.)</i> filed by Interested Parties Highland Capital Management Fund



	<i>Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)</i>
07/15/2020	<u>842</u> Notice of Appearance and Request for Notice by Amanda Melanie Rush filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>843</u> Motion to appear pro hac vice for Tracy K. Stratford. Fee Amount \$100 Filed by Interested Party CCS Medical, Inc. (Rush, Amanda)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27928305, amount \$ 100.00 (re: Doc# <u>843</u> ). (U.S. Treasury)
07/15/2020	<u>844</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>845</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2020	<u>846</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Exhibit A) (Kane, John)
07/15/2020	<u>847</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors, L.P., VineBrook Homes, Trust, Inc., NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Partners, LLC, NexPoint Hospitality Trust, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, NexPoint Real Estate Finance Inc.. (Drawhorn, Lauren)
07/15/2020	<u>848</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>845</u> Objection). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2020	<u>849</u> Amended Motion to appear pro hac vice for Stephen G. Topetzes. (related document: <u>838</u> ) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
07/16/2020	

	<u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u> , (Annable, Zachery)
07/16/2020	<u>851</u> Notice of hearing ( <i>Notice of September 17, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/16/2020	<u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s) <u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.)
07/16/2020	<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document # <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)
07/16/2020	<u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u> ) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
07/16/2020	<u>855</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party MGM Holdings, Inc.. (Drawhorn, Lauren)
07/16/2020	<u>856</u> Notice of Appearance and Request for Notice by Artoush Varshosaz filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/16/2020	<u>857</u> Motion to appear pro hac vice for Mark M. Maloney. Fee Amount \$100 Filed by Interested Party Highland CLO Funding, Ltd. (Bessette, Paul)
07/16/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27932614, amount \$ 100.00 (re: Doc# <u>857</u> ). (U.S. Treasury)
07/16/2020	<u>858</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul)
07/16/2020	<u>859</u> Declaration re: <u>858</u> <i>Objection</i> filed by Interested Party Highland CLO Funding, Ltd. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. ). (Attachments: # <u>1</u> Exhibit A) (Bessette, Paul)
07/16/2020	<u>860</u> Certificate of service re: 1) <i>Order Denying Motion for Remittance of Funds Held in Registry of Court</i> ; and 2) <i>Stipulation by and Between the Debtor and the Official Committee of Unsecured Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>825</u> Order denying motion to reclaim funds from the registry (Related Doc <u>590</u>) Entered on 7/13/2020. (Okafor, M.), <u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/16/2020	<p><u>861</u> Certificate of service re: 1) <i>Summary Sheet and Seventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020</i>; and 2) <i>Summary Sheet and Second Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65.</i> Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. filed by Financial Advisor FTI Consulting, Inc., <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21.</i> Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/17/2020	<p><u>864</u> Transcript regarding Hearing Held 07/14/2020 (134 pages) RE: Applications to Employ. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>863</u> Hearing held on 7/14/2020. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.)). Transcript to be made available to the public on 10/15/2020. (Rehling, Kathy)</p>
07/17/2020	<p><u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document # <u>843</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>835</u>) Entered on 7/17/2020. (Ecker, C.)</p>

07/17/2020	<u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>849</u> ) Entered on 7/17/2020. (Ecker, C.)
07/17/2020	<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. (Annable, Zachery)
07/17/2020	<u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor Committee Official Committee of Unsecured Creditors) ( <i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/17/2020	<u>870</u> Declaration re: ( <i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i> )). (Annable, Zachery)
07/17/2020	<u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> )). (Hesse, Gregory)
07/17/2020	<u>872</u> Response opposed to (related document(s): <u>841</u> Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>844</u> Objection filed by Interested Party CCS Medical, Inc., <u>845</u> Objection filed by Debtor Highland Capital Management, L.P., <u>846</u> Objection filed by Creditor CLO Holdco, Ltd., <u>847</u> Objection filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>855</u> Objection filed by Interested Party MGM Holdings, Inc., <u>858</u> Objection filed by Interested Party Highland CLO Funding, Ltd.) filed by Creditor Committee Official



	Committee of Unsecured Creditors. (Montgomery, Paige)
07/17/2020	<u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u> , (Annable, Zachery)
07/19/2020	<u>874</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document <u>843</u> ) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	<u>875</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>835</u> ) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	<u>876</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>849</u> ) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/20/2020	<u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. (Hoffman, Juliana)
07/20/2020	<u>878</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)
07/20/2020	<u>880</u> Certificate of service re: 1) <i>Debtor's Objection to Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor</i> ; and 2) <i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>845</u> Objection to (related

	document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>848</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>845</u> Objection). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/20/2020	<u>881</u> Certificate of service re: <i>Documents Served on July 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u> , filed by Debtor Highland Capital Management, L.P., <u>851</u> Notice of hearing ( <i>Notice of September 17, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s) <u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.), <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u> ) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Kass, Albert)
07/21/2020	<u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document # <u>857</u> ) Entered on 7/21/2020. (Okafor, M.)
07/21/2020	<u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. (Hoffman, Juliana)
07/21/2020	<u>894</u> Hearing held on 7/21/2020. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion granted in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM communications, and as to Atlass communications with outside law firms. Counsel to submit order. ) (Edmond, Michael) (Entered: 07/24/2020)
07/21/2020	<u>895</u> Hearing held on 7/21/2020. (RE: related document(s) <u>810</u> Motion for protective order (Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P.

	Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion denied in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)
07/21/2020	<u>896</u> Hearing held on 7/21/2020. (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.) (Edmond, Michael) (Entered: 07/24/2020)
07/22/2020	<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
07/22/2020	<u>885</u> INCORRECT ENTRY: EVENT CODE. Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) Modified on 7/22/2020 (Rielly, Bill).
07/22/2020	<u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
07/22/2020	<u>887</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
07/22/2020	<u>888</u> Request for transcript regarding a hearing held on 7/21/2020. The requested turn-around time is daily. (Edmond, Michael)
07/22/2020	<u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
07/22/2020	<u>890</u> Certificate of service re: <i>Documents Served on July 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. filed by Debtor Highland Capital Management, L.P., <u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor



	<p>Committee Official Committee of Unsecured Creditors) (<i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i>) filed by Debtor Highland Capital Management, L.P., filed by Debtor Highland Capital Management, L.P., <u>870</u> Declaration re: (<i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i>) filed by Debtor Highland Capital Management, L.P., <u>871</u> Declaration re: First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)). filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2020	<p><u>891</u> Objection to claim(s) 3 of Creditor(s) ACIS Capital Management L.P. and ACIS Capital Management GP, LLC.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
07/23/2020	<p><u>892</u> Certificate of service re: <i>Amended Ninth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2020	<p><u>893</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document <u>857</u>) Entered on 7/21/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 07/23/2020. (Admin.)</p>
07/24/2020	<p><u>897</u> Transcript regarding Hearing Held 07/21/20 RE: DOCS 808 and 810. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/22/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Transcripts Plus, Inc., Telephone number 215-862-1115 CourtTranscripts@aol.com. (RE: related document(s) 896 Hearing held on 7/21/2020. (RE: related document(s)<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R.</p>



	Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes discussions.)). Transcript to be made available to the public on 10/22/2020. (Hartmann, Karen)
07/24/2020	<u>898</u> Certificate of service re: <i>1) Summary Cover Sheet and Eighth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2020 to and Including June 30, 2020; and 2) Summary Cover Sheet and Second Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
07/27/2020	<u>899</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>795</u> Application for compensation ( <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> ) for Hayward & Assoc). (Annable, Zachery)
07/27/2020	<u>900</u> Certificate of service re: <i>Documents Served on July 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>887</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/28/2020	<u>901</u> INCORRECT ENTRY: See # <u>902</u> for correction. Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13

	Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.) Modified on 7/28/2020 (Ecker, C.).
07/28/2020	<u>902</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	<u>903</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	Receipt Number 00338615, Fee Amount \$30,715.92 (RE: related document(s)) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338617, Fee Amount \$20,830.29 (RE: related document(s)) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338616, Fee Amount \$84,062.32 (RE: related document(s)) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/30/2020	<u>904</u> Notice of Appearance and Request for Notice <i>Chad Timmons, Emily M. Hahn, Larry R. Boyd</i> by Chad D. Timmons filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Timmons, Chad)
07/30/2020	<u>905</u> Amended Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>800</u> Operating report). (Annable, Zachery)
07/30/2020	<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland

	Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order and Schedules 1–7) (Annable, Zachery)
07/30/2020	<u>907</u> Notice of hearing ( <i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u> . (Annable, Zachery)
07/31/2020	<u>908</u> Response opposed to (related document(s): <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Patel, Rakhee)
08/03/2020	<u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.)
08/03/2020	<u>910</u> Order granting motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related



	document # <u>733</u> ) Entered on 8/3/2020. (Okafor, M.)
08/03/2020	<u>911</u> Order granting motion to seal documents (related document # <u>746</u> ) Entered on 8/3/2020. (Okafor, M.)
08/03/2020	<u>912</u> Order directing mediation (RE: related document(s) <u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)
08/03/2020	<u>913</u> Debtor-in-possession monthly operating report for filing period June 1, 2020 to June 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/03/2020	<u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Kane, John)
08/04/2020	<u>915</u> Joinder by <i>NexPoint RE Entities' Joinder to CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, Vinebrook Homes, Trust, Inc. (RE: related document(s) <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Drawhorn, Lauren)
08/04/2020	<u>916</u> Certificate of service re: 1) <i>Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims; and 2) Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moody's Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant



	<p>Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P., <u>907</u> Notice of hearing (<i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/05/2020	<p><u>917</u> Application for compensation (<i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&amp;A May 2020 Invoice) (Annable, Zachery)</p>
08/05/2020	<p><u>918</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5). (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)</p>
08/05/2020	<p><u>919</u> Certificate of service re: 1) <i>Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by Sixty Days</i>; and 2) <i>Order Directing</i></p>

	<i>Mediation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.), <u>912</u> Order directing mediation (RE: related document(s) <u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)). (Kass, Albert)
08/05/2020	<u>920</u> Certificate of No Objection (Amended) filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>918</u> Certificate (generic)). (Hoffman, Juliana)
08/05/2020	<u>921</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
08/06/2020	<u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
08/06/2020	<u>923</u> Notice of Appearance and Request for Notice by Jared M. Slade filed by Interested Party NexBank. (Slade, Jared)
08/06/2020	<u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A – Invoices # <u>2</u> Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland)
08/06/2020	<u>925</u> Certificate of service re: <i>re: 1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>917</u> Application for compensation ( <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A May 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>921</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

08/06/2020	<u>926</u> Withdrawal of claim(s) Claim has been satisfied. Claim: 9 Filed by Creditor Gray Reed & McGraw LLP. (Brookner, Jason)
08/07/2020	<u>927</u> Joinder by filed by Interested Party NexBank (RE: related document(s) <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Slade, Jared)
08/07/2020	<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # <u>1</u> Exhibit 18 # <u>2</u> Exhibit 19) (Annable, Zachery)
08/07/2020	<u>929</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # <u>1</u> Exhibit 18 # <u>2</u> Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/07/2020	<u>930</u> Response opposed to (related document(s): <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A) (Montgomery, Paige)
08/07/2020	<u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A June 2020 Invoice) (Annable, Zachery)
08/07/2020	<u>932</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order Proposed Order Granting Motion to Seal) (Platt, Mark)
08/07/2020	<u>933</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # <u>2</u> Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # <u>3</u> Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # <u>4</u> Exhibit Exhibit 4 # <u>5</u> Exhibit Exhibit 5 # <u>6</u> Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # <u>7</u> Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # <u>8</u> Exhibit Exhibit 8 # <u>9</u> Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # <u>10</u> Exhibit Exhibit 10 # <u>11</u> Exhibit Exhibit 11 # <u>12</u> Exhibit Exhibit 12 # <u>13</u> Exhibit Exhibit 13 # <u>14</u> Exhibit Exhibit 14 # <u>15</u> Exhibit Exhibit 15 # <u>16</u> Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit Exhibit 17 # <u>18</u> Exhibit Exhibit 18 # <u>19</u> Exhibit Exhibit 19 # <u>20</u> Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # <u>21</u> Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # <u>22</u> Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) (Platt, Mark)
08/10/2020	<u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. (Hoffman, Juliana)



08/11/2020	<u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u> Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020 (Rielly, Bill)
08/11/2020	<u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. (Pomerantz, Jeffrey)
08/11/2020	<u>937</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended t)</i> . (Pomerantz, Jeffrey)
08/11/2020	<u>938</u> Certificate of service re: 1) <i>Cover Sheet and Ninth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 Through July 31, 2020</i> ; and 2) <i>Cover Sheet and Second Interim Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/11/2020	<u>939</u> Certificate of service re: 1) <i>Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ; and 2) <i>Notice of Status Conference; to be Held on September 29, 2020 at 1:30 p.m. (Central Time)</i> ; and 3) <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>929</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge



	Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A June 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
08/11/2020	<u>940</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Friday, August 14, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Summary Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period From June 1, 2020 to and Including June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/12/2020	<u>941</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,78). (Hoffman, Juliana)
08/12/2020	<u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> and <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, ) Entered on 8/12/2020. (Okafor, M.). Modified linkage on 10/1/2020 (Okafor, M.).</i>
08/12/2020	<u>943</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
08/12/2020	<u>944</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/12/2020	<u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Plan)(Annable, Zachery)
08/13/2020	<u>946</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Garder). (O'Neil, Holland)
08/13/2020	<u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) ( <i>Joint Motion to Continue Status Conference</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/13/2020	

	<u>948</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>950</u> Order granting motion to seal documents (related document # <u>932</u> ) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>951</u> Order granting joint motion to continue hearing on (related document # <u>947</u> ) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u> , (Annable, Zachery)
08/13/2020	<b><u>953</u> SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC AND JOINDER IN THE DEBTOR'S OBJECTION per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>950</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit Exhibit 1 – Original Synthetic Warehouse Agreement # <u>2</u> Exhibit Exhibit 2 Original Engagement Ltr. # <u>3</u> Exhibit Exhibit 3 Original Cash Warehouse Agreement # <u>4</u> Exhibit Exhibit 6 Expert Report of Louis G. Dudley # <u>5</u> Exhibit Exhibit 7 March 20, 2009 Termination Settlement and Release Agreement # <u>6</u> Exhibit Exhibit 9 UBS and Crusader Fund Settlement Agreement # <u>7</u> Exhibit Exhibit 16 Unredacted version of UBS's Second Amended Complaint # <u>8</u> Exhibit Exhibit 20 UBS's Pre-Trial Brief ISO Bifurcation # <u>9</u> Exhibit Exhibit 21 UBS and Credit Strategies Settlement Agreement # <u>10</u> Exhibit Exhibit 22 Crusader Fund scheme of Arrangement and Joint Plan of Distribution) (Platt, Mark)
08/13/2020	<u>954</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/13/2020	<u>955</u> Order granting motion to seal documents (related document # <u>948</u> ) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<b><u>956</u> SEALED document regarding: Plan of Reorganization of Highland Capital Management, L.P. per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Annable, Zachery)
08/13/2020	<b><u>957</u> SEALED document regarding: Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P. per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A—Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
08/13/2020	<u>958</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u>

	Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020) No. of Notices: 2. Notice Date 08/13/2020. (Admin.)
08/14/2020	<u>959</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65.). (Hoffman, Juliana)
08/14/2020	<u>960</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26.). (Hoffman, Juliana)
08/14/2020	<u>961</u> Certificate of service re: <i>Cover Sheet and Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/14/2020	<u>962</u> Certificate of service re: 1) <i>Order Resolving Discovery Motions and Objections Thereto</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> ) Entered on 8/12/2020. (Okafor, M.), <u>943</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/17/2020	<u>963</u> Motion to file document under seal. Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Chiarello, Annmarie)
08/18/2020	<u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—Invoices) (Annable, Zachery)
08/18/2020	<u>965</u> Order granting motion to seal documents (related document # <u>963</u> ) Entered on 8/18/2020. (Okafor, M.)

08/18/2020	<b><u>966</u> SEALED document regarding: email correspondence produced by Highland Capital Management, L.P. in connection with Acis's bankruptcy cases and bates labeled CONFIDENTIAL Highland0035395– Highland0035405 per court order</b> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>965</u> Order on motion to seal). (Chiarello, Annmarie)
08/18/2020	<u>967</u> Certificate of service re: <i>Documents Served on August 13, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) ( <i>Joint Motion to Continue Status Conference</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>948</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>951</u> Order granting joint motion to continue hearing on (related document <u>947</u> ) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.), <u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u> , filed by Debtor Highland Capital Management, L.P., <u>954</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>955</u> Order granting motion to seal documents (related document <u>948</u> ) Entered on 8/13/2020. (Okafor, M.)). (Kass, Albert)
08/19/2020	<u>968</u> Hearing held on 8/19/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.) (Edmond, Michael)
08/19/2020	<u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. (Hoffman, Juliana)
08/19/2020	<u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
08/19/2020	<u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz



	Objections due by 9/9/2020. (Pomerantz, Jeffrey)
08/19/2020	<u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. (Pomerantz, Jeffrey)
08/19/2020	<u>973</u> Support/supplemental document ( <i>Notice of Filing of Executed Signature Pages to Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/19/2020	<u>974</u> Support/supplemental document ( <i>Notice of Filing of Executed Signature Pages to Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/19/2020	<u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i> ) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit B) (Annable, Zachery)
08/19/2020	<u>976</u> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and</i>

	<p><i>Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, (Annable, Zachery)</p>
08/20/2020	<p><u>977</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)</p>
08/20/2020	<p><u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)</p>
08/20/2020	<p><u>979</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Wednesday, August 19, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i>; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i>; and 3) <i>Notice of and Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices) filed by Other Professional Hayward &amp; Associates PLLC). (Kass, Albert)</p>
08/20/2020	<p><u>980</u> Certificate of service re: <i>Documents Served on August 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. filed by Debtor Highland Capital Management, L.P., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. filed by Consultant Mercer (US) Inc., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B), <u>976</u> Notice of hearing</p>

	<p>(<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A–1 # 2 Exhibit A–2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/21/2020	<u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/21/2020	<u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
08/21/2020	<u>983</u> Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.).
08/21/2020	<u>984</u> Motion to appear pro hac vice for Tracy M. O'Steen. Fee Amount \$100 Filed by Interested Party Integrated Financial Associates, Inc. (Bryant, M.)
08/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 28037405, amount \$ 100.00 (re: Doc# <u>984</u> ).



	(U.S. Treasury)
08/23/2020	<u>985</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/23/2020. (Admin.)
08/24/2020	<u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.)
08/24/2020	<u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
08/24/2020	<u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland)
08/25/2020	<u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document # <u>984</u> ) Entered on 8/25/2020. (Okafor, M.)
08/25/2020	<u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)
08/25/2020	<u>991</u> Certificate of service re: <i>1) Amended Notice of Status Conference; to be Held on October 6, 2020 at 1:30 p.m. (Central Time); and 2) Order Approving Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>977</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)). (Kass, Albert)
08/25/2020	<u>992</u> Certificate of service re: <i>1) Affidavit of Service of Karina Yee re: Action by Written Consent of Stockholders in Lieu of Special Meeting (Cornerstone Healthcare Group Holding, Inc.); 2) Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; and 3) Agreed Scheduling Order Regarding Objections to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>983</u> Agreed Scheduling Order and



	Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.). (Kass, Albert)
08/26/2020	<u>993</u> Request for transcript regarding a hearing held on 8/19/2020. The requested turn-around time is daily. (Edmond, Michael)
08/26/2020	<u>994</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Dugan, S.) Filed by Creditor Paul N. Adkins (related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P.). (COURT NOTE: Signature of filer not included. Amended response with signature requested) (Dugan, S.)
08/26/2020	<u>995</u> Adversary case 20–03105. Complaint by Highland Capital Management, L.P. against Hunter Mountain Investment Trust. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). 91 (Declaratory judgment). (Annable, Zachery)
08/26/2020	<u>996</u> Objection to claim(s) of Creditor(s) Redeemer Committee of the Highland Crusader Fund – Proof of Claim No. 72.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
08/26/2020	<u>997</u> Motion to file document under seal.(With the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order Ex A) (Sosland, Martin)

08/26/2020	<p><u>998</u> Transcript regarding Hearing Held 08/19/2020 (20 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 968 Hearing held on 8/19/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.)). Transcript to be made available to the public on 11/24/2020. (Rehling, Kathy)</p>
08/27/2020	<p><u>999</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)</p>
08/27/2020	<p><u>1000</u> Certificate of service re: 1) <i>Order Approving Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal</i>; 2) <i>Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i>; and 3) <i>Supplement to the Second Interim Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.), <u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP). (Kass, Albert)</p>
08/27/2020	<p><u>1001</u> Certificate of service re: <i>Order Approving Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)). (Kass, Albert)</p>
08/27/2020	<p><u>1002</u> Response unopposed to (related document(s): <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)</p>

08/27/2020	<u>1003</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document <u>984</u> ) Entered on 8/25/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/27/2020	<u>1004</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/28/2020	<u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document # <u>999</u> ) Entered on 8/28/2020. (Okafor, M.)
08/31/2020	<u>1006</u> Amended Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Rielly, Bill)
08/31/2020	<u>1007</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , (Annable, Zachery)
08/31/2020	<u>1008</u> Adversary case 20–03107. Complaint by Highland Capital Management, L.P. against Patrick Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). (Annable, Zachery)
08/31/2020	<u>1009</u> <b>SEALED document regarding: Exhibit 20 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1010</u> <b>SEALED document regarding: Exhibit 21 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1011</u> <b>SEALED document regarding: Exhibit 22 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1012</u> <b>SEALED document regarding: Exhibit 23 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1013</u> <b>SEALED document regarding: Exhibit 24 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
09/01/2020	<u>1014</u> Debtor–in–possession monthly operating report for filing period July 1, 2020 to July 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/01/2020	

	<u>1015</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
09/01/2020	<u>1016</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>917</u> Application for compensation ( <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> ) for Hayward & Associate). (Annable, Zachery)
09/01/2020	<u>1017</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Assoc). (Annable, Zachery)
09/01/2020	<u>1018</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33.). (Hoffman, Juliana)
09/01/2020	<u>1019</u> Objection to (related document(s): <u>906</u> Objection to claim Filed by Debtor Highland Capital Management, L.P. filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Lopez, Paul). MODIFIED to correct linkage on 9/2/2020 (Ecker, C.).
09/01/2020	<u>1020</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>999</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2020	<u>1021</u> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <u>1015</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)
09/02/2020	<u>1022</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, F). (Pomerantz, Jeffrey)
09/02/2020	<u>1023</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing Filing Under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document <u>999</u> ) Entered on 8/28/2020. (Okafor, M.)). (Kass, Albert)
09/03/2020	<u>1024</u> Certificate of service re: <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; to be Held on October 14, 2020 at 1:30 PM (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1007</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Objection to</i>



	<i>Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/04/2020	<u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
09/04/2020	<u>1026</u> Objection to (related document(s): <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
09/04/2020	<u>1027</u> Certificate of service re: <i>Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1015</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/05/2020	<u>1028</u> Witness and Exhibit List for <i>Hearing on September 10, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn, <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US), <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). (Hayward, Melissa)
09/08/2020	<u>1029</u> Certificate of service re: <i>Order Approving Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1021</u> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <u>1015</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)). (Kass, Albert)
09/08/2020	<u>1030</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> ) filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
09/09/2020	<u>1031</u> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28083098, amount \$ 100.00 (re: Doc# <u>1031</u> ). (U.S. Treasury)
09/09/2020	<u>1032</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i> ) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A–1 # 2 Exhibit A–2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u> ). (Annable, Zachery)

09/09/2020	<u>1033</u> Order granting motion to seal documents (related document # <u>997</u> ) Entered on 9/9/2020. (Okafor, M.)
09/09/2020	<u>1034</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). (Annable, Zachery)
09/09/2020	<u>1035</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i> ). (Annable, Zachery)
09/09/2020	<u>1036</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> ). (Annable, Zachery)
09/09/2020	<u>1037</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn). (Annable, Zachery)
09/09/2020	<u>1038</u> Certificate of service re: <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/10/2020	<u>1039</u> <b>SEALED document regarding: Exhibits B and C to the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1033</u> Order on motion to seal). (Attachments: # <u>1</u> Part 2 # <u>2</u> Part 3 # <u>3</u> Part 4 # <u>4</u> Part 5 # <u>5</u> Part 6) (Sosland, Martin)
09/10/2020	<u>1040</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531</i> ). (Hoffman, Juliana)
09/10/2020	<u>1041</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u></i>



	<p>Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A–1 # 2 Exhibit A–2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.). (Annable, Zachery)</p>
09/10/2020	<p>1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>. (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.) (Edmond, Michael) (Entered: 09/14/2020)</p>
09/10/2020	<p>1062 Hearing held on 9/10/2020. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint</p>



	Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.,) (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.) (Edmond, Michael) (Entered: 09/14/2020)
09/11/2020	<u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.)
09/11/2020	<u>1043</u> Order granting application for compensation (related document # <u>971</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3470794.50, expenses awarded: \$12205.15 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	<u>1044</u> Order granting application for compensation (related document # <u>975</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	<u>1045</u> Order granting application for compensation (related document # <u>924</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$63144.80, expenses awarded: \$833.49 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1046</u> Order granting application for compensation (related document # <u>972</u> ) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1047</u> Order granting application for compensation (related document # <u>964</u> ) granting for Hayward & Associates PLLC, fees awarded: \$60210.00, expenses awarded: \$525.80 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1048</u> Order granting application for compensation (related document # <u>831</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1049</u> Request for transcript regarding a hearing held on 9/11/2020. The requested turn-around time is daily. (Edmond, Michael)
09/11/2020	<u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document # <u>1031</u> ) Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1051</u> Order granting application for compensation (related document # <u>883</u> ) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on

	9/11/2020. (Ecker, C.)
09/11/2020	<u>1052</u> Motion to appear pro hac vice for Erica S. Weisgerber. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1053</u> Motion to appear pro hac vice for Daniel E. Stroik. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1054</u> Motion to appear pro hac vice for M. Natasha Labovitz. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1052</u> ). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1053</u> ). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1054</u> ). (U.S. Treasury)
09/11/2020	<u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. (Hoffman, Juliana)
09/11/2020	<u>1056</u> Certificate of service re: 1) <i>Witness and Exhibit List for Hearing on September 10, 2020</i> ; 2) <i>WebEx Meeting Invitation to participate electronically in the hearing on Thursday, September 10, 2020 at 2:30 p.m. Central Time before the Honorable Stacey G. Jernigan</i> ; and 3) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1028</u> <i>Witness and Exhibit List for Hearing on September 10, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn, <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US), <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/11/2020	

	<u>1057</u> Response to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Attachments: # <u>1</u> Appendix Part 1 # <u>2</u> Appendix Part 2 # <u>3</u> Appendix Part 3 # <u>4</u> Appendix Part 4) (Driver, Vickie). Modified linkage on 9/14/2020 (Rielly, Bill).
09/13/2020	<u>1058</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1044</u> Order granting application for compensation (related document <u>975</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1059</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1046</u> Order granting application for compensation (related document <u>972</u> ) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1060</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document <u>1031</u> ) Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/14/2020	<u>1063</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice of James E. O'Neill to Represent Highland Capital Management, L.P.; and 2) Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1031</u> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1032</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> )) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020.,



	<p><u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/16/2020	<p><u>1064</u> Transcript regarding Hearing Held 09/10/2020 (49 pages) RE: Fee Applications; Motion to Extend; Omnibus Objection to Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1061</u> Hearing held on 9/10/2020., Hearing continued (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.), <u>1062</u> Hearing held on 9/10/2020. (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based</p>



	on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.)). Transcript to be made available to the public on 12/15/2020. (Rehling, Kathy)
09/16/2020	<u>1065</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
09/16/2020	<u>1066</u> Certificate of service re: <i>Documents Served on September 11, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.), <u>1048</u> Order granting application for compensation (related document <u>831</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.), <u>1051</u> Order granting application for compensation (related document <u>883</u> ) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on 9/11/2020. (Ecker, C.)). (Kass, Albert)
09/16/2020	<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Rielly, Bill). (Entered: 10/19/2020)
09/17/2020	<u>1067</u> Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s).) (Edmond, Michael)
09/17/2020	<u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document # <u>1052</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document # <u>1053</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document # <u>1054</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1071</u> Certificate of service re: <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from July 1, 2020 to and Including July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1055</u> Application for compensation

	<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
09/18/2020	<u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
09/18/2020	<u>1073</u> Order setting Disclosure Statement hearing and deadline to object (RE: related document(s) <u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>945</u> . The deadline for any party wishing to object to the Disclosure Statement shall be October 19, 2020 at 5:00 p.m. Entered on 9/18/2020 (Okafor, M.)
09/19/2020	<u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08, Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. (Hoffman, Juliana)
09/19/2020	<u>1075</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document <u>1052</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1076</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document <u>1053</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1077</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document <u>1054</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/21/2020	<u>1078</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.) Responses due by 10/5/2020. (Ecker, C.)
09/21/2020	<u>1079</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan). (Annable, Zachery)
09/21/2020	<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)(Annable, Zachery)
09/21/2020	<u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at

	09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , (Annable, Zachery)
09/22/2020	<u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E-F) (Annable, Zachery)
09/22/2020	Receipt of filing fee for Schedules(19-34054-sgj11) [misc,schedall] ( 31.00). Receipt number 28122241, amount \$ 31.00 (re: Doc# <u>1082</u> ). (U.S. Treasury)
09/22/2020	<u>1083</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1030</u> Notice (generic)). (Annable, Zachery)
09/22/2020	<u>1084</u> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1065</u> Notice (generic)). (Annable, Zachery)
09/22/2020	<u>1085</u> Certificate of service re: Orders of the Court filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1043</u> Order on application for compensation, <u>1044</u> Order on application for compensation, <u>1045</u> Order on application for compensation, <u>1046</u> Order on application for compensation, <u>1047</u> Order on application for compensation, <u>1050</u> Order on motion to appear pro hac vice). (Annable, Zachery)
09/22/2020	<u>1086</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1073</u> Order to set hearing, <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement, <u>1081</u> Notice of hearing). (Annable, Zachery)
09/23/2020	<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1088</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement # <u>2</u> Exhibit 2—Release) (Annable, Zachery)
09/23/2020	<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1090</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland

	Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
09/23/2020	<u>1091</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/24/2020	<u>1092</u> Order further extending the debtor's exclusive period for solicitation of acceptances of a chapter 11 plan <u>949</u> Motion to extend or limit the exclusivity period. Entered on 9/24/2020. (Ecker, C.)
09/24/2020	<u>1093</u> Request for transcript regarding a hearing held on 9/17/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael)
09/24/2020	<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/2020, Fee: \$672,815.00, Expenses: \$3,428.14. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 10/15/2020. (Pomerantz, Jeffrey)
09/24/2020	<u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
09/24/2020	<u>1096</u> Certificate of service re: 1) <i>Cover Sheet and Tenth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 Through August 31, 2020</i> ; and 2) <i>Summary Cover Sheet and Tenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08, Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
09/24/2020	<u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland



	Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1098</u> Certificate of service re: <i>Notice of Filing of Debtor's Amended Schedules</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E–F) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion # <u>2</u> Service List) (Kathman, Jason)
09/24/2020	Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] ( 181.00). Receipt number 28129975, amount \$ 181.00 (re: Doc# <u>1099</u> ). (U.S. Treasury)
09/25/2020	<u>1100</u> Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)
09/25/2020	<u>1101</u> Transcript regarding Hearing Held 09/17/2020 (13 pages) RE: Status Conference, Objection to Proof of Claim, Motion to Extend Exclusivity. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>1067</u> Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s)). Transcript to be made available to the public on 12/24/2020. (Rehling, Kathy)
09/25/2020	<u>1102</u> Amended Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)

09/25/2020	<u>1103</u> Certificate of service re: Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptances of a Chapter 11 Plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1092</u> Order on motion to extend/shorten time). (Annable, Zachery)
09/25/2020	<u>1104</u> Certificate of service re: Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Annable, Zachery)
09/25/2020	<u>1105</u> Omnibus Response opposed to (related document(s): <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund) ( <i>UBS's Omnibus Response to Objections to the UBS Proofs of Claim</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # 2 Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # 3 Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # 7 Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19 # 20 Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # 21 Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # 22 Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Sosland, Martin)
09/25/2020	<u>1106</u> Exhibit List to <i>UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1105</u> Response to objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44) (Sosland, Martin)
09/25/2020	<u>1107</u> Motion to file document under seal.( <i>UBS's Motion for Leave to file Documents Under Seal with UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
09/28/2020	<u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1—A—Forms of Ballots # <u>3</u> Exhibit 1—B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1—C—Notice of Non-Voting Status # <u>5</u> Exhibit 1—D—Notice of Assumption) (Annable, Zachery)
09/28/2020	<u>1109</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1—A—Forms of Ballots # <u>3</u> Exhibit 1—B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1—C—Notice of Non-Voting Status # <u>5</u> Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
09/28/2020	<u>1110</u> Certificate of service re: 1) <i>Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1088</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement # <u>2</u> Exhibit 2—Release) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/29/2020	<u>1111</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> )). (Annable, Zachery)
09/29/2020	<u>1112</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Conf, <u>1109</u> Notice of hearing</i> ). (Annable, Zachery)
09/29/2020	<u>1113</u> Certificate of service re: <i>Documents Served on or Before September 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1090</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland</i>



	<p><i>Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., <u>1091</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/30/2020	<u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/30/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28143856, amount \$ 100.00 (re: Doc# <u>1114</u> ). (U.S. Treasury)
09/30/2020	<u>1115</u> Debtor-in-possession monthly operating report for filing period August 1, 2020 to August 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2020	<u>1116</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
10/01/2020	<u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
10/02/2020	<u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
10/02/2020	<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. (Montgomery, Paige)
10/02/2020	<u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors



	(Montgomery, Paige)
10/05/2020	<u>1121</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
10/05/2020	<u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document # <u>1025</u> ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document # <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1125</u> Order granting motion to seal exhibits (related document # <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)
10/05/2020	<u>1127</u> <b>SEALED document regarding: Exhibit B—Cornerstone Monetization Schedule per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<u>1128</u> <b>SEALED document regarding: Exhibit 2 – Partial Final Award dated March 6, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery) Modified docket entry text on 10/5/2020 in include exhibit number. (Ellison, T.).
10/05/2020	<u>1129</u> <b>SEALED document regarding: Exhibit 3—Disposition of Application of Modification of Award dated March 14, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<u>1130</u> <b>SEALED document regarding: Exhibit 4—Final Award dated April 29, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/06/2020	<u>1131</u> Order granting motion to seal documents (related document # <u>1107</u> ) Entered on 10/6/2020. (Okafor, M.)
10/06/2020	<u>1132</u> INCORRECT ENTRY – REQUESTER CANCELLED REQUEST. Request for transcript regarding a hearing held on 9/23/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael) Modified on 10/14/2020 (Edmond, Michael).

10/06/2020	<b><u>1133</u> SEALED document regarding: UBS's Omnibus Response to Objections to the UBS Proofs of Claim per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1131</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 2 # <u>2</u> Exhibit 3 # <u>3</u> Exhibit 4 # <u>4</u> Exhibit 5 # <u>5</u> Exhibit 6 # <u>6</u> Exhibit 8 # <u>7</u> Exhibit 9 # <u>8</u> Exhibit 10 # <u>9</u> Exhibit 11 # <u>10</u> Exhibit 12 # <u>11</u> Exhibit 14 # <u>12</u> Exhibit 18 # <u>13</u> Exhibit 22 # <u>14</u> Exhibit 23 # <u>15</u> Exhibit 24 # <u>16</u> Exhibit 25 # <u>17</u> Exhibit 26 # <u>18</u> Exhibit 28 # <u>19</u> Exhibit 29 # <u>20</u> Exhibit 32 # <u>21</u> Exhibit 34 # <u>22</u> Exhibit 35 # <u>23</u> Exhibit 36 # <u>24</u> Exhibit 37 # <u>25</u> Exhibit 38 # <u>26</u> Exhibit 39 # <u>27</u> Exhibit 40 # <u>28</u> Exhibit 41 # <u>29</u> Exhibit 42 # <u>30</u> Exhibit 43) (Sosland, Martin)
10/06/2020	<u>1134</u> Motion to appear pro hac vice for Joseph L. Christensen. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	<u>1135</u> Motion to appear pro hac vice for Thomas A. Uebler. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1134</u> ). (U.S. Treasury)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1135</u> ). (U.S. Treasury)
10/06/2020	<u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u> , (Hoffman, Juliana)
10/06/2020	<u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)(Edmond, Michael)
10/06/2020	<u>1138</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice for Elissa A. Wagner to Represent Highland Capital Management, L.P.; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1116</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1139</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on October 6, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G.</i>

	<i>Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1140</u> Request for transcript regarding a hearing held on 10/6/2020. The requested turn-around time is daily (Jeng, Hawaii) (Entered: 10/07/2020)
10/07/2020	<u>1141</u> Objection to (related document(s): <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/07/2020	<u>1142</u> Application for compensation ( <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A July 2020 Invoice) (Annable, Zachery)
10/07/2020	<u>1143</u> Certificate of service re: <i>Agreed Motion to Extend the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/07/2020	<u>1144</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/07/2020. (Admin.)
10/08/2020	<u>1145</u> Transcript regarding Hearing Held 10/06/2020 (58 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)). Transcript to be made available to the public on 01/6/2021. (Rehling, Kathy)
10/08/2020	<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document # <u>1134</u> ) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document # <u>1135</u> ) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay Fee</i>

	amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/08/2020	<u>1149</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1148</u> Objection). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)
10/08/2020	<u>1150</u> Adversary case 20-03128. Complaint by Highland Capital Management, L.P. against Patrick Hagaman Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 71 (Injunctive relief – reinstatement of stay). (Annable, Zachery)
10/08/2020	<u>1151</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77.). (Hoffman, Juliana)
10/08/2020	<u>1152</u> Certificate of service re: <i>Documents Served on October 5, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.), <u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document <u>1025</u> ) Entered on 10/5/2020. (Okafor, M.), <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.), <u>1125</u> Order granting motion to seal exhibits (related document <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. ) Entered on 10/5/2020. (Okafor, M.), <u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)). (Kass, Albert)
10/08/2020	<u>1153</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Ex. A – Loan Agreement # <u>2</u> Ex.B – Account Summary) (Assink, Bryan)
10/08/2020	<u>1164</u> Hearing held on 10/8/2020. (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: P. Montgomery for Official Committee of Unsecured Creditors; J. Kane for CLO Holdco. Nonevidentiary hearing. Announcement of an agreed 60-day extension. Counsel to upload order.) (Edmond, Michael) (Entered: 10/13/2020)
10/09/2020	



	<u>1154</u> Motion for leave to <i>Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
10/09/2020	<u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Schedules 1 – 6) Entered on 10/9/2020 (Okafor, M.)
10/09/2020	<u>1156</u> Certificate of service re: <i>Notice of Hearing on Pension Danmarks Motion for Relief from the Automatic Stay and Extending the Objection Deadline</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u> , filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
10/09/2020	<u>1157</u> Certificate of service re: <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1142</u> Application for compensation ( <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A July 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
10/09/2020	<u>1158</u> Certificate of service re: 1) <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> ; and 2) <i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P., <u>1149</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1148</u> Objection). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/09/2020	<u>1159</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent

	Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/09/2020	<u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. (Hoffman, Juliana)
10/10/2020	<u>1161</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document <u>1134</u> ) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)
10/10/2020	<u>1162</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document <u>1135</u> ) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)
10/12/2020	<u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u> , Entered on 10/12/2020 (Okafor, M.)
10/13/2020	<u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	<u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19–34054–sgj11) [claims,trclmagt] ( 25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1165</u> ). (U.S. Treasury)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19–34054–sgj11) [claims,trclmagt] ( 25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1166</u> ). (U.S. Treasury)
10/13/2020	<u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdco, Ltd (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors. Modified to correct linkage on 11/3/2020 (Ecker, C.).
10/14/2020	<u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 10/14/2020 (Okafor, M.)

10/14/2020	<u>1170</u> Certificate of service re: <i>Agreed Supplemental Order Authorizing the Retention and Employment of Hutton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1169</u> Order (generic)). (Annable, Zachery)
10/14/2020	<u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1172</u> Certificate of service re: <i>Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Schedules 1 – 6) Entered on 10/9/2020 (Okafor, M.)). (Kass, Albert)
10/15/2020	<u>1173</u> Notice ( <i>Notice of Filing of (I) Liquidation Analysis and (II) Financial Projections as Exhibits to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). (Attachments: # <u>1</u> Exhibit C/D to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
10/15/2020	<u>1174</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467.). (Hoffman, Juliana)
10/15/2020	<u>1175</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Chiarello, Annmarie)
10/16/2020	<u>1176</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1173</u> Notice (generic)). (Annable, Zachery)
10/16/2020	<u>1177</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/16/2020	<u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
10/16/2020	<u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)

10/16/2020	<u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims ( <i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1182</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
10/16/2020	<u>1183</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1215 AND 1216. Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1184</u> Support/supplemental document ( <i>Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1185</u> Declaration re: ( <i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. ). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1186</u> Brief in support filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds'). (Platt, Mark). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1187</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)



10/16/2020	<u>1188</u> Motion to file document under seal.(UBS's Motion for Leave to File Documents Under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
10/16/2020	<u>1189</u> INCORRECT ENTRY: Attorney to refile. Support/supplemental document APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND, <u>1186</u> Brief). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip page) # <u>20</u> Exhibit 20 (slip page) # <u>21</u> Exhibit 21 (slip page) # <u>22</u> Exhibit 22 (slip page) # <u>23</u> Exhibit 23 (slip page) # <u>24</u> Exhibit 24 (slip page) # <u>25</u> Exhibit 25 (slip page) # <u>26</u> Exhibit 26 (slip page) # <u>27</u> Exhibit 27 (slip page) # <u>28</u> Exhibit 28 (slip page) # <u>29</u> Exhibit 29 (slip page)) (Platt, Mark) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	<u>1190</u> Objection to (related document(s): <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Attachments: # <u>1</u> A–C) (Sosland, Martin)
10/16/2020	<u>1191</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Highland CLO Funding, Ltd.. (Maloney, Mark)
10/16/2020	<u>1192</u> Declaration re: W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1190</u> Objection). (Attachments: # <u>1</u> Exhibit 1–6 # <u>2</u> Attachments A–C) (Sosland, Martin)
10/16/2020	<u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u> . (Annable, Zachery)
10/16/2020	<u>1194</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex.

	H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
10/16/2020	<u>1195</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/16/2020	<u>1196</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Driver, Vickie)
10/16/2020	<u>1197</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	<u>1198</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne,

	<p>Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).</p>
10/16/2020	<p><u>1199</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Sosland, Martin)</p>
10/16/2020	<p><u>1200</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Pomerantz, Jeffrey)</p>
10/16/2020	<p><u>1201</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor Patrick Daugherty. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Service List) (Kathman, Jason)</p>
10/16/2020	<p><u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)</p>
10/16/2020	<p><u>1203</u> Certificate of service re: 1) <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i>; 2) <i>Scheduling Order with</i></p>



	<i>Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch; and 3) Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u> , Entered on 10/12/2020 (Okafor, M.), <u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/16/2020	<u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # <u>1</u> Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Rielly, Bill). (Entered: 10/19/2020)
10/16/2020	<u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # <u>1</u> Proposed Order) (Rielly, Bill) (Entered: 10/19/2020)
10/17/2020	<u>1204</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit PHD -1 # <u>2</u> Exhibit PHD - 2) (Kathman, Jason)
10/18/2020	<u>1205</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	<u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
10/18/2020	<u>1208</u> Declaration re: /of <i>Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ). (Driver, Vickie)
10/19/2020	<u>1209</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Party Jefferies LLC. (Doherty, Casey)
10/19/2020	<u>1210</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Pension Benefit Guaranty Corporation. (Attachments: # <u>1</u> Exhibit # <u>2</u> Certificate of Service) (Baird, Michael)
10/19/2020	<u>1211</u> List <i>APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG,</i>



	<i>LONDON BRANCH AND UBS SECURITIES LLC</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip page) # <u>20</u> Exhibit 20 (slip page) # <u>21</u> Exhibit 21 (slip page) # <u>22</u> Exhibit 22 (slip page) # <u>23</u> Exhibit 23 (slip page) # <u>24</u> Exhibit 24 (slip page) # <u>25</u> Exhibit 25 (slip page) # <u>26</u> Exhibit 26 (slip page) # <u>27</u> Exhibit 27 (slip page) # <u>28</u> Exhibit 28 (slip page) # <u>29</u> Exhibit 29 (slip page)) (Platt, Mark)
10/19/2020	<u>1212</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
10/19/2020	<u>1213</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC. (Drawhorn, Lauren)
10/19/2020	<u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
10/19/2020	<u>1218</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
10/19/2020	<u>1219</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/19/2020	<u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/19/2020	<u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
10/19/2020	<u>1222</u> Notice of hearing filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order), <u>1208</u> Declaration re: /of Michael Pugatch in Support of 3018(A) Motion filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to

	<i>Accept or Reject the Plan</i> )). Hearing to be held on 11/10/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> and for <u>1208</u> , (Driver, Vickie)
10/19/2020	<u>1223</u> Certificate of service re: Motion of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ). (Driver, Vickie)
10/19/2020	<u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u> , (Annable, Zachery)
10/19/2020	<u>1225</u> Amended Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1204</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6 # <u>7</u> Exhibit PHD-7 # <u>8</u> Exhibit PHD-8 # <u>9</u> Exhibit PHD-9 # <u>10</u> Exhibit PHD-10 # <u>11</u> Exhibit PHD-11 # <u>12</u> Exhibit PHD-12 # <u>13</u> Exhibit PHD-13 # <u>14</u> Exhibit PHD-14 # <u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-22) (Kathman, Jason)
10/19/2020	<u>1226</u> Witness and Exhibit List filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Platt, Mark)
10/19/2020	<u>1227</u> Notice of hearing filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # <u>1</u> Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund)..., <u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1215</u> and for <u>1216</u> , (Platt, Mark)
10/19/2020	<u>1228</u> Certificate of service re: 1) <i>Order Granting Extension of Time to File an Adversary Proceeding Against CLO Holdo, Ltd.</i> ; and 2) <i>Notice of Deposition of Professor Nancy B. Rapaport</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdo, Ltd (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry filed by Creditor CLO Holdco, Ltd.). Entered on 10/14/2020 (Okafor, M.), <u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2020	<u>1229</u> Amended Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1199</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> # <u>5</u> Exhibit 5 # <u>6</u> 6) (Sosland, Martin)
10/20/2020	<u>1230</u> Order granting motion to seal documents (related document # <u>1188</u> Motion for leave to file documents under seal with (I) the Objection and (II) the Declaration of W. Kevin

	Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<b><u>1231</u> SEALED document regarding: Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Sosland, Martin)
10/20/2020	<b><u>1232</u> SEALED document regarding: Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 4 # <u>2</u> Exhibit 4 # <u>3</u> Exhibit 6 # <u>4</u> Attachment A # <u>5</u> Attachment B # <u>6</u> Attachment C) (Sosland, Martin)
10/20/2020	<b><u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims ( (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.)</b>
10/20/2020	<b><u>1234</u> Order granting motion to seal documents (related document # <u>1182</u> Motion to seal regarding the Redeemer Committee of the Crusader Funds Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC.) Entered on 10/20/2020. (Okafor, M.)</b>
10/20/2020	<b><u>1235</u> Order granting motion to seal documents (related document # <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)</b>
10/20/2020	<b><u>1236</u> SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Platt, Mark)
10/20/2020	<b><u>1237</u> SEALED document regarding: APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 16 (sealed) # <u>2</u> Exhibit 17 (sealed) # <u>3</u> Exhibit 18 (sealed) # <u>4</u> Exhibit 19 (sealed) # <u>5</u> Exhibit 20 (sealed) # <u>6</u> Exhibit 21 (sealed) # <u>7</u> Exhibit 22 (sealed) # <u>8</u> Exhibit 23 (sealed) # <u>9</u> Exhibit 24 (sealed) # <u>10</u> Exhibit 25 (sealed) # <u>11</u> Exhibit 26 (sealed) # <u>12</u> Exhibit 27 (sealed) # <u>13</u> Exhibit 28 (sealed) # <u>14</u> Exhibit 29 (sealed)) (Platt, Mark)

10/20/2020	<u>1238</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
10/20/2020	<u>1239</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
10/20/2020	<u>1240</u> Joinder by <i>META–E DISCOVERY, LLC TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE</i> filed by Interested Party Meta–e Discovery, LLC (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Umari, Basil)
10/20/2020	<u>1241</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
10/20/2020	<u>1242</u> Joinder by <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS JOINER TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Platt, Mark)
10/20/2020	1243 Hearing held and Continued (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (Continued Hearing to be held on 10/21/2020 at 10:00 AM Dallas Judge Jernigan Ctrm for <u>1087</u> .) (Edmond, Michael)
10/20/2020	<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. (Hoffman, Juliana)
10/20/2020	1256 Hearing held on 10/20/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	



	<p>1257 Hearing held on 10/20/2020. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.) (Edmond, Michael) (Entered: 10/21/2020)</p>
10/20/2020	<p><u>1303</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S EXHIBIT'S #1, #2, #3 &amp; #4; COURT TOOK JUDICIAL NOTICE OF THE DECLARATION OF JOHN A. MORRIS; ADMITTED AS AN EXHIBIT #3; EXHIBITS #2 #3 AND #4 TO DECLARATION AND EXHIBIT #B TO EXHIBIT #1 FILED UNDER SEAL) (Edmond, Michael) (Entered: 10/28/2020)</p>
10/20/2020	<p>1304 DOCKET AN ERROR: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #Q, #R, #S, #T, #U, #V, #W &amp; #X; NOTE* EXHIBIT #P (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). (Entered: 10/28/2020)</p>
10/20/2020	<p><u>1305</u> MODIFIED TEXT: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (1304 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W &amp; #X; JASON KATHMAN; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN &amp; #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE BY PATRICK DAUGHERTY COUNSEL JASON KATHMAN) (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). Modified on 10/30/2020 (Edmond, Michael). (Entered: 10/28/2020)</p>
10/20/2020	<p><u>1314</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W &amp; #X; JASON KATHMAN ; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN &amp; #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE). (Edmond, Michael) (Entered: 10/30/2020)</p>
10/21/2020	<p><u>1245</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>

10/21/2020	<u>1246</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/21/2020	<u>1247</u> Motion to appear pro hac vice for Faheem A. Mahmooth. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Webb, Donna)
10/21/2020	<u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.).
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 0.00). Receipt number KF: No Fee Due – Exempt U.S. Government Agency, amount \$ 0.00 (re: Doc <u>1247</u> ). (Floyd)
10/21/2020	<u>1249</u> <b>SEALED document regarding: Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1250</u> <b>SEALED document regarding: Exhibit 2 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1251</u> <b>SEALED document regarding: Exhibit 11 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1252</u> <b>SEALED document regarding: Exhibit 12 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1253</u> <b>SEALED document regarding: Exhibit 14 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1254</u> <b>SEALED document regarding: Exhibit 15 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<u>1255</u> <b>SEALED document regarding: Exhibit 16 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)

10/21/2020	<u>1258</u> Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.) (Edmond, Michael)
10/21/2020	<u>1259</u> Notice of Appearance and Request for Notice by Thomas G. Haskins Jr. filed by Creditor NWCC, LLC. (Haskins, Thomas)
10/21/2020	<u>1260</u> Motion to appear pro hac vice for Jonathan Sundheimer. Fee Amount \$100 Filed by Creditor NWCC, LLC (Haskins, Thomas)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28201179, amount \$ 100.00 (re: Doc# <u>1260</u> ). (U.S. Treasury)
10/21/2020	<u>1261</u> Certificate of service re: Joinder to Objection to Disclosure Statement filed by Interested Party Meta-e Discovery, LLC (RE: related document(s) <u>1240</u> Joinder). (Umari, Basil)
10/21/2020	<u>1262</u> Motion to appear pro hac vice for Joseph T. Moldovan. Fee Amount \$100 Filed by Interested Party Meta-e Discovery, LLC (Umari, Basil)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28201283, amount \$ 100.00 (re: Doc# <u>1262</u> ). (U.S. Treasury)
10/21/2020	<u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/21/2020	<u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.).
10/21/2020	<u>1265</u> Certificate of service re: <i>Documents Served on or Before October 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims ( <i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1184</u> Support/supplemental document ( <i>Appendix of</i>

	<p><i>Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1185</u> Declaration re: (<i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1187</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u>, filed by Debtor Highland Capital Management, L.P., <u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1266</u> Order granting motion to continue hearing on (related document # <u>1263</u>) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, Entered on 10/22/2020. (Ecker, C.)</p>
10/22/2020	<p><u>1267</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
10/22/2020	<p><u>1268</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, (Annable, Zachery)</p>
10/22/2020	<p><u>1269</u> Certificate of service re: <i>Documents Served on or Before October 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland</p>



	<p>Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P., <u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P., filed by Debtor Highland Capital Management, L.P., <u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1270</u> Certificate of service re: <i>Documents Served on October 20, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims ( (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.), <u>1235</u> Order granting motion to seal documents (related document <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)). (Kass, Albert)</p>
10/23/2020	<p><u>1271</u> Transcript regarding Hearing Held 10/20/2020 (256 pages) RE: Motions to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/21/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1256</u> Hearing held on 10/20/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.), <u>1257</u> Hearing held on 10/20/2020. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.)). Transcript to be made available to the public on 01/21/2021. (Rehling, Kathy)</p>

10/23/2020	<u>1272</u> Request for transcript regarding a hearing held on 10/21/2020. The requested turn-around time is hourly. (Edmond, Michael)
10/23/2020	<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document # <u>1089</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u> , (Annable, Zachery)
10/23/2020	<u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
10/23/2020	<u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document # <u>1247</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1277</u> Order granting motion to appear pro hac vice adding Jonathan D. Sundheimer for NWCC, LLC (related document <u>1260</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document # <u>1262</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1279</u> Motion to file document under seal. – <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Delaware Protective Order) (Kathman, Jason)
10/23/2020	<u>1280</u> Motion for leave to <i>Amend Proof of Claim No. 77</i> Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Second Amended Proof of Claim) (Kathman, Jason)
10/23/2020	<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Kathman, Jason)
10/23/2020	<u>1282</u> Brief in support filed by Creditor Patrick Daugherty (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ). (Kathman, Jason)
10/23/2020	<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed

	by Attorney Juliana Hoffman Objections due by 11/13/2020. (Hoffman, Juliana)
10/23/2020	<u>1284</u> Support/supplemental document– <i>Appendix to Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1282</u> Brief). (Attachments: # <u>1</u> Appendix – Part 1 of 3 # <u>2</u> Appendix – Part 2 # <u>3</u> Appendix – Part 3) (Kathman, Jason)
10/24/2020	<u>1285</u> Transcript regarding Hearing Held 10/21/2020 (48 pages) RE: Motion to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/22/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1258</u> Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.)). Transcript to be made available to the public on 01/22/2021. (Rehling, Kathy)
10/25/2020	<u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/25/2020	<u>1287</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1288</u> Support/supplemental document ( <i>Redline of Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1287</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1290</u> Support/supplemental document ( <i>Redline of the Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1291</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document <u>1247</u> ) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)



10/25/2020	<u>1292</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document <u>1262</u> ) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/26/2020	<u>1293</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/26/2020	<u>1294</u> Certificate of service re: <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/26/2020	<u>1295</u> Support/supplemental document ( <i>Notice of Supplemental Disclosures</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/27/2020	<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. (Hoffman, Juliana)
10/27/2020	<u>1297</u> Request for transcript regarding a hearing held on 10/27/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/27/2020	



	<p><u>1298</u> Certificate of service re: <i>Documents Served on or Before October 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1266</u> Order granting motion to continue hearing on (related document <u>1263</u>) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, Entered on 10/22/2020. (Ecker, C.), <u>1268</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/27/2020	<p>1307 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>. (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)</p>
10/27/2020	<p>1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)</p>
10/28/2020	<p><u>1299</u> Request for transcript regarding a hearing held on 10/28/2020. The requested turn-around time is hourly (Jeng, Hawaii)</p>

10/28/2020	<u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , (Annable, Zachery)
10/28/2020	<u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.)
10/28/2020	<u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document # <u>1087</u> ) Entered on 10/28/2020. (Okafor, M.)
10/28/2020	<u>1306</u> Hearing held on 10/28/2020. (RE: related document(s) <u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.) (Edmond, Michael)
10/28/2020	<u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
10/28/2020	<u>1310</u> Certificate of service re: 1) <i>Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ; 2) <i>Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay</i> ; and 3) <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. (related document <u>1089</u> ) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u> , filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital

	<p>Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/28/2020	<p><u>1311</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eleventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through September 30, 2020</i>; and 2) <i>Debtors Omnibus Reply to Objections to Approval of the Debtors Disclosure Statement for the Debtors First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/29/2020	<p><u>1312</u> Transcript regarding Hearing Held 10/27/2020 (95 pages) RE: Amended Disclosure Statement, Motion for Entry of an Order Approving Adequacy of Disclosure Statement. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/27/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1308</u> Hearing held on 10/27/2020., Hearing continued (RE: related document(s) <u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.)). Transcript to be made available to the public on 01/27/2021. (Rehling, Kathy)</p>
10/29/2020	



	<p><u>1313</u> Certificate of service re: <i>Summary Cover Sheet and Third Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from June 1, 2020 Through and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
10/30/2020	<p><u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)</p>
10/30/2020	<p><u>1316</u> Certificate No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0.). (Hoffman, Juliana)</p>
10/30/2020	<p><u>1317</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/31/2020	<p><u>1318</u> Transcript regarding Hearing Held 10/28/2020 (32 pages) RE: Patrick Daugherty's Motion to Confirm Status of Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1306</u> Hearing held on 10/28/2020. (RE: related document(s)<u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.)). Transcript to be made available to the public on 01/29/2021. (Rehling, Kathy)</p>
11/01/2020	<p><u>1319</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)) No. of Notices: 2. Notice Date 11/01/2020. (Admin.)</p>



11/02/2020	<u>1320</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	<u>1321</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.) Responses due by 11/16/2020. (Ecker, C.)
11/02/2020	<u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u> ) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/03/2020	<u>1323</u> Certificate of service re: Daugherty's Objection to Approval of Debtor's Disclosure Statement filed by Creditor Patrick Daugherty (RE: related document(s) <u>1218</u> Objection to disclosure statement). (Kathman, Jason)
11/03/2020	<u>1324</u> Certificate of service re: Daugherty's Motion for Leave to File Under Seal filed by Creditor Patrick Daugherty (RE: related document(s) <u>1279</u> Motion to file document under seal. — <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents</i> ). (Kathman, Jason)
11/03/2020	<u>1325</u> Certificate of service re: Daugherty's Motion for Leave to Amend Proof of Claim No. 77 filed by Creditor Patrick Daugherty (RE: related document(s) <u>1280</u> Motion for leave to Amend Proof of Claim No. 77). (Kathman, Jason)
11/03/2020	<u>1326</u> Certificate of service re: Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes, Brief and Appendix filed by Creditor Patrick Daugherty (RE: related document(s) <u>1281</u> Motion for leave — <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> , <u>1282</u> Brief, <u>1284</u> Support/supplemental document). (Kathman, Jason)

11/03/2020	<u>1327</u> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document # <u>1099</u> ) Entered on 11/3/2020. (Okafor, M.)
11/03/2020	<u>1328</u> Notice of Withdrawal of Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause For Violations of the Acis Plan Injunction filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)). (Shaw, Brian)
11/03/2020	<u>1329</u> Debtor-in-possession monthly operating report for filing period September 1, 2020 to September 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/03/2020	<u>1330</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1142</u> Application for compensation ( <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> ) for Hayward & Associ). (Annable, Zachery)
11/03/2020	<u>1331</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to September 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
11/04/2020	<u>1332</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1331</u> Notice (generic)). (Annable, Zachery)
11/05/2020	<u>1333</u> Stipulation by Highland Capital Management, L.P. and Acis Capital Management, L.P., Acis Capital Management GP, LLC, Joshua N. Terry, Jennifer G. Terry, and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Annable, Zachery)
11/05/2020	<u>1334</u> Certificate of service re: ( <i>Amended</i> ) Documents Served on October 21, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1294</u> Certificate of service re: <i>Documents Served on October 21,</i>

	<p>2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl &amp; Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/05/2020	<p><u>1335</u> Certificate of service re: (Amended) 1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1310</u> Certificate of service re: 1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be</p>



	held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u> , filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/05/2020	<u>1336</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1327</u> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document <u>1099</u> ) Entered on 11/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/05/2020. (Admin.)
11/06/2020	<u>1337</u> Response opposed to (related document(s): <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P., <u>1215</u> Motion for summary judgment filed by Interested Party Redeemer Committee of the Highland Crusader Fund) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
11/06/2020	<u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
11/06/2020	<u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # <u>1</u> Exhibit)(Sosland, Martin)
11/06/2020	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28246686, amount \$ 298.00 (re: Doc# <u>1339</u> ). (U.S. Treasury)
11/06/2020	<u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. (Hoffman, Juliana)
11/06/2020	<u>1341</u> Brief in opposition filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment). (Sosland, Martin)
11/06/2020	<u>1342</u> Brief in support filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Sosland, Martin)
11/06/2020	<u>1343</u> Motion to file document under seal.( <i>With UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1344</u> Motion to file document under seal.( <i>With UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to</i>



	<i>Federal Rule of Bankruptcy Procedure 3018)</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1345</u> Exhibit List ( <i>Appendix of Exhibits to UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claims Nos. 190 and 191 and in Support of Rule 56(d) Request</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1337</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9–21 # <u>10</u> Exhibit 22) (Sosland, Martin)
11/06/2020	<u>1346</u> Exhibit List ( <i>Appendix of Exhibits to UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018)</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9–29) (Sosland, Martin)
11/09/2020	<u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # <u>1</u> Order)(Assink, Bryan)
11/09/2020	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal.ntcapl] ( 298.00). Receipt number 28249949, amount \$ 298.00 (re: Doc# <u>1347</u> ). (U.S. Treasury)
11/09/2020	<u>1348</u> Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
11/09/2020	<u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/09/2020	<u>1350</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/10/2020	<u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , (Annable, Zachery)
11/10/2020	<u>1352</u> Order granting motion to continue hearing on (related document # <u>1348</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 12/2/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<u>1353</u> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request (related document # <u>1343</u> ) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	

	<u>1354</u> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <u>1344</u> ) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<u>1355</u> <b>SEALED document regarding: UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1353</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21) (Sosland, Martin)
11/10/2020	<u>1356</u> <b>SEALED document regarding: UBS's Brief in Support of Motion for Temporary Allowance of claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1354</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25 # <u>18</u> Exhibit 26 # <u>19</u> Exhibit 27 # <u>20</u> Exhibit 28 # <u>21</u> Exhibit 29) (Sosland, Martin)
11/10/2020	<u>1357</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1338</u> , (Sosland, Martin)
11/10/2020	<u>1358</u> Certificate of service re: <i>Eleventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 to and Including September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
11/10/2020	<u>1359</u> Certificate of service re: 1) <i>Debtors Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ; and 2) <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1350</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2020	<u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28256837, amount \$ 100.00 (re: Doc# <u>1360</u> ). (U.S. Treasury)

11/11/2020	<u>1361</u> Certificate of service re: <i>1) Notice of Transfer for MCS Capital LLC c/o STC, Inc. re: Lynn Pinker Cox &amp; Hurst, LLP (Claim No. 148); and 2) Notice of Transfer for Argo Partners re: Stanton Advisors LLC (Scheduled Amount \$10,000.00)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. filed by Creditor Argo Partners). (Kass, Albert)
11/12/2020	<u>1363</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/12/2020	<u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/12/2020	<u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s) <u>821</u> Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.)
11/12/2020	<u>1366</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # <u>1</u> Exhibit A—DSI Monthly Staffing Report for August 2020) (Annable, Zachery)
11/12/2020	<u>1367</u> Certificate of service re: <i>Notice of Hearing on Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2020	<u>1368</u> Clerk's correspondence requesting to amend the notice of appeal from attorney for appellant. (RE: related document(s) <u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) Responses due by 11/16/2020. (Whitaker, Sheniqua)
11/12/2020	<u>1369</u> Amended notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1339</u> Notice of appeal). (Sosland, Martin)
11/12/2020	<u>1370</u> Notice of docketing notice of appeal. Civil Action Number: 3:20–cv–03390–X. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant

	Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/13/2020	<u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document # <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1372</u> Order granting motion to seal documents (related document # <u>1279</u> ) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1374</u> INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua) Modified on 11/13/2020 (Whitaker, Sheniqua).
11/13/2020	<u>1375</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/13/2020	<u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1380</u> WITHDRAWN per # <u>1421</u> . Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas) Modified on 11/19/2020 (Ecker, C.).
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1377</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1378</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1379</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1380</u> ). (U.S. Treasury)



	(U.S. Treasury)
11/13/2020	<u>1381</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03408-G. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ). (Annable, Zachery)
11/13/2020	<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). (Annable, Zachery)
11/13/2020	<u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). (Annable, Zachery)
11/13/2020	<u>1385</u> Support/supplemental document ( <i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Chapter 11 plan). (Annable, Zachery)
11/13/2020	<u>1386</u> Support/supplemental document ( <i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1384</u> Disclosure statement). (Annable, Zachery)
11/13/2020	<u>1387</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP

	<p>LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/13/2020	<p><u>1388</u> Witness and Exhibit List <i>for Hearing on Motion for Allowance of Claim</i> filed by Creditor Patrick Daugherty (RE: related document(s)<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6 # <u>7</u> Exhibit PHD-7 # <u>8</u> Exhibit PHD-8 # <u>9</u> Exhibit PHD-9 # <u>10</u> Exhibit PHD-10 # <u>11</u> Exhibit PHD-11 # <u>12</u> Exhibit PHD-12 # <u>13</u> Exhibit PHD-13 # <u>14</u> Exhibit PHD-14 # <u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-21 # <u>22</u> Exhibit PHD-22 # <u>23</u> Exhibit PHD-23 # <u>24</u> Exhibit PHD-24 # <u>25</u> Exhibit PHD-25 # <u>26</u> Exhibit PHD-26 # <u>27</u> Exhibit PHD-27 # <u>28</u> Exhibit PHD-28 # <u>29</u> Exhibit PHD-29 # <u>30</u> Exhibit PHD-30 # <u>31</u> Exhibit PHD-31 # <u>32</u> Exhibit PHD-32 # <u>33</u> Exhibit PHD-33 # <u>34</u> Exhibit PHD-34 # <u>35</u> Exhibit PHD-35 # <u>36</u> Exhibit PHD-36 # <u>37</u> Exhibit PHD-37 # <u>38</u> Exhibit PHD-38 # <u>39</u> Exhibit PHD-39 # <u>40</u> Exhibit PHD-40 # <u>41</u> Exhibit PHD-41 # <u>42</u> Exhibit PHD-42) (Kathman, Jason)</p>
11/13/2020	<p><u>1389</u> Notice (<i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan).). (Attachments: # <u>1</u> Exhibit A—Form of Claimant Trust Agreement # <u>2</u> Exhibit B—Form of New GP LLC Documents # <u>3</u> Exhibit C—Form of Reorganized Limited Partnership Agreement # <u>4</u> Exhibit D—Form of Litigation Sub-Trust Agreement # <u>5</u> Exhibit E—Schedule of Retained Causes of Action # <u>6</u> Exhibit F—Form of New Frontier Note # <u>7</u> Exhibit G—Schedule of Employees # <u>8</u> Exhibit H—Form of Senior Employee Stipulation) (Annable, Zachery)</p>
11/14/2020	<p><u>1390</u> BNC certificate of mailing. (RE: related document(s)<u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s)<u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order))) No. of Notices: 1. Notice Date 11/14/2020. (Admin.)</p>
11/15/2020	<p><u>1391</u> BNC certificate of mailing. (RE: related document(s)<u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s)<u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit))) No. of Notices: 2. Notice Date 11/15/2020. (Admin.)</p>
11/15/2020	<p><u>1392</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u>) Entered on 11/13/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 11/15/2020. (Admin.)</p>

11/16/2020	<u>1393</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Peri). (Pomerantz, Jeffrey)
11/16/2020	<u>1394</u> <b>SEALED document regarding: Exhibit 1 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1395</u> <b>SEALED document regarding: Exhibit 26 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1396</u> <b>SEALED document regarding: Exhibit 27 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1397</u> <b>SEALED document regarding: Exhibit 36 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1398</u> <b>SEALED document regarding: Exhibit 37 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1399</u> Notice ( <i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/16/2020	<u>1400</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)



11/16/2020	<u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/16/2020	<u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28270620, amount \$ 25.00 (re: Doc# <u>1401</u> ). (U.S. Treasury)
11/16/2020	<u>1403</u> Exhibit List ( <i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1402</u> Reply). (Annable, Zachery)
11/16/2020	<u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	<u>1405</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1406</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS OBJECTION AND JOINDER TO DEBTORS OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1407</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10.). (Hoffman, Juliana)
11/16/2020	<u>1408</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B (slip sheet only)) (Platt, Mark)
11/16/2020	<u>1409</u> Objection to (related document(s): <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A (slip sheet only) # <u>2</u> Exhibit B (slip sheet only) # <u>3</u> Exhibit C (slip sheet only) # <u>4</u> Exhibit D (slip sheet only)) (Platt, Mark)
11/16/2020	



	<u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic)). (Hoffman, Juliana)
11/16/2020	<u>1411</u> Reply to (related document(s): <u>1349</u> Objection filed by Debtor Highland Capital Management, L.P.) – <i>Daugherty's Reply in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/16/2020	<u>1412</u> Declaration re: <i>Michael S. Colvin in Support of Motion for Temporary Allowance of Claims for Voting Purposes</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1411</u> Reply). (Kathman, Jason)
11/17/2020	<u>1413</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 30) (Annable, Zachery)
11/17/2020	<u>1414</u> Witness and Exhibit List <i>for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Platt, Mark)
11/17/2020	<u>1415</u> Request for transcript regarding a hearing held on 11/17/2020. The requested turn-around time is hourly. (Edmond, Michael)
11/17/2020	<u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86). (Hoffman, Juliana)
11/17/2020	<u>1417</u> Certificate of service re: 1) <i>Motion for Admission Pro Hac Vice of Hayley R. Winograd to Represent Highland Capital Management, L.P.</i> ; 2) <i>Agreed Supplemental Order Regarding Deposit of Funds Into the Registry of the Court</i> ; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 Through August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s) <u>821</u> Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.), <u>1366</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A—DSI Monthly Staffing Report for August 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

11/17/2020	<u>1418</u> Witness and Exhibit List ( <i>UBS's Witness and Exhibit List for November 20, 2020 Hearing</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 26 – 28 # <u>2</u> Exhibit 29 # <u>3</u> Exhibit 30 # <u>4</u> Exhibit AG30 # <u>5</u> Exhibit AG31 # <u>6</u> Exhibit AG32 – AG46) (Sosland, Martin)
11/17/2020	<u>1419</u> Court admitted exhibits date of hearing November 17, 2020 (RE: related document(s) <u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty., (COURT ADMITTED THE FOLLOWING EXHIBIT'S; PLAINTIFF'S PATRICK H. DAUGHERTY EXHIBIT'S #1 THROUGH #41 BY THOMAS UEBLER AND DEFENDANT DEBTOR'S EXHIBIT'S #A THROUGH #V & EXHIBIT'S #X1 & #X2 BY JOHN MORRIS) (Edmond, Michael) (Entered: 11/18/2020)
11/17/2020	<u>1422</u> Hearing held on 11/17/2020. (RE: related document(s) <u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2020)
11/18/2020	<u>1420</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
11/18/2020	<u>1421</u> Withdrawal [ <i>Notice of Withdrawal of Notice of Transfer of Claim From Debevoise &amp; Plimpton LLP to Contrarian Funds, LLC</i> ] Filed by Creditor Contrarian Funds LLC (related document(s) <u>1380</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Schneller, Douglas)
11/18/2020	<u>1423</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1382</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit X-1 # <u>24</u> Exhibit X-2) (Annable, Zachery)
11/18/2020	<u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
11/18/2020	<u>1425</u> Motion for expedited hearing(related documents <u>1424</u> Motion for leave) ( <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

11/18/2020	<p><u>1426</u> Transcript regarding Hearing Held 11/17/2020 (90 pages) RE: Motion for Temporary Allowance of Claim (#1281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/16/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1422 Hearing held on 11/17/2020. (RE: related document(s) <u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 02/16/2021. (Rehling, Kathy)</p>
11/18/2020	<p><u>1427</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1420</u> Notice (generic)). (Annable, Zachery)</p>
11/18/2020	<p><u>1428</u> Certificate of service re: <i>Documents Served on or Before November 14, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u>) Entered on 11/13/2020. (Ecker, C.), <u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). filed by Debtor Highland Capital Management, L.P., <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1385</u> Support/supplemental document (<i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1384</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1389</u> Notice (<i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan)). (Attachments: # 1 Exhibit A—Form of Claimant Trust Agreement # 2 Exhibit B—Form of New GP LLC Documents # 3 Exhibit C—Form of Reorganized Limited Partnership Agreement # 4 Exhibit D—Form of Litigation Sub-Trust Agreement # 5 Exhibit E—Schedule of Retained Causes of Action # 6 Exhibit F—Form of New Frontier Note # 7 Exhibit G—Schedule of Employees # 8 Exhibit H—Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/18/2020	<p><u>1429</u> Expedited Motion to file document under seal. (<i>UBS's Expedited Motion for Leave to File Documents Under Seal With UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
11/19/2020	<p><u>1430</u> Order granting motion to seal documents regarding the Redeemer Committee of the Highland Crusader Funds and Crusader Funds Reply Brief in Support of their Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary</p>



	Judgement on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC.(related document # <u>1405</u> ) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1431</u> Order granting motion to seal documents regarding the Redeemer Committee of the Crusader Fund and the Crusader Funds Objection and Joinder to Debtors Objection to UBS AG, London Branch and UBS Securities LLCs Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <u>1406</u> ) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1432</u> <b>SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' OBJECTION AND JOINDER TO DEBTOR'S OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018 per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1431</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Platt, Mark)
11/19/2020	<u>1433</u> <b>SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1430</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit B) (Platt, Mark)
11/19/2020	<u>1434</u> Notice of hearing ( <i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , (Annable, Zachery)
11/19/2020	<u>1435</u> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1166</u> Assignment/Transfer of claim (Claims Agent)). (Annable, Zachery)
11/19/2020	<u>1436</u> Order granting motion for expedited hearing (Related Doc# <u>1425</u> )(document set for hearing: <u>1424</u> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1437</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/19/2020	<u>1438</u> Notice ( <i>Reservation of Rights of UBS Regarding Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1—A—Forms



	of Ballots # 3 Exhibit 1-B—Notice of Confirmation Hearing # 4 Exhibit 1-C—Notice of Non-Voting Status # 5 Exhibit 1-D—Notice of Assumption), <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement).). (Sosland, Martin)
11/19/2020	<u>1439</u> WITHDRAWN per docket # <u>1622</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
11/19/2020	<u>1440</u> Order granting motion to seal documents with UBS's Witness and Exhibit List for November 20, 2020 Hearing (related document # <u>1429</u> ) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1441</u> <b>SEALED document regarding: UBS's Witness and Exhibit List for November 20, 2020 Hearing per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1440</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 26 # <u>2</u> Exhibit 27 # <u>3</u> Exhibit 28 # <u>4</u> Exhibit 30 # <u>5</u> Exhibit AG32 # <u>6</u> Exhibit AG33 # <u>7</u> Exhibit AG34 # <u>8</u> Exhibit AG35 # <u>9</u> Exhibit AG36 # <u>10</u> Exhibit AG37 # <u>11</u> Exhibit AG38 # <u>12</u> Exhibit AG39 # <u>13</u> Exhibit AG40 # <u>14</u> Exhibit AG41 # <u>15</u> Exhibit AG42 # <u>16</u> Exhibit AG43 # <u>17</u> Exhibit AG44 # <u>18</u> Exhibit AG45 # <u>19</u> Exhibit AG46) (Sosland, Martin)
11/19/2020	<u>1442</u> Certificate of service re: <i>Documents Served on November 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1399</u> Notice ( <i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1400</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1403</u> Exhibit List ( <i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1402</u> Reply). filed by Debtor Highland Capital Management, L.P., <u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

11/19/2020	<u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
11/20/2020	<u>1444</u> Notice ( <i>Revised Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1437</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)
11/20/2020	<u>1445</u> Objection to disclosure statement (RE: related document(s) <u>1384</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/20/2020	<u>1446</u> Request for transcript regarding a hearing held on 11/20/2020. The requested turn-around time is hourly. (Edmond, Michael)
11/20/2020	<u>1447</u> WITHDRAWN per # <u>1460</u> Response opposed to (related document(s): <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Bonds, John) Modified on 11/23/2020 (Ecker, C.).
11/20/2020	<u>1448</u> Application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1450</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1451</u> Support/supplemental document ( <i>Interim Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1452</u> Support/supplemental document ( <i>Cumulative Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1453</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1454</u> Support/supplemental document ( <i>Interim Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)

11/20/2020	<u>1455</u> Support/supplemental document ( <i>Cumulative Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020. (Sosland, Martin)
11/20/2020	<u>1457</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u> ) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
11/20/2020	<u>1462</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG,



	London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1463 Hearing held on 11/20/2020. (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)
11/20/2020	1464 Hearing held on 11/20/2020. (RE: related document(s) <u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.) (Edmond, Michael) (Entered: 11/23/2020)
11/23/2020	<u>1458</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020.) Responses due by 11/25/2020. (Blanco, J.)
11/23/2020	<u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) ( <i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Service Agreements</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1460</u> Withdrawal filed by Interested Party James Dondero (RE: related document(s) <u>1447</u> Response). (Assink, Bryan)
11/23/2020	<u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co filed by Interested Party James Dondero</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1465</u> Reply to (related document(s): <u>1461</u> Objection filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
11/23/2020	<u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020. (Assink, Bryan)
11/23/2020	<u>1467</u> Notice of hearing filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # 1



	Proposed Order)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , (Assink, Bryan)
11/23/2020	<u>1468</u> Certificate of service re: <i>re: 1) WebEx Meeting Invitation to participate electronically in the hearing on Tuesday, November 20, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Debtors Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1413</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # 1 Exhibit 30) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1469</u> Certificate of service re: <i>1) Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreement</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P., <u>1425</u> Motion for expedited hearing(related documents <u>1424</u> Motion for leave) ( <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1470</u> Certificate of service re: <i>Documents Served on November 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1434</u> Notice of hearing ( <i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , filed by Debtor Highland Capital Management, L.P., <u>1435</u> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1166</u> Assignment/Transfer of claim (Claims Agent)). filed by Debtor Highland Capital Management, L.P., <u>1436</u> Order granting motion for expedited hearing (Related Doc <u>1425</u> )(document set for hearing: <u>1424</u> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , Entered on 11/19/2020. (Okafor, M.), <u>1437</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1478</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)

11/23/2020	<p><u>1479</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/23/2020	<p><u>1480</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/24/2020	<p><u>1471</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>1154</u> Motion for leave <i>to Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed Order)) Responses due by 12/8/2020. (Ecker, C.)</p>
11/24/2020	<p><u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). (Annable, Zachery)</p>
11/24/2020	<p><u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). (Annable, Zachery)</p>
11/24/2020	<p><u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document # <u>1281</u>) Entered on 11/24/2020. (Okafor, M.)</p>
11/24/2020	<p><u>1475</u> Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements (related document # <u>1424</u>) Entered on 11/24/2020. (Okafor, M.)</p>
11/24/2020	<p><u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)</p>
11/24/2020	<p><u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox &amp; Hurst, LLP (RE: related document(s)<u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)</p>
11/25/2020	<p><u>1481</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s)<u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested</p>

	Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020.) Responses due by 12/2/2020. (Blanco, J.)
11/25/2020	<u>1482</u> Transcript regarding Hearing Held 11/20/2020 (223 pages) RE: Motions for Partial Summary Judgment; Motion to Allow Claims for Voting Purposes. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1462</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), <u>1463</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # <u>1</u> Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), <u>1464</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.)). Transcript to be made available to the public on 02/23/2021. (Rehling, Kathy)
11/25/2020	<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B/Proposed Order # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (O'Neil, Holland)
11/25/2020	<u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal). (Sosland, Martin)
11/25/2020	<u>1485</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/26/2020	<u>1486</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/26/2020	<u>1487</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)) No. of Notices: 1. Notice Date



	11/26/2020. (Admin.)
11/27/2020	<u>1488</u> Certificate of service re: <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from October 1, 2020 through October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2020	<u>1489</u> Order granting motion to continue hearing on (related document # <u>1485</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/30/2020. (Ecker, C.)
11/30/2020	<u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. (Hoffman, Juliana)
11/30/2020	<u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay) (Kathman, Jason)
12/01/2020	<u>1492</u> Clerk's correspondence requesting exhibits from attorney for plaintiff. (RE: related document(s) <u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal).) Responses due by 12/14/2020. (Blanco, J.)
12/01/2020	<u>1493</u> Debtor-in-possession monthly operating report for filing period October 1, 2020 to October 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/01/2020	<u>1494</u> Notice of hearing on <i>Daugherty's Motion to Lift the Automatic Stay</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay)). Preliminary hearing to be held on 12/17/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Creditor Matrix) (Kathman, Jason)
12/01/2020	<u>1495</u> Certificate of service re: <i>1) Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Objection to Request for Emergency Hearing Filed by James Dondero [Docket No. 1443]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) ( <i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co filed by Interested Party James Dondero</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)



12/01/2020	<u>1496</u> Certificate of service re: 1) <i>Order Granting Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ; 2) <i>Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreements</i> ; and 3) <i>Order Approving Stipulation Resolving Proof of Claim No. 148 Filed by Lynn Pinker Cox &amp; Hurst, LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1474</u> <i>Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty</i> (related document <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.), <u>1475</u> <i>Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> (related document <u>1424</u> ) Entered on 11/24/2020. (Okafor, M.), <u>1477</u> <i>Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox &amp; Hurst, LLP</i> (RE: related document(s) <u>1435</u> <i>Stipulation filed by Debtor Highland Capital Management, L.P.</i> ). Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/01/2020	<u>1497</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1466</u> <i>Appellant designation, Statement of issues on appeal</i> ). (Assink, Bryan)
12/02/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 28309234, amount \$ 181.00 (re: Doc# <u>1491</u> ). (U.S. Treasury)
12/02/2020	<u>1498</u> Notice of hearing filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> <i>Application for compensation Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u> , (O'Neil, Holland)
12/02/2020	<u>1499</u> Certificate of service re: 1) <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2020</i> ; and 2) <i>Joint Motion to Continue Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1483</u> <i>Application for compensation Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1485</u> <i>Joint Motion to continue hearing on</i> (related documents <u>1207</u> <i>Motion to allow claims</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/03/2020	<u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)
12/03/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28312406, amount \$ 26.00 (re: Doc# <u>1500</u> ). (U.S. Treasury)
12/03/2020	<u>1501</u> Request for transcript regarding a hearing held on 11/23/2020. The requested turn-around time is hourly. (Edmond, Michael)

12/03/2020	<u>1502</u> Stipulation by James Dondero and Highland Capital Management, L.P., filed by Interested Party James Dondero (RE: related document(s) <u>1179</u> Objection to claim). (Assink, Bryan)
12/03/2020	<u>1503</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
12/03/2020	<u>1504</u> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1503</u> Notice (generic)). (Annable, Zachery)
12/03/2020	<u>1505</u> Certificate of service re: <i>Debtor's Notice of Affidavit of Publication of the Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm Plan; and (III) Related Important Dates in the New York Times</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/03/2020	<u>1506</u> Certificate of service re: <i>1) Order Granting Joint Motion to Continue Hearing; and 2) Twelfth Monthly Application of Sidley Austin for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1489</u> Order granting motion to continue hearing on (related document <u>1485</u> ) (related documents Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/30/2020. (Ecker, C.), <u>1490</u> Application for compensation Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/03/2020	<u>1507</u> Transcript regarding Hearing Held 11/23/2020 (42 pages) RE: Disclosure Statement Hearing; Motion to Enter into Sub-Servicer Agreements; Motion for Order Shortening Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1478</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1424</u> Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.), <u>1479</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u>

	<p>Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.), <u>1480</u> Hearing held on 11/23/2020. (RE: related document(s) <u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.)). Transcript to be made available to the public on 03/3/2021. (Rehling, Kathy)</p>
12/03/2020	<p><u>1883</u> INCORRECT ENTRY – Agreed Notice of voluntary dismissal of appeals filed by Allied World Assurance Company (RE: related document(s) <u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)). (Blanco, J.) Modified on 2/2/2021 (Blanco, J.). (Entered: 02/02/2021)</p>
12/04/2020	<p><u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan &amp; Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)</p>
12/04/2020	<p><u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)</p>
12/04/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1508</u>). (U.S. Treasury)</p>
12/04/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1509</u>). (U.S. Treasury)</p>
12/04/2020	<p><u>1510</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 138 and 188 (RE: related document(s) <u>1502</u> Stipulation filed by Interested Party James Dondero). Entered on 12/4/2020 (Ecker, C.)</p>
12/04/2020	<p><u>1511</u> Certificate of service re: <i>(Supplemental) Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan;</i></p>

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	<p>(D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/07/2020	<p><u>1512</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. (Rapoport, Amanda)</p>
12/07/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] ( 26.00). Receipt number 28320856, amount \$ 26.00 (re: Doc# <u>1512</u>). (U.S. Treasury)</p>
12/07/2020	<p><u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. (Hoffman, Juliana)</p>
12/07/2020	<p><u>1514</u> Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief – other). (Annable, Zachery)</p>
12/07/2020	<p><u>1515</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s) <u>1466</u> Appellant designation, Statement of issues on appeal, <u>1497</u> Appellant designation, Statement of issues on appeal). (Assink, Bryan)</p>
12/07/2020	<p><u>1516</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal,</p>



	Modified LINKAGE AND TEXT on 3/12/2021 (Blanco, J.).
12/07/2020	<u>1517</u> Appellee designation of contents for inclusion in record of appeal filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal). (Chiarello, Annmarie)
12/08/2020	<u>1518</u> Order temporarily granting UBS' motion to allow claim number(s) (related document # <u>1338</u> ) Entered on 12/8/2020. (Ecker, C.)
12/08/2020	<u>1519</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1280</u> Motion for leave to <i>Amend Proof of Claim No. 77</i> Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Second Amended Proof of Claim)) Responses due by 12/22/2020. (Ecker, C.)
12/08/2020	<u>1520</u> Application for compensation ( <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—August 2020 Invoice) (Annable, Zachery)
12/08/2020	<u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. (Pomerantz, Jeffrey)
12/08/2020	<u>1522</u> INCORRECT EVENT: See # <u>1528</u> for correction. Motion to compel Temporary Restriction of Sales by Non-Debtors CLOs. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Attachments: # <u>1</u> Affidavit # <u>2</u> Proposed Order) (Varshosaz, Artoush) Modified on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1523</u> Motion for expedited hearing(related documents <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund. Modified linkage on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund . (Ecker, C.) (Entered: 12/09/2020)
12/09/2020	<u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/09/2020	<u>1525</u> Request for transcript regarding a hearing held on 1/9/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/09/2020	<u>1526</u> Order granting partial summary judgment (related document # <u>1214</u> ) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	

	<u>1527</u> Order granting joint motion to continue hearing on (related document # <u>1524</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	<u>1529</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Objection to claim). (Annable, Zachery)
12/09/2020	<u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. (Montgomery, Paige)
12/09/2020	<u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A September 2020 Invoice) (Annable, Zachery)
12/09/2020	<u>1532</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/10/2020	<u>1533</u> Order granting motion to amend proof of claim #77 and to file supporting documents under seal. (related document # <u>1280</u> ) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
12/10/2020	<u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). (Annable, Zachery)
12/10/2020	<u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1539</u> Notice of hearing on <i>Motion Imposing Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Ecker, C.)).

	Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , (Varshosaz, Artoush)
12/10/2020	<u>1540</u> Certificate of service re: <i>Twelfth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020</i> ; and 2) <i>Appellees Counter–Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1516</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal, <u>1369</u> Amended notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2020	<u>1541</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1518</u> Order temporarily granting UBS' motion to allow claim number(s) (related document <u>1338</u> ) Entered on 12/8/2020. (Ecker, C.)) No. of Notices: 2. Notice Date 12/10/2020. (Admin.)
12/11/2020	<u>1542</u> Support/supplemental document/ <i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Proposed Order /Exhibit E) (O'Neil, Holland)
12/11/2020	<u>1543</u> Transcript regarding Hearing Held 01/09/2020 (91 pages) RE: Motion to Compromise Controversy (#281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) Hearing held on 1/9/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.)). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)
12/11/2020	<u>1544</u> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP (Hesse, Gregory)
12/11/2020	<u>1545</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A Invoices for July, August, and September 2020) (Annable, Zachery)
12/11/2020	<u>1546</u> Objection to (related document(s): <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) filed by Interested Party James

	Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. (Pomerantz, Jeffrey)
12/11/2020	<u>1548</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	<u>1549</u> Notice to take deposition of John Dubel filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	<u>1550</u> Notice to take deposition of Russell Nelms filed by Interested Party James Dondero. (Assink, Bryan)
12/11/2020	<u>1551</u> Objection to (related document(s): <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/11/2020	<u>1552</u> Application for compensation ( <i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i> ) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
12/11/2020	<u>1553</u> Omnibus Notice of hearing ( <i>Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic))., <u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86)., <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B/Proposed Order # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (O'Neil, Holland), <u>1542</u> Support/supplemental document/ <i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Proposed Order /Exhibit E) (O'Neil, Holland), <u>1544</u> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to



	<p>10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, <u>1545</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Invoices for July, August, and September 2020), <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., <u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u> and for <u>1544</u> and for <u>1545</u> and for <u>1547</u> and for <u>1552</u> and for <u>1410</u> and for <u>1416</u> and for <u>1542</u>, (Annable, Zachery)</p>
12/11/2020	<u>1554</u> Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1555</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<p><u>1556</u> Certificate of service re: 1) <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>; and 2) <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1520</u> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—August 2020 Invoice) filed by Other Professional Hayward &amp; Associates PLLC, <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/11/2020	<p><u>1557</u> Certificate of service re: <i>Documents Served on December 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1526</u> Order granting partial summary judgment (related document <u>1214</u>) Entered on 12/9/2020. (Ecker, C.), <u>1527</u> Order granting joint motion to continue hearing on (related document <u>1524</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Entered on 12/9/2020. (Ecker, C.), <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. filed</p>

	by Creditor Committee Official Committee of Unsecured Creditors, <u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A September 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>1532</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	<u>1639</u> Hearing set (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020., <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020.) Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1296</u> and for <u>1244</u> , (Ellison, T.) (Entered: 12/29/2020)
12/12/2020	<u>1558</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/13/2020	<u>1559</u> WITHDRAWN per # <u>1622</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Sevilla Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1560</u> WITHDRAWN per # <u>1622</u> Subpoena on Russell Nelms filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Nelms Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1561</u> WITHDRAWN per # <u>1622</u> Subpoena on Fred Caruso filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Caruso Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/14/2020	<u>1562</u> Order granting motion for expedited hearing (Related Doc# <u>1523</u> )(document set for hearing: <u>1528</u> Generic motion) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , Entered on 12/14/2020. (Ecker, C.)
12/14/2020	<u>1563</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Assink, Bryan)
12/14/2020	<u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1566</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint

	Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
12/14/2020	<u>1567</u> Motion for expedited hearing(related documents <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.)
12/14/2020	<u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/14/2020	<u>1570</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1569</u> Objection). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Annable, Zachery)
12/14/2020	<u>1571</u> Objection to (related document(s): <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena file filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
12/14/2020	<u>1572</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181.). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6) (Kathman, Jason)
12/14/2020	<u>1573</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Varshosaz, Artoush)
12/14/2020	<u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Annable, Zachery)
12/15/2020	<u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , (Annable, Zachery)
12/15/2020	



	<u>1576</u> Order granting motion for expedited hearing (Related Doc# <u>1567</u> )(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , Entered on 12/15/2020. (Okafor, M.)
12/15/2020	<u>1577</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
12/15/2020	<u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit A-3 # <u>4</u> Exhibit B-1 # <u>5</u> Exhibit B-2 # <u>6</u> Exhibit B-3 # <u>7</u> Exhibit C (Part 1) # <u>8</u> Exhibit C (Part 2) # <u>9</u> Exhibit C (Part 3) # <u>10</u> Exhibit D (Part 1) # <u>11</u> Exhibit D (Part 2) # <u>12</u> Exhibit D (Part 3) # <u>13</u> Exhibit E # <u>14</u> Exhibit F # <u>15</u> Exhibit G) (Annable, Zachery)
12/15/2020	<u>1579</u> Amended Witness and Exhibit List ( <i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1574</u> List (witness/exhibit/generic)). (Annable, Zachery)
12/15/2020	<u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/15/2020	<u>1581</u> INCORRECT ENTRY: See # <u>1580</u> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1578</u> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). (Entered: 12/16/2020)
12/16/2020	<u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trlmagt] ( 26.00). Receipt number 28347173, amount \$ 26.00 (re: Doc# <u>1582</u> ). (U.S. Treasury)
12/16/2020	<u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 1/6/2021. (Annable, Zachery)



12/16/2020	<u>1584</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomer). (Pomerantz, Jeffrey)
12/16/2020	<u>1585</u> Court admitted exhibits date of hearing December 16, 2020 (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund. (COURT ADMITTED EXHIBIT'S #A & #B BY JAMES WRIGHT) (Edmond, Michael)
12/16/2020	<u>1586</u> Request for transcript regarding a hearing held on 12/16/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/16/2020	<u>1587</u> Certificate of service re: Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
12/16/2020	<u>1588</u> Certificate of service re: <i>Documents Served on December 10, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.), <u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , filed by Debtor Highland Capital Management, L.P., <u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.), <u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)). (Kass, Albert)
12/16/2020	<u>1589</u> Certificate of service re: <i>Documents Served on or Before December 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1542</u> Support/supplemental document/Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1544</u> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>1545</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020

to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020) filed by Other Professional Hayward & Associates PLLC, 1546 Objection to (related document(s): 1439 Motion for leave (*James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business*) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P., filed by Debtor Highland Capital Management, L.P., 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. filed by Debtor Highland Capital Management, L.P., 1551 Objection to (related document(s): 1439 Motion for leave (*James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business*) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, 1552 Application for compensation (*Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 1553 Omnibus Notice of hearing (*Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) 1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., 1407 Certificate (generic))., 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) 1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86)., 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document/*Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation (*First Interim Application*) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206,933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation (*Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the*

	<p><i>Period from August 1, 2020 through November 30, 2020 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., <u>1552</u> Application for compensation (Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u> and for <u>1544</u> and for <u>1545</u> and for <u>1547</u> and for <u>1552</u> and for <u>1410</u> and for <u>1416</u> and for <u>1542</u>, filed by Debtor Highland Capital Management, L.P., <u>1554</u> Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1555</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1558</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
12/16/2020	<p>1596 Hearing held on 12/16/2020. (RE: related document(s)<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/16/2020	<p>1597 Hearing held on 12/16/2020. (RE: related document(s)<u>1564</u> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/16/2020	<p>1598 Hearing held on 12/16/2020. (RE: related document(s)<u>1565</u> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/16/2020	<p>1599 Hearing held on 12/16/2020. (RE: related document(s)<u>1439</u> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/17/2020	<p><u>1590</u> Motion to pay (Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)</p>
12/17/2020	



	<u>1591</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
12/17/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28350580, amount \$ 26.00 (re: Doc# <u>1591</u> ). (U.S. Treasury)
12/17/2020	<u>1592</u> Certificate of service re: <i>Documents Served on or Before December 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1567</u> Motion for expedited hearing(related documents <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.), <u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1570</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1569</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/17/2020	<u>1593</u> Certificate of service re: <i>Documents Served on December 15, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , filed by Debtor Highland Capital Management, L.P., <u>1576</u> Order granting motion for expedited hearing (Related Doc <u>1567</u> )(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , Entered on 12/15/2020. (Okafor, M.), <u>1577</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF



	<p>DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit A-3 # 4 Exhibit B-1 # 5 Exhibit B-2 # 6 Exhibit B-3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>1579</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1574</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P., <u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/17/2020	<p><u>1594</u> Adversary case 20-03195. Complaint by Official Committee of Unsecured Creditors against CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III, James D. Dondero. Fee Amount \$350. Nature(s) of suit: 13 (Recovery of money/property – 548 fraudulent transfer). 91 (Declaratory judgment). 72 (Injunctive relief – other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Montgomery, Paige)</p>
12/17/2020	<p><u>1600</u> Hearing held on 12/17/2020. (RE: related document(s)<u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.) (Edmond, Michael) (Entered: 12/18/2020)</p>
12/18/2020	<p><u>1595</u> Notice of Appearance and Request for Notice <i>with Certificate of Service</i> by Douglas S. Draper filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)</p>
12/18/2020	<p><u>1601</u> Request for transcript regarding a hearing held on 12/17/2020. The requested turn-around time is daily. (Edmond, Michael)</p>
12/18/2020	<p><u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u>, (Annable, Zachery)</p>
12/18/2020	<p><u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s)<u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u>, Entered on 12/18/2020 (Ecker, C.)</p>
12/18/2020	<p><u>1604</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (O'Neil, Holland)</p>

12/18/2020	<u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles (related document # <u>1528</u> ) Entered on 12/18/2020. (Okafor, M.)
12/18/2020	<u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation) (Annable, Zachery)
12/18/2020	<u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> . (Annable, Zachery)
12/18/2020	<u>1608</u> Certificate of service re: ( <i>Supplemental</i> ) Documents Served on October 28, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: Documents Served on October 28, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u> ) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1—A—Forms of Ballots # <u>3</u> Exhibit 1—B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1—C—Notice of Non-Voting Status # <u>5</u> Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/19/2020	<u>1609</u> Transcript regarding Hearing Held 12/17/2020 (38 pages) RE: Motion for Relief from Stay (#1491). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber.

	<p>Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1600 Hearing held on 12/17/2020. (RE: related document(s) <u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman, J. Pomerantz and J. Morris for debtor. Motion denied.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><u>1610</u> Transcript regarding Hearing Held 12/16/2020 (66 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1596 Hearing held on 12/16/2020. (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.), 1597 Hearing held on 12/16/2020. (RE: related document(s) <u>1564</u> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1598 Hearing held on 12/16/2020. (RE: related document(s) <u>1565</u> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1599 Hearing held on 12/16/2020. (RE: related document(s) <u>1439</u> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><u>1611</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60.). (Hoffman, Juliana)</p>
12/21/2020	<p><u>1612</u> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document # <u>1491</u>) Entered on 12/21/2020. (Okafor, M.)</p>
12/21/2020	<p><u>1613</u> Certificate of service re: re: 1) Instructions for any counsel and parties who wish to participate in the Hearing; 2) Joinder of the Official Committee of Unsecured Creditors to Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles; and 3) Debtors Motion Pursuant to the Protocols for Authority for Highland and Multi Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1581</u> INCORRECT ENTRY: See <u>1580</u> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1578</u> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). filed by</p>



	Creditor Committee Official Committee of Unsecured Creditors, <u>1590</u> Motion to pay ( <i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/22/2020	<u>1614</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/22/2020	<u>1615</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$). (Hoffman, Juliana)
12/22/2020	<u>1616</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: &#03). (Hoffman, Juliana)
12/23/2020	<u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s) <u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.)
12/23/2020	<u>1618</u> Notice ( <i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
12/23/2020	<u>1619</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1620</u> Motion to appear pro hac vice for A. Lee Hogewood. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
12/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28366971, amount \$ 100.00 (re: Doc# <u>1620</u> ). (U.S. Treasury)
12/23/2020	<u>1621</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1622</u> Withdrawal ( <i>Notice of Withdrawal of James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the</i>



	<i>Ordinary Course of Business and Related Notices of Subpoena</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> )). (Assink, Bryan)
12/23/2020	<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/23/2020	<u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , (Annable, Zachery)
12/23/2020	<u>1627</u> Certificate of service re: <i>Documents Served on December 18, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1590</u> Motion to pay ( <i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u> , filed by Debtor Highland Capital Management, L.P., <u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s) <u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , Entered on 12/18/2020 (Ecker, C.), <u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles (related document <u>1528</u> ) Entered on 12/18/2020. (Okafor, M.), <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P., <u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	<u>1628</u> Certificate of service re: <i>Order Denying Patrick Daughertys Motion to Lift the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1612</u> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document <u>1491</u> ) Entered on 12/21/2020. (Okafor, M.) filed by Creditor Patrick Daugherty). (Kass, Albert)
12/23/2020	<u>1629</u> Certificate of service re: <i>Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1614</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 99</i>

	<i>Filed by Hunton Andrews Kurth LLP</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/23/2020	<u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/24/2020	<u>1631</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7) (Annable, Zachery)
12/24/2020	<u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1634</u> Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Annable, Zachery)
12/26/2020	<u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/28/2020	<u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)
12/28/2020	<u>1637</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/28/2020	<p><u>1638</u> Certificate of service re: <i>Documents Served on December 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s)<u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.), <u>1618</u> Notice (<i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1619</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1621</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/29/2020	<p><u>1640</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23.). (Hoffman, Juliana)</p>
12/30/2020	<p><u>1641</u> Order granting motion to appear pro hac vice adding A. Lee Hogewood, III for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (related document # <u>1620</u>) Entered on 12/30/2020. (Okafor, M.)</p>
12/30/2020	<p><u>1642</u> Certificate of No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>1520</u> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward &amp; Ass). (Annable, Zachery)</p>
12/30/2020	



	<u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
12/30/2020	<u>1644</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
12/30/2020	<u>1645</u> Certificate of service re: Senior Employees Agreed Motion to Withdraw and Substitute Counsel of Record and Notice of Appearance filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau, <u>1644</u> Notice of appearance and request for notice). (Smith, Frances)
12/30/2020	<u>1646</u> Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1631</u> Declaration re: <i>(Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) filed by Debtor Highland Capital Management, L.P., <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1634</u> Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/30/2020	<u>1647</u> Certificate of service re: 1) <i>Supplemental Declaration of Matthew Clemente in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors;</i> and 2) <i>Agreed Order Extending Deadline to Assume Unexpired Nonresidential Real Property Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew</i>



	<i>Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T).</i> filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.). (Kass, Albert)
12/30/2020	<u>1648</u> Notice (Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
12/31/2020	<u>1649</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
12/31/2020	<u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (O'Neil, Holland)
12/31/2020	<u>1651</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward). (Annable, Zachery)
12/31/2020	<u>1652</u> Order granting motion to continue hearing on (related document # <u>1649</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> . Entered on 12/31/2020. (Okafor, M.)
12/31/2020	<u>1653</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.), <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE:

	related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/04/2021	<u>1654</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for J). (Pomerantz, Jeffrey)
01/04/2021	<u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. (Hoffman, Juliana)
01/04/2021	<u>1656</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit L—Amended Schedule of Retained Causes of Action # <u>2</u> Exhibit M—Amended Form of Claimant Trust Agreement # <u>3</u> Exhibit N—Redline of Form of Claimant Trust Agreement # <u>4</u> Exhibit O—Amended Form of Litigation Trust Agreement # <u>5</u> Exhibit P—Redline of Form of Litigation Trust Agreement) (Annable, Zachery)
01/05/2021	<u>1657</u> Notice of Appearance and Request for Notice by Daniel P. Winikka filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
01/05/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trlmagt] ( 26.00). Receipt number 28389049, amount \$ 26.00 (re: Doc# <u>1658</u> ). (U.S. Treasury)
01/05/2021	<u>1659</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1545</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Att). (Annable, Zachery)
01/05/2021	<u>1660</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2021	<u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero. (Clarke, James)
01/05/2021	<u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County. (Spindler, Laurie)
01/05/2021	<u>1663</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1544</u> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee:

	\$206933.85, Expenses: \$546.52.). (Annable, Zachery)
01/05/2021	<u>1664</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30,</i> ). (Annable, Zachery)
01/05/2021	<u>1665</u> Certificate of No Objection filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s) <u>1552</u> Application for compensation ( <i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> )). (Annable, Zachery)
01/05/2021	<u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<u>1667</u> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/05/2021	<u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS). (Adams, David)
01/05/2021	<u>1669</u> WITHDRAWN per # <u>1845</u> . Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/05/2021	<u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # <u>1</u> Exhibit A) (Rukavina, Davor)
01/05/2021	<u>1671</u> Trustee's Objection to <i>Fifth Amended Plan</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) (Lambert, Lisa)
01/05/2021	<u>1672</u> Certificate of service re: Senior Employees' Objection to Debtor's Fifth Amended Plan of Reorganization filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1669</u> Objection to confirmation of plan). (Smith, Frances)
01/05/2021	<u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
01/05/2021	<u>1674</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization</i> filed by Paul Kauffman, Todd Travers, Davis Deadman (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1675</u> Joinder by <i>[Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. No. 1670] and Supplemental</i>

	<i>Objection to Plan Confirmation</i> ] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Kane, John)
01/05/2021	<u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank. (Drawhorn, Lauren)
01/05/2021	<u>1677</u> Joinder by <i>NexPoint RE Entities to Objection to Confirmation of Fifth Amended Plan of Reorganization</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, Vinebrook Homes, Trust, Inc. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Drawhorn, Lauren)
01/05/2021	<u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty. (Kathman, Jason)
01/05/2021	<u>1679</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization (Amended)</i> filed by Davis Deadman, Paul Kauffman, Todd Travers (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1680</u> Motion to appear pro hac vice for Debra Dandenau. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Soderlund, Eric)
01/05/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28390902, amount \$ 100.00 (re: Doc# <u>1680</u> ). (U.S. Treasury)
01/06/2021	<u>1681</u> Motion to appear pro hac vice for Douglas S. Draper. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393061, amount \$ 100.00 (re: Doc# <u>1681</u> ). (U.S. Treasury)
01/06/2021	<u>1682</u> Motion to appear pro hac vice for Leslie A. Collins. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393082, amount \$ 100.00 (re: Doc# <u>1682</u> ). (U.S. Treasury)
01/06/2021	<u>1683</u> Motion to appear pro hac vice for Greta M. Brouphy. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Brouphy, Greta)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393123, amount \$ 100.00 (re: Doc# <u>1683</u> ). (U.S. Treasury)
01/06/2021	<u>1684</u> Order granting third interim fee application for compensation (related document # <u>1296</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.)



01/06/2021	<u>1685</u> Order granting third interim application for compensation (related document # <u>1244</u> ) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1686</u> Order granting first interim application for compensation (related document # <u>1544</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1687</u> Order granting third interim application for compensation (related document # <u>1547</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.)
01/06/2021	<u>1689</u> Motion to appear pro hac vice for Warren Horn. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Horn, Warren)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393995, amount \$ 100.00 (re: Doc# <u>1689</u> ). (U.S. Treasury)
01/06/2021	<u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>1680</u> ) Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1691</u> Order granting third and final application for compensation (related document <u>1483</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.) Modified to correct text on 1/29/2021 (Ecker, C.).
01/06/2021	<u>1692</u> Adversary case 21-03000. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., CLO Holdco, Ltd.. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 72 (Injunctive relief – other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Annable, Zachery)
01/06/2021	<u>1693</u> Subpoena on Highland Capital Management, L.P. filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1694</u> Subpoena on Kurtzman Carson Consultants LLC filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1695</u> Certificate of service re: 1) <i>WebEx Meeting Invitation to participate electronically in the hearing on Wednesday, December 16, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Foley &amp; Lardner LLP's Witness and Exhibit List for Final Fee Application</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner

	LLP). (Kass, Albert)
01/06/2021	<u>1696</u> Certificate of service re: 1) <i>Fourth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through and Including November 30, 2020</i> ; and 2) <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1656</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit L—Amended Schedule of Retained Causes of Action # 2 Exhibit M—Amended Form of Claimant Trust Agreement # 3 Exhibit N—Redline of Form of Claimant Trust Agreement # 4 Exhibit O—Amended Form of Litigation Trust Agreement # 5 Exhibit P—Redline of Form of Litigation Trust Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2021	<u>1697</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
01/07/2021	<u>1698</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
01/07/2021	<u>1699</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1700</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1701</u> Order granting motion to appear pro hac vice adding Douglas S. Draper for Get Good Trust and The Dugaboy Investment Trust (related document <u>1681</u> ) Entered on 1/7/2021. (Okafor, M.) Modified to add party on 1/7/2021 (Okafor, M.).
01/07/2021	<u>1702</u> Order granting motion to appear pro hac vice adding Leslie A. Collins for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1682</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1703</u> Order granting motion to appear pro hac vice adding Greta M. Brouphy for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1683</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1704</u> Order granting motion to appear pro hac vice adding Warren Horn for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1689</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	

	<u>1705</u> Notice to take deposition of Michael Pugatch filed by Interested Party James Dondero. (Assink, Bryan)
01/08/2021	<u>1706</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/08/2021	<u>1707</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
01/08/2021	<u>1708</u> <b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco – Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/08/2021	<u>1709</u> Notice ( <i>Notice of Filing of Certificate of Service Regarding Letter Dated January 7, 2021 to Highland Capital Management Services, Inc. from James P. Seery, Jr. Regarding Demand on Promissory Note</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1710</u> Debtor-in-possession monthly operating report for filing period November 1, 2020 to November 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1711</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
01/08/2021	<u>1712</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1660</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	<u>1713</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document <u>1680</u> ) Entered on 1/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 01/08/2021. (Admin.)

01/09/2021	<u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , (Annable, Zachery)
01/11/2021	<u>1715</u> Order granting application for compensation (related document # <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.)
01/11/2021	<u>1716</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Kane, John)
01/11/2021	<u>1717</u> <b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/11/2021	<u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/11/2021	<u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/11/2021	<u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
01/11/2021	<u>1721</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # <u>1</u> Dondero Ex. A – POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H – M) (Assink, Bryan)
01/11/2021	<u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global



	Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Annable, Zachery)
01/11/2021	<u>1723</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Driver, Vickie)
01/11/2021	<u>1724</u> Certificate of service re: <i>Documents Served on January 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1684</u> Order granting third interim fee application for compensation (related document <u>1296</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.), <u>1685</u> Order granting third interim application for compensation (related document <u>1244</u> ) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.), <u>1686</u> Order granting first interim application for compensation (related document <u>1544</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.), <u>1687</u> Order granting third interim application for compensation (related document <u>1547</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.), <u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.), <u>1691</u> Order granting first and final application for compensation (related document <u>1483</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.)). (Kass, Albert)
01/12/2021	<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	<u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit DD) (Annable, Zachery)
01/13/2021	<u>1727</u> Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1711</u> Notice (generic)). (Annable, Zachery)
01/13/2021	<u>1728</u> Order granting application for compensation (related document # <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)
01/13/2021	<u>1729</u> Certificate of service re: Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of the Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1476</u> Order approving disclosure statement). (Annable, Zachery)

01/13/2021	<u>1730</u> Certificate of service re: Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time). (Annable, Zachery)
01/13/2021	<u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/13/2021	<u>1732</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit EE) (Annable, Zachery)
01/13/2021	<u>1733</u> Expedited Motion to file document under seal./ <i>Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Driver, Vickie)
01/13/2021	<u>1734</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) / <i>HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al. (Driver, Vickie)
01/13/2021	<u>1735</u> Support/supplemental document / <i>Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1734</u> Reply). (Driver, Vickie)
01/13/2021	<u>1736</u> Emergency Motion to file document under seal./( <i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/14/2021	<u>1737</u> Order granting motion to seal exhibits (related document # <u>1736</u> ) Entered on 1/14/2021. (Ecker, C.)
01/14/2021	<u>1738</u> <b>SEALED document regarding: Exhibit A—Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1739</u> <b>SEALED document regarding: Exhibit B—Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1740</u> <b>SEALED document regarding: Exhibit C—Offering Memorandum per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1741</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

01/14/2021	<u>1742</u> Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N) (Assink, Bryan)
01/14/2021	<u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
01/14/2021	<u>1744</u> Declaration re: ( <i>Supplemental Declaration of Marc D. Katz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). (Annable, Zachery)
01/14/2021	<u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)
01/14/2021	<u>1752</u> INCORRECT Entry: Original entry at # [1745 is correct} Motion to Appoint Examiner pursuant to 11 U.S.C. § 1104(c) by Get Good Trust , The Dugaboy Investment Trust . (Ecker, C.) Modified on 1/15/2021 (Ecker, C.). (Entered: 01/15/2021)
01/14/2021	<u>1753</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1754</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1755</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1782</u> Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND

	EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON) (Edmond, Michael) (Entered: 01/20/2021)
01/15/2021	<u>1746</u> Order granting motion to pay (related document # <u>1590</u> ) Entered on 1/15/2021. (Ecker, C.)
01/15/2021	<u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)
01/15/2021	<u>1748</u> Motion for expedited hearing(related documents <u>1745</u> Motion to appoint trustee) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)
01/15/2021	<u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/15/2021	<u>1750</u> Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly (Green, Shanette)
01/15/2021	<u>1751</u> Supplemental Certificate of service re: filed by Creditors The Dugaboy Investment Trust, Get Good Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> , <u>1748</u> Motion for expedited hearing(related documents <u>1745</u> Motion to appoint trustee) ). (Draper, Douglas) Modified on 1/15/2021 (Rielly, Bill).
01/15/2021	<u>1756</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). (Assink, Bryan)
01/15/2021	<u>1757</u> Notice of Increase in Hourly Rates for Pachulski Stang Ziehl & Jones LLP Effective as of January 1, 2021 filed by Debtor Highland Capital Management, L.P.. (Pomerantz, Jeffrey)
01/15/2021	<u>1758</u> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: &#0). (Hoffman, Juliana)
01/15/2021	<u>1759</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64.). (Hoffman, Juliana)
01/15/2021	<u>1760</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on January 11, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related



	<p>document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
01/15/2021	<p><u>1761</u> Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing (<i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1762</u> Certificate of service re: <i>Documents Served on January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.), <u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital</p>

	Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/15/2021	<u>1763</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1728</u> Order granting application for compensation (related document <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/15/2021. (Admin.)
01/16/2021	<u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/17/2021	<u>1765</u> Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1753</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), <u>1754</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), <u>1755</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 04/19/2021. (Rehling, Kathy)
01/17/2021	<u>1766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)) No. of Notices: 1. Notice Date 01/17/2021. (Admin.)
01/18/2021	<u>1767</u> Verified statement pursuant to Rule 2019 filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)
01/18/2021	<u>1768</u> Certificate of service re: Verified Statement Pursuant to Federal Rule of Bankruptcy Procedure 2019 of (I) Frances A. Smith and Disclosures of Ross & Smith, PC; and (II) Michelle Hartmann and Disclosures of Baker & McKenzie LLP filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related

	document(s) <u>1767</u> Verified statement pursuant to Rule 2019). (Smith, Frances)
01/18/2021	<u>1769</u> Declaration re: ( <i>Report of Mediators</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). (Annable, Zachery)
01/19/2021	<u>1770</u> Order Granting Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtors Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith (related document # <u>1733</u> ) Entered on 1/19/2021. (Okafor, M.)
01/19/2021	<u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. (Pomerantz, Jeffrey)
01/19/2021	<u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	<u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	<u>1774</u> Notice to take deposition of Highland Capital Management, L.P. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.)
01/19/2021	<u>1775</u> Certificate of service re: 1) <i>Order Granting Debtors Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay</i> ; 2) <i>Order Approving Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ; and 3) <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1746</u> Order granting motion to pay (related document <u>1590</u> ) Entered on 1/15/2021. (Ecker, C.), <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.), <u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/19/2021	<u>1776</u> Notice to take deposition of Highland Capital Management LP filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/19/2021	<u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B—1 # 3 Exhibit B—2 # 4 Exhibit C) (Annable, Zachery)



01/19/2021	<u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/19/2021	<u>1779</u> Certificate of service re: <i>Documents Served on January 13, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1728</u> Order granting application for compensation (related document <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.), <u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1732</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) filed by Debtor Highland Capital Management, L.P., <u>1736</u> Emergency Motion to file document under seal.( <i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1780</u> Notice of District Court Order Accepting Documents Designated for Inclusion in Record on Appeal Under Seal filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
01/20/2021	<u>1781</u> Certificate of service re: Notice of Rule 30(b)(6) <i>Amended Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1776</u> Notice to take deposition). (Draper, Douglas)
01/20/2021	<u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , (Annable, Zachery)
01/20/2021	<u>1784</u> WITHDRAWN PER # <u>1876</u> . Objection to (related document(s): <u>1719</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan) Modified on 2/2/2021 (Ecker, C.).
01/20/2021	<u>1785</u> Order granting motion for expedited hearing (Related Doc# <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021. (Rielly, Bill)
01/20/2021	<u>1786</u> Certificate of service re: <i>Documents Served on January 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1737</u> Order granting motion to seal exhibits (related document <u>1736</u> ) Entered on 1/14/2021. (Ecker, C.), <u>1741</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>1744</u> Declaration re: ( <i>Supplemental Declaration of Marc D. Katz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). filed by Debtor Highland



	Capital Management, L.P.). (Kass, Albert)
01/20/2021	<p><u>1787</u> Certificate of service re: <i>Documents Served on or Before January 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1769</u> Declaration re: (<i>Report of Mediators</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>912</u> Order (generic)). filed by Debtor Highland Capital Management, L.P., <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. filed by Debtor Highland Capital Management, L.P., <u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1777</u> Motion for leave (<i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C) filed by Debtor Highland Capital Management, L.P., <u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/21/2021	<p><u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # <u>1625</u>) Entered on 1/21/2021. (Okafor, M.)</p>
01/21/2021	<p><u>1789</u> Notice (<i>Notice of Service of Discovery on Highland Capital Management, L.P.</i>) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Document Requests) (Assink, Bryan)</p>
01/21/2021	<p><u>1790</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena) (Assink, Bryan)</p>
01/21/2021	<p><u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation))., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation))., <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document</p>

	<i>(Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/22/2021	<u>1792</u> Witness and Exhibit List <i>United States' (IRS) Witness &amp; Exhibit List</i> filed by Creditor United States (IRS) (RE: related document(s) <u>1668</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Adams, David)
01/22/2021	<u>1793</u> Witness and Exhibit List <i>for Confirmation Hearing</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Hogewood, A.)
01/22/2021	<u>1794</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit 5 # <u>2</u> Exhibit 6 # <u>3</u> Exhibit 6–1) (Draper, Douglas)
01/22/2021	<u>1795</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17) (Assink, Bryan)
01/22/2021	<u>1796</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE1 # <u>2</u> Exhibit SE2 # <u>3</u> Exhibit SE # <u>4</u> Exhibit SE4 # <u>5</u> Exhibit SE5 # <u>6</u> Exhibit SE6 # <u>7</u> Exhibit SE7 # <u>8</u> Exhibit SE8 # <u>9</u> Exhibit SE9 # <u>10</u> Exhibit SE10 # <u>11</u> Exhibit SE11 # <u>12</u> Exhibit SE12 # <u>13</u> Exhibit SE13 # <u>14</u> Exhibit SE14 # <u>15</u> Exhibit SE15 # <u>16</u> Exhibit SE16 # <u>17</u> Exhibit SE17 # <u>18</u> Exhibit SE18 # <u>19</u> Exhibit SE19 # <u>20</u> Exhibit SE20 # <u>21</u> Exhibit SE21 # <u>22</u> Exhibit SE22 # <u>23</u> Exhibit SE23 # <u>24</u> Exhibit SE24 # <u>25</u> Exhibit SE25 # <u>26</u> Exhibit SE26 # <u>27</u> Exhibit SE27 # <u>28</u> Exhibit SE28 # <u>29</u> Exhibit SE29 # <u>30</u> Exhibit SE30 # <u>31</u> Exhibit SE31 # <u>32</u> Exhibit SE33 # <u>33</u> Exhibit SE34 # <u>34</u> Exhibit SE35 # <u>35</u> Exhibit SE36 # <u>36</u> Exhibit SE37 # <u>37</u> Exhibit SE38 # <u>38</u> Exhibit SE39 # <u>39</u> Exhibit SE40) (Smith, Frances)
01/22/2021	<u>1797</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Kane, John)
01/22/2021	<u>1798</u> Certificate of service re: Witness & Exhibit List for Hearing Scheduled for January, 26, 2021 at 9:30 a.m. filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1796</u> List (witness/exhibit/generic)). (Smith, Frances)
01/22/2021	<u>1799</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE33) (Smith, Frances)
01/22/2021	

	<p><u>1800</u> Exhibit and Witness List for Confirmation Hearing filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit U # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit ZZZ) (Hogewood, A.) MODIFIED on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1801</u> Adversary case 21-03003. Complaint by Highland Capital Management, L.P. against James Dondero. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 13-Recovery of money/property – §548 fraudulent transfer; 14-Recovery of money/property – other; 91-Declaratory judgment (Annable, Zachery) Modified text to update Natures of Suit on 8/30/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1802</u> Adversary case 21-03004. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)</p>
01/22/2021	<p><u>1803</u> Adversary case 21-03005. Complaint by Highland Capital Management, L.P. against NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 03 13-Recovery of money/property – §548 fraudulent transfer. 04 14-Recovery of money/property – other. 05 91-Declaratory judgment. (Annable, Zachery) MODIFIED to add natures of suit on 8/30/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1804</u> Adversary case 21-03006. Complaint by Highland Capital Management, L.P. against Highland Capital Management Services, Inc.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 03 13-Recovery of money/property – §548 fraudulent transfer . 04 14-Recovery of money/property – other. 05 91-Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1805</u> Adversary case 21-03007. Complaint by Highland Capital Management, L.P. against HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that</p>



	would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). 0313–Recovery of money/property – §548 fraudulent transfer. 04 14–Recovery of money/property – other . 0591–Declaratory judgment. (Annable, Zachery) MODIFIED to add Natures of Suit on 8/30/2021 (Ecker, C.).
01/22/2021	<u>1806</u> Motion to file document under seal. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small–Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund (Attachments: # <u>1</u> Proposed Order) (Vasek, Julian)
01/22/2021	<u>1807</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan with <i>Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small–Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # <u>1</u> Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Annable, Zachery)
01/22/2021	<u>1809</u> Support/supplemental document ( <i>Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery)
01/22/2021	<u>1810</u> Witness and Exhibit List [Exhibits 1–2 and 12–17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1797</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> CLO Exhibit 2 # <u>2</u> CLO Exhibit 12 # <u>3</u> CLO Exhibit 13 # <u>4</u> CLO Exhibit 14 # <u>5</u> CLO Exhibit 15 # <u>6</u> CLO Exhibit 16 # <u>7</u> CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor



	Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit Q # <u>2</u> Exhibit R # <u>3</u> Exhibit S # <u>4</u> Exhibit T # <u>5</u> Exhibit U # <u>6</u> Exhibit V # <u>7</u> Exhibit W # <u>8</u> Exhibit X # <u>9</u> Exhibit Y # <u>10</u> Exhibit Z # <u>11</u> Exhibit AA # <u>12</u> Exhibit BB # <u>13</u> Exhibit CC # <u>14</u> Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).
01/22/2021	<b><u>1812</u> SEALED document regarding: CLO Exhibit 3 – Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1813</u> SEALED document regarding: CLO Exhibit 4 – Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1814</u> Memorandum of Law in support of confirmation</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).
01/22/2021	<b><u>1815</u> SEALED document regarding: CLO Exhibit 5 – Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1816</u> SEALED document regarding: CLO Exhibit 6 – Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1817</u> SEALED document regarding: CLO Exhibit 7 – Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1818</u> SEALED document regarding: CLO Exhibit 8 – Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1819</u> SEALED document regarding: CLO Exhibit 9 – Valhalla CLO, Ltd. Reference Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1820</u> SEALED document regarding: CLO Exhibit 10 – Westchester CLO, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1821</u> SEALED document regarding: CLO Exhibit 11 – Debtor Prepared Summary of CLO Holdco, Ltd.'s Interest in Debtor-Managed CLO Funds [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)

01/22/2021	<p><u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> List of 20 Largest Creditors C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> List of 20 Largest Creditors W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit XXX # <u>77</u> Exhibit YYY # <u>78</u> Exhibit ZZZ # <u>79</u> Exhibit AAAA # <u>80</u> Exhibit BBBB # <u>81</u> Exhibit CCCC # <u>82</u> Exhibit DDDD # <u>83</u> Exhibit EEEE # <u>84</u> Exhibit FFFF # <u>85</u> Exhibit GGGG # <u>86</u> Exhibit MMMM # <u>87</u> Exhibit NNNN # <u>88</u> Exhibit OOOO # <u>89</u> Exhibit PPPP # <u>90</u> Exhibit QQQQ # <u>91</u> Exhibit RRRR # <u>92</u> Exhibit SSSS # <u>93</u> Exhibit TTTT # <u>94</u> Exhibit UUUU # <u>95</u> Exhibit VVVV # <u>96</u> Exhibit WWWW # <u>97</u> Exhibit XXXX # <u>98</u> Exhibit YYYY # <u>99</u> Exhibit ZZZZ # <u>100</u> Exhibit AAAAA # <u>101</u> Exhibit BBBB # <u>102</u> Exhibit CCCC # <u>103</u> Exhibit DDDD # <u>104</u> Exhibit EEEE # <u>105</u> Exhibit FFFF # <u>106</u> Exhibit GGGG # <u>107</u> Exhibit HHHH # <u>108</u> Exhibit IIII # <u>109</u> Exhibit JJJJ # <u>110</u> Exhibit KKKK # <u>111</u> Exhibit LLLL # <u>112</u> Exhibit MMMM # <u>113</u> Exhibit NNNN # <u>114</u> Exhibit OOOO # <u>115</u> Exhibit PPPP # <u>116</u> Exhibit QQQQ # <u>117</u> Exhibit RRRR # <u>118</u> Exhibit SSSS # <u>119</u> Exhibit TTTT # <u>120</u> Exhibit UUUU # <u>121</u> Exhibit VVVV # <u>122</u> Exhibit WWWW # <u>123</u> Exhibit XXXX # <u>124</u> Exhibit YYYY # <u>125</u> Exhibit ZZZZ # <u>126</u> Exhibit AAAAAA # <u>127</u> Exhibit BBBB # <u>128</u> Exhibit CCCCC # <u>129</u> Exhibit DDDDD # <u>130</u> Exhibit EEEEE # <u>131</u> Exhibit FFFFF # <u>132</u> Exhibit GGGGG # <u>133</u> Exhibit HHHHH # <u>134</u> Exhibit IIIII # <u>135</u> Exhibit JJJJJ # <u>136</u> Exhibit KKKKK # <u>137</u> Exhibit LLLLL # <u>138</u> Exhibit MMMMM # <u>139</u> Exhibit NNNNN # <u>140</u> Exhibit OOOOO # <u>141</u> Exhibit PPPPP # <u>142</u> Exhibit QQQQQ # <u>143</u> Exhibit RRRRR # <u>144</u> Exhibit SSSSS # <u>145</u> Exhibit TTTTT # <u>146</u> Exhibit UUUUU # <u>147</u> Exhibit VVVVV # <u>148</u> Exhibit WWWWW # <u>149</u> Exhibit XXXXX # <u>150</u> Exhibit YYYYY # <u>151</u> Exhibit ZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). Additional attachment(s) added on 1/28/2021 (Okafor, M.).</p>
01/22/2021	<p><u>1823</u> Response unopposed to (related document(s): <u>1828</u> Response filed by Debtor Highland Capital Management, L.P.. Modified linkage on 1/25/2021 (Ecker, C.).</p>
01/22/2021	<p><u>1828</u> Response opposed to (related document(s): <u>1661</u> Objection to confirmation of plan filed by Interested Party James Dondero, <u>1662</u> Objection to confirmation of plan filed by Creditor City of Richardson, Creditor Allen ISD, Creditor Kaufman County, Creditor Dallas County, Creditor City of Allen, <u>1666</u> Objection to confirmation of plan filed by Interested Party Jack Yang, Interested Party Brad Borud, <u>1667</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1668</u> Objection to confirmation of plan filed by Creditor United States (IRS), <u>1669</u> Objection to confirmation of plan filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, <u>1670</u> Objection to confirmation of plan filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>1671</u> Objection, <u>1673</u> Objection to</p>

	confirmation of plan filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, <u>1676</u> Objection to confirmation of plan filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc., <u>1678</u> Objection to confirmation of plan filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) Modified date on 1/25/2021 (Ecker, C.). (Entered: 01/25/2021)
01/23/2021	<u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/23/2021	<u>1825</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.) No. of Notices: 1. Notice Date 01/23/2021. (Admin.)
01/24/2021	<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List) (Vasek, Julian)
01/25/2021	<u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/25/2021	<u>1829</u> Notice ( <i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward &amp; Associates PLLC) Effective as of January 1, 2021</i> ) filed by Other Professional Hayward & Associates PLLC. (Annable, Zachery)
01/25/2021	<u>1830</u> Order granting motion to continue hearing on (related document # <u>1827</u> ) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1831</u> Order granting motion to file exhibits under seal (related document # <u>1806</u> ) Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1832</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order)). Hearing to be held on 3/2/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1745</u> , (Draper, Douglas)
01/25/2021	<u>1833</u> Notice ( <i>Notice of Certificate of Service re: Letter Dated January 19, 2021 to PCMG Trading Partners XXIII, L.P. from James P. Seery, Jr. re Highland Select Equity Fund, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/25/2021	<u>1834</u> Certificate of service re: Notice Of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1832</u> Notice of hearing). (Draper, Douglas)
01/25/2021	<u>1835</u> INCORRECT ENTRY: Attorney to refile. Motion to redact/restrict Emergency Redact (related document(s): <u>1822</u> ) (Fee Amount \$26) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) MODIFIED on 1/26/2021 (Ecker, C.).
01/25/2021	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] ( 26.00). Receipt number 28441834, amount \$ 26.00 (re: Doc# <u>1835</u> ). (U.S. Treasury)

01/25/2021	<u>1836</u> Motion to file document under seal. <i>Emergency Motion to File Competing Plan and Disclosure Statement Under Seal</i> Filed by Interested Party NexPoint Advisors, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)
01/25/2021	<u>1837</u> Certificate of service re: 1) <i>Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Relief</i> ; and 2) <i>Order Granting Debtors Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , filed by Debtor Highland Capital Management, L.P., <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.). (Kass, Albert)
01/26/2021	<u>1838</u> Notice ( <i>Notice of Settlement</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Settlement Agreement) (Annable, Zachery)
01/26/2021	<u>1839</u> WITHDRAWN at # <u>1858</u> . Notice to take deposition of Frank Waterhouse filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.) Modified on 1/29/2021 (Ecker, C.).
01/26/2021	<u>1840</u> INCORRECT ENTRY: Attorney to refile. Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan) Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/26/2021	<u>1841</u> Certificate of service re: Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1840</u> Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan)). (Smith, Frances)
01/26/2021	<u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. (Hoffman, Juliana)
01/26/2021	<u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
01/26/2021	<u>1844</u> Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1788</u> Order granting motion



	<p>to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)).). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/26/2021	<p><u>1850</u> Hearing held on 1/26/2021. (RE: related document(s)<u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/27/2021)</p>
01/27/2021	<p><u>1845</u> Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)<u>1669</u> Objection to confirmation of plan). (Smith, Frances)</p>
01/27/2021	<p><u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/27/2021	<p><u>1847</u> Notice (<i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable,</p>

	Zachery)
01/27/2021	<u>1848</u> Amended Motion to redact/restrict (related document(s): <u>1835</u> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order # <u>2</u> Exhibit PPPP # <u>3</u> Exhibit QQQQ # <u>4</u> Exhibit RRRR # <u>5</u> Exhibit SSSS # <u>6</u> Exhibit TTTT # <u>7</u> Exhibit UUUU # <u>8</u> Exhibit VVVV # <u>9</u> Exhibit WWWW # <u>10</u> Exhibit XXXX # <u>11</u> Exhibit YYYY # <u>12</u> Exhibit ZZZZ # <u>13</u> Exhibit DDDDDD) (Annable, Zachery)
01/27/2021	<u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document # <u>1777</u> ) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1851</u> Order granting motion to seal documents (related document # <u>1836</u> ) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc # <u>1848</u> ) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. (Hoffman, Juliana)
01/27/2021	<u>1854</u> Certificate of service re: <i>Documents Served on January 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1807</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan with <i>Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1809</u> Support/supplemental document ( <i>Redline of Fifth Amended Plan of Reorganization of</i>

	<p><i>Highland Capital Management, L.P. (as Modified)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1814</u> Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBB # 102 Exhibit CCCCC # 103 Exhibit DDDDD # 104 Exhibit EEEEE # 105 Exhibit FFFFF # 106 Exhibit GGGGG # 107 Exhibit HHHHH # 108 Exhibit IIIII # 109 Exhibit JJJJJ # 110 Exhibit KKKKK # 111 Exhibit LLLLL # 112 Exhibit MMMMM # 113 Exhibit NNNNN # 114 Exhibit OOOOO # 115 Exhibit PPPPP # 116 Exhibit QQQQQ # 117 Exhibit RRRRR # 118 Exhibit SSSSS # 119 Exhibit TTTTT # 120 Exhibit UUUUU # 121 Exhibit VVVVV # 122 Exhibit WWWWW # 123 Exhibit XXXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBBBB # 128 Exhibit CCCCCC # 129 Exhibit DDDDDD # 130 Exhibit EEEEE # 131 Exhibit FFFFFF # 132 Exhibit GGGGGG # 133 Exhibit HHHHHH # 134 Exhibit IIIIII # 135 Exhibit JJJJJJ # 136 Exhibit KKKKKK # 137 Exhibit LLLLLL # 138 Exhibit MMMMMM # 139 Exhibit NNNNNN # 140 Exhibit OOOOOO # 141 Exhibit PPPPPP # 142 Exhibit QQQQQQ # 143 Exhibit RRRRRR # 144 Exhibit SSSSSS # 145 Exhibit TTTTTT # 146 Exhibit UUUUUU # 147 Exhibit VVVVVV # 148 Exhibit WWWWWW # 149 Exhibit XXXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/28/2021	<u>1855</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Prostok, Jeff)
01/28/2021	<u>1856</u> Notice of Appearance and Request for Notice by Suzanne K. Rosen filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Rosen, Suzanne)
01/28/2021	<u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)).



	Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u> , (Annable, Zachery)
01/28/2021	<u>1858</u> <i>Withdrawal of Notice of Deposition</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1839</u> Notice to take deposition). (Hogewood, A.)
01/28/2021	<u>1859</u> <b>SEALED document regarding: PLAN OF REORGANIZATION OF JAMES DONDERO, NEXPOINT ADVISORS, L.P. per court order</b> filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1851</u> Order on motion to seal). (Rukavina, Davor)
01/28/2021	<u>1860</u> <b>SEALED document regarding: DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION per court order</b> filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1851</u> Order on motion to seal). (Rukavina, Davor)
01/28/2021	<u>1861</u> Certificate of service re: <i>Documents Served on or Before January 25, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1829</u> Notice ( <i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward &amp; Associates PLLC) Effective as of January 1, 2021</i> ) filed by Other Professional Hayward & Associates PLLC. filed by Other Professional Hayward & Associates PLLC, <u>1830</u> Order granting motion to continue hearing on (related document <u>1827</u> ) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)). (Kass, Albert)
01/29/2021	<u>1862</u> Transcript regarding Hearing Held 01/26/2021 (257 pages) RE: KERP Motion <u>1777</u> . THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1850 Hearing held on 1/26/2021. (RE: related document(s) <u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 04/29/2021. (Rehling, Kathy)
01/29/2021	<u>1863</u> Amended Witness and Exhibit List of <i>Funds and Advisors</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1793</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 #



	<p><u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73 # <u>74</u> Exhibit 74 # <u>75</u> Exhibit 75 # <u>76</u> Exhibit 76 # <u>77</u> Exhibit 77 # <u>78</u> Exhibit 78 # <u>79</u> Exhibit 79 # <u>80</u> Exhibit 80 # <u>81</u> Exhibit 81 # <u>82</u> Exhibit 82) (Hogewood, A.)</p>
01/29/2021	<p><u>1864</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
01/29/2021	<p><u>1865</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
01/29/2021	<p><u>1866</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit AAAAAAA # <u>3</u> Exhibit BBBB BBB # <u>4</u> Exhibit CCCCCC # <u>5</u> Exhibit DDDDDDD # <u>6</u> Exhibit EEEEEEE) (Annable, Zachery)</p>
01/29/2021	<p><u>1867</u> Certificate of service re: 1) <i>Notice of Settlement</i>; 2) <i>Fourteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through December 31, 2020</i>; and 3) <i>Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1838</u> Notice (<i>Notice of Settlement</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/01/2021	<p>Adversary case 3:20–ap–3128 closed (Ecker, C.)</p>
02/01/2021	<p><u>1868</u> Supplemental Objection to confirmation of plan with <i>Certificate of Service</i> (RE: related document(s)<u>1472</u> Chapter 11 plan, <u>1808</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)</p>
02/01/2021	<p><u>1869</u> Certificate of service re: Monthly Staffing Reports by Development Specialists, Inc. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1864</u> Notice</p>

	(generic), <u>1865</u> Notice (generic)). (Annable, Zachery)
02/01/2021	<u>1870</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).
02/01/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28458158, amount \$ 298.00 (re: Doc# <u>1870</u> ). (U.S. Treasury)
02/01/2021	<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) ( <i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	<u>1872</u> <b>SEALED document regarding: Exhibit 76 per court order</b> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1831</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 77 # <u>2</u> Exhibit 78 # <u>3</u> Exhibit 79 # <u>4</u> Exhibit 80 # <u>5</u> Exhibit 81 # <u>6</u> Exhibit 82) (Vasek, Julian)
02/01/2021	<u>1873</u> Notice ( <i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
02/01/2021	<u>1874</u> Amended Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1795</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17 # <u>18</u> Dondero Ex. 18 # <u>19</u> Dondero Ex. 19 # <u>20</u> Dondero Ex. 20) (Assink, Bryan)
02/01/2021	<u>1875</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit DD # <u>4</u> Exhibit EE # <u>5</u> Exhibit FF) (Annable, Zachery)
02/01/2021	<u>1876</u> Withdrawal ( <i>Notice of Withdrawal of Document</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1784</u> Objection). (Assink, Bryan)
02/01/2021	<u>1877</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit DDDDDD # <u>3</u> Exhibit FFFFFFFF # <u>4</u> Exhibit GGGGGGGG # <u>5</u> Exhibit

	HHHHHHH # <u>6</u> Exhibit IIIIII # <u>7</u> Exhibit JJJJJJ # <u>8</u> Exhibit KKKKKKK # <u>9</u> Exhibit LLLLLLL # <u>10</u> Exhibit MMMMMMM # <u>11</u> Exhibit NNNNNNN # <u>12</u> Exhibit OOOOOOO # <u>13</u> Exhibit PPPPPPP # <u>14</u> Exhibit QQQQQQQ (Annable, Zachery)
02/01/2021	<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order Exhibit A # <u>2</u> Exhibit Exhibit B) (Montgomery, Paige)
02/01/2021	<u>1879</u> Certificate of service re: <i>Documents Served on January 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1847</u> Notice ( <i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document <u>1777</u> ) Entered on 1/27/2021. (Okafor, M.), <u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc <u>1848</u> ) Entered on 1/27/2021. (Okafor, M.)). (Kass, Albert)
02/01/2021	<u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
02/01/2021	<u>1881</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47.). (Hoffman, Juliana)
02/02/2021	<u>1882</u> Clerk's correspondence requesting File an amended appeal from attorney for appellant. (RE: related document(s) <u>1870</u> Notice of appeal and <i>Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021.) Responses due by 2/5/2021. (Blanco, J.)
02/02/2021	<u>1884</u> Request for transcript regarding a hearing held on 2/2/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/02/2021	<u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Edmond, Michael)
02/02/2021	<u>1886</u> Certificate of service re: <i>Documents Served on or Before January 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. filed by Creditor

	Committee Official Committee of Unsecured Creditors, <u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/02/2021	<u>1921</u> Hearing held on 2/2/2021. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Matter not taken up in light of all-day confirmation hearing.) (Edmond, Michael) (Entered: 02/09/2021)
02/02/2021	<u>1922</u> Hearing held on 2/2/2021. (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Evidentiary hearing. Hearing recessed and will resume on 2/3/21.) (Edmond, Michael) (Entered: 02/09/2021)
02/03/2021	<u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/03/2021	<u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (Drawhorn, Lauren)
02/03/2021	<u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal). (Draper, Douglas)
02/03/2021	<u>1890</u> Request for transcript regarding a hearing held on 2/3/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/03/2021	<u>1891</u> Certificate of service re: <i>Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	<u>1892</u> Certificate of service re: 1) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 Through November 30, 2020</i> ; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 Through December 31, 2020</i> ; and 3) <i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1864</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i> ) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1865</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i> ) filed by Other Professional



	<p>Development Specialists, Inc. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1866</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAAA # 3 Exhibit BBBB BBB # 4 Exhibit CCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p><u>1893</u> Certificate of service re: <i>Documents Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) (<i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1873</u> Notice (<i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1875</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) filed by Debtor Highland Capital Management, L.P., <u>1877</u> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIII # 7 Exhibit JJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPPP # 14 Exhibit QQQQQQQ) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p><u>1902</u> Bench Ruling set (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u>, (Ellison, T.) (Entered: 02/05/2021)</p>
02/03/2021	<p><u>1915</u> Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR'S EXHIBITS THAT APPEAR AT DOC. #1822, #1866 &amp; #1877 &amp; DONDERO'S EXHIBITS #6 THROUGH #12, #15, 16 &amp; #17; &amp; HIGHLAND CAPTIAL MGMT. FUNDING EXHIBIT #2 AT DOC. #1863 AND JUDGE JERNIGAN TOOK JUDICIAL NOTICE OF THE DEBTOR'S SCHEDULES) (Edmond, Michael) (Entered: 02/08/2021)</p>
02/03/2021	<p><u>1923</u> Hearing held on 2/3/2021. (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan) (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy</p>

	and Get Good Trusts; L. Drawhorn for NexBank and NexPoint; L. Lambert for UST. Evidentiary hearing. Court took matter under advisement after conclusion of evidence and arguments. Bench ruling scheduled for 2/8/21 at 9:00 am.) (Edmond, Michael) (Entered: 02/09/2021)
02/04/2021	<u>1894</u> Transcript regarding Hearing Held 02/02/2021 (295 pages) RE: Confirmation Hearing, Day One (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/5/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/5/2021. (Rehling, Kathy)
02/04/2021	<u>1895</u> Amended Witness and Exhibit List ( <i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1877</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit PPPPPPP # <u>2</u> Exhibit RRRRRRRR # <u>3</u> Exhibit SSSSSSS # <u>4</u> Exhibit TTTTTTTT # <u>5</u> Exhibit UUUUUUU) (Annable, Zachery)
02/04/2021	<u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
02/05/2021	<u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/05/2021	<u>1899</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-CV-00261-L (Lindsay). (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.), <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.)
02/05/2021	<u>1900</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.) Additional attachment(s) added on 2/5/2021 (Blanco, J.).
02/05/2021	<u>1901</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).) (Blanco, J.)
02/05/2021	<u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1905</u> Transcript regarding Hearing Held 02/03/2021 (257 pages) RE: Confirmation Hearing, Day Two (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE

	MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/6/2021. (Rehling, Kathy)
02/05/2021	<u>1906</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	<u>1907</u> Certificate of service re: <i>Response of the Official Committee of Unsecured Creditors to Supplemental Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) Filed by the Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	<u>1908</u> Certificate of service re: <i>Documents Served on February 4, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1895</u> Amended Witness and Exhibit List ( <i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1877</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPPP # 2 Exhibit RRRRRRR # 3 Exhibit SSSSSSS # 4 Exhibit TTTTTTT # 5 Exhibit UUUUUUU) filed by Debtor Highland Capital Management, L.P., <u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P., filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/05/2021	<u>1909</u> Certificate of service re: <i>(Supplemental) Solicitation Materials Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
02/06/2021	



	<u>1910</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). Appellee designation due by 02/22/2021. (Draper, Douglas)
02/06/2021	<u>1911</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1901</u> Notice regarding the record for a bankruptcy appeal, <u>1910</u> Appellant designation). (Draper, Douglas)
02/08/2021	<u>1912</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s) <u>1910</u> Appellant designation of contents for inclusion in record on appeal) Responses due by 2/10/2021. (Blanco, J.)
02/08/2021	<u>1913</u> Request for transcript (ruling only) regarding a hearing held on 2/8/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/08/2021	<u>1914</u> Motion for leave ( <i>Motion for Status Conference</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)
02/08/2021	<u>1924</u> Hearing held on 2/8/2021. (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz; M. Clemente for UCC; M. Lynn, J. Bonds, and B. Assink for J. Dondero; D. Rukavina and L. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Lambert for UST (numerous others; full roll call not taken). Court read bench ruling approving plan. Counsel to incorporate courts bench ruling into their own set of FOFs, COLS and Order to be submitted.) (Edmond, Michael) (Entered: 02/09/2021)
02/09/2021	<u>1916</u> Notice of hearing ( <i>Status Conference</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List)). Status Conference to be held on 3/22/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Vasek, Julian)
02/09/2021	<u>1917</u> Transcript regarding Hearing Held 02/08/2021 (51 pages) RE: Bench Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1902</u> Bench Ruling set (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u> , (Ellison, T.)). Transcript to be made available to the public on 05/10/2021. (Rehling, Kathy)
02/09/2021	<u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/09/2021	<u>1919</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u>



	Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/09/2021	<u>1920</u> Certificate of service re: <i>1) Debtors Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC; 2) Order Approving Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation; and 3) Order Approving Second Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.), <u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)). (Kass, Albert)
02/09/2021	<u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 3/2/2021. (Hesse, Gregory)
02/10/2021	<u>1926</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to). (Pomerantz, Jeffrey)
02/10/2021	<u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. (Hoffman, Juliana)
02/10/2021	<u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation). (Draper, Douglas)
02/11/2021	<u>1929</u> Order denying motion for status conference (related document # <u>1914</u> ) Entered on 2/11/2021. (Ecker, C.)
02/11/2021	<u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)
02/12/2021	<u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document # <u>1624</u> ) Entered on 2/12/2021. (Okafor, M.)
02/12/2021	<u>1932</u> Certificate of service re: <i>1) Debtors Notice of Deposition to James Dondero in Connection with Debtors Objection to Proof of Claim Filed by HCRE Partners, LLC; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1919</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> ) filed by Debtor

	Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28493529, amount \$ 26.00 (re: Doc# <u>1930</u> ). (U.S. Treasury)
02/16/2021	<u>1933</u> Agreed Motion to continue hearing on (related documents <u>1826</u> Application for administrative expenses) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Hogewood, A.)
02/16/2021	<u>1934</u> Certificate of service re: <i>Fourteenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 to and Including December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/17/2021	<u>1935</u> Adversary case 21-03010. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Adversary Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 72 (Injunctive relief – other). (Annable, Zachery)
02/17/2021	<u>1936</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order)) Responses due by 2/24/2021. (Ecker, C.)
02/17/2021	<u>1937</u> Order granting motion to continue hearing on (related document <u>1933</u> ) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	<u>1938</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). (Annable, Zachery)
02/18/2021	<u>1939</u> Certificate of service re: <i>Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document <u>1624</u> ) Entered on 2/12/2021. (Okafor, M.)). (Kass, Albert)
02/19/2021	

	<u>1940</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors</i> , Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	<u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). (Annable, Zachery)
02/22/2021	<u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	<u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	<u>1945</u> Certificate of service re: <i>Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1938</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/24/2021	<u>1946</u> Clerk's correspondence requesting from attorney for appellant. (RE: related document(s) <u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	<u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , (Montgomery, Paige)
02/24/2021	<u>1948</u> Notice ( <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
02/24/2021	<u>1949</u> Debtor-in-possession monthly operating report for filing period December 1, 2020 to December 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2021	<u>1950</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE:

	related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.) No. of Notices: 8. Notice Date 02/24/2021. (Admin.)
02/25/2021	<u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). (Annable, Zachery)
02/25/2021	Receipt of Registry Funds – \$43976.75 by SD. Receipt Number 338805. (admin)
02/25/2021	Receipt of Registry Funds – \$3022.74 by SD. Receipt Number 338806. (admin)
02/25/2021	<u>1952</u> Certificate of service re: <i>Documents Served on February 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1924</u> Hearing held). filed by Debtor Highland Capital Management, L.P., <u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). filed by Debtor Highland Capital Management, L.P., <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.), <u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2021	<u>1953</u> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document # <u>1643</u> ) Entered on 2/26/2021. (Okafor, M.)
02/26/2021	<u>1954</u> Certificate of service re: <i>1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1948</u> Notice ( <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2021	<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)



02/28/2021	<u>1956</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1953</u> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document <u>1643</u> ) Entered on 2/26/2021. (Okafor, M.)) No. of Notices: 3. Notice Date 02/28/2021. (Admin.)
03/01/2021	<u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # <u>1</u> Exhibit A)(Rukavina, Davor)
03/01/2021	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28523950, amount \$ 298.00 (re: Doc# <u>1957</u> ). (U.S. Treasury)
03/01/2021	<u>1958</u> Motion for expedited hearing(related documents <u>1955</u> Motion to stay pending appeal) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
03/01/2021	<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
03/01/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19–34054–sgj11) [claims,trclmagt] ( 26.00). Receipt number 28524853, amount \$ 26.00 (re: Doc# <u>1959</u> ). (U.S. Treasury)
03/01/2021	<u>1960</u> Order Denying Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document # <u>1745</u> ) Entered on 3/1/2021. (Okafor, M.)
03/01/2021	<u>1961</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,). (Hoffman, Juliana)
03/02/2021	<u>1962</u> Certificate of service re: <i>Appellees Amended Supplemental Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2021	<u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. (Hoffman, Juliana)
03/03/2021	<u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan).

	Appellant Designation due by 03/17/2021. (Hogewood, A.)
03/03/2021	<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.)
03/03/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28532838, amount \$ 298.00 (re: Doc# <u>1966</u> ). (U.S. Treasury)
03/03/2021	<u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. (Hoffman, Juliana)
03/03/2021	<u>1969</u> Objection to (related document(s): <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
03/04/2021	<u>1970</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # <u>1</u> Exhibit)(Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28537086, amount \$ 298.00 (re: Doc# <u>1970</u> ). (U.S. Treasury)
03/04/2021	<u>1971</u> Joinder by Joinder to <i>Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit Opinion) (Draper, Douglas)
03/04/2021	<u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/18/2021. (Draper, Douglas)
03/04/2021	<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28537308, amount \$ 298.00 (re: Doc# <u>1972</u> ). (U.S. Treasury)
03/04/2021	<u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery)
03/05/2021	<u>1976</u> Certificate of No Objection Regarding First Monthly Fee Application filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35.). (Hesse, Gregory)

03/05/2021	<u>1977</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 12 Number of appellee volumes: 13. Civil Case Number: 3:20–CV–03390–X (RE: related document(s) <u>1347</u> Notice of appeal ) (Blanco, J.)
03/05/2021	<u>1978</u> Notice of docketing COMPLETE record on appeal. 3:20–CV–03390–X (RE: related document(s) <u>1347</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Blanco, J.)
03/05/2021	<u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)
03/05/2021	<u>1980</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297). (Hoffman, Juliana)
03/07/2021	<u>1981</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 03/07/2021. (Admin.)
03/08/2021	<u>1986</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1987</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1988</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/08/2021	<u>1990</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)

03/08/2021	<u>1991</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/08/2021	<u>1992</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u> , (Annable, Zachery)
03/08/2021	<u>1995</u> Notice to take deposition of Paul Broadus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	<u>1996</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	<u>1997</u> Certificate of service re: <i>Documents Served on or Before March 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/08/2021	<u>1998</u> Certificate of service re: 1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] <i>Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3)</i> ; and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement



	<p>3001 (e) 2 Transferors: Debevoise &amp; Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise &amp; Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise &amp; Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Kass, Albert)</p>
03/08/2021	<p><u>1999</u> Certificate of service re: 1) [Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP, <u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan &amp; Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1512</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. filed by Creditor Hain Capital Group, LLC, <u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1591</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP). (Kass, Albert)</p>
03/09/2021	<p><u>2000</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00538-N. (RE: related document(s)<u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2001</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00539-N. (RE: related document(s)<u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1943</u> Order confirming chapter 11 plan). (Hogewood, A.)) (Whitaker, Sheniqua)</p>
03/09/2021	<p><u>2002</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00546-L. (RE: related document(s)<u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)</p>
03/09/2021	

	<u>2003</u> Application for compensation ( <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2004</u> Application for compensation ( <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2005</u> Application for compensation ( <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2006</u> Certificate of service re: <i>Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	<u>2007</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
03/10/2021	<u>2008</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00550-L. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/10/2021	<u>2009</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
03/10/2021	<u>2011</u> Certificate of service re: <i>Order Approving Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)). (Kass, Albert)
03/10/2021	<u>2012</u> BNC certificate of mailing. (RE: related document(s) <u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u>

	Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/10/2021	<u>2013</u> BNC certificate of mailing. (RE: related document(s) <u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan).) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/11/2021	<u>2014</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1972</u> Notice of appeal). (Draper, Douglas)
03/11/2021	<u>2015</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1957</u> Notice of appeal). (Rukavina, Davor)
03/11/2021	<u>2016</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1957</u> Notice of appeal). Appellee designation due by 03/25/2021. (Rukavina, Davor)
03/11/2021	<u>2017</u> Certificate of service re: <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/12/2021	<u>2018</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 6 Number of appellee volumes: 1. Civil Case Number: 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	<u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	<u>2021</u> Notice of transmittal 20-CV-03408-G 13 SEALED DOCUMENTS (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/12/2021	



	<p><u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021 (Rielly, Bill).</p>
03/12/2021	<p><u>2023</u> Joinder by the <i>Official Committee of Unsecured Creditors</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2022</u> Response). (Hoffman, Juliana)</p>
03/12/2021	<p><u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)</p>
03/12/2021	<p><u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)</p>
03/12/2021	<p><u>2026</u> Certificate of service re: 1) <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through July 31, 2020</i>; 2) <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 Through August 31, 2020</i>; and 3) <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 Through September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2003</u> Application for compensation (<i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2004</u> Application for compensation (<i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2005</u> Application for compensation (<i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP). (Kass, Albert)</p>
03/12/2021	<p><u>2027</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1948</u> <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1954</u> Certificate of service re: 1) <i>Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures</i></p>



	<p><i>Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u>, filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1948</u> Notice (<i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
03/12/2021	<p><u>2028</u> Certificate of service re: <i>1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 Through January 31, 2021; and 2) Notice of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2007</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2009</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a>. filed by Debtor Highland Capital Management, L.P.)). (Kass, Albert)</p>
03/15/2021	<p><u>2030</u> Debtor-in-possession monthly operating report for filing period January 1, 2021 to January 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
03/15/2021	<p><u>2032</u> Notice of transmittal 3:20-CV-03390-X. CLERKS OFFICE OVERLOOKED SECOND APPELLEE. AMENDED MINI RECORD TO INCLUDE SECOND APPELLEE INDEX. ATTACHED ALSO: APPELLEE VOL. 27 (RE: related document(s)<u>1978</u> Notice of docketing COMPLETE record on appeal. 3:20-CV-03390-X (RE: related document(s)<u>1347</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>1302</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)</p>
03/16/2021	<p><u>2033</u> Motion for Certification to Court of Appeals (<i>Joint Motion</i>) Filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Get Good Trust, The Dugaboy Investment Trust, Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)</p>
03/16/2021	<p><u>2034</u> Order certifying appeals of the confirmation order for direct appeal to the United States Court of appeals for the Fifth Circuit (Related Doc # <u>2033</u>) Entered on 3/16/2021. (Okafor, M.)</p>
03/16/2021	<p><u>2035</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/). (Pomerantz, Jeffrey)</p>

03/16/2021	<u>2036</u> Reply to (related document(s): <u>2022</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
03/16/2021	<u>2037</u> Reply to (related document(s): <u>2022</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/16/2021	<u>2038</u> Second Notice of Additional Services to be Provided by Deloitte Tax LLP filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/16/2021	<u>2039</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hayward, Melissa)
03/17/2021	<u>2040</u> Statement of issues on appeal, filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). (Hogewood, A.)
03/17/2021	<u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)
03/17/2021	<u>2042</u> Certificate of service re: 1) Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order; and 2) Omnibus Objection of the Official Committee of Unsecured Creditors Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtors Omnibus Objection to Motions for Stay Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021. filed by Debtor Highland Capital Management, L.P., <u>2023</u> Joinder by the Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2022</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/17/2021	<u>2043</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M) (Vasek, Julian)
03/17/2021	

	<u>2044</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bhawika Jain To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2045</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Michael Beispiel To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2046</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Sang Kook (Michael) Jeong To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	<u>2047</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Phoebe Stewart To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2044</u> ). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2045</u> ). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2046</u> ). (U.S. Treasury)
03/17/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2047</u> ). (U.S. Treasury)
03/17/2021	<u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
03/18/2021	<u>2052</u> Notice of transmittal to submit Amended Mini Record Vol. 1 to remove appellee index and to disregard Appellee Record Vol. 8 filed at doc 27 in 3:20-CV-03408-G (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/18/2021	<u>2053</u> Clerk's correspondence requesting Amended designation from attorney for Appellant. (RE: related document(s) <u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)) Responses due by 3/24/2021. (Blanco, J.)
03/18/2021	<u>2054</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). Appellee designation due by 04/1/2021. (Draper, Douglas)
03/18/2021	<u>2055</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). (Draper, Douglas)
03/18/2021	

	<u>2056</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal). (Taylor, Clay)
03/18/2021	<u>2057</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal, <u>2056</u> Statement of issues on appeal). Appellee designation due by 04/1/2021. (Taylor, Clay)
03/18/2021	<u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33) (Annable, Zachery)
03/18/2021	<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. (Annable, Zachery)
03/18/2021	<u>2060</u> Motion to recuse Judge Jernigan Filed by Interested Party James Dondero (Lang, Michael)
03/18/2021	<u>2061</u> Brief in support filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/18/2021	<u>2062</u> Support/supplemental document <i>Appendix to Motion to Recuse</i> filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/19/2021	<u>2063</u> Request for transcript regarding a hearing held on 3/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
03/19/2021	<u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/19/2021	<u>2065</u> Court admitted exhibits date of hearing March 19, 2021 (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents



	<u>1943</u> Order confirming chapter 11 plan)).) (COURT ADMITTED MOVANT'S EXHIBIT'S #A THROUGH #M BY DAVOR RUKAVINA & DEFENDANT'S EXHIBIT'S #1 THROUGH #33 BY JEFFREY POMERANTZ) (Edmond, Michael)
03/19/2021	<u>2066</u> Witness List ( <i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021 (Rielly, Bill).
03/19/2021	<u>2067</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2068</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2069</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2070</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending

	appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021 (Tello, Chris).
03/19/2021	<u>2072</u> Certificate of service re: 1) <i>Second Notice of Additional Services to be Provided by Deloitte Tax LLP</i> ; and 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2038</u> <i>Second Notice of Additional Services to be Provided by Deloitte Tax LLP</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2039</u> <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2021	<u>2077</u> Hearing set – follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).) Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> . (Ellison, T.) (Entered: 03/22/2021)
03/20/2021	<u>2073</u> Transcript regarding Hearing Held 03/19/2021 (82 pages) RE: Motions/Joinders to Stay Pending Appeal. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/18/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2067</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas

	<p>bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2068 Hearing held on 3/19/2021. (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2069 Hearing held on 3/19/2021. (RE: related document(s) <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.), 2070 Hearing held on 3/19/2021. (RE: related document(s) <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.)). Transcript to be made available to the public on 06/18/2021. (Rehling, Kathy)</p>
03/22/2021	<p><u>2074</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>2041</u> Appellant designation). (Hogewood, A.)</p>
03/22/2021	<p><u>2075</u> Notice to take deposition of James P. Seery filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)</p>
03/22/2021	<p><u>2076</u> Order granting motion to continue hearing on (related document # <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.)</p>
03/22/2021	<p><u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit</p>



	Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , (Annable, Zachery)
03/22/2021	<u>2079</u> Declaration re: ( <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). (Annable, Zachery)
03/22/2021	<u>2080</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>2016</u> Appellant designation). (Rukavina, Davor)
03/23/2021	<u>2081</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 4/6/2021. (Ecker, C.)
03/23/2021	<u>2082</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Order) (Draper, Douglas)
03/23/2021	<u>2083</u> Order denying motion to recuse (related document # <u>2060</u> ) Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document # <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document # <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document # <u>1971</u> ), denying Joinder by filed by Interested Party James Dondero (related document # <u>1973</u> ). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u> , (Montgomery, Paige)
03/23/2021	<u>2086</u> Support/supplemental document ( <i>Letter to Court Regarding Mandatory Stay Pending Appeal Bond Hearing</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 2077 Hearing set/continued, <u>2084</u> Order on motion to stay pending appeal, Order on motion to stay pending appeal). (Rukavina, Davor)
03/23/2021	<u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related



	documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021 (Tello, Chris).
03/23/2021	<u>2088</u> Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 34) (Annable, Zachery)
03/23/2021	<u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/23/2021	<u>2090</u> Certificate of service re: <i>Debtor's Witness and Exhibit List with Respect to Hearing to be Held on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/23/2021	<u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021 (Rielly, Bill).
03/24/2021	<u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)

03/24/2021	<u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)
03/24/2021	<u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2099</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2100</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2101</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2102</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2103</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2104</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2105</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2106</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2107</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2108</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party

	CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2109</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2110</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2111</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2112</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2113</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2114</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2115</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2116</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,7). (Hoffman, Juliana)
03/24/2021	<u>2117</u> Certificate of service re: <i>Documents Served on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2066</u> Witness List ( <i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021. filed by Debtor Highland Capital Management, L.P., <u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2092</u> ).

	(U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2093</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2094</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2096</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2097</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2098</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2099</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2100</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2101</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2102</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2103</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2104</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2105</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2106</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2107</u> ). (U.S. Treasury)



03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2108</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2109</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2110</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2111</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2112</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2113</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2114</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2115</u> ). (U.S. Treasury)
03/25/2021	<u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2120</u> INCORRECT ENTRY: Attorney to refile. Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana) Modified on 3/26/2021 (Ecker, C.).
03/25/2021	<u>2121</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u> ), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u> ). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/25/2021. (Admin.)

03/26/2021	<u>2122</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana)
03/26/2021	<u>2123</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
03/26/2021	<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. (Pomerantz, Jeffrey)
03/26/2021	<u>2125</u> Certificate of service re: 1) <i>Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors</i> ; 2) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> ; and 3) <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u> ) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u> , Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahar Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: ( <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/26/2021	<u>2126</u> Certificate of service re: <i>Documents Served on March 23, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the

	<p>Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u>), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u>). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u>, Entered on 3/23/2021. (Okafor, M.), <u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021. filed by Debtor Highland Capital Management, L.P., <u>2088</u> Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) filed by Debtor Highland Capital Management, L.P., <u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
03/26/2021	<p><u>2127</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)</p>
03/29/2021	<p><u>2128</u> Motion for leave to file <i>Adversary Complaint and Other Materials Under Seal</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
03/29/2021	<p><u>2129</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)</p>
03/29/2021	<p><u>2130</u> Certificate of service re: <i>Supplemental Order on Motions for Stay Pending Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)). (Kass, Albert)</p>

03/29/2021	<u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> )). (Annable, Zachery)
03/29/2021	<u>2132</u> Certificate of Conference filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2128</u> Motion for leave to file <i>Adversary Complaint and Other Materials Under Seal</i> ). (Sosland, Martin)
03/29/2021	<u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. (Annable, Zachery)
03/29/2021	<u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/29/2021	<u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2021	<u>2136</u> Notice to take deposition of Paul Broadus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2137</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2138</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.).
03/31/2021	<u>2139</u> Withdrawal of claim(s): ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/31/2021	<u>2140</u> Order granting motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC(related document # <u>2128</u> ) Entered on 3/31/2021. (Okafor, M.)
03/31/2021	<u>2141</u> Certificate of service re: 1) <i>Debtor's Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC</i> ; and 2) <i>Debtor's Second Amended Notice of Deposition to James Dondero in Connection with Debtor's Objection to Proof of Claim Filed by HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	<u>2142</u> Adversary case 21-03020. Complaint by UBS Securities LLC, UBS AG London Branch against Highland Capital Management, L.P.. Fee Amount \$350. Nature(s) of suit: 72 (Injunctive relief – other). (Sosland, Martin)
03/31/2021	<u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)



03/31/2021	<p><u>2144</u> Certificate of service re: <i>1) Amended Notice of Status Conference; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2123</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a>. filed by Debtor Highland Capital Management, L.P., <u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/31/2021	<p><u>2145</u> Certificate of service re: <i>Doucments Served on March 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2129</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2129</u> Motion to file document under seal. (<i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i>)). filed by Debtor Highland Capital Management, L.P., <u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. filed by Debtor Highland Capital Management, L.P., <u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/01/2021	<p><u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document # <u>2129</u>) Entered on 4/1/2021. (Okafor, M.)</p>
04/01/2021	Adversary case 3:20-ap-3105 closed (Ecker, C.)
04/01/2021	<p><u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file <i>Adversary Complaint and Other Materials Under Seal</i> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
04/01/2021	<p><u>2148</u> <b>SEALED document regarding: (Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2146</u> Order on motion to seal). (Annable, Zachery)</p>
04/01/2021	<p><u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s)<u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # <u>1</u> Exhibit)(Lang, Michael)</p>
04/01/2021	<p>Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal.ntcapl] ( 298.00). Receipt number 28609730, amount \$ 298.00 (re: Doc# <u>2149</u>). (U.S. Treasury)</p>

04/02/2021	<u>2150</u> Certificate of service re: <i>re: Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2138</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/02/2021	<u>2151</u> Motion to appear pro hac vice for Zachary F. Proulx. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28612120, amount \$ 100.00 (re: Doc# <u>2151</u> ). (U.S. Treasury)
04/02/2021	<u>2152</u> Motion to appear pro hac vice for Kathryn K. George. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28612132, amount \$ 100.00 (re: Doc# <u>2152</u> ). (U.S. Treasury)
04/02/2021	<u>2153</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). (Attachments: # <u>1</u> Ex. 1 # <u>2</u> Ex. 2 # <u>3</u> Ex. 3 # <u>4</u> Ex. 4 # <u>5</u> Ex. 5 # <u>6</u> Ex. 6 # <u>7</u> Ex. 7) (Assink, Bryan)
04/02/2021	<u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James Dondero's Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/02/2021	<u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal, ). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.).
04/02/2021	<u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1970</u> Notice of appeal). (Annable, Zachery)
04/02/2021	<u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1966</u> Notice of appeal). (Annable, Zachery)
04/03/2021	<u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). (Montgomery, Paige)
04/05/2021	<u>2159</u> Amended Witness and Exhibit List for April 5, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2158</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Montgomery, Paige)
04/05/2021	<u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured

	Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2162</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/05/2021	<u>2163</u> Certificate of service re: 1) <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ; and 2) <i>Order Approving Joint Stipulation as to Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2139</u> Withdrawal of claim(s): ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)). (Kass, Albert)
04/05/2021	2164 Hearing held on 4/5/2021. (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.) (Edmond, Michael) (Entered: 04/06/2021)
04/06/2021	<u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document # <u>2151</u> ) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document # <u>2152</u> ) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2167</u> Clerk's correspondence requesting to amend document from attorney for Interested Party. (RE: related document(s) <u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) Responses due by 4/8/2021. (Whitaker, Sheniqua)
04/06/2021	<u>2168</u> Request for hearing filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>2081</u> Clerk's correspondence). (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
04/06/2021	<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal). (Lang, Michael)
04/06/2021	<u>2170</u> Certificate of service re: 1) <i>Order Granting Debtor's Motion for Leave to File Under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal</i> ; and 2) <i>Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal)

	Filed by Debtor Highland Capital Management, L.P. (related document <u>2129</u> ) Entered on 4/1/2021. (Okafor, M.), <u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file <i>Adversary Complaint and Other Materials Under Seal</i> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2021	<u>2171</u> Request for transcript regarding a hearing held on 4/5/2021. The requested turn-around time is hourly. (Edmond, Michael)
04/07/2021	<u>2172</u> Certificate of service re: <i>Documents Served on or Before April 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James D. Dondero's Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal, ). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.). filed by Debtor Highland Capital Management, L.P., <u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1970</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1966</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/07/2021	<u>2173</u> Certificate of service re: <i>Documents Served on April 5, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2159</u> Amended Witness and Exhibit List for April 5, 2021 <i>Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2158</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2162</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/08/2021	<u>2174</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80.). (Hesse, Gregory)
04/08/2021	<u>2175</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54.). (Hesse, Gregory)



04/08/2021	<p><u>2176</u> Transcript regarding Hearing Held 04/05/2021 (75 pages) RE: Motion to Compel (1878). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2164</u> Hearing held on 4/5/2021. (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.)). Transcript to be made available to the public on 07/7/2021. (Rehling, Kathy)</p>
04/08/2021	<p><u>2177</u> Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document # <u>1878</u>) Entered on 4/8/2021. (Okafor, M.)</p>
04/08/2021	<p><u>2178</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document <u>2151</u>) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)</p>
04/08/2021	<p><u>2179</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document <u>2152</u>) Entered on 4/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 04/08/2021. (Admin.)</p>
04/09/2021	<p><u>2181</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2125</u> Certificate of service re: 1) <i>Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors</i>; 2) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i>; and 3) <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u>) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William</p>

	Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: ( <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/09/2021	<u>2182</u> Application for compensation ( <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: \$153,957.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
04/09/2021	<u>2183</u> Motion to withdraw as attorney (Brian P. Shaw) Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P., Jennifer G. Terry, Joshua Terry (Attachments: # <u>1</u> Proposed Order) (Shaw, Brian)
04/09/2021	<u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)
04/11/2021	<u>2185</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 04/11/2021. (Admin.)
04/12/2021	<u>2186</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Jennifer G. Terry, Joshua Terry. (Prostok, Jeff)
04/13/2021	<u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21–CV–00261–L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)
04/13/2021	<u>2189</u> Order granting motion to withdraw as attorney (attorney Brian Patrick Shaw terminated). (related document # <u>2183</u> ) Entered on 4/13/2021. (Ecker, C.)
04/13/2021	<u>2190</u> Notice of docketing COMPLETE record on appeal. 3:21–CV–00261–L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal. Related document(s) <u>1788</u> Order on motion to compromise controversy. <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)
04/13/2021	<u>2191</u> Notice of Transmittal 3:21–CV–00261–L (Lindsay) TRANSMITTED 5 SEALED DOCUMENTS (RE: related document(s) <u>2190</u> Notice of docketing COMPLETE record on appeal. 3:21–CV–00261–L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal.

	Related document(s) <u>1788</u> Order on motion to compromise controversy. <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust.) (Blanco, J.)). (Blanco, J.)
04/13/2021	<u>2192</u> Certificate of service re: 1) <i>Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> ; 2) <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2020 Through December 31, 2020</i> ; and 3) <i>Order Approving Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2177</u> Order requiring James D. Dondero to preserve documents and to identify measures taken to ensure document preservation (related document <u>1878</u> ) Entered on 4/8/2021. (Okafor, M.), <u>2182</u> Application for compensation ( <i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/1/2020 to 12/31/2020, Fee: \$153,957.60, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2184</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 110 and 111 (RE: related document(s) <u>2162</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 4/9/2021 (Okafor, M.)). (Kass, Albert)
04/13/2021	<u>2193</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2003</u> Application for compensation ( <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i> ) for Deloitte Ta). (Annable, Zachery)
04/13/2021	<u>2194</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2004</u> Application for compensation ( <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Deloitte Tax LLP, O). (Annable, Zachery)
04/13/2021	<u>2195</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2005</u> Application for compensation ( <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Deloitte Tax L). (Annable, Zachery)
04/14/2021	<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/14/2021	<u>2197</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> )). (Annable, Zachery)
04/14/2021	<u>2198</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> )). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (Annable, Zachery)



04/15/2021	<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/15/2021	<u>2200</u> Declaration re: ( <i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
04/15/2021	<u>2201</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , (Annable, Zachery)
04/15/2021	<u>2203</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal).) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
04/15/2021	<u>2204</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2169</u> Amended Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). (Attachments: # <u>1</u> Exhibit)) (Whitaker, Sheniqua)
04/15/2021	<u>2205</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). (Lang, Michael)
04/15/2021	<u>2206</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2169</u> Amended notice of appeal). Appellee designation due by 04/29/2021. (Lang, Michael)
04/15/2021	<u>2207</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Debtor's Third Omnibus Objection to Certain No Liability Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James



	Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
04/15/2021	<u>2208</u> INCORRECT EVENT: Attorney to refile. Notice of Transfer of Claim Other Than for Security filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/15/2021	<u>2209</u> INCORRECT EVENT: Attorney to refile. Notice of Transfer of Claim Other Than for Security filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff) Modified on 4/16/2021 (Ecker, C.).
04/16/2021	<u>2210</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s) <u>2206</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2169</u> Amended notice of appeal). Appellee designation due by 04/29/2021.) Responses due by 4/20/2021. (Blanco, J.)
04/16/2021	<u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. (Prostok, Jeff)
04/16/2021	<u>2212</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management L.P. (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management, L.P.. (Prostok, Jeff)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28644419, amount \$ 26.00 (re: Doc# <u>2211</u> ). (U.S. Treasury)
04/16/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28644419, amount \$ 26.00 (re: Doc# <u>2212</u> ). (U.S. Treasury)
04/16/2021	<u>2213</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>2206</u> Appellant designation). (Lang, Michael)
04/16/2021	<u>2214</u> Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
04/16/2021	<u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/16/2021	

	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims, trclmagt] ( 26.00). Receipt number 28646419, amount \$ 26.00 (re: Doc# <u>2215</u>). (U.S. Treasury)</p>
04/16/2021	<p><u>2216</u> Certificate of service re: 1) <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>; 2) <i>Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>; and 3) <i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2197</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). filed by Debtor Highland Capital Management, L.P., <u>2198</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2196</u> Motion to compel Disqualification of Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC. (<i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i>)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/18/2021	<p><u>2217</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00879-K. (RE: related document(s)<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal).) (Whitaker, Sheniqua)</p>
04/19/2021	<p><u>2218</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 t). (Pomerantz, Jeffrey)</p>
04/19/2021	<p><u>2219</u> Certificate of service re: <i>Customized for Rule 3001(e)(1) or 3001(e)(3)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(1) or 3001(e)(3) [Re Docket No. 1959]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC). (Kass, Albert)</p>
04/19/2021	<p><u>2220</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>; 2) <i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i>; and 3) <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2200</u> Declaration re: (<i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch</i></p>

	<i>and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>2201</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/19/2021	<u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. (Hoffman, Juliana)
04/20/2021	<u>2222</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
04/20/2021	<u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$1,277,710.00, Expenses: \$13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. (Pomerantz, Jeffrey)
04/20/2021	<u>2224</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Interested Party CPCM, LLC. (Smith, Frances)
04/20/2021	<u>2225</u> Response opposed to (related document(s): <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Interested Party CPCM, LLC. (Smith, Frances) Filed by Interested Party CPCM, LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Smith, Frances)
04/20/2021	<u>2226</u> Motion to continue hearing on (related documents <u>2059</u> Objection to claim) Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
04/20/2021	<u>2227</u> Motion for expedited hearing(related documents <u>2226</u> Motion to continue) Filed by Interested Party CPCM, LLC (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)
04/20/2021	<u>2228</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2214</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October</i>



	16, 2019 to February 28, 2021) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/20/2021	<u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/20/2021	<u>2230</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> . (Annable, Zachery)
04/21/2021	<u>2231</u> Certificate of service re: Notice of Appearance, Preliminary Response to Debtors Third Omnibus Objection to Certain No Liability Claims, Motion to Continue Hearing on Debtors Third Omnibus Objection to Certain Liability Claims, and Motion for Setting and Request for Expedited Hearing filed by Interested Party CPCMC, LLC (RE: related document(s) <u>2224</u> Notice of appearance and request for notice, <u>2225</u> Response to objection to claim, <u>2226</u> Motion to continue hearing on (related documents <u>2059</u> Objection to claim), <u>2227</u> Motion for expedited hearing (related documents <u>2226</u> Motion to continue) ). (Smith, Frances)
04/21/2021	<u>2232</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> . (Annable, Zachery)
04/21/2021	<u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. (Hoffman, Juliana)
04/22/2021	<u>2234</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
04/23/2021	<u>2235</u> INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified



	on 4/26/2021 (Ecker, C.).
04/23/2021	<u>2236</u> Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2237</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2239</u> Certificate of service re: <i>Documents Served on April 20, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$1,277,710.00, Expenses: \$13,687.50. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/11/2021. filed by Debtor Highland Capital Management, L.P., <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2230</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/23/2021	<u>2240</u> Certificate of service re: <i>1) Notice of Hearing; and 2) Fifth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through and Including February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2232</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/17/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , filed by Debtor Highland Capital Management, L.P., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors</i> , Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/23/2021	<u>2241</u> INCORRECT EVENT: See #2248 for correction. Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE:

	related document(s) <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u> ) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Attachments: # <u>1</u> Exhibit 1_Complaint # <u>2</u> Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/27/2021 (Ecker, C.).
04/23/2021	<u>2242</u> DUPLICATE ENTRY: See # <u>2241</u> . Notice of Motion for Modification of Order Authorizing Retention of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u> ) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Attachments: # <u>1</u> Exhibit 1_Complaint # <u>2</u> Exhibit 2_Motion for Leave to File First Amended Complaint) (Sbaiti, Mazin) Modified on 4/26/2021 (Ecker, C.).
04/23/2021	<u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.) (Entered: 04/27/2021)
04/24/2021	<u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. (Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
04/26/2021	<u>2244</u> Notice of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
04/26/2021	<u>2245</u> Certificate of service re: Notice of Status Conference Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2234</u> Notice of hearing (Notice of Status Conference) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/26/2021	<u>2246</u> Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1853</u> and for <u>1655</u> and for <u>2233</u> and for <u>2221</u> , (Hoffman, Juliana)
04/27/2021	<u>2247</u> Motion for order to show cause (Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating

	<i>Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
04/27/2021	<u>2249</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , (Annable, Zachery)
04/27/2021	<u>2250</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$). (Hoffman, Juliana)
04/27/2021	<u>2251</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00.). (Hoffman, Juliana)
04/27/2021	<u>2252</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , (Annable, Zachery)
04/28/2021	<u>2253</u> Certificate of service re: 1) <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> ; 2) <i>Debtor's Memorandum of Law in Support of Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> ; and 3) <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2235</u> INCORRECT EVENT: Attorney to refile. Motion for contempt against The Charitable DAF Fund, L.P.; CLO Holdco, Ltd.; Persons Authorizing The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. to file the Seery Motion; and Sbaiti & Company PLLC regarding Violation of the (i) Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; and (ii) Order Approving Debtor's Motion under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery) Modified on 4/26/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2236</u> Brief in support filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2237</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. Related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P.. Modified to add link on 4/27/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2021	<u>2254</u> Notice of hearing filed by Plaintiff CLO Holdco, Ltd. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by



	Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2248</u> , (Sbaiti, Mazin)
04/29/2021	<u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document # <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)
04/29/2021	<u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021. (Draper, Douglas)
04/29/2021	<u>2257</u> Certificate of service re: filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. ). (Attachments: # <u>1</u> Exhibit – Matrix) (Draper, Douglas)
04/29/2021	<u>2258</u> Certificate of service re: <i>1) Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith; and 2) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/17/2021. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>2244</u> Notice of Filing of Monthly Staffing Report by Development Specialists Inc. for the Period from February 1, 2021 Through February 28, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/29/2021	<u>2259</u> Certificate of service re: <i>1) Notice of Hearing on the Fourth and Fifth Interim Applications for Compensation and Reimbursement of Expenses; and 2) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2246</u> Omnibus Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021., <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021., <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 5/10/2021., <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,156.48. Filed by Attorney Juliana Hoffman Objections due by 5/12/2021.). Hearing to be held on 5/18/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1853</u> and for <u>1655</u> and for <u>2233</u> and for <u>2221</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2252</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2247</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)



04/30/2021	<u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. (Hoffman, Juliana)
04/30/2021	<u>2261</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount \$137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	<u>2262</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount \$50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28681233, amount \$ 26.00 (re: Doc# <u>2261</u> ). (U.S. Treasury)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28681233, amount \$ 26.00 (re: Doc# <u>2262</u> ). (U.S. Treasury)
04/30/2021	<u>2263</u> Assignment/Transfer of Claim. Fee Amount \$156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (McIlwain, Brent)
04/30/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 156.00). Receipt number 28682148, amount \$ 156.00 (re: Doc# <u>2263</u> ). (U.S. Treasury)
04/30/2021	<u>2264</u> Certificate of service re: <i>(Supplemental) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/30/2021	<u>2265</u> Certificate of service re: <i>Order Requiring the Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.)). (Kass, Albert)
05/03/2021	<u>2266</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Sahan Abayarathna To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)
05/03/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28684014, amount \$ 26.00 (re: Doc# <u>2266</u> ). (U.S. Treasury)

05/03/2021	<p>2267 Status conference held on 5/3/2021., Trial set (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.) Trial date set for 9/21/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this. (Ellison, T.)</p>
05/03/2021	<p>2269 INCORRECT ENTRY: DUPLICATE ENTRY. Hearing held on 5/3/2021. (RE: related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz for Debtor; F. Smith for CPMC LLC, purchaser of certain employee claims; J. Vasek for NextPoint, purchaser of certain other employee claims; M. Clemente for UCC; J. Dondero. Nonevidentiary status conference. Matter continued to September 13, 2021 at 1:30 for a Trial Docket Call with evidentiary trial to be held on September 21, 2021 at 9:30 am. Order to be uploaded memorializing this.) (Edmond, Michael) Modified on 5/4/2021 (Tello, Chris). (Entered: 05/04/2021)</p>
05/04/2021	<p><u>2268</u> Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P.)<i>Limited Preliminary Objection</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)</p>
05/04/2021	<p><u>2270</u> PDF with attached Audio File. Court Date &amp; Time [05/03/2021 01:33:52 PM]. File Size [ 3670 KB ]. Run Time [ 00:15:40 ]. (admin).</p>
05/04/2021	<p><u>2271</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2133</u> Objection to claim). (Annable, Zachery)</p>
05/04/2021	<p><u>2272</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2182</u> Application for compensation (<i>Fourth Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 1, 2021 through December 31, 2020</i>) for Deloitte). (Annable, Zachery)</p>
05/04/2021	<p><u>2296</u> Order from circuit court re: appeal on appellate case number: 21-10449, (RE: related document(s)<u>1957</u> Notice of appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.). IT IS ORDERED that the</p>

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	motion of NexPoint Advisors, L.P. and Highland Capital Management Fund Advisors, L.P. for leave to appeal under 28 U.S.C. § 158(d) is GRANTED. Civil Case 3:21-cv-00538-N. Entered on 5/4/2021 (Whitaker, Sheniqua) (Entered: 05/12/2021)
05/05/2021	<u>2273</u> Debtor-in-possession quarterly operating report (post-confirmation) for filing period January 1, 2021 to March 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	<u>2274</u> Objection to (related document(s): <u>1826</u> Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/05/2021	<u>2275</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2274</u> Objection). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
05/05/2021	<u>2276</u> Certificate of service re: <i>Seventeenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2021 to and Including March 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc. for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 5/21/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
05/06/2021	<u>2277</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List)). (Annable, Zachery)
05/06/2021	<u>2278</u> Response opposed to (related document(s): <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
05/06/2021	<u>2279</u> Brief in opposition filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ), <u>2278</u> Response). (Drawhorn, Lauren)
05/06/2021	<u>2280</u> Motion to file document under seal. <i>Appendix in Support of Response to Motion to Disqualify</i> Filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Appendix) (Drawhorn, Lauren)
05/07/2021	<u>2281</u> Notice of Appearance and Request for Notice by Brant C. Martin filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Martin, Brant)
05/07/2021	<u>2282</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/07/2021	

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	<u>2283</u> Application for compensation ( <i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: \$69,327.00, Expenses: \$6,478.70. Filed by Attorney Hayward PLLC (Annable, Zachery)
05/07/2021	<u>2284</u> Order granting motion to continue hearing on (related document # <u>2282</u> ) (related documents Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , Entered on 5/7/2021. (Okafor, M.)
05/10/2021	<u>2285</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Clubok, Andrew)
05/10/2021	<u>2286</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , (Annable, Zachery)
05/10/2021	<u>2287</u> Certificate of service re: 1) <i>Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> ; and 2) <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2274</u> Objection to (related document(s): <u>1826</u> Application for administrative expenses filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P.) filed by Debtor Highland Capital Management, L.P., filed by Debtor Highland Capital Management, L.P., <u>2275</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2274</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/11/2021	<u>2288</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2221</u> Application for compensation <i>Fifth Interim Application for Compensation of FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, Fee: \$838,751.40, Expenses: \$0.). (Hoffman, Juliana)
05/11/2021	<u>2289</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/11/2021	<u>2290</u> Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
05/11/2021	<u>2291</u> Notice <i>Notice of Return of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2290</u> Notice to take deposition of Highland Capital Management, L.P. filed by Creditor The Dugaboy Investment Trust.). (Draper, Douglas)
05/11/2021	<u>2292</u> Certificate of service re: <i>Notice of Cancellation of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2277</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P.



	(RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/12/2021	<u>2293</u> Supplemental Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P.) with <i>Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
05/12/2021	<u>2294</u> Reply to (related document(s): <u>2278</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/12/2021	<u>2295</u> Objection to (related document(s): <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
05/12/2021	<u>2297</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , (Annable, Zachery)
05/12/2021	<u>2298</u> Certificate of service re: <i>1) Motion to Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief; 2) Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 Through November 30, 2020; and 3) Order Continuing Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2282</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2283</u> Application for compensation ( <i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 10/1/2020 to 11/30/2020, Fee: \$69,327.00, Expenses: \$6,478.70. Filed by Attorney Hayward PLLC, <u>2284</u> Order granting motion to continue hearing on (related document <u>2282</u> ) (related documents Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Hearing to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u>, Entered on 5/7/2021. (Okafor, M.)). (Kass, Albert)</i>
05/13/2021	<u>2299</u> Clerk's notice of fees due in the amount of \$207.00 (Filing Fee for Circuit Appeal) See Document <u>2296</u> . filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s) <u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)

05/13/2021	<u>2300</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2223</u> Application for compensation <i>Eighteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> for Jeffrey). (Pomerantz, Jeffrey)
05/13/2021	<u>2301</u> Certificate of service re: <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2286</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/1/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	<u>2302</u> Certificate of service re: <i>Notice of Deposition</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2289</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2021	<u>2303</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2261 and 2262]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2261</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Redeemer Committee of the Highland Crusader Fund (Claim No. 72, Amount \$137,696,610.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, <u>2262</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Highland Crusader Offshore Partners, L.P., et al. (Claim No. 81, Amount \$50,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC). (Kass, Albert)
05/13/2021	Receipt Number 338881, Fee Amount \$207.00 (RE: related document(s) <u>2299</u> Clerk's notice of fees due in the amount of \$207.00 (Filing Fee for Circuit Appeal) See Document 2296. filed by Interested Party Highland Capital Management Fund Advisors, L.P., and Interested Party NexPoint Advisors, L.P.. (RE: related document(s) <u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)) (Floyd, K) (Entered: 05/14/2021)
05/14/2021	<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/14/2021	<u>2305</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Sosland, Martin)
05/14/2021	<u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit) (Hoffman, Juliana)
05/14/2021	<u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and

	Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u> , (Annable, Zachery)
05/14/2021	<u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Annable, Zachery)
05/14/2021	<u>2309</u> Response to show cause order (related document(s): <u>2255</u> Order on motion to show cause) filed by Respondent Mark Patrick. (Phillips, Louis)
05/14/2021	<u>2310</u> Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/14/2021	<u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/14/2021	<u>2312</u> Objection to (related document(s): <u>2247</u> Motion for order to show cause ( <i>Debtor's Motion for an Order Requiring the Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P., <u>2255</u> Order on motion to show cause. MODIFIED to correct linkage on 5/17/2021 (Ecker, C.).
05/14/2021	<u>2313</u> Response to show cause order (related document(s): <u>2255</u> Order on motion to show cause) filed by Plaintiff The Charitable DAF Fund, L.P.. (Attachments: # <u>1</u> Appendix) (Sbaiti, Mazin)
05/14/2021	<u>2314</u> Witness and Exhibit List with <i>Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Draper, Douglas)
05/14/2021	<u>2315</u> Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2311</u> Response). (Hoffman, Juliana)
05/14/2021	<u>2316</u> Motion to withdraw as attorney (John J. Kane, Brian W. Clark and the law firm of Kane Russell Coleman Logan PC) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Proposed Order) (Kane, John)
05/17/2021	<u>2317</u> Agreed Order granting motion to continue hearing on (related document <u>2226</u> ) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).
05/17/2021	<u>2318</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2233</u> Application for compensation <i>Sidley Austin LLP's Fifth Interim Application for Compensation</i> for Official Committee of

	Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, Fee: \$1,957,009.95, Expenses: \$23,). (Hoffman, Juliana)
05/17/2021	<u>2319</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/17/2021	<u>2320</u> Certificate of service re: 1) <i>Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ; and 2) <i>Notice of Change of Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2294</u> Reply to (related document(s): <u>2278</u> Response filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2297</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 5/21/2021 at 09:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2199</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/18/2021	<u>2321</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). (Annable, Zachery)
05/18/2021	<u>2322</u> Notice of Appearance and Request for Notice <i>for BH Equities LLC</i> by Casey William Doherty Jr. filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	<u>2323</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor BHH Equities LLC. (Doherty, Casey)
05/18/2021	<u>2324</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i> )
05/18/2021	<u>2325</u> Order granting fifth interim fee application for compensation (related document # <u>2221</u> ) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$838751.40, expenses awarded: \$0.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2326</u> Order granting fourth interim application for compensation (related document # <u>1655</u> ) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$710280.45, expenses awarded: \$1479.47 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2327</u> Order granting fifth interim application for compensation (related document # <u>2233</u> ) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1957009.95, expenses awarded: \$23156.48 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2328</u> Application for compensation <i>Sidley Austin LLP's Seventeenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty,



	Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. (Hoffman, Juliana)
05/18/2021	<u>2329</u> Order granting fourth interim application for compensation (related document # <u>1853</u> ) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1620489.60, expenses awarded: \$8974.00 Entered on 5/18/2021. (Okafor, M.)
05/18/2021	<u>2330</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
05/18/2021	<u>2331</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73) (Annable, Zachery)
05/18/2021	<u>2360</u> Hearing held on 5/18/2021. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. (Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief) filed by Debtor Highland Capital Management, L.P., (Matter continued) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>2221</u> Application for compensation Fifth Interim Application for Compensation of FTI Consulting, Inc., for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman). (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>1853</u> Application for compensation Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>1655</u> Application for compensation Fourth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, filed by Attorney Juliana Hoffman) (***CNO filed; order signed in chambers***) (Edmond,

	Michael) (Entered: 05/24/2021)
05/18/2021	Hearing NOT held on 5/18/2021. (RE: related document(s) <u>2233</u> Application for compensation Sidley Austin LLP's Fifth Interim Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 2/28/2021, filed by Attorney Juliana Hoffman) (**CNO filed; order signed in chambers***) (Edmond, Michael) (Entered: 05/24/2021)
05/19/2021	<u>2332</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2333</u> Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2334</u> Withdrawal of claim(s): #93 Filed by Interested Party Integrated Financial Associates, Inc.. (Attachments: # <u>1</u> Exhibit Ex. 1 – POC #93 Integrated Financial Associates) (Bryant, M.)
05/19/2021	<u>2335</u> Notice ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/19/2021	<u>2336</u> Amended Witness and Exhibit List for May 21, 2021 Hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2305</u> List (witness/exhibit/generic)). (Sosland, Martin)
05/19/2021	<u>2337</u> Certificate of service re: <i>Documents Served on May 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u> , filed by Debtor Highland Capital Management, L.P., <u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., <u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2315</u> Joinder by to Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2311</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
05/19/2021	<u>2338</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2317</u> Agreed Order granting motion to continue hearing on (related document <u>2226</u> ) (related documents Objection to claim) Hearing to be held on 9/21/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 5/17/2021. (Okafor, M.) Modified text on 5/17/2021 (Okafor, M.).) No. of Notices: 2. Notice Date 05/19/2021.

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	(Admin.)
05/20/2021	<u>2339</u> Amended Exhibit List <i>Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2314</u> List (witness/exhibit/generic)). (Draper, Douglas)
05/20/2021	<u>2340</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) ( <i>Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
05/20/2021	<u>2341</u> Response opposed to (related document(s): <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/20/2021	<u>2342</u> Amended Exhibit List <i>Supplemental Exhibit List</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2339</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29) (Draper, Douglas)
05/20/2021	<u>2343</u> Joinder by <i>Debtors Opposition to Motion to Compel</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2341</u> Response). (Hoffman, Juliana)
05/20/2021	<u>2344</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2319</u> <i>Notice (Notice of Agenda of Matters Scheduled for Hearing on May 18, 2021 at 9:30 a.m. (Central Time))</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/21/2021	<u>2345</u> Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s) <u>2274</u> Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2274</u> , Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2346</u> Order granting motion to withdraw as attorney for CLO Holdco, LTD (attorney John J. Kane terminated). (related document # <u>2316</u> ) Entered on 5/21/2021. (Okafor, M.)
05/21/2021	<u>2347</u> Reply to (related document(s): <u>2311</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Charitable DAF Fund, L.P.. (Sbaiti, Mazin)
05/21/2021	<u>2348</u> PDF with attached Audio File. Court Date & Time [05/21/2021 08:57:33 AM]. File Size [ 73177 KB ]. Run Time [ 05:13:15 ]. (admin).
05/21/2021	<u>2349</u> Omnibus Reply to (related document(s): <u>2309</u> Response to show cause order filed by Respondent Mark Patrick, <u>2312</u> Objection filed by Interested Party James Dondero, <u>2313</u> Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/21/2021	<u>2350</u> Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document # <u>2243</u> ) Entered on 5/21/2021. (Okafor, M.)

05/21/2021	<u>2351</u> Declaration re: ( <i>Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 19 # <u>2</u> Exhibit 20 # <u>3</u> Exhibit 21 # <u>4</u> Exhibit 22) (Annable, Zachery)
05/21/2021	<u>2352</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s) <u>2335</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2353</u> Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>2133</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.)
05/21/2021	<u>2354</u> Order granting motion to continue hearing on (related document # <u>2340</u> ) (related documents Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relating Hearing to be held on 6/25/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 2229</i> , Entered on 5/21/2021. (Okafor, M.)
05/21/2021	<u>2355</u> Declaration re: ( <i>Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 19 # <u>2</u> Exhibit 20 # <u>3</u> Exhibit 21 # <u>4</u> Exhibit 22) (Annable, Zachery)
05/21/2021	<u>2356</u> Notice ( <i>Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
05/21/2021	<u>2357</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
05/21/2021	<u>2358</u> Certificate of service re: <i>Documents Served on May 18, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2321</u> Notice ( <i>Notice of Cancellation of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2196</u> Motion to compel Disqualification of Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC. ( <i>Debtor's Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). filed by Debtor Highland Capital Management, L.P., <u>2324</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2243</u> Motion to compromise controversy with Siepe, LLC and Siepe Services, LLC. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Siepe, LLC and Siepe Services, LLC [Claim Nos. 38, 39] and Authorizing Actions Consistent Therewith</i> ) <u>2325</u> Order granting fifth interim fee application for compensation (related document <u>2221</u> ) granting for FTI Consulting, Inc. Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$838751.40, expenses awarded:



	<p>\$0.00 Entered on 5/18/2021. (Okafor, M.), <u>2326</u> Order granting fourth interim application for compensation (related document <u>1655</u>) granting for FTI Consulting, Inc., Financial Advisor for the Official Committee of Unsecured Creditors, fees awarded: \$710280.45, expenses awarded: \$1479.47 Entered on 5/18/2021. (Okafor, M.), <u>2327</u> Order granting fifth interim application for compensation (related document <u>2233</u>) granting for Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1957009.95, expenses awarded: \$23156.48 Entered on 5/18/2021. (Okafor, M.), <u>2328</u> Application for compensation Sidley Austin LLP's Seventeenth Monthly Application for Compensation for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$6,279.02. Filed by Attorney Juliana Hoffman Objections due by 6/8/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2329</u> Order granting fourth interim application for compensation (related document <u>1853</u>) granting Sidley Austin LLP, Attorneys for Official Committee of Unsecured Creditors, fees awarded: \$1620489.60, expenses awarded: \$8974.00 Entered on 5/18/2021. (Okafor, M.), <u>2331</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53 # 54 Exhibit 54 # 55 Exhibit 55 # 56 Exhibit 56 # 57 Exhibit 57 # 58 Exhibit 58 # 59 Exhibit 59 # 60 Exhibit 60 # 61 Exhibit 61 # 62 Exhibit 62 # 63 Exhibit 63 # 64 Exhibit 64 # 65 Exhibit 65 # 66 Exhibit 66 # 67 Exhibit 67 # 68 Exhibit 68 # 69 Exhibit 69 # 70 Exhibit 70 # 71 Exhibit 71 # 72 Exhibit 72 # 73 Exhibit 73) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/21/2021	<p><u>2359</u> Hearing held on 5/21/2021. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 05/24/2021)</p>
05/21/2021	<p><u>2368</u> Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 &amp; #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST &amp; EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO (Edmond, Michael) (Entered: 05/24/2021)</p>
05/24/2021	<p><u>2361</u> Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould &amp; Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s)<u>2196</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u>, Entered on 5/24/2021 (Okafor, M.)</p>
05/24/2021	

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	<u>2362</u> Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)
05/24/2021	<u>2363</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2364</u> Request for transcript regarding a hearing held on 5/21/2021. The requested turn-around time is daily. (Edmond, Michael)
05/24/2021	<u>2365</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2366</u> Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/24/2021	<u>2367</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. Filed by Get Good Trust, The Dugaboy Investment Trust Objections due by 5/20/2021.). Hearing to be held on 6/10/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2256</u> . (Draper, Douglas)
05/24/2021	<u>2369</u> Certificate of service re: Notice of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2367</u> Notice of hearing). (Attachments: # <u>1</u> Mailing Matrix) (Draper, Douglas)
05/24/2021	<u>2370</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2260</u> Application for compensation <i>Seventeenth Monthly Application for Compensation for FTI Consulting, Inc.</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 3/1/2021 to 3/31/2021, Fee: \$96,823.80, Expenses: \$0.). (Hoffman, Juliana)
05/24/2021	<u>2371</u> Certificate of service re: 1) <i>Debtor's Notice of Deposition to Mark Patrick in Connection with Debtor's Contempt Motion</i> ; 2) <i>Debtor's Notice of Rule 30(b)(6) Deposition to (A) CLO Holdco, Ltd., and (B) Charitable DAF Fund, L.P.; and 3) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2332</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2333</u> Notice to take deposition of CLO Holdco, Ltd. and Charitable DAF Fund, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2335</u> Notice ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 165, 168, and 169</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/25/2021	<u>2372</u> Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	<u>2373</u> Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/25/2021	<u>2374</u> Certificate of service re: 1) <i>Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ; 2) <i>Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3</i> Filed by Dugaboy Investment Trust and Get Good Trust; and 3) <i>Joinder of the Official Committee of Unsecured Creditors to Debtors Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3</i> Filed by

	<p><i>Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2340</u> Motion to continue hearing on (related documents <u>2229</u> Motion to borrow/incur debt) (<i>Motion to Further Continue Hearing on Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2341</u> Response opposed to (related document(s): <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2343</u> Joinder by <i>Debtors Opposition to Motion to Compel</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2341</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
05/26/2021	<p><u>2375</u> Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2359</u> Hearing held on 5/21/2021. (RE: related document(s)<u>2199</u> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein, J. Morris, J. Pomeranz, and G. Demo for Debtor; A. Clubok and K. Posin for UBS; D. Draper for Dugaboy and Get Good Trusts; C. Taylor and B. Assink for J. Dondero. Evidentiary hearing. Motion approved for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 08/24/2021. (Rehling, Kathy)</p>
05/26/2021	<p><u>2376</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Creditor Plano ISD. (Reece, Linda)</p>
05/26/2021	<p><u>2377</u> Declaration re: (<i>Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2349</u> Reply). (Attachments: # <u>1</u> Exhibit 23 # <u>2</u> Exhibit 24) (Annable, Zachery)</p>
05/26/2021	<p><u>2378</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). (Annable, Zachery)</p>
05/26/2021	<p><u>2379</u> Certificate of service re: [<i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i>] <i>Notice of Transfer of Claim Pursuant to F. R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2092 2094 and 2096 2115]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement</p>



	<p>3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2099</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2100</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2101</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2102</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2103</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2104</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2105</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2106</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2107</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2108</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2109</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2110</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2111</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2112</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2113</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2114</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC, <u>2115</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. filed by Interested Party CPCM, LLC). (Kass, Albert)</p>
05/26/2021	<p><u>2380</u> Certificate of service re: <i>Documents Served on May 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2345</u> Agreed scheduling order with respect to Debtors Objection to Application for Administrative Claim of Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (RE: related document(s) <u>2274</u> Objection filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/28/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2274</u>, Entered on 5/21/2021 (Okafor, M.), <u>2349</u> Omnibus Reply to (related document(s): <u>2309</u> Response to show cause order filed by Respondent Mark Patrick, <u>2312</u> Objection filed by Interested Party James Dondero, <u>2313</u> Response to show cause order filed by Creditor The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2350</u> Order approving Debtor's settlement with Siepe, LLC and Siepe Services, LLC.(Claims Nos. 38, 39) and authorizing actions consistent therewith (related document <u>2243</u>) Entered on 5/21/2021. (Okafor, M.), <u>2352</u></p>



	<p>Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 165, 168, and 169 (RE: related document(s)<u>2335</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), <u>2353</u> Order sustaining objection to claim number(s) #93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>2133</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/21/2021 (Okafor, M.), <u>2354</u> Order granting motion to continue hearing on (related document <u>2340</u>) (related documents Motion to borrow/incure debt (<i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i>) Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u>, Entered on 5/21/2021. (Okafor, M.), <u>2355</u> Declaration re: (Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2349</u> Reply). (Attachments: # 1 Exhibit 19 # 2 Exhibit 20 # 3 Exhibit 21 # 4 Exhibit 22) filed by Debtor Highland Capital Management, L.P., <u>2356</u> Notice (Notice of Filing of Sixth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2357</u> Declaration re: (Disclosure Declaration of Ordinary Course Professional) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/26/2021	<p><u>2381</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2362</u> Order requiring James Dondero to appear at all hearings in the bankruptcy case Entered on 5/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 05/26/2021. (Admin.)</p>
05/27/2021	<p><u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. (Hoffman, Juliana)</p>
05/27/2021	<p><u>2383</u> Application for compensation (<i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i>) for Pachulski Stang Ziehl &amp; Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$1,286,897.00, Expenses: \$8,173.58. Filed by Other Professional Pachulski Stang Ziehl &amp; Jones LLP (Annable, Zachery)</p>
05/27/2021	<p><u>2384</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 38 . Civil Case Number: 3:21–CV–00879–K (RE: related document(s)<u>2149</u> Notice of appeal <u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal).) (Blanco, J.)</p>
05/27/2021	<p><u>2386</u> Notice of docketing COMPLETE record on appeal. 3:21CV00879K (RE: related document(s)<u>2149</u> Notice of appeal<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s)<u>2149</u> Notice of appeal).) (Blanco, J.)</p>
05/27/2021	

	<u>2387</u> Notice of hearing ( <i>Status Conference</i> ) filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.). Status Conference to be held on 8/4/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Drawhorn, Lauren)
05/27/2021	<u>2388</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s) <u>2365</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.)
05/27/2021	<u>2389</u> Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document # <u>2199</u> ) Entered on 5/27/2021. (Okafor, M.)
05/27/2021	<u>2390</u> Certificate of service re: <i>Documents Served on May 24, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2361</u> Agreed scheduling order with respect to Debtor's motion to disqualify Wick Phillips Gould & Martin LLP as counsel to HCRE Partners, LLC (RE: related document(s) <u>2196</u> Motion to compel filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , Entered on 5/24/2021 (Okafor, M.), <u>2363</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2365</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 38 and 39</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2366</u> Subpoena on Grant Scott filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/27/2021	<u>2391</u> Certificate of service re: <i>1) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion; and 2) Debtor's Notice of Service of Subpoena in Connection with Debtor's Contempt Motion</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2372</u> Subpoena on NexBank Capital, Inc. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2373</u> Subpoena on Highland Capital Management Fund Advisors, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2021	<u>2392</u> Withdrawal / <i>Notice of Withdrawal of Appearance</i> filed by Interested Party NexBank (RE: related document(s) <u>923</u> Notice of appearance and request for notice). (Slade, Jared)
06/01/2021	<u>2393</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , (Annable, Zachery)
06/01/2021	<u>2394</u> Certificate of service re: <i>1) Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not be Held in Civil Contempt for Violating Two Court Orders; and 2) Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2377</u> Declaration re: ( <i>Second Amended Reply Declaration of John A. Morris in Support of Debtor's Motion for an Order Requiring Violators to Show Cause Why They Should Not Be Held in Civil Contempt for Violating Two Court Orders</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2349</u> Reply). (Attachments: # 1 Exhibit 23 # 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., <u>2378</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

06/01/2021	<u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/01/2021	<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. (Hoffman, Juliana)
06/02/2021	<u>2397</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2283</u> Application for compensation ( <i>Eleventh Monthly Application for Compensation and Reimbursement of Hayward PLLC as Local Counsel to the Debtor for the Period from October 1, 2020 through November 30, 2020</i> ) for Hayward PLLC, Debtor's Attorney,). (Annable, Zachery)
06/02/2021	<u>2398</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). Appellant Designation due by 06/16/2021. (Draper, Douglas)
06/02/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28754649, amount \$ 298.00 (re: Doc# <u>2398</u> ). (U.S. Treasury)
06/02/2021	<u>2399</u> Certificate of service re: <i>Documents Served on May 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 6/17/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2383</u> Application for compensation ( <i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i> ) for Pachulski Stang Ziehl & Jones LLP, Debtor's Attorney, Period: 4/1/2021 to 4/30/2021, Fee: \$1,286,897.00, Expenses: \$8,173.58. Filed by Other Professional Pachulski Stang Ziehl & Jones LLP, <u>2388</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claims No. 38 and No. 39 (RE: related document(s) <u>2365</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 5/27/2021 (Okafor, M.), <u>2389</u> Order approving Debtor's settlement with UBS Securities LLC and UBS AG London Branch and authorizing actions consistent therewith (related document <u>2199</u> ) Entered on 5/27/2021. (Okafor, M.)). (Kass, Albert)
06/02/2021	<u>2466</u> Circuit Court Order granting motions for certification to court of appeals (Related Doc # <u>2033</u> ) Entered on 6/2/2021. IT IS ORDERED that the motion of Highland Global AllocationFund, Highland Income Fund, NexPoint Capital, Incorporated, and NexPoint Strategic Opportunities Fund for leave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of James Dondero forleave to appeal under 28 U.S.C. § 158(d) is GRANTED.IT IS FURTHER ORDERED that the motion of Get Good Trust andThe Dugaboy Investment Trust for leave to appeal under 28 U.S.C. § 158(d)is GRANTED. USCA Circuit Court Case: 21-10449 (Whitaker, Sheniqua) (Entered: 06/21/2021)
06/03/2021	<u>2400</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
06/03/2021	<u>2401</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS



	105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/03/2021	<u>2402</u> Certificate of service re: <i>1) Amended Notice of Hearing; and 2) Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2393</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2229</u> , filed by Debtor Highland Capital Management, L.P., <u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2021	<u>2403</u> Objection to (related document(s): <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.) Preliminary Objection filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/04/2021	<u>2404</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
06/04/2021	<u>2405</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2395</u> , (Annable, Zachery)
06/04/2021	<u>2406</u> Response opposed to (related document(s): <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Howell, William)
06/04/2021	<u>2407</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider (related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2255</u> and for <u>2248</u> and for <u>2304</u> , (Annable, Zachery)



06/04/2021	<p><u>2408</u> Certificate of service re: <i>(Supplemental) 1) Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; and 2) Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u>, filed by Debtor Highland Capital Management, L.P., <u>2337</u> Certificate of service re: <i>Documents Served on May 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit # 2 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2307</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2304</u>, filed by Debtor Highland Capital Management, L.P., <u>2308</u> Omnibus Reply to (related document(s): <u>2268</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>2293</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2295</u> Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Debtor Highland Capital Management, L.P., <u>2311</u> Response opposed to (related document(s): <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) filed by Plaintiff The Charitable DAF Fund, L.P., Plaintiff CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2315</u> Joinder by to <i>Debtors Objection to Motion for Modification of Order Authorizing Appointment of James P. Seery, Jr. Due to Lack of Subject Matter Jurisdiction</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2311</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
06/04/2021	<p><u>2409</u> Certificate of service re: <i>Eighteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2021 Through April 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$21,694.88. Filed by Attorney Juliana Hoffman Objections due by 6/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
06/05/2021	<p><u>2410</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2255</u> Order on motion to show cause). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u></p>

	Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53) (Annable, Zachery)
06/05/2021	<u>2411</u> Witness and Exhibit List filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P., Respondent Mark Patrick (RE: related document(s) <u>2255</u> Order on motion to show cause). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43) (Phillips, Louis)
06/05/2021	<u>2412</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery)
06/06/2021	<u>2414</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). Appellant Designation due by 06/16/2021.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
06/06/2021	<u>2415</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/06/2021	<u>2416</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01295-X. (RE: related document(s) <u>2398</u> Notice of appeal <i>and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Whitaker, Sheniqua)
06/07/2021	<u>2417</u> Notice ( <i>Notice of Proposed Order</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). (Annable, Zachery)
06/07/2021	<u>2418</u> Declaration re: ( <i>Declaration of Jeffrey N. Pomerantz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2417</u> Notice (generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
06/07/2021	<u>2419</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2412</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 16 # <u>2</u> Exhibit 17) (Annable, Zachery)
06/07/2021	<u>2420</u> Amended Witness and Exhibit List <i>Exhibits 44, 45, 46</i> filed by CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2411</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 44 # <u>2</u> Exhibit 45 # <u>3</u> Exhibit 46) (Sbaiti, Mazin)
06/07/2021	<u>2421</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2410</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 54 # <u>2</u> Exhibit 55) (Annable, Zachery)

06/08/2021	<u>2422</u> Request for transcript regarding a hearing held on 6/8/2021. The requested turn-around time is hourly. (Edmond, Michael)
06/08/2021	<u>2423</u> Amended Witness and Exhibit List ( <i>Second Amended</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2419</u> List (witness/exhibit/generic)). (Hayward, Melissa)
06/08/2021	<u>2424</u> Reply to (related document(s): <u>2341</u> Response filed by Debtor Highland Capital Management, L.P.) <i>Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Exhibit 1) (Draper, Douglas)
06/08/2021	<u>2425</u> Certificate of service re: Reply to Debtor's Opposition to Motion to Compel Compliance with Bankruptcy Rule 2015.3 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2424</u> Reply). (Draper, Douglas)
06/08/2021	<u>2426</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2306</u> Application to employ Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors as Other Professional ). (Hoffman, Juliana)
06/08/2021	<u>2427</u> Certificate of service re: [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] <i>Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4)</i> [ <i>Re Docket Nos. 2211 and 2215</i> ] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
06/08/2021	<u>2428</u> Certificate of service re: 1) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 Through March 31, 2021</i> ; and 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2400</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from March 1, 2021 through March 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2401</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/08/2021	<u>2430</u> Hearing held on 6/8/2021. (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbaty and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.) (Edmond, Michael)



06/08/2021	2431 Hearing held on 6/8/2021. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbat and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90-day continuance without prejudice. Counsel to upload order.) (Edmond, Michael)
06/08/2021	<u>2519</u> Court admitted exhibits date of hearing June 8, 2021 (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (COURT ADMITTED DEBTOR'S EXHIBIT'S #12 THROUGH #55 THAT APPEAR AT DOC. #2410 BY JOHN MORRIS; (NOTE* EXHIBIT'S #1 THROUGH #11 WERE NOT ADMITTED) & THE COURT ADMITTED DEFENDANT'S EXHIBIT'S #1, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #15, #16, #17, #18, #19, #20, #21, #22, #23, #24, #25, #26, #27, #28, & #30 THRUUGHT #44 ALL ADMITTED BY LOUIS PHILLIPS; (NOTE* EXHIBIT'S #13, #14 & #29 WERE NOT ADMITTED) (Edmond, Michael) (Entered: 07/02/2021)
06/09/2021	<u>2432</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 54 . Civil Case Number: 3:21-CV-00538-N (RE: related document(s) <u>1957</u> Notice of appeal ) (Blanco, J.)
06/09/2021	<u>2433</u> Notice of docketing record on appeal. 3:21-cv-00538-N (RE: related document(s) <u>1957</u> Notice of appeal ) (Blanco, J.)
06/09/2021	<u>2434</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Notice of Hearing</i> ; and 3) <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2404</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>2405</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2395</u> , filed by Debtor Highland Capital Management, L.P., <u>2407</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.), <u>2255</u> Order requiring violators to show cause why they should not be held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Any response should be filed by May 21, 2021. Entered on 4/29/2021. (Okafor, M.), <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 6/8/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2255</u> and for <u>2248</u> and for <u>2304</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2435</u> Certificate of service re: 1) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> ; and 2) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2410</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2255</u> Order on motion to show cause). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11



	Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33 # 34 Exhibit 34 # 35 Exhibit 35 # 36 Exhibit 36 # 37 Exhibit 37 # 38 Exhibit 38 # 39 Exhibit 39 # 40 Exhibit 40 # 41 Exhibit 41 # 42 Exhibit 42 # 43 Exhibit 43 # 44 Exhibit 44 # 45 Exhibit 45 # 46 Exhibit 46 # 47 Exhibit 47 # 48 Exhibit 48 # 49 Exhibit 49 # 50 Exhibit 50 # 51 Exhibit 51 # 52 Exhibit 52 # 53 Exhibit 53) filed by Debtor Highland Capital Management, L.P., <u>2412</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2436</u> Certificate of service re: <i>Documents Served on June 7, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2417</u> Notice ( <i>Notice of Proposed Order</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2418</u> Declaration re: ( <i>Declaration of Jeffrey N. Pomerantz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2417</u> Notice (generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>2419</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2412</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 16 # 2 Exhibit 17) filed by Debtor Highland Capital Management, L.P., <u>2421</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2410</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 54 # 2 Exhibit 55) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2437</u> Certificate of service re: <i>Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2423</u> Amended Witness and Exhibit List ( <i>Second Amended</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2419</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/09/2021	<u>2438</u> BNC certificate of mailing. (RE: related document(s) <u>2415</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2398</u> Notice of appeal and <i>Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy).) No. of Notices: 1. Notice Date 06/09/2021. (Admin.)
06/10/2021	<u>2439</u> Amended Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/11/2021 at 10:00 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2248</u> , (Sbaiti, Mazin)
06/10/2021	<u>2440</u> Transcript regarding Hearing Held 06/08/2021 (298 pages) RE: Show Cause Hearing (2255); Motion to Modify Order (2248); Motion to Extend Time (2304). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/8/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2430</u> Hearing held on 6/8/2021. (RE: related document(s) <u>2255</u> Order requiring violators to show cause why they should not be

	held in civil contempt for violating two court orders (related document <u>2247</u> ) Show Cause hearing to be held on 6/8/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor for J. Dondero; M. Clemente for UCC. Evidentiary hearing. Court took matter under advisement.), 2431 Hearing held on 6/8/2021. (RE: related document(s) <u>2304</u> Motion to extend time to Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, J. Pomeranz, and G. Demo for Debtor; M. Sbati and J. Bridges for DAF and CLO Holdco, Ltd.; L. Phillips and M. Anderson for Mark Patrick; C. Taylor and J. Wilson for J. Dondero; M. Clemente for UCC. Nonevidentiary hearing. Court granted 90-day continuance without prejudice. Counsel to upload order.)). Transcript to be made available to the public on 09/8/2021. (Rehling, Kathy)
06/10/2021	<u>2441</u> Agreed Motion to continue hearing on (related documents <u>2248</u> Motion to Reconsider) Filed by Plaintiff The Charitable DAF Fund, L.P. (Attachments: # <u>1</u> Proposed Order) (Sbaiti, Mazin)
06/10/2021	<u>2442</u> Hearing held on 6/10/2021. (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b) certain information from Dondero-related entities for clarification of their standing.) (Edmond, Michael) (Entered: 06/11/2021)
06/11/2021	Receipt Number 338903, Fee Amount \$207.00 – Filing Fee for Direct Appeal to Fifth Circuit Court of Appeals paid by K&L Gates LLP (RE: related document(s) <u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.)) (Floyd, K)
06/11/2021	<u>2443</u> Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document # <u>2306</u> ) Entered on 6/11/2021. (Okafor, M.)
06/11/2021	<u>2444</u> Request for transcript regarding a hearing held on 6/10/2021. The requested turn-around time is hourly. (Edmond, Michael)
06/12/2021	<u>2445</u> Transcript regarding Hearing Held 06/10/2021 (91 pages) RE: Motion to Compel Compliance (2256). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2442</u> Hearing held on 6/10/2021. (RE: related document(s) <u>2256</u> Motion to compel Compliance with Bankruptcy Rule 2015.3. filed by Get Good Trust, The Dugaboy Investment Trust., (Appearances: D. Draper for Trusts; J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC. Nonevidentiary hearing. Motion continued for another hearing in early September (counsel should contact CRD for a setting). If Effective Date occurs before then, matter will be moot; if Effective Date has not occurred by then, court will consider motion further. Mr. Pomeranz should upload an order consistent with the courts ruling. Court will separately be issuing an order requiring: (a) Trust representative to appear at all future hearings in which Trusts take positions; and (b)

	certain information from Dondero-related entities for clarification of their standing.)). Transcript to be made available to the public on 09/10/2021. (Rehling, Kathy)
06/14/2021	Receipt Number 338904, Fee Amount \$207.00 – Filing fee for Direct Appeal to Fifth Circuit Court of Appeals paid by Heller, Draper, Patrick, Horn & Dabney, LLC (Fifth Circuit Docket No. 21–10449) (RE: related document(s) <u>2014</u> Amended notice of appeal filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust.(RE: related document(s) <u>1943</u> Order confirming chapter 11 plan)).
06/14/2021	<u>2446</u> Second Notice of hearing filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (Ecker, C.)). Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2248</u> , (Sbaiti, Mazin)
06/14/2021	<u>2447</u> Notice to take deposition of Trussway Industries, LLC filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/14/2021	<u>2448</u> Notice to take deposition of Highland Capital Management, LP filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/15/2021	<u>2449</u> Certificate of service re: <i>Order Pursuant to Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of Teneo Capital, LLC as Litigation Advisor to the Official Committee of Unsecured Creditors Effective April 15, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2443</u> Order granting application to employ Teneo Capital, LLC as litigation advisor to the Official Committee of Unsecured Creditors effective April 15, 2021 (related document <u>2306</u> ) Entered on 6/11/2021. (Okafor, M.)). (Kass, Albert)
06/15/2021	<u>2450</u> Certificate of service re: <i>(Supplemental) [Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2427</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2211 and 2215]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2211</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Acis Capital Management GP, LLC (Claim No. 23, Amount \$23,000,000.00) To ACMLP Claim, LLC. Filed by Creditor Acis Capital Management GP, LLC. filed by Creditor Acis Capital Management GP, LLC, <u>2215</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: ACMLP Claim, LLC (Claim No. 23, Amount \$23,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
06/16/2021	<u>2451</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2389</u> Order on motion to compromise controversy). (Draper, Douglas)
06/16/2021	<u>2452</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2398</u> Notice of appeal, <u>2451</u> Statement of issues on appeal). Appellee designation due by 06/30/2021. (Draper, Douglas)
06/16/2021	<u>2453</u> Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document:# <u>2304</u> Motion to extend time.) Entered on 6/16/2021. (Okafor, M.)

06/16/2021	<u>2454</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2421</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 23 # <u>2</u> Exhibit 24) (Annable, Zachery)
06/16/2021	<u>2455</u> Support/supplemental document ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> ). (Annable, Zachery)
06/16/2021	<u>2456</u> Order granting unopposed emergency motion to continue hearing on (related document # <u>2441</u> ) (related documents Motion to Reconsider(related documents <u>854</u> Order on application to employ)) Hearing to be held on 6/25/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2248</u> , Entered on 6/16/2021. (Okafor, M.)
06/17/2021	<u>2457</u> Clerk's correspondence requesting exhibits from attorney for appellant. (RE: related document(s) <u>2452</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2398</u> Notice of appeal, <u>2451</u> Statement of issues on appeal). Appellee designation due by 06/30/2021.) Responses due by 6/21/2021. (Blanco, J.)
06/17/2021	<u>2458</u> Order requiring a trustee of The Dugaboy Investment Trust and the The Get Good Trust to appear at all hearings in the bankruptcy case and adversary cases in which they take positions. Entered on 6/17/2021 (Okafor, M.)
06/17/2021	<u>2459</u> Motion for leave to Amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document(s) <u>2452</u> Appellant designation) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
06/18/2021	<u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition . Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)
06/18/2021	<u>2461</u> Application for compensation ( <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC (Annable, Zachery)
06/18/2021	<u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Objection to claim). (Annable, Zachery)
06/21/2021	<u>2465</u> Certificate of service re: 1) <i>Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> ; 2) <i>Debtor's Second Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 8, 2021</i> ; and 3) <i>Notice of Final Term Sheet</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2453</u> Order Further Extending Period Within Which The Debtor May Remove Actions Pursuant to 28 USC 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (related document: <u>2304</u> Motion to extend time.) Entered on 6/16/2021. (Okafor, M.), <u>2454</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2421</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 23



	# 2 Exhibit 24) filed by Debtor Highland Capital Management, L.P., <u>2455</u> Support/supplemental document ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/21/2021	<u>2467</u> Supplemental Objection to (related document(s): <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Draper, Douglas)
06/21/2021	<u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)
06/22/2021	<u>2469</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>2280</u> Motion to file document under seal. <i>Appendix in Support of Response to Motion to Disqualify</i> Filed by Creditor NexPoint Real Estate Partners LLC t/k/a HCRE Partners LLC (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Appendix)) Responses due by 6/29/2021. (Ecker, C.)
06/22/2021	<u>2470</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2383</u> Application for compensation ( <i>Nineteenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2021 Through April 30, 2021</i> ) for Pachulsk). (Pomerantz, Jeffrey)
06/22/2021	<u>2471</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2382</u> Application for compensation <i>Eighteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2021 to 4/30/2021, Fee: \$85,577.40, Expenses: \$0.). (Hoffman, Juliana)
06/22/2021	<u>2472</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2395</u> Motion to pay ( <i>Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3) (Annable, Zachery)
06/22/2021	<u>2473</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
06/23/2021	<u>2474</u> Order granting motion for leave to amend the Designation of Record Pursuant to Fed. R. Bankr. P. 8009 (related document # <u>2459</u> ) Entered on 6/23/2021. (Okafor, M.)
06/23/2021	<u>2475</u> Witness and Exhibit List with <i>Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4A # <u>5</u> Exhibit 4B # <u>6</u> Exhibit 5 # <u>7</u> Exhibit 6 # <u>8</u> Exhibit 7 # <u>9</u> Exhibit 8 # <u>10</u> Exhibit 9 # <u>11</u> Exhibit 10) (Draper, Douglas)

06/23/2021	<u>2476</u> Reply to (related document(s): <u>2403</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2467</u> Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Annable, Zachery). Related document(s) <u>2229</u> Motion to borrow/incur debt ( <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relate</i> filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.).
06/23/2021	<u>2477</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2473</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 5 # <u>3</u> Exhibit 6 # <u>4</u> Exhibit 7 # <u>5</u> Exhibit 8) (Annable, Zachery)
06/23/2021	<u>2478</u> Certificate of service re: 1) <i>Order Requiring Disclosures</i> ; 2) <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020</i> ; and 3) <i>Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), <u>2461</u> Application for compensation ( <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> ) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/23/2021	<u>2479</u> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s) <u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). (Kass, Albert)
06/24/2021	<u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. (Pomerantz, Jeffrey)
06/24/2021	<u>2481</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2480</u> , (Pomerantz, Jeffrey)
06/24/2021	

	<p><u>2482</u> Declaration re: <i>(Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel <i>(Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment)</i>). (Annable, Zachery)</p>
06/25/2021	<p><u>2483</u> Certificate of service re: 1) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtors Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtors Chief Executive Officer and Chief Restructuring Officer;</i> and 2) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021 re: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2472</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2395</u> Motion to pay <i>(Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer)</i>). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) filed by Debtor Highland Capital Management, L.P., <u>2473</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt <i>(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i>). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2021	<p><u>2484</u> Certificate of service re: 1) <i>Debtor's Reply in Support of Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter Into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief;</i> and 2) <i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on June 25, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2476</u> Reply to (related document(s): <u>2403</u> Objection filed by Creditor The Dugaboy Investment Trust, <u>2467</u> Objection filed by Creditor The Dugaboy Investment Trust) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D) (Annable, Zachery). Related document(s) <u>2229</u> Motion to borrow/incur debt <i>(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Relat</i> filed by Debtor Highland Capital Management, L.P.. Modified on 6/24/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>2477</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2473</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 5 # 3 Exhibit 6 # 4 Exhibit 7 # 5 Exhibit 8) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/25/2021	<p><u>2485</u> Amended U.S. Trustee's appointment of committee of <i>Unsecured Creditors</i> (Lambert, Lisa)</p>
06/25/2021	<p><u>2486</u> Certificate of service re: U.S. Trustee's Amended Appointment of Committee of Unsecured Creditors filed by U.S. Trustee United States Trustee (RE: related document(s)<u>2485</u> UST appointment of committee). (Lambert, Lisa)</p>
06/25/2021	<p><u>2487</u> Hearing held on 6/25/2021. (RE: related document(s)<u>2229</u> Motion to borrow/incur debt <i>(Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief)</i> filed by Debtor Highland</p>



	Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2488 INCORRECT ENTRY (corrected by DE 2490) Hearing held on 6/25/2021. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael) Modified on 6/29/2021 (Ellison, T.).
06/25/2021	2489 Hearing held on 6/25/2021. (RE: related document(s) <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.) (Edmond, Michael)
06/25/2021	2490 Hearing held on 6/25/2021. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.) (Edmond, Michael)
06/25/2021	<u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
06/25/2021	<u>2492</u> Court admitted exhibits date of hearing June 25, 2021 (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P., <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd. , The Charitable DAF Fund, L.P. (Ecker, C.), <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (NOTE* COURT ADMITTED EXHIBIT'S DEBTOR'S #1, #2, #3 THAT APPEARS AT DOC. #2472 BY JEFF POMERANTZ AND DUGABOY'S EXHIBIT'S #1, #2, #3, #4, #5, #6, #7 & #8 THAT APPEARS AT #2473 & 2477; NOTE* #2, #3 & #4 APPEARS AT DOC. #2473 & #1, #5, #6, #7 & #8 APPEARS AD DOC. 2477 BY DOUGLAS DRAPER, FOR MOTION AT DOC. #2229); (DEBTOR'S EXHIBIT'S #1 THORUGH #17 THAT APPEARS AT DOC. #2412, #2419 & #2423 BY JOHN MORRIS AND CHARITABLE DAF FUND, L.P. AND CLO HOLDCO, LTD., EXHIBIT'S #1 THROUGH #44 BY JONATHNA BRIDGES; NOTE* EXHIBIT'S #2, #3, #17 & #19 WERE NOT ADMITED BY JONATHAN BRIDGES) FOR MOTION AT DOC. #2395) (Edmond, Michael) (Entered: 06/28/2021)
06/28/2021	<u>2493</u> Request for transcript regarding (MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES SEERY, JR.) a hearing held on 6/25/2021. The requested turn-around time is daily. (Edmond, Michael) Modified TEXT on 6/29/2021 (Jeng, Hawaii).
06/28/2021	



	Receipt Number 338916, Fee Amount \$207.00 for Direct Appeal to the Fifth Circuit Court of Appeals (Reference 21-90011 and 21-10449) (RE: related document(s) <u>1970</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # 1 Exhibit)) (Floyd, K)
06/28/2021	<u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)
06/28/2021	<u>2495</u> Notice ( <i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). (Annable, Zachery)
06/28/2021	<u>2496</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2491</u> , (Annable, Zachery)
06/29/2021	<u>2497</u> Request for transcript regarding a(ENTIRE) hearing held on 6/25/2021. The requested turn-around time is hourly (Jeng, Hawaii)
06/29/2021	<u>2498</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2396</u> Application for compensation <i>Sidley Austin LLP's Eighteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2021 to 4/30/2021, Fee: \$417,427.20, Expenses: \$2). (Hoffman, Juliana)
06/29/2021	<u>2499</u> Certificate of service re: 1) <i>Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021</i> ; 2) <i>Notice of Hearing on Fourth Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period from December 1, 2020 Through April 30, 2021</i> ; and 3) <i>Supplemental Declaration of Timothy F. Silva in Support of Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021. filed by Debtor Highland Capital Management, L.P., <u>2481</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>2480</u> , filed by Debtor Highland Capital Management, L.P., <u>2482</u> Declaration re: ( <i>Supplemental Declaration of Timothy F. Silva in Support of Debtor's</i>

	<i>Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> ), filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/30/2021	<u>2500</u> Transcript regarding Hearing Held 06/25/2021 (122 pages) (Excerpt 2: Proceedings from 11:33 am to 3:35 pm) RE: Motion to Reconsider/Motion for Modification(#2248). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com. (RE: related document(s) 2490 Hearing held on 6/25/2021. (RE: related document(s) <u>2248</u> Motion to Reconsider(related documents <u>854</u> Order on application to employ) Filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P., (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion denied, Lengthy bench ruling. Debtors counsel to upload order. Court to issue post-hearing order regarding jury trial rights discussed.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)
06/30/2021	<u>2501</u> Transcript regarding Hearing Held 06/25/2021 (79 pages) (Excerpt 1: Proceedings from 9:36 am to 11:25 am) RE: Motion to Borrow (2229) and Motion to Pay Restructuring Fee (2395). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/28/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2487 Hearing held on 6/25/2021. (RE: related document(s) <u>2229</u> Motion to borrow/incur debt (Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.), 2489 Hearing held on 6/25/2021. (RE: related document(s) <u>2395</u> Motion to pay (Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; D. Draper for Dugaboy; J. Bridges and M. Sbati for CLO Holdco and DAF; M. Clemente for Unsecured Creditors Committee. Evidentiary hearing. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 09/28/2021. (Rehling, Kathy)
06/30/2021	<u>2502</u> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$1,603,754.00, Expenses: \$28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. (Pomerantz, Jeffrey)
06/30/2021	<u>2503</u> Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document # <u>2229</u> ) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	

	<u>2504</u> Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document # <u>2395</u> ) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	<u>2505</u> Order granting motion to seal appendix (related document # <u>2280</u> ) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	<u>2506</u> Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document # <u>2248</u> ) Entered on 6/30/2021. (Okafor, M.)
06/30/2021	<u>2507</u> Notice ( <i>Third Notice of Additional Services Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Annable, Zachery)
06/30/2021	<u>2508</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/30/2021	<u>2509</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief</i> ) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	<u>2510</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2480</u> , (Annable, Zachery)
07/01/2021	<u>2511</u> Certificate of service re: <i>1) Order Requiring Post-Hearing Submissions; 2) Notice of Filing of Second Amended and Restated Investment Advisory Agreement; and 3) Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.), <u>2495</u> Notice ( <i>Notice of Filing of Second Amended and Restated Investment Advisory Agreement</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2494</u> Order Requiring Post-Hearing Submissions. Details Per Order. (RE: related document(s) <u>2248</u> Motion to Reconsider filed by Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P., Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd.). Entered on 6/28/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2496</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i)</i>



	<i>Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2491</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/01/2021	<u>2512</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2328</u> Application for compensation <i>Sidley Austin LLP's Seventeenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 3/31/2021, Fee: \$371,842.20, Expenses: \$). (Hoffman, Juliana)
07/02/2021	<u>2513</u> Notice of appeal . Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). Appellant Designation due by 07/16/2021. (Sbaiti, Mazin)
07/02/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28822100, amount \$ 298.00 (re: Doc# <u>2513</u> ). (U.S. Treasury)
07/02/2021	<u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. (Hoffman, Juliana)
07/02/2021	<u>2515</u> Notice ( <i>Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/02/2021	<u>2516</u> Declaration re: ( <i>Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
07/02/2021	<u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
07/02/2021	<u>2518</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause)). (Attachments: # <u>1</u> Exhibit 56) (Annable, Zachery)
07/06/2021	<u>2520</u> Withdrawal of claim(s) Claim has been satisfied. Claim: 194 Filed by Creditor Crescent TC Investors, L.P.. (Held, Michael)
07/06/2021	<u>2522</u> Notice of transmittal of appellee supplemental record vol. 1 3:21-CV-00261-L (RE: related document(s) <u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . , Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8



	Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	<u>2523</u> Notice of transmittal SEALED DOCUMENTS 3:21-cv00261 (RE: related document(s) <u>2187</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 8 Number of appellee volumes: 4. Civil Case Number: 3:21-CV-00261-L (Lindsay) (RE: related document(s) <u>1870</u> Notice of appeal Related document(s) <u>1788</u> Order on motion to compromise controversy. (Blanco, J.)). (Blanco, J.)
07/06/2021	<u>2524</u> Certificate of service re: <i>Documents Served on June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2502</u> Application for compensation <i>Twentieth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021, Fee: \$1,603,754.00, Expenses: \$28,644.51. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/21/2021. filed by Debtor Highland Capital Management, L.P., <u>2503</u> Order Granting Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to (A) Enter into Exit Financing Agreement in Aid of Confirmed Chapter 11 Plan and (B) Incur and Pay Related Fees and Expenses, and (II) Granting Related Relief (related document <u>2229</u> ) Entered on 6/30/2021. (Okafor, M.), <u>2504</u> Order Granting Debtor's Motion for Entry of an Order Authorizing Payment of a Restructuring Fee to James P. Seery, Jr., the Debtor's Chief Executive Officer and Chief Restructuring Officer (related document <u>2395</u> ) Entered on 6/30/2021. (Okafor, M.), <u>2506</u> Order denying motion for modification of order authorizing retention of James P. Seery, Jr. (related document <u>2248</u> ) Entered on 6/30/2021. (Okafor, M.), <u>2507</u> Notice ( <i>Third Notice of Additional Services Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2508</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	<u>2525</u> Certificate of service re: <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2510</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2480</u> Application for compensation <i>Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, Fee: \$7,527,021.50, Expenses: \$80,299.92. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/15/2021.). Hearing to be held on 7/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2480</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/06/2021	<u>2526</u> Application for compensation <i>Sidley Austin LLP's Nineteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. (Hoffman, Juliana)
07/07/2021	<u>2527</u> Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document # <u>2517</u> ) Entered on 7/7/2021. (Okafor, M.)

07/08/2021	<u>2530</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2513</u> Notice of appeal .filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). Appellant Designation due by 07/16/2021.) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
07/08/2021	<u>2531</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2513</u> Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	<u>2532</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01585-S. (RE: related document(s) <u>2513</u> Notice of appeal . filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2506</u> Order on motion to reconsider). (Whitaker, Sheniqua)
07/08/2021	<u>2533</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
07/08/2021	<u>2534</u> Brief in support filed by Plaintiffs CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2494</u> Order (generic)). (Attachments: # <u>1</u> Exhibit 1_June 8, 2021 Hearing Transcript Excerpts # <u>2</u> Exhibit 2_June 25, 2021 Hearing Transcript Excerpts # <u>3</u> Exhibit 3_Subscription and Transfer Agreement # <u>4</u> Exhibit 4_Members Agreement) (Sbaiti, Mazin)
07/08/2021	<u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
07/08/2021	<u>2536</u> Certificate of service re: <i>Documents Served on July 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 7/23/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2515</u> Notice ( <i>Notice of Filing of Seventh Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – OCP List # <u>4</u> Exhibit C – Form of Declaration of Disinterestedness # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2516</u> Declaration re: ( <i>Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>2517</u> Motion for leave ( <i>Debtor's Unopposed Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2518</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2517</u> Motion for leave ( <i>Debtor's Unopposed</i>

	<i>Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> ) (related document(s) <u>2247</u> Motion for order to show cause)). (Attachments: # 1 Exhibit 56) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/08/2021	<u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit D # <u>3</u> Exhibit E) (Annable, Zachery)
07/08/2021	Receipt of filing fee for Motion to Sell(19-34054-sgj11) [motion,msell] ( 188.00). Receipt number 28834907, amount \$ 188.00 (re: Doc# <u>2537</u> ). (U.S. Treasury)
07/08/2021	<u>2538</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/09/2021	<u>2539</u> Notice and Disclosures of Funds Pursuant to Court's Sua Sponte Order filed by Interested Parties Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Hogewood, A.)
07/09/2021	<u>2540</u> Support/supplemental document ( <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> ). (Annable, Zachery)
07/09/2021	<u>2541</u> Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)
07/09/2021	<u>2542</u> Notice of Disclosures filed by Creditor Get Good Trust (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management,



	<p>L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2543</u> Notice (<i>Advisors' Disclosures in Response to Sua Sponte Order</i>) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Rukavina, Davor)</p>
07/09/2021	<p><u>2544</u> Notice and Disclosures of NexPoint RE Entities and HMCS Inc. in Response to Sua Sponte Order filed by Creditor Highland Capital Management Services, Inc., Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A) (Drawhorn, Lauren)</p>
07/09/2021	<p><u>2545</u> Amended Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2546</u> Amended Notice of Disclosures filed by Creditor Get Good Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a</p>



	<p>direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Draper, Douglas)</p>
07/09/2021	<p><u>2547</u> Notice of Response and Disclosures related to sua sponte Order Requiring Disclosures filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);<sup>10</sup> (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1.Patrick Declaration # <u>2</u> 2.Transcript, June 8, 2021 Hearing, Excerpts # <u>3</u> Exhibit 3.Structure Chart # <u>4</u> Exhibit 4.Kenneth K. Bebozo Memorandum # <u>5</u> Exhibit 5.Certificate of Incorporation – CLO HoldCo, Ltd. # <u>6</u> Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # <u>7</u> Exhibit 7.Ordinary Share Registry– CLO HoldCo # <u>8</u> Exhibit 8.Certificate of Registration of Exempted Limited Partnership – DAF Fund # <u>9</u> Exhibit 9.DAF Fund LP Agreement # <u>10</u> Exhibit 10.DAF Fund General Partner Register # <u>11</u> Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # <u>12</u> Exhibit 12.Register of Management Shares DAF Holdco # <u>13</u> Exhibit 13.Register of Participating Shares DAF Holdco # <u>14</u> Exhibit 14.Certificate of Formation of DAF GP # <u>15</u> Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # <u>16</u> Exhibit 16.HDF Certificate of Incorporation # <u>17</u> Exhibit 17.IRS Determination – HDF # <u>18</u> Exhibit 18.Narrative Description of Activities # <u>19</u> 19.RESERVED FOR POSSIBLE SUPPLEMENTATION # <u>20</u> Exhibit 20.HDF Bylaws # <u>21</u> Exhibit 21.HSBF Certificate of Incorporation # <u>22</u> Exhibit 22.IRS Determination – HSBF # <u>23</u> Exhibit 23.SBF Overview Letter # <u>24</u> Exhibit 24.GKCCF Certificate of Formation # <u>25</u> Exhibit 25.GKCCF Letter # <u>26</u> Exhibit 26.Bylaws HKCF # <u>27</u> Exhibit 27.Share Transfer Form # <u>28</u> Exhibit 28.March 25 Resolution – DAF Holdco # <u>29</u> Exhibit 29.April 2 Resolution – CLO HoldCo # <u>30</u> Exhibit 30.Written Resolution – Murphy # <u>31</u> Exhibit 31.Charitable Giving Overview, Grant Summary: 2012–2020 # <u>32</u> Exhibit 32.The Family Place Letter # <u>33</u> Exhibit 33.Cristo Rey Letter # <u>34</u> Exhibit 34.DCAC Letter # <u>35</u> Exhibit 35.Complaint # <u>36</u> Exhibit 36.CLO HoldCo – Register of Directors # <u>37</u> Exhibit 37.DAF Holdco – Register of Directors # <u>38</u> Exhibit 38.Register of Directors – Liberty CLO Holdco, Ltd. # <u>39</u> Exhibit 39.Share Register – Liberty CLO Holdco, Ltd. # <u>40</u> Exhibit 40.Register of Directors – MGM Studios Holdco, Ltd # <u>41</u> Exhibit 41.Share Register – MGM Studios Holdco, Ltd # <u>42</u> Exhibit 42.Register of Directors – HCT Holdco 2 – Ltd. # <u>43</u> Exhibit 43.Share Register – HCT Holdco 2, Ltd.) (Phillips, Louis)</p>
07/09/2021	<p><u>2548</u> Certificate of service re: (Supplemental) 1) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims; and 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), <u>2478</u> Certificate of service re: 1) Order Requiring Disclosures; 2) Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020; and 3) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed] Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee</p>

	<p>Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), <u>2461</u> Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2479</u> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
07/09/2021	<p><u>2549</u> Amended Notice <i>Second Amended Response of Dugaboy Investment Trust to Order Requiring Disclosures</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2541</u> Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.))., <u>2545</u> Amended Notice of Disclosures filed by Creditor The Dugaboy Investment Trust (RE: related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)).). (Draper, Douglas)</p>
07/09/2021	<p><u>2550</u> Certificate of service re: <i>Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2526</u> Application for compensation <i>Sidley Austin LLP's Nineteenth Monthly Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 7/27/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/12/2021	<p><u>2551</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale</i></p>

	<i>of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2537</u> and for <u>2535</u> , (Annable, Zachery)
07/12/2021	<u>2552</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2461</u> Application for compensation ( <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i> ) for Hayward PLLC, Debtor). (Annable, Zachery)
07/12/2021	<u>2553</u> Amended appellant designation of contents for inclusion in record on appeal pursuant to <i>Fed. R. Bankr. P. 8009</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2452</u> Appellant designation). (Draper, Douglas)
07/12/2021	<u>2554</u> Application for compensation ( <i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$83,450.00, Expenses: \$5,939.09. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/12/2021	<u>2555</u> Certificate of service re: <i>Order Granting Debtor's Motion to Supplement the Record in the Contempt Hearing Held on June 8, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2527</u> Order granting Debtor's motion to supplement the record in the Contempt Hearing held on June 8, 2021 (related document <u>2517</u> ) Entered on 7/7/2021. (Okafor, M.)). (Kass, Albert)
07/12/2021	<u>2556</u> Notice of Filing of Supplement and Additional Exhibits filed by Interested Parties CLO Holdco, Ltd., Highland Dallas Foundation, Inc., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2547</u> Notice of Response and Disclosures related to sua sponte Order Requiring Disclosures filed by Interested Parties Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, CLO Holdco, Ltd. (RE: related document(s) <u>2460</u> Order Requiring Disclosures (RE: related document(s) <u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.)). (Attachments: # 1 Exhibit 1.Patrick Declaration # 2 2.Transcript, June 8, 2021 Hearing, Excerpts # 3 Exhibit 3.Structure Chart # 4 Exhibit 4.Kenneth K. Bebozo Memorandum # 5 Exhibit 5.Certificate of Incorporation – CLO HoldCo, Ltd. # 6 Exhibit 6.Memorandum of Association of CLO HoldCo, Ltd. # 7 Exhibit 7.Ordinary Share Registry– CLO HoldCo # 8 Exhibit 8.Certificate of Registration of Exempted Limited Partnership – DAF Fund # 9 Exhibit 9.DAF Fund LP Agreement # 10 Exhibit 10.DAF Fund General Partner Register # 11 Exhibit 11.Amended and Restated Memorandum of Association of DAF Holdco # 12 Exhibit 12.Register of Management Shares DAF Holdco # 13 Exhibit 13.Register of Participating Shares DAF Holdco # 14 Exhibit 14.Certificate of Formation of DAF GP # 15 Exhibit 15.Assignment and Assumption of Membership Interests Agreement Dated March 24, 2021 # 16 Exhibit 16.HDF Certificate of Incorporation # 17 Exhibit 17.IRS Determination – HDF # 18 Exhibit 18.Narrative Description of Activities # 19 19.RESERVED FOR POSSIBLE SUPPLEMENTATION # 20 Exhibit 20.HDF Bylaws # 21 Exhibit 21.HSBF Certificate of Incorporation # 22 Exhibit 22.IRS Determination – HSBF # 23 Exhibit 23.SBF Overview Letter # 24 Exhibit 24.GKCCF Certificate of Formation # 25



	Exhibit 25.GKCCF Letter # 26 Exhibit 26.Bylaws HKCF # 27 Exhibit 27.Share Transfer Form # 28 Exhibit 28.March 25 Resolution – DAF Holdco # 29 Exhibit 29.April 2 Resolution – CLO HoldCo # 30 Exhibit 30.Written Resolution – Murphy # 31 Exhibit 31.Charitable Giving Overview, Grant Summary: 2012–2020 # 32 Exhibit 32.The Family Place Letter # 33 Exhibit 33.Cristo Rey Letter # 34 Exhibit 34.DCAC Letter # 35 Exhibit 35.Complaint # 36 Exhibit 36.CLO HoldCo – Register of Directors # 37 Exhibit 37.DAF Holdco – Register of Directors # 38 Exhibit 38.Register of Directors – Liberty CLO Holdco, Ltd. # 39 Exhibit 39.Share Register – Liberty CLO Holdco, Ltd. # 40 Exhibit 40.Register of Directors – MGM Studios Holdco, Ltd # 41 Exhibit 41.Share Register – MGM Studios Holdco, Ltd # 42 Exhibit 42.Register of Directors – HCT Holdco 2 – Ltd. # 43 Exhibit 43.Share Register – HCT Holdco 2, Ltd.)). (Attachments: # <u>1</u> Supplement # <u>2</u> Exhibit 19. Letter From The Dallas Foundation # <u>3</u> Exhibit Exhibit 44. Baltimore Sun Article re: Nonprofit Offshore Structures) (Phillips, Louis)
07/13/2021	<u>2558</u> Certificate of service re: <i>Documents Served on or Before July 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2533</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit D # <u>3</u> Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>2538</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	<u>2559</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
07/14/2021	<u>2560</u> PDF with attached Audio File. Court Date & Time [05/18/2021 09:37:03 AM]. File Size [ 4798 KB ]. Run Time [ 00:20:29 ]. (admin).
07/14/2021	<u>2561</u> PDF with attached Audio File. Court Date & Time [06/08/2021 02:03:12 PM]. File Size [ 26321 KB ]. Run Time [ 01:52:35 ]. (admin).
07/14/2021	<u>2562</u> PDF with attached Audio File. Court Date & Time [06/08/2021 04:04:27 PM]. File Size [ 27205 KB ]. Run Time [ 01:56:13 ]. (admin).
07/14/2021	<u>2563</u> Objection to (related document(s): <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an</i>



	<i>Indemnity Trust Agreement and (ii) Granting Related Relief</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust. (Taylor, Clay)
07/14/2021	<u>2564</u> PDF with attached Audio File. Court Date & Time [06/08/2021 09:34:21 AM]. File Size [ 26132 KB ]. Run Time [ 01:51:38 ]. (admin).
07/14/2021	<u>2565</u> PDF with attached Audio File. Court Date & Time [06/08/2021 11:30:55 AM]. File Size [ 23135 KB ]. Run Time [ 01:38:51 ]. (admin).
07/14/2021	<u>2566</u> PDF with attached Audio File. Court Date & Time [06/10/2021 09:44:23 AM]. File Size [ 31458 KB ]. Run Time [ 02:14:19 ]. (admin).
07/14/2021	<u>2567</u> PDF with attached Audio File. Court Date & Time [06/25/2021 08:48:05 AM]. File Size [ 77915 KB ]. Run Time [ 05:33:38 ]. (admin).
07/14/2021	<u>2568</u> Certificate of service re: <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2540</u> Support/supplemental document ( <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> )). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2021	<u>2569</u> Certificate of service re: (Supplemental) 1) <i>Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief</i> ; and 2) <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2540</u> Support/supplemental document ( <i>Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property</i> )). filed by Debtor Highland Capital Management, L.P., <u>2558</u> Certificate of service re: <i>Documents Served on or Before July 9, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2533</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2021 through April 30, 2021)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> )

	<p><i>Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>2538</u> Motion to file document under seal. (Debtor's Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2568</u> Certificate of service re: Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2540</u> Support/supplemental document (Notice of Filing of Exhibit C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</i></p>
07/14/2021	<p><u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. (Hoffman, Juliana)</p>
07/15/2021	<p><u>2571</u> Response opposed to (related document(s): <u>2534</u> Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
07/15/2021	<p><u>2572</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2491</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)</p>
07/15/2021	<p><u>2573</u> Certificate of service re: 1) <i>Notice of Hearing</i>; and 2) <i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2551</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (<i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) Fee amount \$188, Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit D # 3 Exhibit E)). Hearing to be held on 8/4/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2537</u> and for <u>2535</u>, filed by Debtor Highland Capital Management, L.P., <u>2554</u> Application for compensation (<i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i>) for Hayward PLLC, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$83,450.00, Expenses: \$5,939.09. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)</p>
07/16/2021	<p><u>2574</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2480</u> Application for compensation <i>Fourth Interim Application for</i></p>

	<i>Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30,). (Pomerantz, Jeffrey)</i>
07/16/2021	<u>2575</u> Witness and Exhibit List filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> )). (Attachments: # <u>1</u> Objectors Ex. A # <u>2</u> Objectors Ex. B # <u>3</u> Objectors Ex. C # <u>4</u> Objectors Ex. D # <u>5</u> Objectors Ex. E # <u>6</u> Objectors Ex. F # <u>7</u> Objectors Ex. G # <u>8</u> Objectors Ex. H # <u>9</u> Objectors Ex. I # <u>10</u> Objectors Ex. J # <u>11</u> Objectors Ex. K # <u>12</u> Objectors Ex. L # <u>13</u> Objectors Ex. M # <u>14</u> Objectors Ex. N # <u>15</u> Objectors Ex. O) (Taylor, Clay)
07/16/2021	<u>2576</u> Reply to (related document(s): <u>2563</u> Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) ( <i>Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2021	<u>2577</u> Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2576</u> Reply). (Hoffman, Juliana)
07/16/2021	<u>2578</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021. (Sbaiti, Mazin)
07/16/2021	<u>2579</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2559</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/19/2021	<u>2580</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>2578</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2532</u> Notice of docketing notice of appeal/record). Appellee designation due by 07/30/2021.) Responses due by 7/21/2021. (Blanco, J.)
07/19/2021	<u>2581</u> PDF with attached Audio File. Court Date & Time [07/19/2021 09:30:44 AM]. File Size [ 19741 KB ]. Run Time [ 01:24:28 ]. (admin).
07/19/2021	<u>2582</u> Court admitted exhibits date of hearing July 19, 2021 (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> ), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED PLAINTIFF'S/DEBTOR'S EXHIBITS #1, #2, #3, #4, #5 & #6 BY JOHN



	MORRIS AND DEFENDANT/RESPONDENT EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N & #O BY DAVOR RUKAVINA) (Edmond, Michael)
07/19/2021	<u>2583</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2480</u> Application for compensation Fourth Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	<u>2584</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2491</u> Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael)
07/19/2021	<u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Hoffman, Juliana)
07/19/2021	<u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
07/19/2021	<u>2587</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., The Charitable DAF Fund, L.P. (RE: related document(s) <u>2578</u> Appellant designation). (Sbaiti, Mazin)
07/20/2021	<u>2588</u> Order granting fourth interim application for compensation (related document # <u>2480</u> ) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP , fees awarded: \$7527021.50, expenses awarded: \$80299.92 Entered on 7/20/2021. (Okafor, M.)
07/20/2021	<u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
07/20/2021	<u>2590</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendant). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement) (Annable, Zachery)
07/20/2021	<u>2592</u> Notice of docketing APPELLANT SUPPLEMENTAL record on appeal. 3:21-CV-00879-K (RE: related document(s) <u>2149</u> Notice of appeal filed by Interested



	Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) (Blanco, J.)
07/20/2021	<u>2593</u> Request for transcript regarding a hearing held on 7/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
07/20/2021	<u>2594</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21-3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2589</u> , (Annable, Zachery)
07/20/2021	<u>2595</u> Application for compensation ( <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$55,885.00, Expenses: \$3,218.35. Filed by Other Professional Hayward PLLC (Annable, Zachery)
07/20/2021	<u>2596</u> Declaration re: ( <i>Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> )). (Annable, Zachery)
07/20/2021	<u>2597</u> Certificate of service re: 1) <i>Nineteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2021 Through May 31, 2021</i> ; 2) <i>Debtor's Reply to Plaintiffs' Post-Hearing Brief Regarding Motion for Modification of Order</i> ; and 3) <i>Debtor's Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on July 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: \$4,983.88. Filed by Attorney Juliana Hoffman Objections due by 8/4/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2571</u> Response opposed to (related document(s): <u>2534</u> Brief filed by Creditor CLO Holdco, Ltd., Interested Party CLO Holdco, Ltd., Creditor The Charitable DAF Fund, L.P., Interested Party The Charitable DAF Fund, L.P.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2572</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2491</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/21/2021	<u>2598</u> Transcript regarding Hearing Held 07/19/2021 (59 pages) RE: Debtor's Motion for Entry of Order Authorizing Creation of Indemnity Sub-Trust (2491); Pachulski Stang Fourth Interim Fee Application (2480). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, <a href="mailto:kathyrehlingtranscripts@gmail.com">kathyrehlingtranscripts@gmail.com</a> , Telephone number 972-786-3063. (RE: related document(s) <u>2583</u> Hearing held on 7/19/2021. (RE: related document(s) <u>2480</u> Application for compensation Fourth Interim Application for Compensation and for Reimbursement of

	<p>Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from December 1, 2020 through April 30, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 4/30/2021, filed by Attorney Jeffrey Nathan Pomerantz). (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), 2584 Hearing held on 7/19/2021. (RE: related document(s) <u>2491</u> Motion for leave (Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomerantz and J. Morris for Debtor; C. Taylor for J. Dondero; D. Draper for Dugaboy Trust; D. Rukavina for Advisors; M. Clemente for UCC; L. Lambert for UST. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 10/19/2021. (Rehling, Kathy)</p>
07/21/2021	<p><u>2599</u> Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document # <u>2491</u>) Entered on 7/21/2021. (Okafor, M.)</p>
07/21/2021	<p><u>2600</u> Certificate of service re: <i>1) Debtor's Reply in Support of Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief; and 2) The Official Committee of Unsecured Creditors' Response and Joinder to the Debtor's Response to the Objection to Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2576</u> Reply to (related document(s): <u>2563</u> Objection filed by Interested Party James Dondero, Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust) (<i>Debtor's Reply in Support of Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2577</u> Joinder by filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2576</u> Reply). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/22/2021	<p><u>2601</u> Certificate of service re: <i>1) Sixth Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021; and 2) First Consolidated Monthly Fee Application of Teneo Capital, LLC as Litigation Advisor for the Official Committee of Unsecured Creditors for the Period from April 15, 2021 to and Including June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,957.78. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89. Filed by Attorney Juliana Hoffman Objections due by 8/9/2021. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/22/2021	<p><u>2602</u> Certificate of service re: (<i>Supplemental</i>) <i>1) Debtor's Third Omnibus Objection to Certain No Liability Claims; 2) Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims; and 3) First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello;</p>

	<p>Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021. filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.), <u>2478</u> Certificate of service re: 1) <i>Order Requiring Disclosures</i>; 2) <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 Through December 31, 2020</i>; and 3) <i>Certification of No Objection Regarding Debtor's Third Omnibus Objection to Certain No Liability Claims [No Responses Filed]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2460</u> Order Requiring Disclosures (RE: related document(s)<u>3</u> Chapter 11 Voluntary Petition. Fee Amount \$1717. filed by Debtor Highland Capital Management, L.P.). Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);10 (b) whether Mr. Dondero or his family trusts have either a direct or indirect ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims). Entered on 6/18/2021 (Okafor, M.), <u>2461</u> Application for compensation (<i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from December 1, 2020 through December 31, 2020</i>) for Hayward PLLC, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$43,270.00, Expenses: \$1,693.45. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2464</u> Certificate of No Objection Regarding Debtor's Third Omnibus Objection to Certain No-Liability Claims filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2059</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2479</u> Certificate of service re: <i>First Order Sustaining Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2468</u> First Order sustaining Debtor's third omnibus objection to certain no liability claims (RE: related document(s)<u>2059</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 6/21/2021 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
07/23/2021	<p><u>2603</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2502</u> Application for compensation <i>Twentieth Monthly Application for</i></p>



	<i>Compensation and for Reimbursement of Expenses for the Period from May 1, 2021 through May 31, 2021 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2021 to 5/31/2021.</i> (Pomerantz, Jeffrey)
07/23/2021	<u>2604</u> Order granting motion to seal exhibits (related document # <u>2538</u> ) Entered on 7/23/2021. (Okafor, M.)
07/23/2021	<u>2605</u> Certificate of service re: <i>Documents Served on July 20, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2588</u> Order granting fourth interim application for compensation (related document <u>2480</u> ) granting for Jeffrey Nathan Pomerantz of Pachulski Stang Ziehl & Jones LLP, fees awarded: \$7527021.50, expenses awarded: \$80299.92 Entered on 7/20/2021. (Okafor, M.), <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2590</u> Declaration re: <i>(Declaration of John A. Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement Pursuant to Bankruptcy Rule 9019 and Authorizing Actions Consistent Therewith)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendant). (Attachments: # 1 Exhibit 1—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>2594</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2589</u> , filed by Debtor Highland Capital Management, L.P., <u>2595</u> Application for compensation ( <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$55,885.00, Expenses: \$3,218.35. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC, <u>2596</u> Declaration re: <i>(Declaration of Alexander McGeoch in Support of Proposed Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> )). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/23/2021	<u>2606</u> Certificate of service re: <i>Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry Into an Indemnity Trust Agreement and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2599</u> Order granting Debtor's Motion for Entry of an Order (i) Authorizing the (A) Creation of an Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (ii) Granting Related Relief (related document <u>2491</u> ) Entered on 7/21/2021. (Okafor, M.)). (Kass, Albert)
07/26/2021	<u>2607</u> Stipulation by Highland Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2345</u> Order to set hearing). (Annable,



	Zachery)
07/26/2021	<u>2608</u> Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/27/2021	<u>2609</u> Application for compensation ( <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: \$11,549.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	<u>2610</u> Application for compensation ( <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: \$4,933.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
07/27/2021	<u>2611</u> Application for compensation <i>Sixth Interim Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. (Hoffman, Juliana)
07/27/2021	<u>2612</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>2514</u> Application for compensation <i>Nineteenth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: to, Fee: \$88,932.60, Expenses: \$0.). (Hoffman, Juliana)
07/27/2021	<u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
07/27/2021	<u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
07/28/2021	<u>2615</u> Objection to (related document(s): <u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty-Five Pages</i> filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Initial Objection To Motion For Leave And To Emergency Consideration Of The Motion For Leave</i> filed by Interested Party Highland Dallas Foundation, Inc., Respondent Mark Patrick. (Phillips, Louis)
07/28/2021	<u>2616</u> Support/supplemental document ( <i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ). (Attachments: # <u>1</u> Exhibit B--Redacted PetroCap Partnership Agreement # <u>2</u> Exhibit C--Redacted SLP Partnership Agreement) (Annable, Zachery)
07/28/2021	<u>2617</u> <b>SEALED document regarding: Exhibit B: PetroCap Partnership Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2604</u> Order on motion to seal). (Annable, Zachery)

07/28/2021	<u>2618</u> SEALED document regarding: Exhibit C: SLP Partnership Agreement per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2604</u> Order on motion to seal). (Annable, Zachery)
07/28/2021	<u>2619</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing the Filing Under Seal of Exhibits to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2604</u> Order granting motion to seal exhibits (related document <u>2538</u> ) Entered on 7/23/2021. (Okafor, M.)). (Kass, Albert)
07/29/2021	<u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15) (Montgomery, Paige)
07/29/2021	<u>2621</u> Objection to (related document(s): <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <u>1</u> Exhibit A – NexPoint PSA # <u>2</u> Exhibit B – PSA Redline)</i> (Berghman, Thomas)
07/29/2021	<u>2623</u> Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21–10449, Civil Case Number: 3:21–cv–00538–N (RE: related document(s) <u>1957</u> Notice of appeal . (Whitaker, Sheniqua)
07/29/2021	<u>2624</u> Transmittal of addendum to record on appeal to U.S. District Court . Number of appellee records: 5 Sealed Documents (RE: related document(s) <u>2623</u> Addendum to record on appeal. Reason for supplemental record: United States Court of Appeals Order 00515933197. Circuit Case 21–10449, Civil Case Number: 3:21–cv–00538–N (RE: related document(s) <u>1957</u> Notice of appeal .) (Whitaker, Sheniqua)
07/29/2021	<u>2625</u> Notice of docketing supplemental record on appeal. (RE: related document(s) <u>1957</u> Notice of appeal . (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Civil Case 3:21–CV–00538–N, Circuit Court Case 21–10449 (Whitaker, Sheniqua)
07/29/2021	<u>2626</u> Objection to (related document(s): <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> filed by Debtor Highland Capital Management, L.P.) filed by Interested Party NexPoint Advisors, L.P.. (Attachments: # <u>1</u> Exhibit A – PSA # <u>2</u> Exhibit B – PSA Redline) (Berghman, Thomas)
07/29/2021	<u>2627</u> Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty–Five Page (related document # <u>2613</u> ) Entered on 7/29/2021. (Okafor, M.)
07/29/2021	<u>2628</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
07/29/2021	<u>2629</u> Chapter 11 Post–Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
07/29/2021	<u>2630</u> Certificate of service re: 1) Stipulation (A) Amending Scheduling Order and (B) Consolidating and Resolving Certain Matters; and 2) Debtors Amended Notice of Rule 30(b)(6) Deposition to Wick Phillips Gould & Martin, LLP Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2607</u> Stipulation by Highland

	Capital Management, L.P. and Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2345</u> Order to set hearing). filed by Debtor Highland Capital Management, L.P., <u>2608</u> Notice to take deposition of Wick Phillips Gould & Martin, LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/30/2021	<u>2631</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/30/2021	<u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$1,200,401.75, Expenses: \$19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. (Pomerantz, Jeffrey)
07/30/2021	<u>2633</u> Witness and Exhibit List filed by Interested Party NexPoint Advisors, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property, <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i> (Berghman, Thomas)
07/30/2021	<u>2634</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property.</i> (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) (Annable, Zachery)
07/30/2021	<u>2635</u> Witness and Exhibit List filed by Interested Party PetroCap, LLC (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i> (Schultz, Sarah)
07/30/2021	<u>2636</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) ( <i>Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief.</i> (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) (Annable, Zachery)
07/30/2021	<u>2637</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u> , (Montgomery, Paige)
07/30/2021	<u>2638</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2513</u> Notice of appeal, (Annable, Zachery).

07/30/2021	<u>2639</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket No. 2263]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2263</u> Assignment/Transfer of Claim. Fee Amount \$156. Transfer Agreement 3001 (e) 2 Transferors: HarbourVest 2017 Global Fund L.P. (Claim No. 143); HarbourVest 2017 Global AIF L.P. (Claim No. 147); HarbourVest Dover Street IX Investment L.P. (Claim No. 150); HV International VIII Secondary L.P. (Claim No. 153); HarbourVest Skew Base AIF L.P. (Claim No. 154); HarbourVest Partners L.P. (Claim No. 149) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
07/30/2021	<u>2640</u> Certificate of service re: 1) <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 Through January 31, 2021</i> ; 2) <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i> ; and 3) <i>Sixth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2021 Through and Including May 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2609</u> Application for compensation ( <i>Fifth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 1/1/2021 to 1/31/2021, Fee: \$11,549.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2610</u> Application for compensation ( <i>Sixth Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Deloitte Tax LLP, Other Professional, Period: 2/1/2021 to 2/28/2021, Fee: \$4,933.20, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2611</u> Application for compensation <i>Sixth Interim Application for Compensation for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2021 to 5/31/2021, Fee: \$339,167.25, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/17/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</i>
08/01/2021	<u>2641</u> Motion to compel Mediation. Filed by Interested Party James Dondero (Taylor, Clay)
08/02/2021	<u>2642</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u> . (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)
08/02/2021	<u>2643</u> Application for compensation ( <i>Fourth Monthly Fee Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: \$37153.08, Expenses: \$30.90. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2644</u> Application for compensation ( <i>Fifth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: \$41,936.40, Expenses: \$573.69. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2645</u> Application for compensation ( <i>Sixth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: \$35,841.24, Expenses: \$0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)



08/02/2021	<u>2646</u> Application for compensation ( <i>Seventh Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: \$78,401.16, Expenses: \$0.00. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 8/23/2021. (Hesse, Gregory)
08/02/2021	<u>2647</u> Certificate of service re: 1) <i>The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> ; 2) <i>Motion for Expedited Consideration on the Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> ; and 3) <i>Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2613</u> <i>Motion for leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/17/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2614</u> <i>Motion for expedited hearing</i> (related documents <u>2613</u> <i>Motion for leave</i> ) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty-Five Pages</i> Filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2616</u> <i>Support/supplemental document (Notice of Filing of Exhibits B and C to the Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> <i>Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ). (Attachments: # 1 Exhibit B—Redacted PetroCap Partnership Agreement # 2 Exhibit C—Redacted SLP Partnership Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/02/2021	<u>2648</u> Reply to (related document(s): <u>2621</u> <i>Objection</i> filed by Interested Party NexPoint Advisors, L.P.) ( <i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/02/2021	<u>2649</u> Reply to (related document(s): <u>2626</u> <i>Objection</i> filed by Interested Party NexPoint Advisors, L.P.) ( <i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/02/2021	<u>2650</u> Joinder by the Official Committee of Unsecured Creditors to the Debtor's Reply and Response filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2648</u> Reply, <u>2649</u> Reply). (Hoffman, Juliana)
08/02/2021	<u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, Expenses: \$12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. (Hoffman, Juliana)
08/02/2021	<u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> <i>Motion for examination</i> ) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # <u>1</u> Proposed Order) (Reid, Penny)
08/02/2021	<u>2653</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2636</u> <i>List (witness/exhibit/generic)</i> ). (Attachments: # <u>1</u> Exhibit 18) (Annable, Zachery)

08/02/2021	<u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order) (Reid, Penny)
08/03/2021	<u>2655</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2554</u> Application for compensation ( <i>Thirteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from January 1, 2021 through January 31, 2021</i> ) for Hayward PLLC, Debto). (Annable, Zachery)
08/03/2021	<u>2656</u> Amended Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>2648</u> Reply filed by Debtor Highland Capital Management, L.P.) ( <i>Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)
08/03/2021	<u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Exhibit UST Questionnaire and Information Sheet (Ex A) # <u>2</u> Exhibit Proposed Order (Ex B)) (Taylor, Clay)
08/03/2021	<u>2658</u> Certificate of service re: <i>Documents Served on July 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2627</u> Order Granting The Official Committee of Unsecured Creditors' Motion for Leave to File a Brief in Excess of Twenty-Five Page (related document <u>2613</u> ) Entered on 7/29/2021. (Okafor, M.), <u>2628</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2021 filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2629</u> Chapter 11 Post-Confirmation Report for the Quarter Ending: June 30, 2021 filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/03/2021	<u>2659</u> Objection to (related document(s): <u>1888</u> Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/04/2021	<u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)
08/04/2021	<u>2661</u> Motion to appear pro hac vice for Thomas P. Cimino. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2662</u> Motion to appear pro hac vice for Michael M. Eidelman. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2663</u> Motion to appear pro hac vice for David L. Kane. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2664</u> Motion to appear pro hac vice for William W. Thorsness. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)
08/04/2021	<u>2665</u> Motion to appear pro hac vice for Douglas J. Lipke. Fee Amount \$100 Filed by Interested Party James Dondero (Taylor, Clay)

08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2661</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2662</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2663</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2664</u> ). (U.S. Treasury)
08/04/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28893951, amount \$ 100.00 (re: Doc# <u>2665</u> ). (U.S. Treasury)
08/04/2021	<u>2666</u> PDF with attached Audio File. Court Date & Time [08/04/2021 08:49:40 AM]. File Size [ 28979 KB ]. Run Time [ 02:03:57 ]. (admin).
08/04/2021	<u>2667</u> Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS. (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14 & #15 THAT APPEAR AT DEOC. 2634 IN REGARDS TO MAPLE HOLDINGS BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	<u>2668</u> Court admitted exhibits date of hearing August 4, 2021 (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17 THAT APPEAR AT DOC. #2636 AND EXHIBIT #18 THAT APPEAR AT DOC. #2653 FOR PETROCAP III; BY JOHN MORRIS) (Edmond, Michael)
08/04/2021	2669 Hearing held on 8/4/2021. (RE: related document(s) <u>1888</u> Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.) (Edmond, Michael)
08/04/2021	2670 Hearing held on 8/4/2021. (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)

08/04/2021	2671 Hearing held on 8/4/2021. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.) (Edmond, Michael)
08/04/2021	<u>2672</u> Request for transcript regarding a hearing held on 8/4/2021. The requested turn-around time is hourly. (Edmond, Michael)
08/04/2021	<u>2673</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # <u>1</u> Exhibit A)(Vasek, Julian)
08/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28895617, amount \$ 298.00 (re: Doc# <u>2673</u> ). (U.S. Treasury)
08/04/2021	<u>2674</u> Certificate of service re: <i>Documents Served on July 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2631</u> Notice to take deposition of Mark Patrick filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/2021, Fee: \$1,200,401.75, Expenses: \$19,123.23. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/20/2021. filed by Debtor Highland Capital Management, L.P., <u>2634</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2535</u> Motion to sell Property <b>NOTE: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS.</b> (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) filed by Debtor Highland Capital Management, L.P., <u>2636</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15) filed by Debtor Highland Capital Management, L.P., <u>2637</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2638</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2513</u> Notice of appeal,. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/05/2021	<u>2675</u> Transcript regarding Hearing Held 08/04/2021 (83 pages) RE: Status Conference re: Application for Administrative Expenses; Motions to Sell. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling,



	<p>kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2669 Hearing held on 8/4/2021. (RE: related document(s) <u>1888</u> Application for administrative expenses, filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Nonevidentiary status conference. Parties expect to submit an agreed scheduling order shortly.), 2670 Hearing held on 8/4/2021. (RE: related document(s) <u>2535</u> Motion to sell Property: THE PROPERTY TO BE SOLD PURSUANT TO THIS MOTION TO SELL WILL NOT BE SOLD FREE AND CLEAR OF LIENS (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.), 2671 Hearing held on 8/4/2021. (RE: related document(s) <u>2537</u> Motion to sell property free and clear of liens under Section 363(f) (Motion of the Debtor for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief), filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; L. Drawhorn for NexBank; M. Clemente for UCC; T. Berghman and J. Vasek for NexPoint Advisors; C. Taylor and J. Eidelman for J. Dondero; D. Draper for Dugaboy Trust; S. Shultz for PetroCap III purchaser. Evidentiary hearing. Objections and counter-bids withdrawn. Motion approved. Counsel to upload order.)). Transcript to be made available to the public on 11/3/2021. (Rehling, Kathy)</p>
08/05/2021	<p><u>2676</u> Certificate of service re: <i>Documents Served on August 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2642</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). Hearing to be held on 8/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2620</u>, (Attachments: # 1 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2648</u> Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Real Property and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2649</u> Reply to (related document(s): <u>2626</u> Objection filed by Interested Party NexPoint Advisors, L.P.) (<i>Debtor's Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (ii) Granting Related Relief</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2650</u> Joinder by the Official Committee of Unsecured Creditors to the Debtor's Reply and Response filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2648</u> Reply, <u>2649</u> Reply). filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, Expenses: \$12,211.68. Filed by Attorney Juliana Hoffman Objections due by 8/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 8/23/2021. (Attachments: # 1 Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2653</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2636</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 18) filed by Debtor Highland Capital Management, L.P., <u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1</p>

	Proposed Order) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/06/2021	<u>2678</u> Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s) <u>2607</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.)
08/06/2021	<u>2679</u> Certificate Certificate of Conference filed by Interested Party James Dondero (RE: related document(s) <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> )). (Taylor, Clay)
08/06/2021	<u>2680</u> Certificate of service re: <i>1) Debtor's Amended Reply in Support of its Motion for Entry of an Order (I) Authorizing the Sale of Certain Property and (II) Granting Related Relief; and 2) Debtor's Objection to Application for Administrative Claim of NexBank Capital Inc., NexBank Securities, Inc., NexBank Title, Inc., and NexBank</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2656</u> Amended Reply to (related document(s): <u>2621</u> Objection filed by Interested Party NexPoint Advisors, L.P., <u>2648</u> Reply filed by Debtor Highland Capital Management, L.P.) ( <i>Debtor's Amended Reply in Support of Its Motion for Entry of an Order (i) Authorizing the Sale of Certain Property and (ii) Granting Related Relief</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Debtor Highland Capital Management, L.P., <u>2659</u> Objection to (related document(s): <u>1888</u> Application for administrative expenses filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2021	<u>2681</u> Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document # <u>2661</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2682</u> Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document # <u>2662</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2683</u> Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document # <u>2663</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2684</u> Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document # <u>2664</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2685</u> Order granting motion to appear pro hac vice adding Douglas J. Lipke for James Dondero (related document # <u>2665</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2686</u> Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s) <u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 8/6/2021 (Okafor, M.)
08/06/2021	<u>2687</u> Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document # <u>2535</u> ) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2688</u> Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) <u>2652</u> Motion to

	shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination)) Entered on 8/6/2021. (Okafor, M.)
08/06/2021	<u>2689</u> Certificate of service re: <i>Memorandum Opinion and Order Holding Certain Parties and Their Attorneys in Civil Contempt of Court for Violation of Bankruptcy Court Orders</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)). (Kass, Albert)
08/06/2021	<u>2690</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2660</u> Memorandum Opinion And Order Holding Certain Parties And Their Attorneys In Civil Contempt of Court For Violation Of Bankruptcy Court Orders (RE: related document(s) <u>2247</u> Motion for order to show cause filed by Debtor Highland Capital Management, L.P.). Entered on 8/4/2021 (Okafor, M.)) No. of Notices: 3. Notice Date 08/06/2021. (Admin.)
08/08/2021	<u>2691</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2681</u> Order granting motion to appear pro hac vice adding Thomas P. Cimino for James Dondero (related document <u>2661</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2692</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2682</u> Order granting motion to appear pro hac vice adding Michael E. Eidelman for James Dondero (related document <u>2662</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2693</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2683</u> Order granting motion to appear pro hac vice adding David L. Kane for James Dondero (related document <u>2663</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/08/2021	<u>2694</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2684</u> Order granting motion to appear pro hac vice adding William W. Thorsness for James Dondero (related document <u>2664</u> ) Entered on 8/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/08/2021. (Admin.)
08/09/2021	<u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. (Hoffman, Juliana)
08/09/2021	<u>2696</u> Adversary case 21–03051. Complaint by James Dondero against Alvarez & Marsal CRF Management, LLC and Farallon Capital Management, L.L.C.. Fee Amount \$350 (Attachments: # <u>1</u> Appendix # <u>2</u> Adversary Cover Sheet). Nature(s) of suit: 01 (Determination of removed claim or cause). (Rosenthal, Michael)
08/09/2021	<u>2697</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. (Leen, Edward)
08/09/2021	<u>2698</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. (Leen, Edward)

08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 52.00). Receipt number 28905213, amount \$ 52.00 (re: Doc# <u>2697</u> ). (U.S. Treasury)
08/09/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 52.00). Receipt number 28905213, amount \$ 52.00 (re: Doc# <u>2698</u> ). (U.S. Treasury)
08/10/2021	<u>2699</u> Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document # <u>2537</u> ) Entered on 8/10/2021. (Rielly, Bill)
08/11/2021	<u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
08/11/2021	<u>2701</u> Certificate of No Objection filed by Other Professional Teneo Capital, LLC (RE: related document(s) <u>2586</u> Application for compensation of <i>Teneo Capital, LLC as Litigation Advisor</i> for Official Committee of Unsecured Creditors, Other Professional, Period: 4/15/2021 to 6/30/2021, Fee: \$80,000.00, Expenses: \$118.89.). (Hoffman, Juliana)
08/11/2021	<u>2702</u> Certificate of service re: <i>Documents Served on August 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2678</u> Order approving stipulation (A) amending schedule and (B) consolidating and resolving certain matters (RE: related document(s) <u>2607</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Trial in the Adversary Proceeding (including on the Advisors Admin Claim) is set for December 7 and 8, 2021 at 9:30 a.m. (Central Time), Entered on 8/6/2021 (Okafor, M.), <u>2686</u> Second Agreed Supplemental Order authorizing the retention and employment of Hunt Andrews Kurth LLP as special counsel nunc pro tunc to the petition date (RE: related document(s) <u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 8/6/2021 (Okafor, M.), <u>2687</u> Order approving Debtors Motion for Entry of an Order (i)Authorizing the Sale of Certain Property and (ii) Granting Related Relief (related document <u>2535</u> ) Entered on 8/6/2021. (Okafor, M.), <u>2688</u> Order granting the Committee's Emergency Motion to Set Briefing Schedule for Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Re: related document(s) <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination)) Entered on 8/6/2021. (Okafor, M.)). (Kass, Albert)
08/12/2021	<u>2703</u> Certificate of No Objection filed by Other Professional Hayward PLLC (RE: related document(s) <u>2595</u> Application for compensation ( <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from February 1, 2021 through February 28, 2021</i> ) for Hayward PLLC, Deb). (Annable, Zachery)
08/12/2021	<u>2704</u> Certificate of service re: <i>Twentieth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2021 to and Including June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2695</u> Application for compensation <i>Twentieth Monthly Application for Compensation</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2021 to 6/30/2021, Fee: \$80,105.04, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 8/30/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)



08/13/2021	<u>2706</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/13/2021	<u>2707</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). Appellant Designation due by 08/18/2021. (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	<u>2708</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01895-D. (RE: related document(s) <u>2673</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2599</u> Order on motion for leave). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
08/13/2021	<u>2709</u> Certificate of service re: <i>Order Approving Motion of the Debtor for Entry of an Order (I) Authorizing the Sale and/or Forfeiture of Certain Limited Partnership Interests and Other Rights and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2699</u> Order granting motion of the Debtor for entry of an order (i) Authorizing the sale and/or forfeiture of certain limited partnership interests and other rights and (ii) Granting related relief (related document <u>2537</u> ) Entered on 8/10/2021.). (Kass, Albert)
08/16/2021	<u>2710</u> Application for compensation – <i>Eighth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: \$161,981.82, Expenses: \$1,100.68. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/16/2021	<u>2711</u> Motion to appear pro hac vice for Blaire Cahn. Fee Amount \$100 Filed by Interested Party Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (Smith, Frances)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28921283, amount \$ 100.00 (re: Doc# <u>2711</u> ). (U.S. Treasury)
08/16/2021	<u>2712</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # <u>1</u> Ex. 1 – Order)(Assink, Bryan)
08/16/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28921379, amount \$ 298.00 (re: Doc# <u>2712</u> ). (U.S. Treasury)
08/16/2021	<u>2713</u> Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti &amp; Company PLLC, Mazin A. Sbaiti, Jonathan Bridges</i> . Fee Amount \$298 filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP. Appellant Designation due by 08/30/2021. (Sbaiti, Mazin)
08/16/2021	<u>2714</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Transcript) (Taylor, Clay)
08/16/2021	<u>2715</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official

	Committee of Unsecured Creditors) filed by Dolomiti LLC, Dana Scott Breault, SLHC Trust, The Get Good Non Exempt Trust No 2, Get Good Non Exempt Trust No 1, The Dondero Insurance Rabbi Trust, Get Better Trust, Canis Minor Trust, Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
08/16/2021	<u>2716</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Advisors GP, LLC, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Vasek, Julian)
08/16/2021	<u>2717</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party NexPoint Strategic Opportunities Fund. (Hogewood, A.)
08/16/2021	<u>2718</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order</i> filed by Highland Dallas Foundation, Inc., Charitable DAF GP, L.P., Charitable DAF HoldCo, Ltd., Interested Party Charitable DAF Fund, LP. (Phillips, Louis)
08/16/2021	<u>2719</u> Notice of Appearance and Request for Notice by Cortney C. Thomas filed by Interested Parties Okada Family Foundation, Inc., The Okada Insurance Rabbi Trust, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Mark & Pamela Okada Family Trust – Exempt Trust #1, Mark Okada. (Thomas, Cortney)
08/16/2021	<u>2720</u> Motion to appear pro hac vice for Brian Glueckstein. Fee Amount \$100 Filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust – Exempt Trust #1, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Okada Insurance Rabbi Trust (Thomas, Cortney)
08/16/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28921800, amount \$ 100.00 (re: Doc# <u>2720</u> ). (U.S. Treasury)
08/16/2021	<u>2721</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties Mark Okada, Okada Family Foundation, Inc., The Mark & Pamela Okada Family Trust – Exempt Trust #1, The Mark & Pamela Okada Family Trust – Exempt Trust #2, The Okada Insurance Rabbi Trust. (Thomas, Cortney)
08/16/2021	<u>2722</u> Joinder by <i>NexPoint RE Entities' to Objections to 2004 Motion</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, Vinebrook Homes, Trust, Inc., Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., <u>2714</u> Objection, <u>2715</u> Objection, <u>2716</u> Objection). (Drawhorn, Lauren)
08/16/2021	<u>2723</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>and Reservation of Rights</i> filed by Witness Nancy Dondero. (Attachments: # <u>1</u> Exhibit A) (Deutsch-Perez, Deborah)

08/16/2021	<u>2724</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) <i>Objection To The Motion Of The Official Committee Of Unsecured Creditors And The Litigation Advisor For Entry Of An Order</i> filed by Interested Parties Mary Jalonick, Highland Kansas City Foundation, Inc., Highland Santa Barbara Foundation, Inc., The Greater Kansas City Community Foundation, The Santa Barbara Foundation, The Dallas Foundation. (Attachments: # <u>1</u> Publication Regarding Ms. Jalonicks Service) (Phillips, Louis)
08/16/2021	<u>2725</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Matthew DiOrto, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse. (Smith, Frances)
08/16/2021	<u>2726</u> Objection to (related document(s): <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor Grant James Scott III. (Kane, John)
08/17/2021	<u>2727</u> Certificate of service re: Reservation of Rights Regarding Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure filed by Interested Party Matthew DiOrto, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (RE: related document(s) <u>2725</u> Objection). (Soderlund, Eric)
08/17/2021	<u>2728</u> Motion to appear pro hac vice for Susheel Kirpalani. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige) MODIFIED attorney name on 8/19/2021 (Okafor, M.).
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924194, amount \$ 100.00 (re: Doc# <u>2728</u> ). (U.S. Treasury)
08/17/2021	<u>2729</u> Motion to appear pro hac vice for Benjamin Finestone. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924291, amount \$ 100.00 (re: Doc# <u>2729</u> ). (U.S. Treasury)
08/17/2021	<u>2730</u> Motion to appear pro hac vice for Deborah Newman. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924312, amount \$ 100.00 (re: Doc# <u>2730</u> ). (U.S. Treasury)
08/17/2021	<u>2731</u> Motion to appear pro hac vice for Jordan Harap. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
08/17/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28924326, amount \$ 100.00 (re: Doc# <u>2731</u> ). (U.S. Treasury)
08/17/2021	<u>2732</u> Witness and Exhibit List <i>for August 19, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Montgomery,

	Paige)
08/17/2021	<u>2733</u> Witness and Exhibit List filed by Creditor Grant James Scott III (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Kane, John)
08/17/2021	<u>2734</u> Application for compensation – <i>Ninth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: \$59,205.24, Expenses: \$169.36. Filed by Attorney Gregory Getty Hesse, Spec. Counsel Hunton Andrews Kurth LLP Objections due by 9/7/2021. (Hesse, Gregory)
08/17/2021	<u>2735</u> Witness and Exhibit List filed by Interested Party Highland Dallas Foundation, Inc. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 27 # <u>16</u> 28 # <u>17</u> Exhibit 36 # <u>18</u> Exhibit 37) (Phillips, Louis)
08/17/2021	<u>2736</u> Certificate of service re: Motion for Order on Rule 2004 Parties, Notice of Hearing on Motion for Order on Rule 2004 Parties, Amended Notice of Hearing on Motion for Order on Rule 2004 Parties, Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Motion for Expedited Consideration on Motion to Set Briefing Schedule on Motion for Order on Rule 2004 Parties, Order Granting Emergency Motion to Set Briefing Schedule, Motion for Leave to File Brief in Excess of 25–pages, Motion for Expedited Consideration of Motion for Leave, Order Granting Leave to File Brief in Excess of 25–pages filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2613</u> Motion for leave to <i>File a Brief in Excess of Twenty–Five Pages</i> , <u>2614</u> Motion for expedited hearing(related documents <u>2613</u> Motion for leave) <i>Motion for Expedited Consideration on The Official Committee of Unsecured Creditors' Emergency Motion for Leave to File a Brief in Excess of Twenty–Five Pages</i> , <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion., <u>2627</u> Order on motion for leave, <u>2637</u> Notice of hearing, <u>2642</u> Notice of hearing, <u>2652</u> Motion to shorten time to Response Deadline to Rule 2004 Motion (RE: related document(s) <u>2620</u> Motion for examination), <u>2654</u> Motion for expedited hearing(related documents <u>2652</u> Motion to extend/shorten time) , <u>2688</u> Order on motion to extend/shorten time). (Montgomery, Paige)
08/18/2021	<u>2737</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X # <u>25</u> Dondero Ex. Y # <u>26</u> Dondero Ex. Z # <u>27</u> Dondero Ex. AA # <u>28</u> Dondero Ex. BB # <u>29</u> Dondero Ex. CC # <u>30</u> Dondero Ex. DD # <u>31</u> Dondero Ex. EE # <u>32</u> Dondero Ex. FF # <u>33</u> Dondero Ex. GG # <u>34</u> Dondero Ex. HH # <u>35</u> Dondero Ex. II # <u>36</u> Dondero Ex. JJ) (Assink, Bryan)
08/18/2021	<u>2738</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2673</u> Notice of appeal). Appellee designation due by 09/1/2021. (Vasek, Julian)
08/18/2021	<u>2739</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Creditor The Dugaboy Investment Trust (RE: related document(s) <u>2673</u> Notice of appeal). (Vasek, Julian)
08/18/2021	<u>2740</u> Witness and Exhibit List filed by Witness Nancy Dondero (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully



	in the Motion.). (Deutsch–Perez, Deborah)
08/18/2021	<u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust. (Attachments: # <u>1</u> Proposed Order) (Montgomery, Paige)
08/18/2021	<u>2742</u> Application for compensation <i>Twenty–Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. (Pomerantz, Jeffrey)
08/18/2021	<u>2743</u> Notice of Agreed Order filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub–Trust (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit Exhibits 1 to 15)). (Attachments: # <u>1</u> Exhibit A–Proposed Order) (Montgomery, Paige)
08/19/2021	<u>2744</u> Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document # <u>2711</u> ) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	<u>2745</u> Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust – Exempt Trust #1; The Mark & Pamela Okada Family Trust – Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document # <u>2720</u> ) Entered on 8/19/2021. (Okafor, M.)
08/19/2021	<u>2746</u> Hearing held on 8/19/2021. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.) (Edmond, Michael)
08/19/2021	<u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/19/2021	<u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/19/2021	<u>2749</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at

	<a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2748</u> , (Annable, Zachery)
08/20/2021	<u>2750</u> Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc # <u>2620</u> ) Entered on 8/20/2021. (Okafor, M.)
08/20/2021	<u>2751</u> Certificate of service re: <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> Witness and Exhibit List for August 19, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
08/20/2021	<u>2752</u> Certificate of service re: 1) <i>Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> ; and 2) <i>Twenty-Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2741</u> Omnibus Reply to (related document(s): <u>2714</u> Objection filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/21/2021	<u>2753</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2744</u> Order granting motion to appear pro hac vice adding Blaire Cahn for Matthew DiOrio, Scott Ellington, Isaac Leventon, Mary Kathryn Lucas (nee Irving), John Paul Sevilla, Stephanie Vitiello, and Frank Waterhouse (related document <u>2711</u> ) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/21/2021	<u>2754</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2745</u> Order granting motion to appear pro hac vice adding Brian D. Glueckstein for The Mark & Pamela Okada Family Trust – Exempt Trust #1; The Mark & Pamela Okada Family Trust – Exempt Trust #2; The Okada Insurance Rabbi Trust; Mark Okada and Okada Family Foundation, Inc. (related document <u>2720</u> ) Entered on 8/19/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/21/2021. (Admin.)
08/23/2021	<u>2755</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2632</u> Application for compensation <i>Twenty-First Monthly Application for Compensation and for Reimbursement of Expenses for the Period from June 1, 2021 through June 30, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2021 to 6/30/). (Pomerantz, Jeffrey)
08/23/2021	<u>2756</u> Response opposed to (related document(s): <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> ) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
08/23/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28936978, amount \$ 298.00 (re: Doc# <u>2713</u> ). (U.S. Treasury)
08/23/2021	<u>2757</u> Agreed first amended scheduling order (RE: related document(s) <u>2196</u> Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30

	AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> , Entered on 8/23/2021 (Okafor, M.)
08/23/2021	<u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal). (Sbaiti, Mazin)
08/23/2021	<u>2760</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/23/2021	<u>2761</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2758</u> Amended Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti &amp; Company PLLC, Mazin A. Sbaiti, Jonathan Bridges</i> . (Whitaker, Sheniqua)
08/23/2021	<u>2762</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01974-X. (RE: related document(s) <u>2758</u> Amended notice of appeal filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal).) (Whitaker, Sheniqua) MODIFIED text on 8/24/2021 (Whitaker, Sheniqua).
08/24/2021	<u>2763</u> Withdrawal ( <i>Notice of Withdrawal of Amended Motion to Compel Mediation</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> )). (Assink, Bryan)
08/24/2021	<u>2765</u> Certificate of mailing regarding appeal (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). Appellant Designation due by 08/30/2021. (Attachments: # 1 Ex. 1 – Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
08/24/2021	<u>2766</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Attachments: # 1 Ex. 1 – Order)) (Whitaker, Sheniqua)
08/24/2021	<u>2767</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-01979-S. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Whitaker, Sheniqua)
08/24/2021	<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 8/24/2021. (Okafor, M.).
08/24/2021	<u>2769</u> Order granting motion to appear pro hac vice adding Susheel Kirpalani for Litigation Sub-Trust (related document # <u>2728</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2770</u> Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub-Trust (related document # <u>2729</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2771</u> Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub-Trust (related document # <u>2730</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2772</u> Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub-Trust (related document # <u>2731</u> ) Entered on 8/24/2021. (Okafor, M.)
08/24/2021	<u>2773</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i> ) filed by Debtor Highland Capital

	Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
08/24/2021	<u>2774</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
08/24/2021	<u>2775</u> Certificate of service re: 1) <i>Notice of Proposed Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> ; 2) <i>Reorganized Debtors Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> ; and 3) <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2743</u> <i>Notice of Agreed Order</i> filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Exhibit Exhibits 1 to 15)). (Attachments: # 1 Exhibit A-Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>2749</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 9/13/2021 at 02:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2748</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/24/2021	<u>2776</u> Certificate of service re: ( <i>Supplemental</i> ) 1) <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> ; and 2) <i>Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> <i>Witness and Exhibit List for August 19, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2741</u> <i>Omnibus Reply to</i> (related document(s): <u>2714</u> <i>Objection</i> filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2751</u> Certificate of service re: <i>The Litigation Trustees Witness and Exhibit List for August 19, 2021 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2732</u> <i>Witness and Exhibit List for August 19, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion.). filed by Creditor Committee Official Committee of Unsecured Creditors). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2752</u> Certificate of service re: 1) <i>Omnibus Reply of the Litigation Trustee in Support of Motion for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> ; and 2) <i>Twenty-Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 Through July 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2741</u> <i>Omnibus Reply to</i> (related document(s): <u>2714</u> <i>Objection</i> filed by Interested Party James Dondero) filed by Interested Party Litigation Trustee of the Highland



	Capital Management, L.P. Litigation Sub-Trust. (Attachments: # 1 Proposed Order) filed by Interested Party Litigation Trustee of the Highland Capital Management, L.P. Litigation Sub-Trust, <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2021 to 7/31/2021, Fee: \$1,275,026.00, Expenses: \$25,276.19. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/8/2021. filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
08/25/2021	<u>2777</u> Certificate of service re: <i>Agreed Order Granting the Motion of the Official Committee of Unsecured Creditors and the Litigation Advisor for Entry of an Order Authorizing the Examination of Rule 2004 Parties Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2750</u> Agreed Order granting motion for 2004 examination of various entities/persons as set forth fully in the Motion (related doc <u>2620</u> ) Entered on 8/20/2021. (Okafor, M.)). (Kass, Albert)
08/26/2021	<u>2778</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2553</u> Amended appellant designation of contents for inclusion in record on appeal pursuant to Fed. R. Bankr. P. 8009 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2452</u> Appellant designation).). (Attachments: # <u>1</u> Exhibit A) (Draper, Douglas)
08/26/2021	<u>2779</u> Certificate of service re: <i>1) Debtors Response to James Donderos First Amended Motion for Entry of an Order (I) Compelling Mediation and (II) Granting Related Relief; and 2) Agreed First Amended Scheduling Order with Respect to Debtors Motion to Disqualify Wick Phillips Gould &amp; Martin, LLP as Counsel to HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2756</u> Response opposed to (related document(s): <u>2657</u> Amended Motion to compel Mediation. (related document: <u>2641</u> ) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>2757</u> Agreed first amended scheduling order (RE: related document(s) <u>2196</u> Motion to disqualify Wick Phillips Gould & Martin, LLP as counsel to HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2196</u> . Entered on 8/23/2021 (Okafor, M.)). (Kass, Albert)
08/26/2021	<u>2780</u> Application for compensation ( <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$52,302.50, Expenses: \$1,131.65. Filed by Other Professional Hayward PLLC (Annable, Zachery)
08/26/2021	<u>2781</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2643</u> Application for compensation ( <i>Fourth Monthly Fee Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 3/1/2021 to 3/31/2021, Fee: \$37153.08, Expenses: \$30.90.). (Hesse, Gregory)
08/26/2021	<u>2782</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2644</u> Application for compensation ( <i>Fifth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 4/1/2021 to 4/30/2021, Fee: \$41,936.40, Expenses: \$573.69.). (Hesse, Gregory)
08/26/2021	<u>2783</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2645</u> Application for compensation ( <i>Sixth Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 5/1/2021 to 5/31/2021, Fee: \$35,841.24, Expenses: \$0.00.). (Hesse, Gregory)

08/26/2021	<u>2784</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2646</u> Application for compensation ( <i>Seventh Monthly Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 6/1/2021 to 6/30/2021, Fee: \$78,401.16, Expenses: \$0.00.). (Hesse, Gregory)
08/26/2021	<u>2785</u> BNC certificate of mailing. (RE: related document(s) <u>2761</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2758</u> Amended Notice of appeal by <i>The Charitable DAF Fund, L.P., CLO Holdco, Ltd., Mark Patrick, Sbaiti &amp; Company PLLC, Mazin A. Sbaiti, Jonathan Bridges.</i> ) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2786</u> BNC certificate of mailing. (RE: related document(s) <u>2766</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>2712</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>2660</u> Memorandum of opinion). (Attachments: # 1 Ex. 1 – Order))) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2787</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2770</u> Order granting motion to appear pro hac vice adding Benjamin I. Finestone for Litigation Sub–Trust (related document <u>2729</u> ) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 0. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2788</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2771</u> Order granting motion to appear pro hac vice adding Deborah J. Newman for Litigation Sub–Trust (related document <u>2730</u> ) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/26/2021	<u>2789</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2772</u> Order granting motion to appear pro hac vice adding Jordan A. Harap for Litigation Sub–Trust (related document <u>2731</u> ) Entered on 8/24/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 08/26/2021. (Admin.)
08/27/2021	<u>2790</u> Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/27/2021	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 28948918, amount \$ 100.00 (re: Doc# <u>2790</u> ). (U.S. Treasury)
08/27/2021	<u>2791</u> Certificate of service re: 1) <i>Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i> ; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i> ; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2768</u> <i>Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims</i> (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , Entered on 8/24/2021. (Okafor, M.), <u>2773</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2774</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

08/27/2021	<u>2792</u> Certificate of service re: <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2780</u> Application for compensation ( <i>Fifteenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward PLLC as Local Counsel to the Debtor for the Period from March 1, 2021 through March 31, 2021</i> ) for Hayward PLLC, Debtor's Attorney, Period: 3/1/2021 to 3/31/2021, Fee: \$52,302.50, Expenses: \$1,131.65. Filed by Other Professional Hayward PLLC filed by Other Professional Hayward PLLC). (Kass, Albert)
08/27/2021	<u>2793</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> <i>Notice (Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> <i>Notice (Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
08/28/2021	<u>2794</u> Transcript regarding Hearing Held 08/19/2021 (52 pages) RE: Motion for 2004 Exam (#2620). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/26/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>2746</u> Hearing held on 8/19/2021. (RE: related document(s) <u>2620</u> Motion for 2004 examination of Various entities/persons as set forth fully in the Motion, filed by Creditor Committee Official Committee of Unsecured Creditors; (Appearances: J. Pomeranz for Debtor; P. Montgomery and D. Newman for Litigation Trustee, M. Kirschner; L. Phillips for CLO Holdco. Nonevidentiary announcement of an agreed order. Counsel to upload order.)). Transcript to be made available to the public on 11/26/2021. (Rehling, Kathy)
08/30/2021	<u>2795</u> Notice ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/30/2021	<u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
08/30/2021	<u>2797</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s) <u>2712</u> Notice of appeal). Appellee designation due by 09/13/2021. (Assink, Bryan)
08/30/2021	<u>2798</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Parties CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) <u>2713</u> Notice of appeal). Appellee designation due by 09/13/2021. (Sbaiti, Mazin)



08/31/2021	<u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document # <u>2790</u> ) Entered on 8/31/2021. (Okafor, M.)
09/01/2021	<u>2800</u> Certificate of service re: <i>Motion for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2790</u> Motion to appear pro hac vice for Kenneth H. Brown. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	<u>2801</u> Notice ( <i>Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/02/2021	<u>2802</u> Certificate of service re: <i>1) Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197; and 2) Objection to Proof of Claim Number 131 Filed by The Dugaboy Investment Trust on April 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2795</u> Notice ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 75 and 197</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2021	<u>2803</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document <u>2790</u> ) Entered on 8/31/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 09/02/2021. (Admin.)
09/03/2021	<u>2804</u> Certificate of service re: <i>1) Order for Admission Pro Hac Vice of Kenneth H. Brown to Represent Highland Capital Management, L.P.; and 2) Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2799</u> Order granting motion to appear pro hac vice adding Kenneth H. Brown for Highland Capital Management, L.P. (related document <u>2790</u> ) Entered on 8/31/2021. (Okafor, M.), <u>2801</u> Notice ( <i>Notice of Appointment of Members of the Oversight Board of the Highland Claimant Trust</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/03/2021	<u>2805</u> Certificate of service re: <i>[Customized for Rule 3001(e)(2) or 3001(e)(4)] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) [Re Docket Nos. 2697 and 2698]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2697</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Jessup Holdings LLC. Filed by Creditor Jessup Holdings LLC. filed by Creditor Jessup Holdings LLC, <u>2698</u> Assignment/Transfer of Claim. Fee Amount \$52. Transfer Agreement 3001 (e) 2 Transferors: UBS Securities LLC and UBS AG London Branch (Claim No. 190, Amount \$32,175,000.00); UBS Securities LLC and UBS AG London Branch (Claim No. 191, Amount \$18,000,000.00) To Muck Holdings LLC. Filed by Creditor Muck Holdings LLC. filed by Creditor Muck Holdings LLC). (Kass, Albert)
09/03/2021	<u>2806</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)).



	filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
09/03/2021	<u>2807</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2570</u> Amended application for compensation <i>Sidley Austin LLP's Amended 19th Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2021 to 5/31/2021, Fee: \$432,748.80, Expenses: &#036). (Hoffman, Juliana)
09/03/2021	<u>2808</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2651</u> Application for compensation <i>Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2021 to 6/30/2021, Fee: \$464,954.40, E). (Hoffman, Juliana)
09/03/2021	<u>2809</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2585</u> Application for compensation <i>Sidley Austin LLP's Sixth Interim Application for Compensation</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2021 to 5/31/2021, Fee: \$1,527,522.75, Expenses: \$32,9). (Hoffman, Juliana)
09/07/2021	<u>2811</u> Notice of Transmittal; 3:21–CV–01590–N – Appellant Supplemental Record Vol. 1 and 2 per District Court order entered 8/24/2021 . (Blanco, J.) Modified TEXT on 9/7/2021 (Blanco, J.).
09/07/2021	<u>2812</u> Order denying as moot motion to compel compliance with Bankruptcy Rule 2015.3 (related document # <u>2256</u> ) Entered on 9/7/2021. (Okafor, M.)
09/08/2021	<u>2813</u> Notice ( <i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2589</u> Motion to compromise controversy with Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Related AP case numbers: 21–3000. Related defendants: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc.. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). (Annable, Zachery)
09/08/2021	<u>2815</u> Transmittal of record on appeal to U.S. District Court . Deficient record on appeal: Appellee failed to provide court admitted exhibits for hearings: January 9, 2020 (doc 335); AND July 14, 2020 (doc 836). ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 21 Number of appellee volumes: 2. Civil Case Number: 3:21–CV–01585–S (RE: related document(s) <u>2513</u> Notice of appeal) (Blanco, J.)
09/08/2021	<u>2816</u> Notice of docketing DEFICIENT record on appeal. 3:21–CV–01585–S (RE: related document(s) <u>2513</u> Notice of appeal (RE: related document(s) <u>2506</u> Order on motion to reconsider). (Blanco, J.)
09/09/2021	<u>2817</u> Order approving stipulation and agreed order authorizing withdrawal of proof of claims 75 and 197 (RE: related document(s) <u>2795</u> Notice (generic) filed by Debtor Highland

	Capital Management, L.P.). Entered on 9/9/2021 (Okafor, M.)
09/09/2021	<u>2818</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2742</u> Application for compensation <i>Twenty-Second Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from July 1, 2021 through July 31, 2021</i> for Jeffrey). (Pomerantz, Jeffrey)
09/09/2021	<u>2819</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
09/09/2021	<u>2820</u> Notice to take deposition of Robert L. Kehr filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
09/09/2021	<u>2821</u> Notice to take deposition of Ben Selman filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/09/2021	<u>2822</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2710</u> Application for compensation – <i>Eighth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2021 to 7/31/2021, Fee: \$161,981.82, Expenses: \$1,100.68.). (Hesse, Gregory)
09/09/2021	<u>2823</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>2734</u> Application for compensation – <i>Ninth Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 8/1/2021 to 8/11/2021, Fee: \$59,205.24, Expenses: \$169.36.). (Hesse, Gregory)
09/09/2021	<u>2824</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2796</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C), <u>2819</u> Objection to claim(s) of Creditor(s) The Dugaboy Investment Trust.. Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G)). Hearing to be held on 10/25/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2819</u> and for <u>2796</u> , (Annable, Zachery)
09/10/2021	<u>2825</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>2453</u> Order on motion to extend/shorten time)). (Annable, Zachery)
09/10/2021	<u>2826</u> Certificate of service re: ( <i>Supplemental</i> ) 1) <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ; and 2) <i>Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>2747</u> Certificate of service re: <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2700</u> Notice ( <i>Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as

	<p>modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.)., <u>2791</u> Certificate of service re: 1) <i>Agreed Scheduling Order on Debtors Third Omnibus Objection to Certain No Liability Claims</i>; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2768</u> Agreed Scheduling Order on Debtor's third omnibus objection to certain no liability claims (related document <u>2226</u> and <u>2267</u> ). Hearing to be held on 12/15/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, Entered on 8/24/2021. (Okafor, M.)., <u>2773</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2021 through May 31, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2774</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2021 through June 30, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
09/13/2021	<p><u>2827</u> Notice (<i>Notice of Removal of Matter from September 13, 2021 Hearing Docket</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2748</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>2453</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.). (Annable, Zachery)</p>
09/13/2021	<p><u>2828</u> Order Further Extending Period Within Which The Reorganized Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (Related document #<u>2748</u>) Entered on 9/13/2021. (Okafor, M.)</p>
09/13/2021	<p><u>2829</u> Order granting Debtor's motion to compromise controversy with Highland Capital Management Fund Advisors, Nexpoint Advisors, Highland Income Fund, Nexpoint Strategic Opportunities Fund, and Nexpoint Capital (related document # <u>2589</u>) Entered on 9/13/2021. (Okafor, M.)</p>

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 2**



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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

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**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

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

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In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

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)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)

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**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

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

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## **DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### **ARTICLE I.** **RULES OF INTERPRETATION, COMPUTATION OF TIME,** **GOVERNING LAW AND DEFINED TERMS**

#### **A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the

Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.



24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or

Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].



62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.



101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized



Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee

Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

## **H. Classification and Treatment of Claims and Equity Interests**

### **1. Class 1 – Jefferies Secured Claim**

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

### **2. Class 2 – Frontier Secured Claim**

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.



3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

**11. Class 11 – Class A Limited Partnership Interests**

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.



**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and

monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.



Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

*10. Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

*11. Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

*12. Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

*13. Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

*14. Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

*1. Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.



2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

#### **E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.



The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a

contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

## **B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

## **B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the



Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.



1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding

upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's

Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**  
**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross



negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### *1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### *2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or**

arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

**ARTICLE II.** Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,



Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

#### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this



Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

#### **I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

#### **K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717)

Ira D. Kharasch (CA Bar No. 109084)

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ikharasch@pszjlaw.com

gdemo@pszjlaw.com

and

**HAYWARD & ASSOCIATES PLLC**

Melissa S. Hayward (TX Bar No. 24044908)

Zachery Z. Annable (TX Bar No. 24053075)

10501 N. Central Expy, Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Facsimile: (972) 755-7110

Email: MHayward@HaywardFirm.com

ZAnnable@HaywardFirm.com

*Counsel for the Debtor and Debtor-in-Possession*





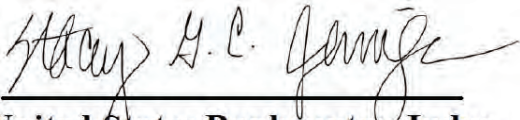
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed February 22, 2021

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.

*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No.1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

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<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.



## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the

bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.



The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from

Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

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<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).



13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

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<sup>7</sup> See *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

**16. Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing



were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

**17. Questionability of Good Faith as to Outstanding Confirmation**

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." *See* Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and



Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.

22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of



section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other

Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is



Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.

- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.



44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure**

**Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity



Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

**49. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

**50. Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B

of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

**51. No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for

any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the



acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.

- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does



not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business

in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

**69. Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

**70. Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

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<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]



creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief

Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, Collier on Bankruptcy, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not



part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

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<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result



in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5<sup>th</sup> Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5<sup>th</sup> Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5<sup>th</sup> Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

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<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the



Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the

Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

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<sup>11</sup> The Plan is attached hereto as **Exhibit A.**

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.



**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership**

**Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited

Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the



Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “Issuer Executory Contracts”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples” and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

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<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feronia Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,

(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burtton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date



must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,



in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XII.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the



Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,

federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.



**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable

immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have



any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**

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

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In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

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)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
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**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

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Counsel for the Debtor and Debtor-in-Possession

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



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**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” of any Person means any Entity that, with respect to such Person, either (i) is an “affiliate” as defined in section 101(2) of the Bankruptcy Code, or (ii) is an “affiliate” as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term “control” (including, without limitation, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.



15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized



Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,



and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder

of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.



130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until



full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. *Class 2 – Frontier Secured Claim*

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. *Class 3 – Other Secured Claims*

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.** **MEANS FOR IMPLEMENTATION OF THIS PLAN**

#### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited

partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:



- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;

(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer

of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and



no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,

the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.



**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.



The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.



**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**

**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

**C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

## **ARTICLE IX.**

### **EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

#### **A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

#### **B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

#### **C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing



will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,

without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

**Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.**

**Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.**

**The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.**

**Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court**

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

**ARTICLE II.** Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).



**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

#### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the



Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

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Dated: January 22, 2021

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

*Counsel for the Debtor and Debtor-in-Possession*



**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

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**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jasper CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.



51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Chapter 11
Debtor.	§	Case No. 19-34054-sgj11
	§	
	§	

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH UBS SECURITIES LLC AND UBS AG LONDON BRANCH  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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**TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:**

Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), files this Motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), substantially in the form attached hereto as **Exhibit A**, approving a settlement agreement (the “Settlement Agreement”)<sup>2</sup> entered into between the Debtor and certain related parties, on the one hand, and UBS Securities LLC and UBS AG London Branch (collectively, “UBS”), on the other hand. A copy of the Settlement Agreement is attached as **Exhibit 1** to the *Declaration of Robert J. Feinstein in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (“Feinstein Declaration”), filed concurrently herewith. In support of this Motion, the Debtor respectfully states as follows:

**INTRODUCTION**

1. The Settlement Agreement resolves more than \$1 billion in claims that UBS filed in the Bankruptcy Case (collectively, the “UBS Claim”), as well as UBS’s claims against certain related parties that have been pending for more than a decade in the Supreme Court of the State of New York, County of New York (the “State Court”).<sup>3</sup> The UBS Claim arises from: (i) a judgment entered by the State Court against Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO

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<sup>2</sup> Capitalized terms used herein, but not defined, have the meanings ascribed to such terms in the Settlement Agreement or elsewhere in this Motion, as applicable.

<sup>3</sup> The UBS Claim includes (i) Claim No. 190 filed by UBS Securities LLC, attached as **Exhibit 2** to the Feinstein Declaration, and (ii) Claim No. 191 filed by UBS AG London Branch, attached as **Exhibit 3** to the Feinstein Declaration.

Fund, the “Funds”) and (ii) related claims against the Debtor and other funds managed by the Debtor.

2. The Settlement Agreement provides for the allowance of the UBS Claim as (i) a single general unsecured claim in the amount of \$65,000,000 against the Debtor, which will be treated as a Class 8 General Unsecured Claim under the Plan,<sup>4</sup> and (ii) a single subordinated unsecured claim in the amount of \$60,000,000 against the Debtor, which will be treated as a Class 9 Subordinated General Unsecured Claim under the Plan. The Settlement Agreement also provides for a payment of \$18,500,000 to UBS by Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat”), a non-Debtor fund managed by the Debtor that is a co-defendant in the State Court litigation. In exchange for the allowance of the UBS Claim as set forth above and the payment by Multi-Strat, UBS will, among other things, release claims against the Debtor, Multi-Strat, and the Debtor’s general partner, Strand Advisors, Inc. (“Strand”), also named as a defendant in the State Court litigation, as described in Section 3 of the Settlement Agreement. The Settlement Agreement also obligates the Debtor to assist UBS in its collection efforts against the Funds in the State Court litigation and its pursuit of other claims, subject to a cap on its expenses of \$3,000,000, provided that, to the extent provided for in Section 1(c) of the Settlement Agreement, for every dollar UBS recovers from the Funds (other than certain of the preferred shares issued by Greenbriar CLO Ltd. or Greenbriar CLO Corp. (collectively, “Greenbriar”), Sentinel Reinsurance, Ltd. (“Sentinel”), Multi-Strat (other than the initial payment of \$18,500,000 referred to above), or any other person or entity described in Section 1(c)(iii) of the Settlement Agreement (the “UBS Recovery”), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP.

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<sup>4</sup> As used herein, the term “Plan” refers to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Dkt. No. 1808], as may be amended, supplemented, or restated.

3. The Settlement Agreement is the product of extensive arms-length negotiations among the parties and their counsel, as well as multiple mediation sessions with Judge Allan L. Gropper (Ret.) and Sylvia A. Mayer (together, the “Mediators”). Moreover, the parties had the benefit of this Court’s decision on the motions for partial summary judgment filed by the Debtor and the Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”), and the Court’s ruling on UBS’s motion to temporarily allow its claim for voting purposes. After the Debtor, Redeemer Committee, and UBS submitted comprehensive briefing and voluminous exhibits, and the Court heard approximately five hours of argument, the Court granted the partial summary judgment motions to the extent set forth in its December 9, 2020 Order, and temporarily allowed the UBS Claim for the purposes of voting in the amount of \$94,761,076 (the “UBS Rulings”). Of that amount, approximately \$43,000,000 (inclusive of pre-judgment interest) related to transfers made to Multi-Strat, based on the Court estimating a 90% chance that UBS would prevail on that portion of its claim (under either a fraudulent conveyance or breach of implied covenant theory).

4. After the mediation and the UBS Rulings, the parties reached an initial settlement in principle. The Debtor disclosed that initial settlement to the Court and parties-in-interest at the February 2, 2021, hearing on confirmation of the Plan. Specifically, with UBS’s consent, the Debtor announced the initial settlement under which UBS was to receive (i) a single Class 8 General Unsecured Claim of \$50,000,000, (ii) a single Class 9 Subordinated General Unsecured Claim of \$25,000,000 (along with \$18,500,000 from Multi-Strat and an agreement to assist UBS, to the extent possible, with the conveyance of CDO Fund’s assets to UBS). Those amounts were well in line with the UBS Rulings and reflected the parties’ respective assessments of the risks of litigating the claims to a final decision based on the then-known facts and the rulings.

5. Notably, among the critical facts predating UBS’s prosecution of its Proof of Claim was information provided to UBS in formal and informal discovery regarding the Funds’

assets. Before the Bankruptcy Case was filed, UBS was advised by the Debtor's prepetition management that the Funds had no material assets. During the course of the Bankruptcy Case, the Debtor's prepetition management – including its general counsel and senior litigation counsel – reiterated those “no asset” representations to the Independent Board,<sup>5</sup> including claiming that the Funds were “ghost funds” that had no material assets. These representations were, in turn, relayed to UBS.

6. As the recently uncovered facts described below reveal, the representations of the Debtor's prepetition management to UBS prior to the Bankruptcy Case and to the Independent Board *after* the filing of the Bankruptcy Case were fraudulent. The fraudulent representations appear to have been made as part of an orchestrated scheme by former management to hide from the Independent Board and UBS that in August 2017 more than \$300 million in face amount of securities and cash were secretly transferred from the Funds to a related entity owned and controlled by James Dondero and Scott Ellington.

7. The Independent Board's initial investigation into the UBS Claim and the defenses and potential liabilities of the Debtor and its managed and owned funds began in January 2020. The UBS Claim was the largest in the case, and the Independent Board brought intense focus to all of the legal and factual matters surrounding the underlying contracts, the defaults, and the decade-long litigation underlying the UBS Claim. In directing that extensive investigation, the Independent Board instructed Mr. Ellington, Isaac Leventon, and other members of the Debtor's legal department to provide detailed information regarding the history of the transactions, the Funds, and the UBS Claim generally. Mr. Dondero also provided information to the Independent Board regarding the transactions, the Funds, the litigation, and the pre-petition settlement negotiations with UBS. This post-petition information provided by the Debtor's employees

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<sup>5</sup> The term “Independent Board” means the independent board of directors at Strand appointed by this Court on January 9, 2020. *See Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*. Dkt. No. 399.



became part of the factual support for the Debtor's objection to the UBS Claim, and undergirded the Debtor's aggressive objection to the UBS Claim.

8. Prior to the mediation, UBS made additional discovery requests of the Debtor and the Funds. James P. Seery, Jr. (a member of the Independent Board and the Debtor's Chief Executive Officer and Chief Restructuring Officer) tasked the Debtor's in-house legal team with providing the responses to UBS's discovery requests. When Mr. Seery and outside counsel pressed the Debtor's employees for a timely response, Mr. Ellington claimed that he and Mr. Leventon were engaged in a "Herculean task" and had spent "in excess of 100 hours trying to piece together everything we can to create a true and accurate document based record of what happened" to the Funds and their assets. Ultimately, Mr. Leventon claimed that substantially all of the assets that had been at the Funds were used to pay the Funds' legal fees incurred in the litigation against UBS. He also provided specific documents purporting to show that certain assets were "written off" with the exception of certain preferred shares in Greenbriar that were supposedly difficult to locate. The Debtor reported the findings to UBS and used the findings in its presentation to the Mediators and this Court. As the Debtor ultimately learned, Mr. Ellington and Mr. Leventon's statements were false and were apparently made as part of a coordinated post-petition conspiracy to cover-up the illegal pre-petition transfers.

9. After the mediation and the UBS Rulings failed to result in a resolution of the UBS Claim, the Debtor and UBS continued to negotiate. During that time, the Debtor was also involved in significant disputes with Mr. Dondero. Upon learning that Mr. Ellington and Mr. Leventon had breached their respective duties to the Debtor by assisting Mr. Dondero's actions against the estate, they were terminated on January 5, 2021. Upon further investigation, in late January 2021, Mr. Seery working in conjunction with the Debtor's bankruptcy advisors, uncovered certain facts and circumstances relating to the Funds that were extremely disturbing.

10. Specifically, the Debtor's investigation revealed that in or around August 2017, shortly after rulings were issued in favor of UBS in the State Court Action (defined below), and in advance of the impending trial in State Court, Highland's principal, Mr. Dondero, acting in concert with others then employed by Highland, orchestrated the surreptitious transfer of all or substantially all of the assets of the Funds, among others, which had a face value of more than \$300 million in the aggregate (the "Transferred Assets"), to Sentinel. Sentinel is a Cayman-domiciled entity that, on information and belief, is indirectly owned and controlled by Mr. Dondero and Mr. Ellington.<sup>6</sup> The transfer of the Funds' assets appears to be for (at best) a fraction of their total value.<sup>7</sup> Upon information and belief, the Transferred Assets included, among other assets: (i) CDO Fund's interest in Multi-Strat that was ostensibly "redeemed" in November 2019 (the "Sentinel Redemption"), and (ii) assets held by CDO Fund related to Greenbriar, Aberdeen Loan Funding Ltd., Eastland CLO Ltd., Grayson CLO Ltd., Valhalla CLO Ltd., and Governance Re, Ltd., including cash payments related to those assets.<sup>8</sup> The Independent Board disclosed this information to UBS promptly upon its discovery in February 2021. Prior to that disclosure, neither these assets nor the transfers was ever disclosed to UBS.

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<sup>6</sup> On information and belief, Mr. Dondero indirectly owns 70% of Sentinel and Mr. Ellington indirectly owns the remaining 30%. Although Mr. Dondero and Mr. Ellington are the ultimate beneficial owners, their ownership of Sentinel is held through a series of exceedingly complicated intermediate holding and operating companies.

<sup>7</sup> Highland and the Funds, acting through Mr. Dondero, Mr. Ellington, Mr. Leventon, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and other Highland employees, fraudulently (or, at a bare minimum, in breach of their fiduciary duties) transferred these assets pursuant to a so-called purchase agreement (the "Purchase Agreement"), purportedly to satisfy a \$25,000,000 premium on a \$100,000,000 "after the event," legal liability insurance policy issued by Sentinel (the "Insurance Policy"). The Insurance Policy was supposedly intended to insure against an adverse judgment in the UBS State Court Action (defined below), notwithstanding that the Transferred Assets were worth more than both the premium and the policy limit combined.

<sup>8</sup> The Debtor believes that the timing of both the transfer of the Transferred Assets and the Sentinel Redemption are relevant. In July 2016, the Redeemer Committee commenced its arbitration for, among other things, breach of contract and breach of fiduciary duty against the Debtor. In March 2017 (approximately five months before the Purchase Agreement), the State Court denied the Debtor's motion for summary judgement as to UBS's fraudulent transfer claim, among others, and UBS's suit was being set for trial. In the spring and summer of 2017, Patrick Daugherty and Joshua Terry commenced their own actions against the Debtor or its affiliates. The walls of Mr. Dondero's fraudulent fortress were under attack. Similarly, in April 2019, Redeemer received its final arbitration award, and in November 2019, the State Court entered its \$1 billion judgment in favor of UBS against the Funds – around the same time that the Sentinel Redemption was ostensibly made.

11. It also became clear to Mr. Seery and the Independent Board that they had been materially misled by a coordinated conspiracy to cover up the fraud, which was engineered by, among others, Mr. Dondero, Mr. Ellington, Mr. Leventon, as in-house senior litigation counsel, and certain other employees of the Debtor.

12. In light of these shocking revelations, UBS sought to reopen the settlement discussions. Due to the potential increased risk of additional monetary exposure to the Debtor's estate, the Debtor agreed to revisit the terms of the settlement and ultimately came to revised terms as reflected in the Settlement Agreement. As revised and incorporated into the Settlement Agreement, UBS will receive an increased allowed Class 8 Claim in the amount of \$65 million, and an increased subordinated Class 9 Claim in the amount of \$60 million. These increases reflect the facts and circumstances recently uncovered which increase the Debtor's potential exposure on UBS's asserted claim for breach of the implied covenant of good faith and fair dealing. While the revised, settled UBS Claim exceeds the total estimate the Court previously provided in the UBS Rulings, the non-subordinated amount of UBS's allowed Class 8 Claim, \$65 million, remains less than the Court's estimate of \$94,761,076. And, while that increased Class 8 Claim is potentially dilutive of the recoveries of other creditors, in the Debtor's judgment, the newly discovered facts increase the risk of UBS obtaining a higher recovery on the UBS Claim if it were litigated to conclusion.

13. The Settlement Agreement reflects informed decisions made by highly sophisticated parties, represented by experienced counsel, taking into account (among other things) the significant litigation risk to both UBS and the Debtor if the parties proceed to trial on UBS's claims against the Debtor, Multi-Strat, and Strand. As just a few examples, and as discussed at length in the parties' submissions and oral argument in connection with the partial summary judgment motions and the 3018 Motion (defined below), a litigated resolution of the UBS Claim would involve (i) a determination as to whether Highland Financial Partners, L.P. ("HFP") was the

alter ego of the Funds that contracted with UBS, (ii) factual and legal disputes as to whether HFP received fair consideration for the allegedly fraudulent transfers at issue, including whether the underlying debt could be recharacterized as equity, and whether the debt was secured, and (iii) vigorously contested issues as to whether the Debtor owed or breached a duty of good faith and fair dealing in connection with the transfers made by HFP or its subsidiaries.

14. There is no guarantee that the Debtor would prevail, particularly in light of the number and variety of complex issues that would need to be determined, the recently uncovered fraud, and the fact that it no longer controls many of the witnesses. Moreover, even if the Debtor ultimately prevailed on most (if not all) of its defenses, the time and expense required to litigate the issues outlined above, and the other issues that would need to be addressed to fully resolve the dispute with UBS, would be a significant drain on the Debtor's estate, with a concomitant detrimental impact on the Debtor's creditors. Absent the Settlement Agreement, further litigation of the UBS Claim would involve substantial (and expensive) pre-trial preparation, a lengthy trial, and likely appeals. The Debtor also would need to defend against UBS's claims against Multi-Strat and Strand in the State Court Action, as the Debtor is the investment manager of Multi-Strat, and Strand has been sued for derivative liability as the Debtor's general partner. It has not yet been determined where those claims would be tried, an issue that itself would generate additional litigation and cause further delay. Any attempt to remove the claims to this Court in all likelihood would be vigorously contested by UBS; and if the claims remained in the State Court, the case could not be tried for the foreseeable future due to the pandemic, particularly if UBS continued to demand a jury trial.

15. The Settlement Agreement ends the Debtor's decade-long dispute with UBS, and avoids the expense, delay, and uncertainty of further litigation on the UBS Claim. The Independent Board, including Mr. Seery, has been intimately involved in the negotiation of the Settlement Agreement and believes it to be a fair and reasonable compromise that undoubtedly is



in the best interests of the Debtor's estate and its creditors. Accordingly, the Debtor respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

### **JURISDICTION AND VENUE**

16. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

### **RELEVANT BACKGROUND**

#### **I. The State Court Litigation**

18. On February 24, 2009, UBS filed its first complaint against the Debtor and the Funds in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action"). In that complaint, UBS asserted an indemnification claim for breach of contract against the Debtor based on restructured warehouse agreements entered into in 2008 among UBS, the Debtor, and the Funds which provided that the Funds, not the Debtor, would bear the risk of any investment losses.

19. UBS's breach of contract claim against the Debtor was dismissed in early 2010. UBS then amended its complaint in the 2009 Action to add new claims and five new defendants, HFP, Multi-Strat, Strand, Highland Credit Strategies Master Funds, L.P. ("Credit Strategies"), and Highland Crusader Offshore Partners, L.P. ("Crusader"). The claims against the new defendants included, among other things, (i) actual and constructive fraudulent transfer claims based on transfers of \$233,455,147 of assets by HFP or its subsidiaries in March 2009, (ii) a claim for declaratory relief against HFP seeking a determination that HFP was the alter ego of one of the Funds, and (iii) a claim against Strand for general partner liability.

20. On June 28, 2010, UBS filed a new, separate action against the Debtor captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”). In the 2010 Action, UBS asserted claims against the Debtor for fraudulent transfer (actual and constructive) and breach of the implied covenant of good faith and fair dealing, alleging that the Debtor received certain of the March 2009 transfers (which UBS alleged were orchestrated by the Debtor) and that the March 2009 transaction breached a purported duty of good faith and fair dealing under the warehouse agreements. UBS also sought pre-judgment interest, calculated at nine percent under New York law, attorneys’ fees, and punitive damages. The 2009 Action and 2010 Action (collectively, the “State Court Action”) were later consolidated.

21. The claims asserted in the State Court Action were bifurcated for purposes of trial. Phase I of the trial commenced on July 9, 2018, and was limited to UBS’s breach of contract claim against the Funds, and certain contractual counterclaims asserted by the Debtor. Phase I of the trial concluded on July 27, 2018. The State Court issued its decision more than a year later, on November 14, 2019, determining that the Funds breached the warehouse agreements on December 5, 2008. The Phase I judgment was entered against the Funds on February 10, 2020, in the principal amount of \$519,374,149 with \$520,583,650.44 in prejudgment interest included for an overall judgment of \$1,039,957,799.44. UBS Claim ¶ 23.

22. The claims to be tried in Phase II of the State Court Action included (i) UBS’s claim against the Debtor for breach of the implied covenant of good faith and fair dealing, (ii) UBS’s fraudulent transfer claims against the Debtor, HFP, and Multi-Strat, (iii) UBS’s claim for declaratory relief against HFP, and (iv) UBS’s general partner liability claim against Strand.<sup>9</sup> Phase II of the trial was automatically stayed as to the Debtor by its bankruptcy filing.

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<sup>9</sup> UBS’s claims against Credit Strategies and Crusader, as the recipients of \$172,411,785 of the assets transferred in the March 2009 transaction, were settled in June 2015.

## **II. The Bankruptcy Case**

23. The Debtor commenced the Bankruptcy Case in the District of Delaware on October 16, 2019, by filing its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Case was transferred to this Court on December 4, 2019. The Official Committee of Unsecured Creditors (“OCUC”) was appointed by the U.S. Trustee on October 29, 2019, before the Bankruptcy Case was transferred to this Court.

24. On May 20, 2020, UBS moved for relief from the automatic stay (the “Stay Relief Motion”), seeking stay relief to prosecute its claims against the Debtor in the State Court. Dkt. No. 644. The Debtor, Redeemer Committee, OCUC, and Acis Capital Management, L.P. and Acis Capital Management GP, LLC all objected to the Stay Relief Motion. Following a hearing on June 15, 2020, the Court denied the Stay Relief Motion and set June 26, 2020 as the deadline for UBS to file its proof of claim against the Debtor. Dkt. No. 765.

25. On August 3, 2020, the Court entered the *Order Directing Mediation*, pursuant to which the Debtor and UBS (among other parties) were directed to mediate their disputes before the Mediators. Dkt. No. 912.

26. On February 22, 2021, the Bankruptcy Court entered the *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief*, Dkt. No. 1943, which confirmed the Plan.<sup>10</sup>

## **III. The UBS Claim**

27. UBS filed the UBS Claim in the Bankruptcy Case on June 26, 2020. The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch. Feinstein Decl. Exhibits 2 and 3. UBS asserted a general unsecured claim against the Debtor for \$1,039,957,799.40, *i.e.*,

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<sup>10</sup> The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

the exact amount of UBS's breach of contract judgment against the Funds. The UBS Claim seeks "damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP" and interest, punitive damages and attorneys' fees. UBS Claim ¶ 26.

28. The Debtor and the Redeemer Committee and the Highland Crusader Funds ("Redeemer/Crusader") each objected to the UBS Claim on August 7, 2020. Dkt. Nos. 928, 933. UBS filed its response to the claim objections on September 25, 2020. Dkt. No. 1105.

#### **IV. The Partial Summary Judgment Motions and UBS's 3018 Motion**

29. On October 16, 2020, the Debtor filed a motion for partial summary judgment on the UBS Claim, as did Redeemer/Crusader. Dkt. Nos. 1214, 1215. UBS filed its response on November 6, 2020, and the moving parties submitted their replies on November 16, 2020. Dkt. Nos. 1337, 1402, 1408. The Debtor and Redeemer/Crusader sought to disallow (i) any claim against the Debtor that arose prior to February 24, 2009, including any claim to enforce the Phase I judgment against the Debtor, (ii) any claim to impose alter ego liability on the Debtor, and (iii) any claim seeking recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to Credit Strategies and Crusader in March 2009. By Order dated December 9, 2020, the Court granted the motions for partial summary judgment filed by the Debtor and Redeemer/Crusader, and denied UBS's request for leave to file an amended proof of claim. Dkt. No. 1526.

30. On November 6, 2020, UBS filed a motion pursuant to Bankruptcy Rule 3018, seeking the temporary allowance of the UBS Claim for purposes of voting on the Plan. Dkt. No. 1338 (the "3018 Motion"). UBS requested that the Court temporarily allow the UBS Claim in the amount of \$543,620,736.03, which included (i) the \$233,455,147 of assets transferred in March 2009, (ii) approximately \$45,000,000 that UBS asserted was held by HFP after the March 2009 transaction, and (iii) \$265,165,589.03 for nine percent pre-judgment interest from March



2009 to the petition date. Dkt. No. 1342 ¶ 38. With respect to the March 2009 transfers, UBS included the following chart:

Recipient	Market Value of Assets
Credit Strategies	\$20,044,219
Crusader Holding	\$108,961,751
Crusader Offshore	\$43,405,815
Multi-Strat Entities	\$25,782,988
Debtor	\$17,778,566
Citibank, N.A.	\$17,481,808
<b><u>Total</u></b>	<b><u>\$233,455,147</u></b>

Dkt. No. 1342 ¶ 15. UBS also asserted that the Debtor could be liable for additional amounts purportedly held by CDO Fund, because the Debtor interfered (in breach of its implied covenant of good faith and fair dealing) with CDO Fund's obligation to bear responsibility for 51% of the losses suffered by UBS under the warehouse agreements. *See, e.g.*, 11/20/20 Hrg. Tr. [Dkt. 1482] at 207:21 (asserting that \$23,000,000 was held by CDO Fund as of December 31, 2009).

31. The Debtor and Redeemer/Crusader objected to the 3018 Motion on November 16, 2020. Dkt. Nos. 1404, 1409. The Debtor (joined by Redeemer/Crusader) argued that the UBS Claim should be temporarily allowed in the maximum amount of \$35,742,978.98. The calculation of that amount used the \$233,455,147 of transfers in March 2009 as a starting point, then subtracted the \$172,411,785 transferred to Credit Strategies and Crusader (*i.e.*, the parties that settled with UBS in 2015), leaving a remaining principal amount of \$61,043,362 (or \$119,143,263.26 with 9% prejudgment interest). The Debtor further argued that a 70% discount should be applied to account for the substantial likelihood that UBS would not be able to establish most, if not all, of its claims at trial ( $\$119,143,263.26 \times .30 = \$35,742,978.978$ ). Dkt. No. 1404 at 1.

32. The Debtor, Redeemer/Crusader, and UBS collectively submitted more than 3,000 pages of exhibits in connection with the partial summary judgment motions and 3018 Motion. *See, e.g.*, Dkt. Nos. 1413, 1414, 1418.

33. On November 20, 2020, the Court held a hearing on the partial summary judgment motions and 3018 Motion. During the all-day hearing, the Court heard lengthy arguments by counsel for the Debtor, Redeemer/Crusader, and UBS. The Court received extensive evidence, including deposition clips and excerpts from one of UBS's expert's report relating to, among other things, the terms of the warehouse agreements, the March 2009 transfers and underlying notes, the pre-petition operation of the Debtor's business, and the convoluted history of the State Court Action to date. At the conclusion of the hearing, the Court granted the partial summary judgment motions (as discussed above) and temporarily allowed the UBS Claim for voting purposes in the amount of \$94,761,076. 11/20/20 Hrg. Tr. at 213:25-214:1.<sup>11</sup> That amount reflected the following:

- \$8 million for the amount transferred to the Debtor in March 2009. The Court used the adjusted amount included in one of the tables to UBS's expert's report, with no discount applied for litigation risk. 11/20/20 Hrg. Tr. at 215:16-22. UBS continued to dispute whether the original amount (\$17,778,566) or the adjusted amount should be used. *Id.* at 217:4-23.
- Approximately \$23.2 million for the total amount transferred to Multi-Strat in March 2009 (\$25,782,988), reflecting a 90% chance that UBS would prevail on that portion of its claim. 11/20/20 Hrg. Tr. at 214:14-215:15.
- Approximately \$3.5 million for the total amount transferred to Citibank, N.A. in March 2009 (\$17,481,808), reflecting a 20% chance that UBS would prevail on that portion of its claim. 11/20/20 Hrg. Tr. at 215:23-216:3.
- \$30 million for pre-judgment interest on the above three amounts. 11/20/20 Hrg. Tr. at 216:4-7.
- \$10 million relating to the approximately \$68 million that UBS argued was held by HFP and CDO Fund, at minimum, after the March 2009 transfers. 11/20/20 Hrg. Tr. at 216:8-15.
- \$10 million relating to pre-judgment interest on the above amount. 11/20/20 Hrg. Tr. at 216:15-16.

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<sup>11</sup> An excerpt of the transcript from the November 20, 2020 hearing setting forth the Court's ruling on the 3018 Motion is attached as **Exhibit 4** to the Feinstein Declaration.

- \$10 million to take into account UBS's demand for attorneys' fees. 11/20/20 Hrg. Tr. at 216:17-24.

The Court's order on the 3018 Motion was entered on December 7, 2020. Dkt. No. 1518.

**V. Summary of the Salient Terms of the Settlement Agreement**

34. In an effort to resolve the long-standing and highly contentious dispute between the Debtor and UBS, the parties and their counsel engaged in extensive negotiations and multiple sessions with the Mediators. *See, e.g.*, Settlement Agreement at 2. Those efforts resulted in the Settlement Agreement, which the parties executed on March 30, 2021.

35. The principal terms of the Settlement Agreement are as follows:<sup>12</sup>

- The parties to the Settlement Agreement are (i) the Debtor, (ii) Multi-Strat, together with its general partner and its direct and indirect wholly-owned subsidiaries, (iii) Strand, and (iv) UBS. Settlement Agreement at 1.
- The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against the Debtor, which shall be treated as a Class 8 General Unsecured Claim under the Plan, and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against the Debtor, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan. *Id.* § 1(a).
- Multi-Strat will pay \$18,500,000 to UBS, to be funded in part with certain Multi-Strat assets previously placed in escrow pursuant to an agreement between Multi-Strat and UBS (among other parties) entered into in May 2020. *Id.* § 1(b).<sup>13</sup>
- UBS will withdraw with prejudice its appeal of this Court's order approving the Debtor's settlement with Redeemer/Crusader [Dkt. No. 1273] if Redeemer/Crusader do not object to this Settlement Agreement. *Id.* § 1(d).
- The Debtor will transfer to UBS any claim it may have against Sentinel or any other party with respect to the Multi-Strat Interest transferred as part of the Transferred Assets. *Id.* § 1(g).

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<sup>12</sup> In the event of any inconsistency between this Motion and the Settlement Agreement, the terms of the Settlement Agreement shall control.

<sup>13</sup> The two other parties to the May 2020 agreement – Highland Credit Opportunities CDO, Ltd. and Highland Credit Opportunities CDO Asset Holdings, L.P. – also are signatories to the Settlement Agreement. Settlement Agreement at 3, 14.

- The parties will exchange broad mutual releases upon the effective date of the Settlement Agreement. *Id.* §§ 2(a), 3(a)-(c).
- If UBS ever controls or has authority over any HCMLP-affiliated defendant(s) in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment, neither UBS nor such defendant(s) will assert or pursue any claims that such defendant(s) has or may have against the Debtor or any other HCMLP Parties (as defined in the Settlement Agreement) (provided that nothing prohibits those actions set forth in Section 3(a)(1)-(6) of the Settlement Agreement), and if UBS receives any distribution from any such defendant(s) that is derived from a claim such defendant(s) has against the Debtor (subject to the exceptions set forth in Section 3(a)) which distribution is directly attributable to any property such defendant(s) receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such amount will be credited against amounts due to UBS under Section 1(a) of the Settlement Agreement. *Id.*, § 5.
- The Debtor will use reasonable efforts to assist UBS in, among other things, collecting its judgment against the Funds and assets the Funds may own, including by cooperating with UBS (i) to assign or convey any assets owned or controlled by the Funds and/or HFP and (ii) in its pursuit of the Transferred Assets and claims against the individuals and entities set forth in 1(c)(ii)-(iii) of the Settlement Agreement, subject to a limit on the Debtor's incurrence of no more than \$3 million in expenses in connection therewith and the right to reimbursement of those amounts as set forth in the Settlement Agreement. *Id.* § 1(c).
- The effectiveness of the Settlement Agreement is expressly conditioned upon this Court's approval of the Settlement Agreement. *Id.* §§ 2(c), 6.

### **RELIEF REQUESTED**

36. By this Motion, the Debtor requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the Motion, approving the Settlement Agreement, and authorizing the Debtor and its agents to take all actions necessary or desirable to implement the Settlement Agreement without the need for further notice or approval by the Court. The Debtor seeks approval of the Settlement Agreement pursuant to Bankruptcy Rule 9019 and,



to the extent that the Settlement Agreement is viewed as requiring the Debtor to take action outside the ordinary course of business as the investment manager of Multi-Strat, the Debtor also seeks approval of the Settlement Agreement pursuant to Bankruptcy Code section 363(b).

### **BASIS FOR RELIEF REQUESTED**

37. Bankruptcy Rule 9019 provides that “[o]n motion ... and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). Settlements are favored in the bankruptcy context to “minimize litigation and expedite the administration of a bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). The approval of a settlement is within the “sound discretion” of the Court. *In re Jackson Brewing Co.*, 624 F.2d 599, 603 (5th Cir. 1980).

38. Pursuant to Bankruptcy Rule 9019(a), the Court may approve a settlement if it is fair, reasonable, and in the best interests of the estate. *See, e.g., Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015). A settlement should be approved unless it falls below the lowest point in the range of reasonableness, based on a comparison between the terms of the settlement and the costs and benefits of further litigation. *See, e.g., Jackson Brewing Co.*, 624 F.2d at 602 (court must compare the “terms of the compromise with the likely rewards of litigation”); *Cook v. Waldron*, 2006 U.S. Dist. LEXIS 31411, \*10 (S.D. Tex. April 18, 2006) (court should “canvass the issues” to decide if settlement falls “below the lowest point in the range of reasonableness”).

39. In evaluating a proposed settlement, courts consider (i) the “probability of success in the litigation, with due consideration for the uncertainty in fact and law,” (ii) the “complexity and likely duration of the litigation and any attendant expense, inconvenience and delay,” and (iii) “[a]ll other factors bearing on the wisdom of the compromise.” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (quoting *Jackson Brewing Co.*, 624 F.2d at 602). The “other factors” include

“the best interests of the creditors, ‘with proper deference to their reasonable views,’” as well as “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* (quoting *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917-18 (5th Cir. 1995)).

40. A trustee (or debtor-in-possession) also “is permitted to settle lawsuits pursuant to section 363(b)” of the Bankruptcy Code. *Id.* at 354. Section 363(b) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. 363(b)(1). A settlement involving a transaction outside the ordinary course of business “must be supported by an articulated business justification, good business judgment, or sound business reasons.” *Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.)*, 922 F.3d 323, 327 (5th Cir. 2019) (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)).

41. As discussed in detail below, all of the factors to be considered pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 363(b) weigh **heavily** in favor of approving the Settlement Agreement in this case.

42. **Probability of Success in the Litigation.** While the first factor to be considered does not require a “mini-trial” on the merits, *Cajun Elec. Power Coop.*, 119 F.3d at 356, the Court can evaluate the Settlement Agreement with the benefit of having already considered the extensive briefing, evidence, and argument presented by the Debtor, UBS, and the Redeemer Committee in connection with the partial summary judgment motions and 3018 Motion. As illustrated at the November 20, 2020 hearing and in the parties’ briefs, resolution of the UBS Claim through litigation would involve many complex issues, with resulting uncertainty as to whether the Debtor or UBS ultimately would prevail.

43. For instance, to establish its fraudulent transfer claims relating to the March 2009 transfers, UBS would need to prove that it was a creditor of the entity (HFP) that allegedly

made the purported fraudulent transfers, which would require proof that HFP was the alter ego of one of the Funds that was a party to the contracts with UBS. While the Debtor believes that it would be difficult for UBS to establish its alter ego claim, UBS is equally confident that it will prevail, relying on (among other things) the survival of its alter ego allegations following dispositive motion practice in the State Court Action (and the recently uncovered fraud may help its case).

44. Litigation of the UBS Claim also would require a determination as to whether HFP received fair consideration in exchange for the March 2009 transfers. The Debtor asserts that the transfers were made on account of secured notes issued by HFP. UBS, on the other hand, contends that the debt should be recharacterized as equity, that the notes were unsecured, and that the value of the notes was not equivalent to the amount of the March 2009 transfers. Other hotly contested issues include: (i) whether the Debtor could be held responsible for transfers made by HFP to any entity other than the Debtor, including the transfer made to a completely unrelated third-party (Citibank, N.A.); (ii) whether the transfers were made in good faith, or with actual fraudulent intent; and (iii) whether UBS can recover the attorneys' fees it has incurred – which likely are substantial – from the Debtor, in light of the high standard required for an award of attorneys' fees under New York law. *See, e.g.*, Dkt. No. 1404 ¶¶ 22-23.

45. The Debtor also disputes the merits of UBS's claim for breach of the implied covenant of good faith and fair dealing. The Debtor maintains that UBS cannot use the implied covenant to "rewrite" the warehouse agreements, which were heavily negotiated contracts among sophisticated parties that placed all risk of loss on the Funds, not the Debtor. The Debtor also maintains that UBS will not be able to prove the Debtor breached any purported duty of good faith and fair dealing as to the March 2009 transfers made by HFP or its subsidiaries, given that HFP was not a party to the warehouse agreements and was not a defendant in the State Court Action at the time of the transfers, and the transfers were made after UBS terminated the warehouse agreements.

UBS, of course, has raised its own arguments in response to each of the Debtor's points. Specifically, UBS maintains that its claim does not "rewrite" the warehouse agreements because the Debtor was a party to all three contracts – and in fact was the only Highland party to one of the three contracts – whereby it expressly promised that the Funds would bear all losses on the contracts, thus obligating itself not to interfere with, injure, or frustrate UBS's right to recover such losses from the Funds. UBS also maintains that the Debtor exerted its control over the Funds to move assets out of UBS's reach and into the pockets of other Highland-affiliated entities. And UBS maintains that the Debtor's principal arguments have already been rejected by the New York appellate courts (although the Debtor disputes that contention). Accordingly, UBS is confident that it will prevail on its implied covenant claim. (Moreover, the recent discovery of the Sentinel transactions, including the transfer of the Transferred Assets by CDO Fund, provides additional weight to UBS's claim.)

46. As one final example of the plethora of issues that would need to be resolved absent the Settlement Agreement, the parties dispute whether UBS's implied covenant claim is limited to the allegedly fraudulent transfers made by HFP or its subsidiaries in March 2009. The Debtor has asserted that the March 2009 transfers – with only approximately \$61 million of transfers remaining at issue in light of the Court's ruling on the partial summary judgment motions – are the only basis for UBS's implied covenant claim. UBS, on the other hand, has argued that damages on its implied covenant claim may include, in addition to the remaining \$61 million of March 2009 transfers still at issue, all or some portion of any assets held by HFP, SOHC, and CDO Fund after the March 2009 transfers were made, which until, the Independent Board informed it of the Transferred Assets, UBS believed to be approximately \$45 million at HFP and approximately \$23 million at CDO Fund – but now understands was significantly more. *See, e.g.*, 11/20/20 Hrg. Tr. at 138:10-139:5; 207:19-208:14.

47. These and other issues were the subject of extensive discovery and numerous competing expert opinions in the State Court Action. For the more than ten years that the State Court



Action has been pending, UBS and the Debtor – each represented by sophisticated business people and experienced counsel – have maintained diametrically different views on the merits of UBS’s claims and the Debtor’s defenses. The Settlement Agreement appropriately takes into account the complexity of the issues that would need to be resolved in further litigation, and the resulting uncertainty. Moreover, the settlement amount agreed upon by the parties is consistent with the Court’s evaluation of the UBS Claim in connection with the 3018 Motion. Therefore, the Settlement Agreement satisfies the “probability of success” factor.

48. **Expense, Inconvenience, and Delay.** The Settlement Agreement resolves claims that UBS asserted against the Debtor, Multi-Strat, and Strand more than ten years ago. The convoluted history of the State Court Action itself speaks volumes about the expense, inconvenience, and delay likely to result from further litigation of the UBS Claim. Indeed, the only claims resolved to date – UBS’s breach of contract claim against the Funds and the Debtor’s contractual counterclaims (which were rejected) – required a thirteen-day bench trial in the State Court.

49. Litigation of UBS’s claims against the Debtor, including the resolution of the complex issues outlined above, would require enormous time and effort, and the expenditure of millions of dollars by the Debtor’s estate. Pre-trial preparation and trial is, of course, expensive and time-consuming in any complex case. And here, expert witnesses who prepared their expert reports years ago would need to be re-engaged, and fact witnesses involved in transactions that occurred more than ten years ago would need to be prepared for trial – many of whom are no longer under the Debtor’s control and some of whom are adverse to the Debtor today. Furthermore, any result obtained at trial in all likelihood would be subjected to appellate review. By finally ending the acrimonious, decade-old dispute between the Debtor and UBS without further expense, the Settlement Agreement easily satisfies the “expense, inconvenience, and delay” factor.

50. **Other Factors.** As an initial matter, there can be no doubt that the Settlement Agreement was the product of good faith, arms-length negotiations between the Debtor and UBS.

The parties reached agreement after extensive negotiations and multiple sessions with the Mediators. And, no party could credibly contend that there was collusion between the Debtor and UBS, who have been aggressive adversaries for more than a decade.

51. As to the second “other factor” identified by the Fifth Circuit, approval of the Settlement Agreement is in the best interests of the Debtor’s creditors. The UBS Claim was filed as a \$1 billion claim in June 2020, and already has been the subject of vigorously contested litigation in this Court. Pursuant to the Settlement Agreement, the UBS Claim will be resolved, without further litigation expense to the Debtor’s estate, with (i) allowance of a single, general unsecured claim in the amount of \$65 million against the Debtor, (ii) allowance of a single, subordinated unsecured claim in the amount of \$60 million against the Debtor, and (iii) the \$18.5 million payment by Multi-Strat. Resolution of the UBS Claim on these terms benefits the many other Class 8 unsecured creditors who share ratably with UBS and would be at risk of substantial dilution if the UBS Claim were allowed at \$1 billion, as UBS has asserted, or anything approaching that amount.

52. **Sound Business Reasons and Justifications.** As outlined above, there are sound business reasons and justifications for entering into the Settlement Agreement, particularly as it pertains to Multi-Strat. UBS has alleged that Multi-Strat was the direct recipient of \$25,782,988 of the amount allegedly fraudulently transferred by HFP in March 2009. While the Debtor believes there are numerous meritorious defenses to that claim, litigation of UBS’s claim against Multi-Strat would involve the same uncertainty and expense as litigation of UBS’s fraudulent transfer claim against the Debtor, including the impact of the fraud on certain Multi-Strat transactions. Furthermore, after hearing extensive evidence and argument relating to, among other things, the fraudulent transfer claims, the Court determined there was a 90% chance that UBS would prevail on the Multi-Strat portion of its claim (*i.e.*, a value of approximately \$43 million, including pre-judgment interest, and potentially attorney fees). *See* 11/20/20 Hrg. Tr. at 214:10-215:15. The settlement payment to be made by Multi-Strat (\$18,500,000) takes into account the strengths and

weaknesses of both parties' positions, as well as the benefit of resolving the litigation without further expense. Therefore, the Debtor respectfully requests that the Settlement Agreement be approved pursuant to both Bankruptcy Rule 9019 and section 363(b) of the Bankruptcy Code (to the extent necessary).

53. Finally, the Debtor is also authorized, as investment manager, to cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action without seeking leave under 11 U.S.C. § 363(b). *First*, section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1). However, the assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."). Here, Multi-Strat is not wholly owned by the Debtor and has meaningful third party investors. Thus, the payment to be made by Multi-Strat pursuant to the Settlement Agreement will not involve property of the Debtor's estate or implicate 11 U.S.C. § 363(b). Instead, it will involve the transfer of Multi-Strat's property in settlement of UBS's claim against Multi-Strat. *Second*, even if 11 U.S.C. § 363 is relevant, the Debtor is authorized to operate its business in the ordinary course without notice or hearing pursuant to 11 U.S.C. § 363(c)(1). As the investment manager of Multi-Strat, the Debtor can, in the ordinary course of business, cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action. *Finally*, even if the Settlement Agreement is viewed as requiring the Debtor to take action outside the ordinary course of business as the investment manager of Multi-Strat, the Settlement Agreement should be approved pursuant to section 363(b) of the Bankruptcy Code for the reasons set forth above.

#### **NO PRIOR REQUEST**

54. No previous request for the relief sought herein has been made to this Court or any other court.

**NOTICE**

55. Notice of this Motion shall be given to (i) counsel for UBS, (ii) counsel to the OCUC, (iii) the Debtor's principal secured parties, (iv) the Office of the United States Trustee, and (v) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested herein, no other or further notice need be given.

**PRAYER**

**WHEREFORE**, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the Motion and the relief requested herein, and granting the Debtor such other and further relief as the Court deems just and proper.

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Dated: April 15, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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**Exhibit A**

**Proposed Order**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER APPROVING DEBTOR'S SETTLEMENT WITH  
UBS SECURITIES LLC AND UBS AG LONDON BRANCH  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on the *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (the "Motion")<sup>2</sup> filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case; and the

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.

Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered the Motion, the materials submitted in support of the Motion, all responses to the Motion, and the arguments presented by counsel at the hearing on the Motion; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest, and is supported by sound business reasons and justifications; and the Court having determined that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.
2. The Settlement Agreement attached as **Exhibit 1** to the Feinstein Declaration is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code.
3. The Debtor and its agents are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement without further notice or further Court approval.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**



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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 3**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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*Attorneys for The Dugaboy Investment Trust  
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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

PACHULSKI STANG ZIEHL & JONES LLP  
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Robert J. Feinstein (NY Bar No. 1767805) (*pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Chapter 11
Debtor.	§	Case No. 19-34054-sgj11
	§	
	§	

**DECLARATION OF ROBERT J. FEINSTEIN IN SUPPORT OF  
DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT  
WITH UBS SECURITIES LLC AND UBS AG, LONDON BRANCH  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



I, Robert J. Feinstein, declare as follows:

1. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”). I submit this declaration in support of the *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith*, filed concurrently herewith. This declaration is based on my personal knowledge of the facts set forth herein and my review of the documents identified below.

2. Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement executed as of March 30, 2021, by the Debtor, Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.), Strand Advisors, Inc., and UBS Securities LLC, and UBS AG, London Branch.

3. Attached as **Exhibit 2** is a true and correct copy, without exhibits, of Claim No. 190 filed by UBS Securities LLC in the Bankruptcy Case.

4. Attached as **Exhibit 3** is a true and correct copy, without exhibits, of Claim No. 191 filed by UBS AG, London Branch in the Bankruptcy Case.

5. Attached as **Exhibit 4** is a true and correct excerpt from the transcript of the November 20, 2020 hearing in the Bankruptcy Case [Dkt. 1482] setting forth the Court’s ruling on *UBS’s Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Dkt. No. 1338].

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

Executed on April 15, 2021, in New York, New York.

/s/ Robert J. Feinstein

Robert J. Feinstein

# **Exhibit 1**

## **Settlement Agreement**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat,” and together with its general partner and its direct and indirect wholly-owned subsidiaries, the “MSCF Parties”), (iii) Strand Advisors, Inc. (“Strand”), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, “UBS”).

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## R E C I T A L S

**WHEREAS**, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO Fund, the “Funds”) related to a securitization transaction (the “Knox Agreement”);

**WHEREAS**, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

**WHEREAS**, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the “State Court”) against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the “2009 Action”);

**WHEREAS**, UBS’s lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. (“HFP”), Highland Credit Strategies Master Funds, L.P. (“Credit-Strat”), Highland Crusader Offshore Partners, L.P. (“Crusader”), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

**WHEREAS**, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”);

**WHEREAS**, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the “State Court Action”), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

**WHEREAS**, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;

**WHEREAS**, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

**WHEREAS**, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of \$105,647,679 (the "Transferred Assets") and purported face value of over \$300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

**WHEREAS**, Sentinel treated the Transferred Assets as payment for a \$25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

**WHEREAS**, the Insurance Policy purports to provide coverage to the Funds for up to \$100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

**WHEREAS**, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

**WHEREAS**, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

**WHEREAS**, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

**WHEREAS**, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

**WHEREAS**, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

**WHEREAS**, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

**WHEREAS**, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately \$32,823,423.50 (the "Sentinel Redemption");

**WHEREAS**, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of \$1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

**WHEREAS**, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's



fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

**WHEREAS**, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

**WHEREAS**, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

**WHEREAS**, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

**WHEREAS**, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for \$1,039,957,799.40;

**WHEREAS**, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

**WHEREAS**, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

**WHEREAS**, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

**WHEREAS**, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

**WHEREAS**, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

**WHEREAS**, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of \$94,761,076 [Docket No. 1518];

**WHEREAS**, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

**WHEREAS**, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

**WHEREAS**, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

**WHEREAS**, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

## **A G R E E M E N T**

**1. Settlement of Claims.** In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;<sup>1</sup> and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

(b) Multi-Strat will pay UBS the sum of \$18,500,000 (the “Multi-Strat Payment”) as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the “HCMLP Excluded Employees”); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor’s actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities’ holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the

MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of \$3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and



(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

## **2. Definitions.**

(a) “Agreement Effective Date” shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) “HCMLP Parties” shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) “Order Date” shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) “UBS Parties” shall mean UBS Securities LLC and UBS AG London Branch.

## **3. Releases.**

(a) **UBS Releases.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys’ fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the “UBS Released Claims”), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities’ past, present or future subsidiaries and feeders funds (the “UBS Unrelated Investments”); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

**4. No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

**5. UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

**6. Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

**7. Representations and Warranties.**

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.



**8. No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

**9. Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

**10. Notice.** Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

**HCMLP Parties or the MSCF Parties**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Telephone No.: 972-628-4100  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
E-mail: jpomerantz@pszjlaw.com

**UBS**

UBS Securities LLC  
UBS AG London Branch  
Attention: Elizabeth Kozlowski, Executive Director and Counsel  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-9007  
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC  
UBS AG London Branch  
Attention: John Lantz, Executive Director  
1285 Avenue of the Americas  
New York, NY 10019

Telephone No.: 212-713-1371  
E-mail: john.lantz@ubs.com

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

Latham & Watkins LLP  
Attention: Andrew Clubok  
Sarah Tomkowiak  
555 Eleventh Street, NW, Suite 1000  
Washington, D.C. 20004-1304  
Telephone No.: 202-637-3323  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

**11. Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

**13. No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

**14. Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

**15. Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

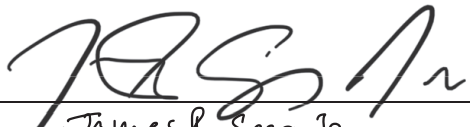
Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

**16. Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

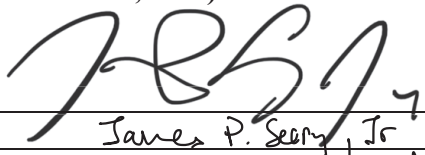
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IT IS HEREBY AGREED.

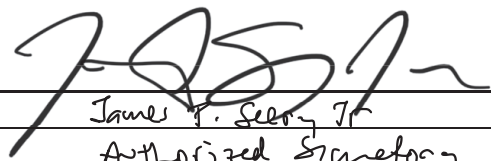
**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

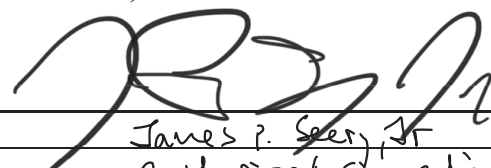
**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P. (f/k/a Highland Credit  
Opportunities CDO, L.P.)**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

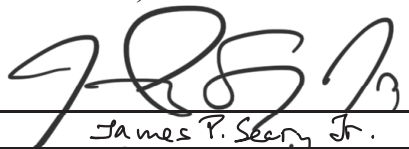
**HIGHLAND CREDIT OPPORTUNITIES CDO,  
Ltd.**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, L.P.**

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

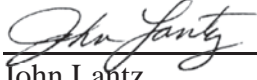
**STRAND ADVISORS, INC.**

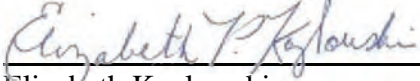
By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

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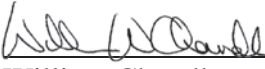


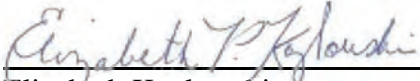
**UBS SECURITIES LLC**

By:   
Name: John Lantz  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

**UBS AG LONDON BRANCH**

By:   
Name: William Chandler  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

## **APPENDIX A**

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled “Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets” (the “Tax Memo”), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the \$105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero’s relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor’s settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.

# **Exhibit 2**

## **Proof of Claim No. 190**

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>UBS Securities LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>UBS Securities LLC</u> <u>Attn: Suzanne Forster</u> <u>1285 Avenue of the Americas</u> <u>New York, New York 10019</u>	
	Contact phone <u>2127133432</u>	Contact phone _____
	Contact email <u>suzanne.forster@ubs.com</u>	Contact email _____
	(see summary page for notice party information)	
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Who made the earlier filing? <u>UBS AG, London Branch</u> - this is a joint litigation claim.	





**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>1,039,957,799.40</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>Litigation - See attached addendum</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 06/26/2020  
MM / DD / YYYY

/s/Asif Attarwala  
Signature

Print the name of the person who is completing and signing this claim:

Name Asif Attarwala  
First name Middle name Last name

Title Associate

Company Latham and Watkins LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 330 North Wabash Ave., Suite 2800, Chicago, IL, 60611

Contact phone 3128767667 Email asif.attarwala@lw.com



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> UBS Securities LLC Attn: Suzanne Forster 1285 Avenue of the Americas  New York, New York, 10019  <b>Phone:</b> 2127133432 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> suzanne.forster@ubs.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> Yes <b>Related Claim Filed By:</b> UBS AG, London Branch - this is a joint litigation claim. See attached addendum	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> Latham and Watkins LLP Andrew Clubok 555 Eleventh Street, NW  Washington, D.C., 2004-1304  <b>Phone:</b> 2026373323 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> andrew.clubok@lw.com		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Litigation - See attached addendum	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 1,039,957,799.40	<b>Includes Interest or Charges:</b> Yes	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Asif Attarwala on 26-Jun-2020 5:10:38 p.m. Eastern Time <b>Title:</b> Associate <b>Company:</b> Latham and Watkins LLP		

**Optional Signature Address:**

Asif Attarwala  
330 North Wabash Ave.  
Suite 2800  
Chicago, IL, 60611

**Telephone Number:**

3128767667

**Email:**

asif.attarwala@lw.com



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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

## Chapter 11

Case No. 19-34054-sgj11 (SGJ)

**ADDENDUM TO PROOF OF CLAIM FILED BY  
UBS AG, LONDON BRANCH**

1. UBS Securities LLC hereby submits this addendum to its proof of claim (together, the “**Proof of Claim**”) against Highland Capital Management, L.P. (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”).

2. UBS Securities LLC and UBS AG, London Branch (together, the “**Claimant**” or “**UBS**”) each have claims against the Debtor and each is filing a proof of claim in this Chapter 11 Case. Because their claims arise from the same set of factual events, including the same failed transaction, misconduct involving the Debtor and its affiliates, and subsequent litigation, the UBS claims overlap and their proof of claim forms and addendums are substantially the same.

3. This addendum is attached to, incorporated into, and constitutes an integral part of Claimant's Proof of Claim against the Debtor. Claimant files this Proof of Claim under compulsion of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], as extended by the *Joint Stipulation and Order Extending Bar Date* [Docket No. 547] and modified by the *Order Denying UBS's Motion for Relief*

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*from the Automatic Stay to Proceed with State Court Action* [Docket No. 765], solely for the purpose of asserting Claimant's claims against the Debtor, as more particularly described and subject to any limitations set forth below.

### **Factual Background**

#### **A. The Knox Transaction**

2. Claimant's claims arise out of a failed transaction dating back thirteen years ago and the state court action (the "**State Court Action**") that followed between Claimant, the Debtor, Highland CDO Opportunity Master Fund, L.P. ("**CDO Fund**") and Highland Special Opportunities Holding Company ("**SOHC**") (together with CDO Fund, the "**Fund Counterparties**," and the Fund Parties and the Debtor collectively, "**Highland**"), among other parties.<sup>2</sup>

3. In early 2007, Claimant and Highland agreed to pursue a complex form of securitization transaction known as a "CLO Squared" (the "**Knox Transaction**"). (Ex. B, Decision at 2.) The purpose of the Knox Transaction was to acquire and securitize a series of collateralized loan obligation ("**CLO**") securities and credit default swap ("**CDS**") assets (the "**Knox Assets**"). To that end, the Debtor agreed to be the "Servicer" of the Knox Transaction, and as such was responsible for identifying the specific CLO and CDS assets to be securitized. Claimant agreed to finance the acquisition of the CLO and CDS assets identified by Highland. Claimant would then hold, or "warehouse," the assets until the securitization was completed (the "**Knox Warehouse**"). Under this arrangement, Claimant financed the acquisition of \$818 million in Knox Assets. (*Id.*)

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<sup>2</sup> The procedural history of the State Court Action is incorporated by reference, but is voluminous. The operative Second Amended Complaint and Phase I Decision and Order are attached as **Exhibit A** and **Exhibit B**, respectively. Additional pleadings and orders can be found on the State Court docket for Index No. 650097/2009 or by contacting Claimant's counsel. Claimant reserves the right to file a copy of additional pleadings or orders with this Court.

4. The parties' first attempt at the Knox Transaction was not completed successfully and the relevant agreements expired in August 2007 without the contemplated securitization having occurred. (*Id.* at 3.) Rather than end their relationship, however, Highland and Claimant continued to consider the possibility of pursuing the contemplated securitization in 2008 under restructured versions of the prior agreements. Highland and Claimant always understood that—if the securitization were not successful—the Fund Counterparties would be obligated to pay Claimant for 100% of the losses on any CLO or CDS assets that been acquired and warehoused for the securitization. In order to convince Claimant to agree to enter restructured versions of those agreements and to finance the acquisition of the CLO and CDS assets, Highland assured Claimant that the Fund Counterparties had sufficient assets to cover any losses. It did so by providing Claimant with false, incomplete, and otherwise misleading information concerning the Fund Counterparties' finances and assets. (Ex. A, Compl. ¶¶ 47-61.)

5. In addition, Claimant specifically conditioned its agreement to enter the restructured agreements on the Fund Counterparties' ability to post an additional \$70 million in cash and securities as collateral (the “**Initial Restructuring Collateral**”), in which Claimant would hold a security interest. (*Id.* ¶¶ 56-59; Ex. B, Decision at 3.) Highland assembled \$70 million in such Initial Restructuring Collateral. But what Highland did not tell Claimant—and what is now clear was omitted on purpose—was that the Fund Counterparties did not own all of the Initial Restructuring Collateral they were expected to post. Instead, to meet this obligation, the Debtor exercised its control over other Highland affiliates, transferring and redirecting assets from such other entities that it controlled to assemble the Initial Restructuring Collateral. (Ex. A, Compl. ¶¶ 56-59.)

6. Similarly, while negotiating the restructured transaction, Highland provided Claimant with financial reports and statements that contained materially false and misleading information and omissions concerning the financial condition of the Fund Counterparties. (*Id.* ¶¶ 47-52.) The Debtor itself had prepared these financial statements and knew they contained material misstatements. (*Id.* ¶¶ 48-50, 54.) Among other things, Highland misrepresented the amount of cash held by CDO Fund. (*Id.* ¶ 52.) Highland also failed to disclose that many of the assets on the Fund Counterparties' financial statements already had been encumbered. (*Id.* ¶¶ 51, 53.) These misrepresentations not only evince a specific intent by Highland to induce Claimant into entering the restructured agreements, but a longstanding willingness to prevent Claimant from ever recovering the amounts owed under the parties' proposed agreements in the event the Knox Assets suffered any losses. In addition, these events show the Debtor's singular control over—and ability to move—assets from one Highland affiliate to another at will.

7. Based on Highland's material misstatements and omissions, Claimant agreed to pursue the restructured transaction and once more attempt the securitization, and the parties executed three new written agreements: an Engagement Letter, a Cash Warehouse Agreement, and a Synthetic Warehouse Agreement (collectively, the "**Warehouse Agreements**"). (*See* Ex. B, Decision at 3.) The Engagement Letter was executed by Claimant and the Debtor; the Fund Counterparties were not parties to the Engagement Letter. (Ex. A, Compl. ¶ 62.) The Cash Warehouse and Synthetic Warehouse Agreements were executed by Claimant and the Debtor, along with the Fund Counterparties. (*Id.* ¶¶ 64-65.)

8. As described above, Claimant agreed to finance the acquisition of the CLO and CDS assets that the parties planned to securitize. In so doing, the key risk Claimant faced was the possibility that the Knox Assets would lose value while securitization was pending. To address



this risk, Claimant and the Debtor agreed in the Engagement Letter that the Fund Counterparties would bear this risk. Notably, at the time, the Debtor was the Investment Manager to the Fund Counterparties under agreements that gave the Debtor total control over those entities. (Ex. A, Compl. ¶¶ 24, 26.)

9. The Warehouse Agreements reiterated that the Fund Counterparties (as controlled by the Debtor) would bear the risk, specifying that if the Knox Assets lost value while securitization was pending, the Fund Counterparties “will in aggregate bear 100% of the risk” for the Knox Assets—with CDO Fund bearing 51% of any losses and SOHC bearing the remaining 49%.

10. To further protect Claimant in the event that the Knox Assets lost value, the Warehouse Agreements provided for recurring measurements of mark-to-market losses on all assets in the Knox Warehouse and required the Fund Counterparties to post collateral in the event the Knox Assets lost a set amount of value. Specifically, the parties agreed that the Fund Counterparties would post an additional \$10 million in collateral for each \$100 million in losses to the overall value of the Knox Assets. (Ex. B, Decision at 4.)

11. In September and October 2008, amid the global economic recession, the value of the Knox Assets dropped by \$100 million, twice. Thus, Claimant twice exercised its contractual right to demand additional collateral. And twice Highland posted the required collateral. (*Id.*) Although the Warehouse Agreements specified that it was the Fund Counterparties who would post collateral, the Debtor moved assets around from other entities it controlled to make the first two collateral calls (without disclosing this practice to Claimant). (Ex. A, Compl. ¶ 79.) On or about November 7, 2008, Claimant issued a third margin call, because the value of the Knox Assets suffered additional losses of \$200 million (bringing the aggregate losses to over \$400 million).

(Ex. B, Decision at 4.) This time, Highland refused to provide the additional collateral required under the Warehouse Agreements.

12. Highland's default on Claimant's third margin call triggered a termination event under the Warehouse Agreements. (*Id.*) On December 5, 2008, Claimant gave Highland formal notice of default and demanded the Fund Counterparties pay Claimant for 100% of the losses incurred on the Knox Assets—which had, by then, grown to over \$520 million.

13. There is no question that the Debtor knew the Fund Counterparties were liable for the losses under the Warehouse Agreements. Indeed, the Highland officer who executed the Warehouse Agreements admitted under oath that, “as of the end of the year 2008,” Highland knew that the Fund Counterparties owed Claimant “hundreds of millions of dollars in connection with the Knox Warehouse Agreements.” (Travers Dep. at 261:8-20.) But rather than paying Claimant what it was owed, the Debtor, with Mr. Dondero at the helm, “devised a strategy to delay the resolution of that obligation [to pay Claimant] for as long as possible.” (*Id.*) To that end, Highland devised and subsequently deployed a multifaceted strategy—one that would last for many years thereafter—to intentionally frustrate and prevent Claimant from recovering any of the amounts that both the Debtor and the Fund Counterparties knew were rightfully owed to Claimant under the Warehouse Agreements.

14. First, the Debtor directed the Fund Counterparties to withhold any payment to Claimant—a position that the Fund Counterparties maintained (again, under the specific direction of the Debtor) for more than a decade. (*See id.*) The Debtor did so not only with the specific knowledge that the Fund Counterparties owed hundreds of millions of dollars to Claimant for the losses on the Knox Assets, but with the knowledge that Claimant would come seeking payment

for such losses and, in particular, to look toward any and all collateral owned by the Fund Counterparties as one source of payment. As one of Highland's officers stated in an internal email to Mr. Dondero in an internal email dated January 16, 2009: "[UBS] is going to be calling [] today asking for all additional collateral that cdo and sohc have left to cover the obligation left by the knox transaction." But rather than turning over the collateral in question to Claimant or, at the very least, securing such assets so that they could be used to pay Claimant, the Debtor directed the Fund Counterparties to withhold such assets and payments from Claimant: "[T]hey can see us in court for their additional collateral." True to that promise, even after Claimant filed suit and laid out the amounts due under the contracts, the Debtor forced the Fund Counterparties to launch an affirmative, multi-year campaign—one which would consume much of the cash and assets belonging to the Fund Counterparties themselves—to stave off any payment from the Fund Counterparties to force Claimant to try to recover such claims through litigation and, once in litigation, devising knowingly baseless defenses and arguments for the Fund Counterparties to assert in such litigation.

15. On top of directing the Fund Counterparties to withhold payment and force Claimant to litigate for amounts the Debtor already knew they rightfully owed to Claimant, the Debtor undertook a litany of other actions to ensure that, even if Claimant were successful in the litigation it had been forced to initiate against the Fund Counterparties, it would not be able to collect any judgment arising out of the litigation. Such actions included, but were not limited to, a series of fraudulent transfers out of, and away from, an alter ego of SOHC, Highland Financial Partners, L.P. ("**HFP**"). (Ex. A, Compl. ¶ 109.) These internal transfers of funds—all overseen by James Dondero, the Debtor's founder and president—were designed to prevent Claimant from ever collecting the millions of dollars it was owed under the Warehouse Agreements.

16. In addition to such fraudulent transfers, the Debtor also took steps after the lawsuit was filed to ensure that no additional value would be transferred *to* the Fund Counterparties—deliberately taking steps to keep both SOHC and CDO Fund undercapitalized. Not only did the Debtor prevent additional value from being transferred to the Fund Counterparties, it is clear that the Debtor also failed to ensure that the Fund Counterparties retained assets that could be used to pay any such judgment. Quite to the contrary, it is now clear that any and all assets of any value that once belonged to the Fund Counterparties have, in one way or another, been transferred away, drained, or otherwise wasted by the Fund Counterparties, the Debtor itself, or the Debtor’s affiliates—all at the Debtor’s direction. Indeed, in a recent filing before this Court, the Debtor recently disclosed that both of the Fund Counterparties are completely “insolvent.” (Docket No. 687 at 1.) This means that—separate and apart from the transfers of assets out of, and away from, HFP that occurred in 2009—the Debtor has directed, or otherwise permitted, the Fund Counterparties to engage in acts that have left these once marque investment funds with literally *no* assets that can be used to pay Claimant. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate Claimant’s ability to recover the amounts owed under the Warehouse Agreements, or a wanton and reckless disregard of Claimant’s rights to those amounts. Such actions and omissions constitute breaches of the Debtor’s duty of good faith and fair dealing under the Warehouse Agreements.

**B. The State Court Action and the Debtor’s Efforts to Avoid Paying Claimant**

17. On February 24, 2009, Claimant filed a complaint in the Supreme Court of the State of New York (the “State Court”) against the Debtor and the Fund Counterparties. With knowledge of Claimant’s lawsuit, the Debtor exercised its control over the Fund Counterparties to ensure they would not meet their obligations and to impede Claimant’s ability to recover the



amounts owed by those entities. (*Id.* ¶¶ 112, 114.) Rather than paying Claimant what it was owed, and as discussed above, the Debtor orchestrated an extensive multi-part strategy to delay resolution of Claimant's claims for as long as possible. As a result, the Debtor further interfered with Claimant's contractual rights, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements. (*Id.*)

18. By this time, the Fund Counterparties and SOHC's alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant's ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the “**Affiliated Transferee Defendants**”), among others, thereby further reducing Highland's abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, *i.e.*, solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the

process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

19. As Claimant learned about Highland's conduct through discovery, Claimant amended its complaint to assert additional claims and name additional Highland entities, including HFP, the Affiliated Transferee Defendants, and Strand Advisors, Inc. As amended and stated in its Second Amended Complaint (attached hereto as Exhibit A) in the State Court Action, filed on May 11, 2011, Claimant's claims include breach of contract claims directly against the Fund Counterparties, as well as claims for fraudulent inducement, breach of the duty of good faith and fair dealing, fraudulent conveyance, tortious interference, and declaratory judgments for alter ego liability against HFP and general partner liability against Strand Advisors, Inc. The Debtor subsequently brought counterclaims against Claimant for breach of contract and unjust enrichment. (*See* Ex. B, Decision at 35-37.)

20. The procedural history of the State Court Action is complex. The Debtor and its affiliates and Claimant filed, and the State Court ruled on, four sets of motions to dismiss. The Debtor and its affiliates then filed two sets of summary judgment motions, which led to a series of complex rulings by the State Court in 2017. The parties filed various interlocutory appeals of the State Court's rulings on the motions to dismiss and for summary judgment. Those appeals were heard by the Appellate Division for the First Judicial Department in the County of New York, with the Appellate Division issuing five decisions over this suit's protracted history (some of which are still subject to further appellate rights).

21. Also included in the Appellate Division's decisions was an order arising from an appeal of the State Court's ruling on Claimant's motion to restrain Defendants Highland Credit

Strategies Master Fund, L.P. and Highland Crusader Partners, L.P. from disposing of property received through the fraudulent transfers orchestrated by the Debtor. Claimant showed it had a likelihood of success on the merits of its fraudulent transfer claims, and the Appellate Division enjoined both Highland entities from disposing of their assets. Ultimately, these injunctions resulted in partial settlements between Claimant and Highland Credit Strategies Master Fund, L.P. and Highland Crusader Partners, L.P.

22. By early 2018, more than nine years after Claimant first filed suit, the parties were finally ready to proceed to trial. Due to a jury waiver clause in the Warehouse Agreements, however, and after related pre-trial briefing, the State Court bifurcated Claimant's claims into two distinct phases for trial: Phase I, consisting of a bench trial on Claimant's claims against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements, as well as the Debtor's counterclaims; and Phase II, consisting of a jury trial on Claimant's remaining claims against all remaining Highland entities, including the Debtor.<sup>3</sup> (Ex. B, Decision at 2 n.1, 38.)

23. The State Court presided over a thirteen-day bench trial for Phase I from July 9 through July 27, 2018. (*Id.* at 1.) On November 14, 2019, the State Court entered a Decision and Order on Phase I (attached hereto as Exhibit B), ruling in favor of Claimant on almost every issue presented in Phase I. In particular, the court found the Fund Counterparties liable to Claimant for breach of the Cash Warehouse and Synthetic Warehouse Agreements, found no liability on the part of Claimant for either of the Debtor's counterclaims, and rejected almost every one of the Debtor's offset arguments with the only remaining issue (affecting approximately \$70,500,000) to

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<sup>3</sup> Remaining claims are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining issues.

be determined after Phase II. (*Id.* at 39.) An Entry of Judgment on Phase I was entered on February 10, 2020. Under that Phase I final judgment, Claimant is entitled to \$1,039,957,799.44, consisting of \$519,374,149.00 in damages and \$520,583,650.44 in pre-judgment interest as of January 22, 2020, with additional interest of \$128,065 having accrued daily until the Entry of Judgment.

24. The next step in the State Court Action is Phase II of the trial, where Claimant's remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non-Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final \$1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor's various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys' fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

25. Currently, Phase II of the State Court Action is stayed against the Debtor by the automatic stay imposed pursuant to section 362 of the Bankruptcy Code when the Debtor commenced this Chapter 11 Case.



26. Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys' fees that may be awarded by any court at the conclusion of Phase II.

### **Reservation of Rights**

27. Claimant does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor, the Fund Counterparties, Strand Advisors, Inc., other non-Debtor Highland Defendants, or any other Debtor affiliate, subsidiary, person, or entity.

28. Claimant expressly reserves all of its rights to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery. Claimant further reserves all rights to amend, modify, supplement, reclassify, or otherwise revise its Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert additional grounds for any of the claims, to seek reconsideration under section 502(j) of the Bankruptcy Code or otherwise of any disallowance of any amounts claimed hereunder, or to reflect any and all additional claims of whatever kind or nature that Claimant has or may have against the Debtor.

29. To the extent any payment to Claimant based on this Proof of Claim, or any portion thereof, is clawed back from Claimant, avoided, or set aside, for any reason whatsoever, or Claimant is required to disgorge any such payment, or any portion thereof, Claimant hereby reserves its rights to amend this Proof of Claim accordingly.

30. The execution and filing of this Proof of Claim is not intended as, nor should it be construed as or deemed to be any of the following: (i) a waiver of the right to seek withdrawal of the reference, or to otherwise challenge the jurisdiction of this Court, with respect to the subject matter of the claims asserted herein, any objection or other proceeding commenced with respect thereto, or any other action or proceeding commenced in this Chapter 11 Case against or otherwise involving Claimant; (ii) an admission that any matter is a core matter for purposes of 28 U.S.C. § 157(b) or is a matter as to which this Court can enter a final order or judgment consistent with Article III of the United States Constitution; (iii) a waiver of the right to *de novo* review by the district court of any order or judgment for which this Court, absent Claimant's consent, lacks authority to enter a final order or judgment; (iv) a consent to the entry by this Court of a final order or judgment with respect to the claims asserted herein or any other matter; (v) a waiver of Claimant's right to a jury trial against the Debtor, as applicable, or waiver of Claimant's right to a jury trial against any of the non-Debtor Defendants; (vi) a waiver or release of the claims or rights of Claimant against any other entity or person that may be liable for all or any part of the claims or any matters related to the claims asserted herein; (vii) a waiver of any rights and remedies Claimant has or may have under the Cash Warehouse and Synthetic Warehouse Agreements, Engagement Letter, or any other contract, whether mentioned in this Proof of Claim or not; (viii) a waiver of Claimant's contractual right to seek to have these or any other claims settled by binding arbitration; (ix) a waiver of any right related to the confirmation of any plan of reorganization proposed in this

Chapter 11 Case, or any other insolvency-related proceeding that may be commenced, either in the United States or abroad, by or against the Debtor, or any non-Debtor affiliate; (x) a waiver or agreement granting any party relief; or (xi) an election of remedies.

31. Neither this Proof of Claim nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of Claimant. Claimant specifically reserves all of its defenses and rights, procedural and substantive, including, without limitation, its rights with respect to any claim that may be asserted against Claimant by the Debtor, the Fund Counterparties, or any affiliate of the Debtor, and its rights to enforce the Cash Warehouse or Synthetic Warehouse Agreements, Engagement Letter, or any other contract.

#### **Right of Setoff and Recoupment**

32. Claimant reserves all rights of setoff and recoupment that it may have. To the extent the Debtor or any non-Debtor affiliate asserts any claim against Claimant, Claimant shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code or right of recoupment against such claim with respect to the claims asserted herein and any amendments thereto.

#### **Notice**

33. Copies of all notices and communications concerning this Proof of Claim should be sent to:

UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Suzanne Forster  
Telephone: (212) 713-3432  
Email: [suzanne.forster@ubs.com](mailto:suzanne.forster@ubs.com)

With a copy to:

John Lantz  
UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 713-1371  
Email: john.lantz@ubs.com

Andrew Clubok  
Sarah Tomkowiak  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, District of Columbia 20004  
Telephone: (202) 637-2200  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

Jeffrey E. Bjork  
Kimberly A. Posin  
LATHAM & WATKINS LLP  
355 South Grand Avenue, Ste. 100  
Los Angeles, California 90071  
Telephone: (213) 485-1234  
Email: jeff.bjork@lw.com  
kim.posin@lw.com

Asif Attarwala  
LATHAM & WATKINS LLP  
330 N. Wabash Avenue, Ste. 2800  
Chicago, Illinois 60611  
Telephone: (312) 876-7700  
Email: asif.attarwala@lw.com



# **Exhibit 3**

## **Proof of Claim No. 191**

000721

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>UBS AG, London Branch</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)		
	Contact phone <u>212-713-3432</u> Contact email <u>suzanne.forster@ubs.com</u>	Contact phone _____ Contact email _____
	(see summary page for notice party information) Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Who made the earlier filing? <u>UBS Securities LLC - this is a joint litigation claim, see</u>	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>1,039,957,799.40</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>Litigation - See attached addendum</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? ☒ No ☐ Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)? ☒ No ☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 06/26/2020  
MM / DD / YYYY

/s/Asif Attarwala  
Signature

Print the name of the person who is completing and signing this claim:

Name Asif Attarwala  
First name Middle name Last name

Title Associate

Company Latham and Watkins LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 330 North Wabash Ave., Suite 2800, Chicago, IL, 60611

Contact phone 312-876-7667 Email asif.attarwala@lw.com





For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> UBS AG, London Branch UBS Securities LLC, Attn: Suzanne Forster 1285 Avenue of the Americas  New York, New York, 10019  <b>Phone:</b> 212-713-3432 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> suzanne.forster@ubs.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> Yes <b>Related Claim Filed By:</b> UBS Securities LLC - this is a joint litigation claim, see attached addendum	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> Latham and Watkins LLP Andrew Clubok 555 Eleventh Street, NW  Washington, D.C., 2004-1304  <b>Phone:</b> 2026373323 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> andrew.clubok@lw.com		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Litigation - See attached addendum	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 1,039,957,799.40	<b>Includes Interest or Charges:</b> Yes	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Asif Attarwala on 26-Jun-2020 5:17:47 p.m. Eastern Time <b>Title:</b> Associate <b>Company:</b> Latham and Watkins LLP		

**Optional Signature Address:**

Asif Attarwala  
330 North Wabash Ave.  
Suite 2800  
Chicago, IL, 60611

**Telephone Number:**

312-876-7667

**Email:**

asif.attarwala@lw.com

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-34054-sgj11 (SGJ)

**ADDENDUM TO PROOF OF CLAIM FILED BY  
UBS AG, LONDON BRANCH**

1. UBS AG, London Branch hereby submits this addendum to its proof of claim (together, the “**Proof of Claim**”) against Highland Capital Management, L.P. (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”).

2. UBS AG, London Branch and UBS Securities LLC (together, the “**Claimant**” or “**UBS**”) each have claims against the Debtor and each is filing a proof of claim in this Chapter 11 Case. Because their claims arise from the same set of factual events, including the same failed transaction, misconduct involving the Debtor and its affiliates, and subsequent litigation, the UBS claims overlap and their proof of claim forms and addendums are substantially the same.

3. This addendum is attached to, incorporated into, and constitutes an integral part of Claimant's Proof of Claim against the Debtor. Claimant files this Proof of Claim under compulsion of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], as extended by the *Joint Stipulation and Order Extending Bar Date* [Docket No. 547] and modified by the *Order Denying UBS's Motion for Relief*

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*from the Automatic Stay to Proceed with State Court Action* [Docket No. 765], solely for the purpose of asserting Claimant's claims against the Debtor, as more particularly described and subject to any limitations set forth below.

### **Factual Background**

#### **A. The Knox Transaction**

2. Claimant's claims arise out of a failed transaction dating back thirteen years ago and the state court action (the "**State Court Action**") that followed between Claimant, the Debtor, Highland CDO Opportunity Master Fund, L.P. ("**CDO Fund**") and Highland Special Opportunities Holding Company ("**SOHC**") (together with CDO Fund, the "**Fund Counterparties**," and the Fund Parties and the Debtor collectively, "**Highland**"), among other parties.<sup>2</sup>

3. In early 2007, Claimant and Highland agreed to pursue a complex form of securitization transaction known as a "CLO Squared" (the "**Knox Transaction**"). (Ex. B, Decision at 2.) The purpose of the Knox Transaction was to acquire and securitize a series of collateralized loan obligation ("**CLO**") securities and credit default swap ("**CDS**") assets (the "**Knox Assets**"). To that end, the Debtor agreed to be the "Servicer" of the Knox Transaction, and as such was responsible for identifying the specific CLO and CDS assets to be securitized. Claimant agreed to finance the acquisition of the CLO and CDS assets identified by Highland. Claimant would then hold, or "warehouse," the assets until the securitization was completed (the "**Knox Warehouse**"). Under this arrangement, Claimant financed the acquisition of \$818 million in Knox Assets. (*Id.*)

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<sup>2</sup> The procedural history of the State Court Action is incorporated by reference, but is voluminous. The operative Second Amended Complaint and Phase I Decision and Order are attached as **Exhibit A** and **Exhibit B**, respectively. Additional pleadings and orders can be found on the State Court docket for Index No. 650097/2009 or by contacting Claimant's counsel. Claimant reserves the right to file a copy of additional pleadings or orders with this Court.



4. The parties' first attempt at the Knox Transaction was not completed successfully and the relevant agreements expired in August 2007 without the contemplated securitization having occurred. (*Id.* at 3.) Rather than end their relationship, however, Highland and Claimant continued to consider the possibility of pursuing the contemplated securitization in 2008 under restructured versions of the prior agreements. Highland and Claimant always understood that—if the securitization were not successful—the Fund Counterparties would be obligated to pay Claimant for 100% of the losses on any CLO or CDS assets that been acquired and warehoused for the securitization. In order to convince Claimant to agree to enter restructured versions of those agreements and to finance the acquisition of the CLO and CDS assets, Highland assured Claimant that the Fund Counterparties had sufficient assets to cover any losses. It did so by providing Claimant with false, incomplete, and otherwise misleading information concerning the Fund Counterparties' finances and assets. (Ex. A, Compl. ¶¶ 47-61.)

5. In addition, Claimant specifically conditioned its agreement to enter the restructured agreements on the Fund Counterparties' ability to post an additional \$70 million in cash and securities as collateral (the "**Initial Restructuring Collateral**"), in which Claimant would hold a security interest. (*Id.* ¶¶ 56-59; Ex. B, Decision at 3.) Highland assembled \$70 million in such Initial Restructuring Collateral. But what Highland did not tell Claimant—and what is now clear was omitted on purpose—was that the Fund Counterparties did not own all of the Initial Restructuring Collateral they were expected to post. Instead, to meet this obligation, the Debtor exercised its control over other Highland affiliates, transferring and redirecting assets from such other entities that it controlled to assemble the Initial Restructuring Collateral. (Ex. A, Compl. ¶¶ 56-59.)

6. Similarly, while negotiating the restructured transaction, Highland provided Claimant with financial reports and statements that contained materially false and misleading information and omissions concerning the financial condition of the Fund Counterparties. (*Id.* ¶¶ 47-52.) The Debtor itself had prepared these financial statements and knew they contained material misstatements. (*Id.* ¶¶ 48-50, 54.) Among other things, Highland misrepresented the amount of cash held by CDO Fund. (*Id.* ¶ 52.) Highland also failed to disclose that many of the assets on the Fund Counterparties' financial statements already had been encumbered. (*Id.* ¶¶ 51, 53.) These misrepresentations not only evince a specific intent by Highland to induce Claimant into entering the restructured agreements, but a longstanding willingness to prevent Claimant from ever recovering the amounts owed under the parties' proposed agreements in the event the Knox Assets suffered any losses. In addition, these events show the Debtor's singular control over—and ability to move—assets from one Highland affiliate to another at will.

7. Based on Highland's material misstatements and omissions, Claimant agreed to pursue the restructured transaction and once more attempt the securitization, and the parties executed three new written agreements: an Engagement Letter, a Cash Warehouse Agreement, and a Synthetic Warehouse Agreement (collectively, the "**Warehouse Agreements**"). (*See* Ex. B, Decision at 3.) The Engagement Letter was executed by Claimant and the Debtor; the Fund Counterparties were not parties to the Engagement Letter. (Ex. A, Compl. ¶ 62.) The Cash Warehouse and Synthetic Warehouse Agreements were executed by Claimant and the Debtor, along with the Fund Counterparties. (*Id.* ¶¶ 64-65.)

8. As described above, Claimant agreed to finance the acquisition of the CLO and CDS assets that the parties planned to securitize. In so doing, the key risk Claimant faced was the possibility that the Knox Assets would lose value while securitization was pending. To address

this risk, Claimant and the Debtor agreed in the Engagement Letter that the Fund Counterparties would bear this risk. Notably, at the time, the Debtor was the Investment Manager to the Fund Counterparties under agreements that gave the Debtor total control over those entities. (Ex. A, Compl. ¶¶ 24, 26.)

9. The Warehouse Agreements reiterated that the Fund Counterparties (as controlled by the Debtor) would bear the risk, specifying that if the Knox Assets lost value while securitization was pending, the Fund Counterparties “will in aggregate bear 100% of the risk” for the Knox Assets—with CDO Fund bearing 51% of any losses and SOHC bearing the remaining 49%.

10. To further protect Claimant in the event that the Knox Assets lost value, the Warehouse Agreements provided for recurring measurements of mark-to-market losses on all assets in the Knox Warehouse and required the Fund Counterparties to post collateral in the event the Knox Assets lost a set amount of value. Specifically, the parties agreed that the Fund Counterparties would post an additional \$10 million in collateral for each \$100 million in losses to the overall value of the Knox Assets. (Ex. B, Decision at 4.)

11. In September and October 2008, amid the global economic recession, the value of the Knox Assets dropped by \$100 million, twice. Thus, Claimant twice exercised its contractual right to demand additional collateral. And twice Highland posted the required collateral. (*Id.*) Although the Warehouse Agreements specified that it was the Fund Counterparties who would post collateral, the Debtor moved assets around from other entities it controlled to make the first two collateral calls (without disclosing this practice to Claimant). (Ex. A, Compl. ¶ 79.) On or about November 7, 2008, Claimant issued a third margin call, because the value of the Knox Assets suffered additional losses of \$200 million (bringing the aggregate losses to over \$400 million).

(Ex. B, Decision at 4.) This time, Highland refused to provide the additional collateral required under the Warehouse Agreements.

12. Highland's default on Claimant's third margin call triggered a termination event under the Warehouse Agreements. (*Id.*) On December 5, 2008, Claimant gave Highland formal notice of default and demanded the Fund Counterparties pay Claimant for 100% of the losses incurred on the Knox Assets—which had, by then, grown to over \$520 million.

13. There is no question that the Debtor knew the Fund Counterparties were liable for the losses under the Warehouse Agreements. Indeed, the Highland officer who executed the Warehouse Agreements admitted under oath that, “as of the end of the year 2008,” Highland knew that the Fund Counterparties owed Claimant “hundreds of millions of dollars in connection with the Knox Warehouse Agreements.” (Travers Dep. at 261:8-20.) But rather than paying Claimant what it was owed, the Debtor, with Mr. Dondero at the helm, “devised a strategy to delay the resolution of that obligation [to pay Claimant] for as long as possible.” (*Id.*) To that end, Highland devised and subsequently deployed a multifaceted strategy—one that would last for many years thereafter—to intentionally frustrate and prevent Claimant from recovering any of the amounts that both the Debtor and the Fund Counterparties knew were rightfully owed to Claimant under the Warehouse Agreements.

14. First, the Debtor directed the Fund Counterparties to withhold any payment to Claimant—a position that the Fund Counterparties maintained (again, under the specific direction of the Debtor) for more than a decade. (*See id.*) The Debtor did so not only with the specific knowledge that the Fund Counterparties owed hundreds of millions of dollars to Claimant for the losses on the Knox Assets, but with the knowledge that Claimant would come seeking payment



for such losses and, in particular, to look toward any and all collateral owned by the Fund Counterparties as one source of payment. As one of Highland's officers stated in an internal email to Mr. Dondero in an internal email dated January 16, 2009: "[UBS] is going to be calling [] today asking for all additional collateral that cdo and sohc have left to cover the obligation left by the knox transaction." But rather than turning over the collateral in question to Claimant or, at the very least, securing such assets so that they could be used to pay Claimant, the Debtor directed the Fund Counterparties to withhold such assets and payments from Claimant: "[T]hey can see us in court for their additional collateral." True to that promise, even after Claimant filed suit and laid out the amounts due under the contracts, the Debtor forced the Fund Counterparties to launch an affirmative, multi-year campaign—one which would consume much of the cash and assets belonging to the Fund Counterparties themselves—to stave off any payment from the Fund Counterparties to force Claimant to try to recover such claims through litigation and, once in litigation, devising knowingly baseless defenses and arguments for the Fund Counterparties to assert in such litigation.

15. On top of directing the Fund Counterparties to withhold payment and force Claimant to litigate for amounts the Debtor already knew they rightfully owed to Claimant, the Debtor undertook a litany of other actions to ensure that, even if Claimant were successful in the litigation it had been forced to initiate against the Fund Counterparties, it would not be able to collect any judgment arising out of the litigation. Such actions included, but were not limited to, a series of fraudulent transfers out of, and away from, an alter ego of SOHC, Highland Financial Partners, L.P. ("**HFP**"). (Ex. A, Compl. ¶ 109.) These internal transfers of funds—all overseen by James Dondero, the Debtor's founder and president—were designed to prevent Claimant from ever collecting the millions of dollars it was owed under the Warehouse Agreements.

16. In addition to such fraudulent transfers, the Debtor also took steps after the lawsuit was filed to ensure that no additional value would be transferred *to* the Fund Counterparties—deliberately taking steps to keep both SOHC and CDO Fund undercapitalized. Not only did the Debtor prevent additional value from being transferred to the Fund Counterparties, it is clear that the Debtor also failed to ensure that the Fund Counterparties retained assets that could be used to pay any such judgment. Quite to the contrary, it is now clear that any and all assets of any value that once belonged to the Fund Counterparties have, in one way or another, been transferred away, drained, or otherwise wasted by the Fund Counterparties, the Debtor itself, or the Debtor’s affiliates—all at the Debtor’s direction. Indeed, in a recent filing before this Court, the Debtor recently disclosed that both of the Fund Counterparties are completely “insolvent.” (Docket No. 687 at 1.) This means that—separate and apart from the transfers of assets out of, and away from, HFP that occurred in 2009—the Debtor has directed, or otherwise permitted, the Fund Counterparties to engage in acts that have left these once marque investment funds with literally *no* assets that can be used to pay Claimant. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate Claimant’s ability to recover the amounts owed under the Warehouse Agreements, or a wanton and reckless disregard of Claimant’s rights to those amounts. Such actions and omissions constitute breaches of the Debtor’s duty of good faith and fair dealing under the Warehouse Agreements.

**B. The State Court Action and the Debtor’s Efforts to Avoid Paying Claimant**

17. On February 24, 2009, Claimant filed a complaint in the Supreme Court of the State of New York (the “State Court”) against the Debtor and the Fund Counterparties. With knowledge of Claimant’s lawsuit, the Debtor exercised its control over the Fund Counterparties to ensure they would not meet their obligations and to impede Claimant’s ability to recover the

amounts owed by those entities. (*Id.* ¶¶ 112, 114.) Rather than paying Claimant what it was owed, and as discussed above, the Debtor orchestrated an extensive multi-part strategy to delay resolution of Claimant's claims for as long as possible. As a result, the Debtor further interfered with Claimant's contractual rights, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements. (*Id.*)

18. By this time, the Fund Counterparties and SOHC's alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant's ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the "**Affiliated Transferee Defendants**"), among others, thereby further reducing Highland's abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, *i.e.*, solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the

process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

19. As Claimant learned about Highland's conduct through discovery, Claimant amended its complaint to assert additional claims and name additional Highland entities, including HFP, the Affiliated Transferee Defendants, and Strand Advisors, Inc. As amended and stated in its Second Amended Complaint (attached hereto as Exhibit A) in the State Court Action, filed on May 11, 2011, Claimant's claims include breach of contract claims directly against the Fund Counterparties, as well as claims for fraudulent inducement, breach of the duty of good faith and fair dealing, fraudulent conveyance, tortious interference, and declaratory judgments for alter ego liability against HFP and general partner liability against Strand Advisors, Inc. The Debtor subsequently brought counterclaims against Claimant for breach of contract and unjust enrichment. (*See* Ex. B, Decision at 35-37.)

20. The procedural history of the State Court Action is complex. The Debtor and its affiliates and Claimant filed, and the State Court ruled on, four sets of motions to dismiss. The Debtor and its affiliates then filed two sets of summary judgment motions, which led to a series of complex rulings by the State Court in 2017. The parties filed various interlocutory appeals of the State Court's rulings on the motions to dismiss and for summary judgment. Those appeals were heard by the Appellate Division for the First Judicial Department in the County of New York, with the Appellate Division issuing five decisions over this suit's protracted history (some of which are still subject to further appellate rights).

21. Also included in the Appellate Division's decisions was an order arising from an appeal of the State Court's ruling on Claimant's motion to restrain Defendants Highland Credit



Strategies Master Fund, L.P. and Highland Crusader Partners, L.P. from disposing of property received through the fraudulent transfers orchestrated by the Debtor. Claimant showed it had a likelihood of success on the merits of its fraudulent transfer claims, and the Appellate Division enjoined both Highland entities from disposing of their assets. Ultimately, these injunctions resulted in partial settlements between Claimant and Highland Credit Strategies Master Fund, L.P. and Highland Crusader Partners, L.P.

22. By early 2018, more than nine years after Claimant first filed suit, the parties were finally ready to proceed to trial. Due to a jury waiver clause in the Warehouse Agreements, however, and after related pre-trial briefing, the State Court bifurcated Claimant's claims into two distinct phases for trial: Phase I, consisting of a bench trial on Claimant's claims against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements, as well as the Debtor's counterclaims; and Phase II, consisting of a jury trial on Claimant's remaining claims against all remaining Highland entities, including the Debtor.<sup>3</sup> (Ex. B, Decision at 2 n.1, 38.)

23. The State Court presided over a thirteen-day bench trial for Phase I from July 9 through July 27, 2018. (*Id.* at 1.) On November 14, 2019, the State Court entered a Decision and Order on Phase I (attached hereto as Exhibit B), ruling in favor of Claimant on almost every issue presented in Phase I. In particular, the court found the Fund Counterparties liable to Claimant for breach of the Cash Warehouse and Synthetic Warehouse Agreements, found no liability on the part of Claimant for either of the Debtor's counterclaims, and rejected almost every one of the Debtor's offset arguments with the only remaining issue (affecting approximately \$70,500,000) to

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<sup>3</sup> Remaining claims are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining issues.

be determined after Phase II. (*Id.* at 39.) An Entry of Judgment on Phase I was entered on February 10, 2020. Under that Phase I final judgment, Claimant is entitled to \$1,039,957,799.44, consisting of \$519,374,149.00 in damages and \$520,583,650.44 in pre-judgment interest as of January 22, 2020, with additional interest of \$128,065 having accrued daily until the Entry of Judgment.

24. The next step in the State Court Action is Phase II of the trial, where Claimant's remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non-Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final \$1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor's various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys' fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

25. Currently, Phase II of the State Court Action is stayed against the Debtor by the automatic stay imposed pursuant to section 362 of the Bankruptcy Code when the Debtor commenced this Chapter 11 Case.

26. Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys' fees that may be awarded by any court at the conclusion of Phase II.

### **Reservation of Rights**

27. Claimant does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor, the Fund Counterparties, Strand Advisors, Inc., other non-Debtor Highland Defendants, or any other Debtor affiliate, subsidiary, person, or entity.

28. Claimant expressly reserves all of its rights to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery. Claimant further reserves all rights to amend, modify, supplement, reclassify, or otherwise revise its Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert additional grounds for any of the claims, to seek reconsideration under section 502(j) of the Bankruptcy Code or otherwise of any disallowance of any amounts claimed hereunder, or to reflect any and all additional claims of whatever kind or nature that Claimant has or may have against the Debtor.

29. To the extent any payment to Claimant based on this Proof of Claim, or any portion thereof, is clawed back from Claimant, avoided, or set aside, for any reason whatsoever, or Claimant is required to disgorge any such payment, or any portion thereof, Claimant hereby reserves its rights to amend this Proof of Claim accordingly.

30. The execution and filing of this Proof of Claim is not intended as, nor should it be construed as or deemed to be any of the following: (i) a waiver of the right to seek withdrawal of the reference, or to otherwise challenge the jurisdiction of this Court, with respect to the subject matter of the claims asserted herein, any objection or other proceeding commenced with respect thereto, or any other action or proceeding commenced in this Chapter 11 Case against or otherwise involving Claimant; (ii) an admission that any matter is a core matter for purposes of 28 U.S.C. § 157(b) or is a matter as to which this Court can enter a final order or judgment consistent with Article III of the United States Constitution; (iii) a waiver of the right to *de novo* review by the district court of any order or judgment for which this Court, absent Claimant's consent, lacks authority to enter a final order or judgment; (iv) a consent to the entry by this Court of a final order or judgment with respect to the claims asserted herein or any other matter; (v) a waiver of Claimant's right to a jury trial against the Debtor, as applicable, or waiver of Claimant's right to a jury trial against any of the non-Debtor Defendants; (vi) a waiver or release of the claims or rights of Claimant against any other entity or person that may be liable for all or any part of the claims or any matters related to the claims asserted herein; (vii) a waiver of any rights and remedies Claimant has or may have under the Cash Warehouse and Synthetic Warehouse Agreements, Engagement Letter, or any other contract, whether mentioned in this Proof of Claim or not; (viii) a waiver of Claimant's contractual right to seek to have these or any other claims settled by binding arbitration; (ix) a waiver of any right related to the confirmation of any plan of reorganization proposed in this



Chapter 11 Case, or any other insolvency-related proceeding that may be commenced, either in the United States or abroad, by or against the Debtor, or any non-Debtor affiliate; (x) a waiver or agreement granting any party relief; or (xi) an election of remedies.

31. Neither this Proof of Claim nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of Claimant. Claimant specifically reserves all of its defenses and rights, procedural and substantive, including, without limitation, its rights with respect to any claim that may be asserted against Claimant by the Debtor, the Fund Counterparties, or any affiliate of the Debtor, and its rights to enforce the Cash Warehouse or Synthetic Warehouse Agreements, Engagement Letter, or any other contract.

#### **Right of Setoff and Recoupment**

32. Claimant reserves all rights of setoff and recoupment that it may have. To the extent the Debtor or any non-Debtor affiliate asserts any claim against Claimant, Claimant shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code or right of recoupment against such claim with respect to the claims asserted herein and any amendments thereto.

#### **Notice**

33. Copies of all notices and communications concerning this Proof of Claim should be sent to:

UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Suzanne Forster  
Telephone: (212) 713-3432  
Email: [suzanne.forster@ubs.com](mailto:suzanne.forster@ubs.com)

With a copy to:

John Lantz  
UBS Securities LLC  
1285 Avenue of the Americas  
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**Exhibit 4**  
**11/20/20 Hrg. Transcript (Excerpt Only)**

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

In Re: ) **Case No. 19-34054-sgj-11**  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) Friday, November 20, 2020  
 ) 9:30 a.m. Docket  
Debtor. )  
 ) - DEBTOR'S MOTION FOR PARTIAL  
 ) SUMMARY JUDGMENT [1214]  
 ) - REDEEMER COMMITTEE'S MOTION  
 ) FOR PARTIAL SUMMARY JUDGMENT  
 ) [1215, 1216]  
 ) - UBS'S MOTION FOR TEMPORARY  
 ) ALLOWANCE OF CLAIM FOR VOTING  
 ) PURPOSES [1338]

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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For the Debtor: Robert J. Feinstein  
PACHULSKI STANG ZIEHL & JONES, LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017-2024  
(212) 561-7700

For UBS Securities, LLC: Andrew Clubok  
Sarah A. Tomkowiak  
LATHAM & WATKINS, LLP  
555 Eleventh Street, NW,  
Suite 1000  
Washington, DC 20004  
(202) 637-2200

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1 example, precluding damages relating to the \$45 million that  
2 HFP had in March 2009 or the \$20-plus million that the CDO  
3 Fund had in December 2009.

4 So I think that's the answer I got from Mr. Feinstein at  
5 the end of oral argument. But even if the Debtor was making  
6 the request that the Court rule that, as a matter of law, UBS  
7 cannot assert any claim against the Debtor except the claims  
8 relating to the \$61 million of transfers, I think that UBS has  
9 shown, has put summary judgment evidence in the record that  
10 there may be a fact issue here with regard to these funds.  
11 They may be able to prove, have a potential theory here that  
12 Highland breached the covenant of good faith and fair dealing  
13 by somehow exercising control over the CDO Fund and HFP and  
14 causing them to dissipate those assets and not pay them to  
15 UBS. There might be a theory there.

16 So I hope that is clear, that I'm not granting summary  
17 judgment declaring that UBS is barred from asserting something  
18 more than the \$61 million of March 2009 transfers.

19 So that is my ruling on the motions for partial summary  
20 judgment. I'll turn now to the UBS Rule 3018(a) estimation  
21 motion. Once again, given the late hour, I'm going to  
22 dispense with the flowery legal standards that apply to this  
23 motion. I reserve the right in my order to supplement with  
24 more fulsome statements.

25 But I have decided that I should estimate UBS's claim for

1 voting purposes at the following number: \$94,761,076. Okay.  
2 So here is my math for how I get there. Let's start with the  
3 three transfers in March 2009 that have been alleged to be  
4 fraudulent transfers or, you know, Highland caused to be made  
5 in breach of its duty of good faith and fair dealing. And I'm  
6 talking about, obviously, the Multi-Strat entities, you know,  
7 the \$25,782,988 that HFP transferred in March 2009, then there  
8 was \$17,778,566 transferred to the Debtor, and then Citibank  
9 received \$17,481,808.

10 So, as we've talked about, we've talked about \$61,043,362.  
11 Okay. So, obviously, I've ruled summary judgment that  
12 Crusader -- transfers to Crusader and the transfer to Credit  
13 Strategies are gone. They're off the table. So, but focusing  
14 in on that \$61 million, I start with the \$25-plus million to  
15 Multi-Strat. I am estimating a high chance of UBS winning on  
16 that, a 90-percent chance. So, 90 percent of \$25,783,300 --  
17 what is the number? \$25 million. I may have done my math  
18 wrong. I've computed it equals \$23,205,008, but I think I --  
19 no, no, no, no. No, no, no. Let me back up. Just a minute.  
20 Hang on. (Pause.) All right. I think what I meant to do is  
21 calculate 90 percent of \$25,782,988, and my math may be wrong.  
22 I've got that equals \$23,205,008, but I feel like I did  
23 something wrong there. Someone can double-check my math  
24 there. Can someone -- I've left my calculator back in  
25 chambers. What's 90 percent of \$25,783,343? Hello. You've

1 got a calculator over there?

2 THE CLERK: Yeah. What was the number?

3 THE COURT: Okay.

4 THE CLERK: You said \$25,783,4 --

5 THE COURT: No, no, no. I'm sorry. That's where I

6 went wrong, I think. The number is should have -- not --

7 that's where I went wrong. I should have been using

8 \$25,782,988. And I have no idea where I got that \$25,783,000

9 number. So, 90 percent of \$25,782,988.

10 MR. FEINSTEIN: My calculator says that \$23.2

11 million, Your Honor.

12 THE COURT: Okay. Well, I guess I was right. Okay.

13 MR. FEINSTEIN: You were right.

14 THE COURT: Okay. So I'm putting a 90 percent chance

15 of winning on that, so \$23.2 million.

16 And then on the transfer to the Debtor, I'm using the

17 expert report, if you will, of I think his name is Mr. Dudney,

18 UBS's own expert, where he used \$8 million. He said you

19 should adjust that number to \$8 million, if I was

20 understanding correctly, because of HFP, the transferor,

21 having some percentage ownership in that. So if I use \$8

22 million, that gets us up to \$31.2 million.

23 Then, with regard to Citibank, the transfer to Citibank of

24 \$17,481,808, I'm giving a 20 percent chance of success on that

25 one. I just, again, feel in my gut, you know, in my

1 discretion, looking at the summary judgment evidence, I just  
2 feel in my gut there's going to be defenses to that. So, 20  
3 percent of that would be \$3,555,713.

4 So that gets us up to roughly 31 -- excuse me, \$34.76  
5 million. So, if you assume interest, pre-judgment interest, I  
6 used \$30 million there. Again, that's imprecise. But that  
7 gets us up to \$64.76 million.

8 Then what I did beyond that is, with regard to the summary  
9 judgment evidence thrown out that maybe there was 40 -- \$45  
10 million on hand at HFP in March of 2009 -- I think we're  
11 talking about UBS Exhibit 25 -- and then another \$23 million  
12 may have been on hand at the CDO Fund, at least in December  
13 2009, that's about \$68 million. And I am just assuming that  
14 there might be a credible argument made as to \$10 million of  
15 that. And then I'll add \$10 million of interest for all of  
16 these years, of pre-judgment interest.

17 And then I've plugged in another \$10 million for  
18 attorneys' fees, because I believe there is the ability to get  
19 attorneys' fees for actual fraudulent transfers. And I'm  
20 assuming that some of these, the ones to Highland and Multi-  
21 Strat, there might be credible arguments of actual fraudulent  
22 transfers. And then I have been told, I think, by Mr. Clubok  
23 that you might even get attorneys' fees for breach of covenant  
24 of good faith and fair dealing.

25 So, \$64.761 million plus \$10 million plus another \$10

1 million plus \$10 million is \$94.761 million.

2 Any questions? I know that was probably hard to follow,  
3 but any questions about that estimation?

4 MR. CLUBOK: Your Honor, the only question, and maybe  
5 it's too late and that's fine, I understand your analysis, but  
6 the calculation of the amount that was transferred to  
7 Highland, I think even Highland had agreed in their -- that  
8 the number is higher. I think that's out of context, and if  
9 that's -- if there's no chance for us to clear that up, I  
10 understand. You've made your decision. But I do want to say  
11 that I think even Highland would agree that they received more  
12 than \$8 million. The footnote from (inaudible) is a little  
13 bit out of context, and, you know, there was -- if you look at  
14 Highland's papers in terms of their response on 3018, I think  
15 they have accepted our 17, roughly \$17 million number. I  
16 think that is a -- it's complicated. But anyway, I just raise  
17 that, and maybe because you've done all this math, that won't  
18 affect your view, Your Honor. Totally understand that. But I  
19 do want to say that I think that Highland even acknowledges  
20 that the amount received was \$17 million. That was  
21 (inaudible) by Redeemer. I think it's misunderstood. You  
22 know, our -- a footnote from our expert report that takes the  
23 full expert report out of context.

24 THE COURT: Well, that's going to be my ruling. And,  
25 again, you know, estimation --



1 MR. CLUBOK: Understood.

2 THE COURT: -- is just that. It's imprecise. And I  
3 may have cut you some slack in other areas where I'm sure  
4 Highland and the Crusader Fund would vehemently contest what I  
5 did. You know, the 90-percent chance of winning I gave you on  
6 Multi-Strat, you know, they said it should be a much lower  
7 number, 30 percent or whatever.

8 So that is going to be the ruling.

9 Okay. Here is what I would like to do. I'm going to push  
10 off work, is what I'm going to do. I know that on the motions  
11 for partial summary judgment Highland submitted a proposed  
12 form of order that was pretty short and to the point. I can't  
13 remember seeing one for Redeemer.

14 Bankruptcy Rule 7056, Rule 56, they don't require,  
15 obviously, findings of facts and conclusions of law. They  
16 just require some reasoning to support the Court's ruling. So  
17 I feel like I need something more fulsome than what was  
18 uploaded by the Debtor, but it doesn't have to be extremely  
19 beyond what the Court ruled. I would, though, ask -- you  
20 know, I don't know if a combined order granting both motions  
21 with -- you all talk offline, Mr. Feinstein and Ms. Mascherin,  
22 whether you want separate orders and judgments or you feel  
23 like a combined one suffices.

24 MS. MASCHERIN: Your Honor, I can say with respect to  
25 the motions for summary judgment I think they could be dealt

(Proceedings concluded at 4:12 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

**/s/ Kathy Rehling**

**11/25/2020**

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

**LIMITED PRELIMINARY OBJECTION TO THE DEBTOR’S MOTION FOR ENTRY  
OF AN ORDER APPROVING SETTLEMENT WITH UBS SECURITIES LLC AND UBS  
AG LONDON BRANCH AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

Now into Court, through undersigned counsel, comes The Dugaboy Investment Trust and Get Good Trust (“Objectors”), who file this limited preliminary opposition to the *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (“Motion”) [Dkt. #2199]. The limited preliminary objection is being filed so that a contested matter will exist between Highland Capital Management, L.P. (the “Debtor”) and the Objectors, thus allowing the Objectors to conduct discovery to ascertain facts and obtain documents in support of the Objectors’ limited objection and determine if additional grounds exist for an amended objection.

Objectors and other entities own interests in Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P. (“Multi-Strat”)) and, on information and belief, the interests of Objectors and third parties is in excess of any interest owned by the Debtor in Multi-Strat.

Objectors’ issues with the settlement do not revolve around the Debtor settling its claims with UBS Securities LLC and UBS AG London Branch (collectively, “UBS”) but, rather, go to the following issues:

- 1) That the Bankruptcy Court has no jurisdiction to rule on the settlement of litigation between UBS and Multi-Strat. The Debtor’s sole position with the Multi-Strat entities appears to be as an investment advisor and possibly a general partner. The position taken by the Debtor in seeking Court approval for the Multi-Strat portion of the settlement is inconsistent with its previously articulated position taken in its *Debtor’s Response to Mr. James Dondero’s Motion to Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* (“Response”) (Dkt. #1546) to *James Dondero’s Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* (“Motion for Future Estate Transactions”) (Dkt. #1439). In the Motion for Future Estate Transactions filed by James Dondero seeking notice and hearing, one of the sales mentioned in the Motion for Future Estate Transactions was the sale of an asset owned by Multi-Strat (See Dkt. #1439).

In its Response, the Debtor stated:

However, the assets of a debtor’s non-debtor subsidiaries are *not* property of a debtor’s estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) (“As a general rule, property of the estate includes the debtor’s stock in a subsidiary but not the assets of the subsidiary.”); *see also*

*Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975) (“Ownership of all of the outstanding stock of a corporation, however, is not the equivalent of ownership of the subsidiary’s property or assets. . . Even though the value of the subsidiary’s outstanding shares owned by the debtor may be directly affected by the subsidiary’s disputes with third parties,’ Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor’s estate.”) (citing *In re Beck Indus., Inc.*, 479 F.2d 410 (2d Cir. 1973)).

Further, while the Debtor has certain control rights over RCP, MSCF, and SSPI, those rights do not make the assets of RCP, MSCF, and SSPI property of the Debtor’s estate. See *In re Thomas*, 2020 Bankr. LEXIS 1364 at \*31 (Bankr. W.D. Tenn. 2020) (a debtor’s membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989) (a debtor’s ownership interests and control rights in non-debtor partnerships were property of the estate; but those rights did not make the assets of the partnership property of the estate or implicate the automatic stay so as to prevent secured creditors of the non-debtor partnerships from foreclosing on properties of the partnerships).

The law has not changed since the Response filed by the Debtor and this Court has no jurisdiction to approve the transfer of assets by a non-debtor “affiliated entity” to a third party in settlement of the claims of the third party against the non-debtor.

This position that the Court has jurisdiction over the UBS/Multi-Strat portion of the Settlement Agreement and Motion is also inconsistent with the fact that the Debtor did not seek Court approval for a May 2020 settlement between UBS and Multi-Strat, Highland Credit Opportunities CDO and Highland CDO Asset Holding L.P. Clearly, Highland, as both the Investment Advisor and either General Partner or Managing Member of the entities other than UBS, did not believe the Bankruptcy Court had jurisdiction over the May 2020 settlement identified in the Settlement Agreement attached to the Motion. The status of Debtor, with respect to the Multi-Strat portion of the Motion before this Court, has not changed from its status at the time of the May 2020 Settlement Agreement that was not brought before this Court. It is



also apparent that UBS did not believe that Bankruptcy Court approval was necessary for the May 2020 settlement.

- 2) Whether the Debtor, under the organizational documents of Multi-Strat and its Investment Advisor Agreement with Multi-Strat, possesses the requisite authority to bind Multi-Strat under the terms of the proposed settlement. The Motion fails to identify the authority possessed by the Debtor to bind Multi-Strat and fails to attach the documents giving the Debtor requisite authority to bind Multi-Strat to the proposed settlement. The Motion does not attach exhibits that evidence such authority or even quote portions of such documents giving rise to the Debtor's authority to bind the entity.
- 3) While the Debtor's bankruptcy counsel can advise the Debtor as to the wisdom of the settlement, the Motion fails to state whether a third party other than the Debtor or its counsel rendered an opinion to Multi-Strat and its owners that the settlement between the UBS entities was in the best interests of Multi-Strat. In fact, it is unknown as to whether anyone on behalf of Multi-Strat other than Highland or its counsel was apprised of the Multi-Strat/UBS settlement. Clearly, counsel for the Debtor cannot render such an opinion inasmuch as they do not represent Multi-Strat. While the case against Multi-Strat appears to be based upon transfers made to it, issues between Multi-Strat and the Debtor exist as to whether a portion of the Debtor's payments to the UBS entities reduces the claims by UBS against Multi-Strat under the single recovery rule. For example, if the case against Multi-Strat was brought by the Debtor and the property subject to the unlawful transfer had been transferred by another Highland Fund to Multi-Strat under 11 U.S.C. § 550(d), the Debtor could obtain only

a single satisfaction of the claim. Objectors believe that the interests of Debtor with respect to its own liability to UBS and its bargained for settlement and release for itself, Strand Advisors, Inc. and the list of released third parties place Debtor and its counsel in a conflict of interest position in evaluating the wisdom of the settlement between Multi-Strat and the various UBS entities.

- 4) The portion of the Settlement Agreement that confers exclusive jurisdiction of any dispute between Multi-Strat and UBS is void. It is well settled law that the parties cannot confer jurisdiction where no jurisdiction exists.

Objectors recognize that this Court has jurisdiction under Bankruptcy Rule 9019 of the settlement between the Debtor and UBS. The Court, however, does not have jurisdiction to give res judicata or collateral estoppel effect to a settlement of a dispute between three (3) non-debtors. The Dugaboy Investment Trust and Get Good Trust reserve the right to amend and supplement this objection upon obtaining documents and discovery from the Debtor and possibly UBS.

May 4, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that on May 4, 2021, a copy of the above and foregoing *Limited Preliminary Objection to the Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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

<b>IN RE:</b>	*	<b>Chapter 11</b>
	*	
	*	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>	*	<b>Case No. 19-34054sgj11</b>
	*	
<b>Debtor</b>	*	

**SUPPLEMENTAL OPPOSITION TO DEBTOR’S MOTION FOR ENTRY OF AN  
ORDER APPROVING SETTLEMENT WITH UBS SECURITIES LLC AND UBS AG  
LONDON BRANCH AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

Now into Court, through undersigned counsel, comes The Dugaboy Investment Trust (“Dugaboy”), who files this supplemental opposition to the *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (“Motion”) [Dkt. #2199]. Dugaboy has previously filed with this Court a *Limited Preliminary Objection to the Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Dkt. #2268] and this opposition is a supplement to the objections already raised by Dugaboy.

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## I. BACKGROUND

1. Highland Capital Management, L.P. (“Debtor”) filed for relief on the 16<sup>th</sup> day of October, 2019 in the United States Bankruptcy Court for the District of Delaware. The case was transferred to this Court on December 4, 2019.

2. On November 24, 2020, the Debtor filed its *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (“Fifth Amended Plan of Reorganization”) [Dkt. #1472].

3. The Fifth Amended Plan of Reorganization was confirmed by this Court’s *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief* (“Order”) on the 22<sup>nd</sup> day of February, 2021 [Dkt. #1943].

4. UBS Securities LLC and UBS AG London Branch (together, “UBS”) filed Proof of Claim Nos. 190 and 191 in the bankruptcy which are the subject of the Motion. The claims arise out of litigation filed in New York by UBS. The New York action was split into two phases. The first phase dealt primarily with the contractual claim between UBS and the Debtor and the non-Debtor funds. In connection with the first phase of the New York action, a judgment was rendered on July 27, 2018 against Highland CDO Opportunity Master Fund L.P. (“HCDO”) and Highland Special Opportunities Holding Company (“HSO”) (collectively, “Non-Debtor Funds”) in the amount of \$1,039,957,799.44.

5. In connection with the New York lawsuit, in March of 2009 UBS commenced a lawsuit against Highland Credit Strategies Master Fund L.P. (“HCS”), Highland Crusader Offshore Partners L.P. (“Crusader”), and Highland Credit Opportunities CDO L.P (now asserted by UBS and the Debtor to be Highland Multi-Strategy Credit Fund L.P (“Multi-Strat”). The

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claim against the entities identified in this paragraph was the transfer to these entities of \$2,333,455,147.00. (See *UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* (“Brief in Support of Motion for Temporary Allowance”)[Dkt. #1342, ¶ #8]) As shown in the chart created by UBS and included in the UBS Brief in Support of Motion for Temporary Allowance, \$25,782,988.00 was transferred to Multi-Strat Entities ( Note the Chart uses Multi-Strat Entities as opposed to Multi-Strat the party to the UBS/ Multi-Strat Settlement). In its Motion for Temporary Allowance, UBS classified the claim against Multi-Strat as a fraudulent conveyance claim (See Dkt. #1342, ¶¶ 39-47). This portion of the UBS lawsuit was to be tried at a later point. The New York suit was stayed as a result of the Debtor filing for relief pursuant to Chapter 11.

6. This Court has heard testimony concerning the UBS lawsuit in connection with *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Dkt. #1338] and the Debtor's (Dkt. #1181 and Dkt. #1214) and the *Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [Dkt. #1215 and Dkt. #1216]. On November 20, 2020, this Court estimated the UBS claims for purposes of voting. In its opinion, the Court estimated that UBS had a ninety percent (90%) chance of winning its fraudulent conveyance suit. The amount allocated to Multi-Strat ( it appears as though the Court did not differentiate the amount between multiple Multi-Strat Entities) of the UBS claims for voting purposes was ninety percent (90%) of \$25,782,988.00.

## **II. SETTLEMENT MOTION**

7. The Debtor has filed a motion to settle its claim with UBS. Dugaboy objects to the settlement in total but its objection is primarily focused on the following: 1) whether the Court has jurisdiction to approve the UBS/Multi-Strat settlement; 2) whether the Debtor had or has the authority to act on behalf of Multi-Strat in entering or attempting to enter into a settlement with UBS; and 3) whether the Debtor is required to obtain independent advice and counsel for Multi-Strat or if, in fact, Multi-Strat had independent counsel and advice in: (i) analyzing whether to settle the UBS claim, (ii) the payment of \$18,000,000.00 by Multi-Strat to UBS in settlement of alleged fraudulent conveyances, and (iii) whether the lack of a release by the Debtor to Multi-Strat for transfers it received from Highland CDO Master Opportunity Fund LP, Highland Special Opportunities Holding Company or Highland Financial Partners subjects Multi-Strat to paying twice for the same transfers.

## **III. AUTHORITY TO ACT ON BEHALF OF MULTI-STRAT**

8. Multi-Strat is a Delaware limited partnership whose current general partner appears to be Highland Multi-Strategy Credit Fund GP, L.P. Based upon the Motion, the Debtor asserts it is the investment manager of Multi-Strat and, thus, according to the Debtor, it has authority to bind Multi-Strat to a settlement with UBS (See Dkt. #2199, Pg. 26, ¶ 53). No additional information is provided in the Motion as to the authority of the Debtor to commit Multi-Strat to the settlement. It is also believed that some form of Investment Advisor Agreement (as opposed to Investment Manager Agreement) may exist between Multi-Strat and the Debtor. The Motion cites no document, attaches no exhibit and merely uses the conclusory

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statement “is also authorized” to provide the legal basis for the authority of the Debtor to act on behalf of Multi-Strat.

9. The extent of the Debtor’s ownership interest in Multi-Strat is unknown. From the tenor of the UBS lawsuit and a review of the pleadings before this Court, it appears as though the Debtor’s interest in Multi-Strat is minimal. The Motion indicates that the interest of the Debtor in Multi-Strat has been transferred to third parties for some consideration. The Motion and Settlement Agreement [Dkt. #2200] refer to an interest in Multi-Strat being “redeemed” and other transfers of the Debtor’s interest in Multi-Strat (See Pgs. 9 and 10 of the Settlement Agreement [Dkt. #2200] and Motion (Page 2, Dkt. #2199)). The third-party ownership in Multi-Strat is significant. What the Debtor received for the transfers of its interests in Multi-Strat is unknown, however, and in assessing the value the Debtor received for its interest in Multi-Strat it is safe to assume that in some measure the Debtor received the benefit of the so-called fraudulently transferred assets.

#### **IV. DUGABOY’S OBJECTION TO THE SETTLEMENT**

10. The focus of the Dugaboy objection to the Motion is with respect to the Multi-Strat portion of the Settlement Agreement. Dugaboy believes that the Multi-Strat settlement should be excluded from this Court’s approval for the reasons set forth in its opposition. The Debtor’s Motion seeking approval of the UBS/ Multi-Strat portion of the UBS settlement is inconsistent with the position taken by the Debtor with respect to sales of assets by non-debtor affiliates (See Dkt. #1546) and this Court’s ruling in the motion filed by James Dondero requesting that he and the other parties in interest in the case receive Notice of any future sales of non-debtor assets. (See Dkt. #1605) The May 20, 2020 settlement between UBS, the Debtor and

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Multi-Strat was not brought before this Court for approval. The Debtor's knowing failure to follow the reporting required by B.R. 2015.3 (which requires a debtor to file periodic reports on operations of entities in which the debtor has a controlling or substantial interest) is additional evidence that the Debtor believes that all matters affecting the Debtor's subsidiaries are not subject to review unless it suits the Debtor's purposes.

11. Dugaboy recognizes that the Debtor can settle its claim against Multi-Strat for the assets that were asserted to be fraudulently transferred to Multi-Strat and obtain the \$18,000,000.00. A settlement of that claim is not before the Court and should not be considered, inasmuch as the Debtor, based upon its pleadings to date, would be in control of both parties to such a settlement. A second problem with such a settlement relates to the disposition of the proceeds of such a settlement. Under the terms of the Debtor's confirmed Fifth Amended Plan of Reorganization, any recovery of an action possessed by the Debtor must be distributed in accordance with the Fifth Amended Plan of Reorganization and cannot be targeted for payment to UBS. If the Debtor obtained an \$18,000,000.00 recovery from Multi-Strat, the Debtor would not have a need for an exit loan. The settlement between the Debtor and UBS in fact transfers some Debtor assets to UBS and is probably a plan modification without notice and hearing in compliance with 11 U.S.C. § 1127.

#### **V. COURT LACKS JURISDICTION OVER THE UBS/MULTI-STRAT CLAIM**

12. In its preliminary objection to the UBS/Multi-Strat settlement [Dkt. #2268], Dugaboy objected to the settlement between UBS and Multi-Strat on the ground that the Bankruptcy Court lacks jurisdiction to approve a settlement between two non-debtors. The limited jurisdiction of the Bankruptcy Court may not be created by packaging the UBS/ Multi-

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Strat settlement in the settlement of the UBS proofs of claim in this case. The two settlements are separate and distinct as a matter of law. The fact that the Debtor and UBS linked the two settlements is not a basis to create bankruptcy jurisdiction where no jurisdiction previously existed.

13. It is blackletter law that the automatic stay does not apply to co-defendants in a lawsuit. See *Wedgeworth v. Fibreboard*, 706 F.2d 541, 544 (5<sup>th</sup> Cir. 1983) and *In Re SI Acquisition*, 817 F.2d 1142 ftns. 27 and 28 (5<sup>th</sup> Cir. 1987). At any point during this Chapter 11 case, UBS could have proceeded against Multi-Strat and the other non-debtor defendants in New York.

14. The claim of UBS against Multi-Strat also does not fit within the constitutional constructs of 28 U.S.C. § 157(b) and 28 U.S.C. §1334(b) as an action arising in, under or related to a case under Chapter 11.

15. In paragraph 53 of the Debtor's Motion [Dkt. #2199], the Court's lack of jurisdiction is admitted by the Debtor. The Debtor, in support of its Motion, states the following:

Finally, the Debtor is also authorized, as investment manager, to cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action without seeking leave under 11 U.S.C. § 363(b). First, section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1). However, the assets of a debtor's non-debtor subsidiaries are not property of a debtor's estate. See, e.g., *In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D.Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."). Here, Multi-Strat is not wholly owned by the Debtor and has meaningful third party investors. Thus, the payment to be made by Multi-Strat pursuant to the Settlement Agreement will not involve property of the Debtor's estate or implicate 11 U.S.C. § 363(b). Instead, it will involve the transfer of Multi-Strat's property in settlement of UBS's claim against Multi-Strat.

16. The question the Court should ask the Debtor is why it is seeking Court approval for a claim between two non-debtors. The Debtor has not sought Court approval for any action it has taken on behalf of the subsidiaries to date (except as required in the protocol for transactions

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between related entities). Dugaboy suggests that the reason for this change of position is that the Debtor is seeking a res judicata or collateral estoppel shield for its breach of its fiduciary duty to Multi-Strat and its owners under applicable law. If the Debtor believes it has authority to go forward with the transaction without Bankruptcy Court authority, it should execute the settlement without asking this Court to take an act outside of its constitutional jurisdiction. The Debtor, by packaging its settlement with UBS with the UBS/ Multi-Strat settlement, is attempting to create Bankruptcy Court jurisdiction where no such jurisdiction previously existed.

17. A significant question exists as to the disclosure the Debtor as “investment manager” has made to the “meaningful third party investors” in Multi-Strat. Has the Debtor disclosed to the meaningful third party investors the risks of the UBS claim against Multi-Strat, the cost of defending the claim, and the benefit of the settlement? Of even more importance, has the Debtor disclosed its conflict of interest in connection with the UBS/Multi-Strat settlement? Has the Debtor disclosed to the Multi-Strat investors that it has retained all claims possessed by the Debtor against Multi-Strat in its Fifth Amended Plan of Reorganization? (See Retained Claims Dkt. #1389-5) If in fact the two settlements of the UBS claims are linked (one against the Debtor and one against Multi-Strat), the Advisors Act and applicable law require notice of the conflict to the investors in Multi-Strat. Has the Debtor, in entering into the settlement, obtained a fairness type opinion by an independent third party? The Settlement Agreement states that Multi-Strat has received legal advice from independent counsel. The statement in the Settlement Agreement appears to be inaccurate for the reason set forth later in this opposition.

18. It is unclear if the Debtor’s settlement with UBS is conditioned upon the approval of the UBS/Multi-Strat settlement. If such a condition exists, the Debtor has an obvious conflict between its role as “investment manager for Multi-Strat” and its position as a Debtor in

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Possession in this case. It cannot serve both masters. It is in the interest of the Debtor to have Multi-Strat pay as much as possible to reduce the exposure of the Debtor to UBS. To the extent payment comes from Multi-Strat, the payment is coming out of the pocket of the third party investors. If in fact the Debtor owned one hundred percent (100%) of Multi-Strat, this would not be an issue, however, the Debtor's minimal interest in Multi-Strat places the burden of the UBS\Multi-Strat settlement on others.

19. It is clear that, to the extent the Debtor\ UBS and Multi-Strat\UBS settlements are linked and contingent upon one another, the Debtor has a conflict of interest in acting on behalf of both parties. The Debtor's actions, with respect to this clear conflict, violate both the Debtor's fiduciary duties as possibly the Multi-Strat general partner and the requirements imposed on the Debtor under the Advisors Act.

20. The Advisers Act establishes a federal fiduciary duty for investment advisers that cannot be waived. *See, e.g., SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Morg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) (“§206 establishes ‘federal fiduciary standards’ to govern the conduct of investment advisers.”); *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court's reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”). *See also* Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients' interests to its own”) (*citing Proxy Voting by Investment Advisers*, Investment Advisers Act Release No. IA2106 (Jan. 31, 2003)).

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21. This is manifested in a duty of loyalty and a duty of utmost care, which include a duty of transparency. It also means that the Registered Investment Advisor (“RIA”) has to follow the terms of the agreements and the regulations that apply to the investment vehicle. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to reflect the RIA’s fiduciary duties and to prevent the RIA from violating disclosure rules. *See* 17 C.F.R. § 275.206(4)-7. That also entails the RIA’s duty to disclose all facets surrounding potential conflicts of interest to investors.

22. Specifically, for all conflicts of interest, the RIAs must disclose those conflicts to the clients verbally, in writing, on Form ADV or a combination of the foregoing. General Instruction 3 to Part 2 of Form ADV (stating that an adviser’s disclosure obligation “requires that [the adviser] provide the client with sufficiently specific facts so that the client is able to understand the conflicts of interest [the adviser has] and the business practices in which [the adviser] engage[s], and can give informed consent to such conflicts or practices or reject them”). *See also* Investment Advisers Act Release 3060, *supra*; General Instruction 3 to Part 2 of Form ADV (“Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship. As a fiduciary, you also must seek to avoid conflicts of interest with your clients, and, at a minimum, make full disclosure of all material conflicts of interest between you and your clients that could affect the advisory relationship. This obligation requires that you provide the client with sufficiently specific facts so that the client is able to understand the conflicts of interest you have and the business practices in which you engage, and can give informed consent to such conflicts or practices or reject them.”). *See also Robare Group, Ltd., et al. v. SEC*, 922 F.3d 468, 472 (D.C. Cir. 2019) (“[R]egardless of

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what Form ADV requires, [investment advisers have] a fiduciary duty to fully and fairly reveal conflicts of interest to their clients.”).

23. Where an RIA places its interests above the advisee or its investors, the Advisers Act holds such RIA is liable for breach of fiduciary duty. Violating any premise of the advisor act (or any rule or regulation) voids the advisory agreement. 15 U.S.C. § 80b-15 (“Every contract ...heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision.”).

24. The law of Delaware also does not allow a general partner fiduciary to serve two masters. See *Miller vs Am Real Estate Partners L.P.* (attached as **Exhibit 1** pages 10 to 12).

**VI. THE SETTLEMENT AGREEMENT DOES NOT PUT AN END TO THE UBS MULTI-STRAT LITIGATION AND REQUIRES THE DEBTOR, AS INVESTMENT’ MANAGER FOR MULTI-STRAT, TO ACT CONTRARY TO MULTI-STRAT’S BEST INTERESTS**

25. Dugaboy would note for the Court the following elements of the Settlement Agreement that place the Debtor in direct conflict with Multi-Strat:

- a) The Debtor is not releasing any claim it has against Multi-Strat for the assets transferred to Multi-Strat that are the subject of the UBS New York lawsuit.

- b) The Debtor, notwithstanding its asserted position as investment manager for Multi-Strat, has obligated itself to investigate and participate in the prosecution and investigation of claims against Multi-Strat (See Settlement Agreement, Dkt. #2200, Pg. 5, ¶ 1(c)).
- c) The Settlement Agreement contains in paragraph 11 a statement that each party (which would include Multi-Strat) has been “adequately represented by independent legal counsel or its own choice.” The section goes on to state that Multi-Strat “had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel who has answered any and all questions.” Inasmuch as the Debtor has claims against Multi-Strat (See Retained Claims in the Debtor’s Fifth Amended Plan of Reorganization, Dkt. #1389-5) and Pachulski represents the Debtor under no set of facts can the Debtor claim that Pachulski can act as independent counsel for Multi-Strat. Any representation of Multi-Strat by the Pachulski firm is the representation of an adverse interest. Multi-Strat did not have either independent counsel or a third party not affiliated with the Debtor or Strand Advisors analyze its exposure with respect to the UBS lawsuit.
- d) The Settlement Agreement is unclear as to whether UBS is releasing all claims against Multi-Strat or just some claims. (See Dkt. #2199, ¶ 2, page 5 and other references to possible continuing litigation between UBS and Multi-Strat.)

## **VII. CONCLUSION**



Based upon the foregoing, the Court should deny the Debtor's 9019 Motion or, alternatively, limit the approval to the UBS/Debtor settlement and exclude from any authorization or approval the UBS/ Multi-Strat portion of the settlement.

May 12, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that on May 12, 2021, a copy of the above and foregoing *Supplemental Opposition to Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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/s/Douglas S. Draper



**Miller v. Am. Real Estate Partners, L.P.**

Court of Chancery of Delaware, New Castle

August 6, 2001, Submitted ; September 6, 2001, Decided

Civil Action No. 16788

**Reporter**

2001 Del. Ch. LEXIS 116 \*

RUTH ELLEN MILLER, CHARLES and LYDIA HOFFMAN, and JOY LAZARUS on the behalf of Themselves and all others similarly situated, Plaintiff, v. AMERICAN REAL ESTATE PARTNERS, L.P., HIGH COAST LIMITED PARTNERSHIP, AMERICAN PROPERTY INVESTORS, INC., CARL ICAHN, ALFRED D. KINGSLEY, MARK H. RACHESKY, WILLIAM A. LEIDESDORF, JACK G. WASSERMAN, and JOHN P. SALDARELLI, Defendants.

**Notice:** THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

**Disposition:** [\*1] Defendants' motion to dismiss the complaint GRANTED.

**Counsel:** Pamela S. Tikellis and Robert J. Kriner, Jr., Esquires, of CHIMICLES & TIKELLIS, Wilmington, Delaware; Of Counsel: Lynda J. Grant, Esquire of GOODKIND LABATON RUDOFF, New York, New York, Attorneys for Plaintiffs.

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**Judges:** STRINE, Vice Chancellor.

**Opinion by:** STRINE

**Opinion**

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MEMORANDUM OPINION

STRINE, Vice Chancellor

This is yet another case in which a general partner of a limited partnership contends that the partnership agreement eliminates the applicability of default principles of fiduciary duty, and in which this court finds that the drafters of the agreement [\*2] did not make their intent to

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eliminate such duties sufficiently clear to bar a fiduciary duty claim. Here, the drafters of the American Real Estate Partners, L.P. partnership agreement did not clearly restrict the fiduciary duties owed to the partnership by its general partner, a defendant entity wholly owned by defendant Carl Icahn. Indeed, the agreement seems to contemplate that the general partner and its directors could be liable for breach of fiduciary duty to the partnership if they acted in bad faith to advantage themselves at the expense of the partnership.

The fact that the general partner and other defendants owe fiduciary duties does not, however, mean that the plaintiffs have pled a viable claim. In this opinion addressing the defendants' motion to dismiss, I reject the defendants' argument that they did not owe fiduciary duties, but find that the plaintiffs have failed to make non-conclusory allegations of fact that, if true, support an inference that the defendants breached their fiduciary duty of loyalty. Because the plaintiffs have averred enough to lead the court to suspect that a viable complaint can be pled, however, the complaint is dismissed without prejudice. [\*3] As to those aspects of the plaintiffs' complaint that are barred by the doctrine of laches, the dismissal shall be with prejudice.

## I. Factual Background

### Overview Of The Plaintiffs' Allegations

The plaintiffs are holders of limited partnership units in defendant American Real Estate Partners, L.P. ("American Real Estate" or the "Partnership"). They seek various forms of relief against the entities and persons who control American Real Estate: American Real Estate's general partner, defendant American Property Investors, Inc. ("the General Partner"); the General Partner's directors, including defendant Carl Icahn, the General Partner's owner and chairman of the board; and American Real Estate's majority unitholder, defendant High Coast Limited Partnership ("High Coast"), which is also controlled by Icahn and has

American Property Investors as its general partner.

Distilled to its essence, the amended complaint alleges that Icahn (i) acquired the General Partner interest; (ii) used the General Partner to make a rights offering that would enable High Coast to acquire a majority of American Real Estate's units and insulate the General Partner from removal; (iii) cut off [\*4] all distributions so that Icahn could devote available cash to investments in which other Icahn entities were interested and place pressure on other unitholders to sell out; (iv) amended the Partnership Agreement through a written consent executed by High Coast to broaden the purposes of the Partnership and allow American Real Estate to invest in any securities, thus furthering Icahn's plan to use American Real Estate as a financing agency for the investment goals of his other entities; and (v) bought out additional unitholders at an allegedly unfair price through a tender offer. According to plaintiffs, the sum total of these actions have left the public unitholders of American Real Estate as unitholders in a profitable Partnership that pays no distributions so that it can instead serve as a pool of available capital that Icahn can use for his own personal purposes. Because Icahn has total control over American Real Estate and its cash flow, and has made no secret of his intent to continue to use the Partnership in this self-interested manner, the capital markets have placed a correspondingly low value on Partnership units, to the detriment of the public unitholders.

I will now set [\*5] forth the elements of this supposed scheme, as such elements are pled in the amended complaint.

#### A. High Coast Obtains Voting Control

American Real Estate was formed in early 1987. Its purpose was to invest and manage real estate, and to engage in other activities related to those purposes. As of the mid-1990s, American Real Estate owned a large portfolio of diverse real estate properties.

By 1995, the Icahn-controlled General Partner was

in place at American Real Estate. In February 1995, Icahn's affiliate High Coast controlled 9.89% of American Real Estate's units.

That month, the General Partner caused American Real Estate to make a "Rights Offering." Each limited partner was issued one freely tradeable and transferable subscription right for each seven units held. The subscription right entitled the right holder to obtain six partnership units and one preferred unit for \$ 55, with \$ 45 of the price being allocated to the six units and \$ 10 to the preferred unit. The price per regular unit was a slight discount to the then-prevailing market price.

All limited partners were also offered the opportunity to participate in an oversubscription privilege. This privilege enabled [\*6] limited partners to purchase, on a *pro rata* basis, any rights not exercised by other holders. In connection with the Offering, High Coast guaranteed that it would purchase all units it would receive rights to purchase, and any units and preferred units that were not subscribed for by other limited partners.

The unitholders were informed that the Partnership wanted to raise cash to take advantage of "what the General Partner perceived as significant investment opportunities to acquire undervalued properties, such as development properties and non-performing loans, which the General Partner believes have the potential to diversify and enhance the long-term value of the Partnership's investment portfolio." <sup>1</sup>

Nearly two million rights were issued, of which only 418,307 were exercised. High Coast was therefore able to use the unexercised rights to acquire an additional 10,324,128 units (plus 1.7 million preferred units). This raised its ownership stake from 9.89% to 50.6%.

[\*7] Because the Partnership Agreement states that the General Partner can be removed only by the affirmative votes of 75% of the unitholders,

High Coast had achieved a level of ownership that rendered Icahn's control of American Real Estate unshakeable.

#### B. The General Partner Eliminates Cash Distributions

In 1993, the General Partner had halved quarterly distributions from a quarter to twelve and a half cents per unit. In December 1995 -- after High Coast obtained a majority of units -- the General Partner ceased all distributions.

According to the plaintiffs, this decision adversely affected the public unitholders. Although the units trade on the New York Stock Exchange, allegedly the trading volume in Partnership units is thin, and the price at which units trade relates principally to the amount of distributions it makes. Because Icahn had locked up control and had ceased to distribute any of the Partnership's cash flow to unitholders, the units' trading price allegedly was depressed.

#### C. Icahn Uses His Control To Amend The Partnership Agreement

In July 1996, the General Partner disseminated an "Information Statement" to unitholders, informing them that the Partnership Agreement [\*8] had been amended solely by the votes of High Coast upon recommendation of the General Partner.

The "Amendment" altered § 3.01 of the Partnership Agreement, which defined American Real Estate's business and purpose. The Amendment ended the Partnership's exclusive focus on real estate to enable American Real Estate to invest in securities of any kind, whether or not related to real estate. As the information statement indicated:

The equity securities in which the Partnership may invest may include common stocks, preferred stocks and securities convertible into common stocks, as well as warrants to purchase such securities. The debt securities in which the Partnership may invest may include bonds, debentures, notes, mortgage-related securities and municipal obligations. Certain of such securities may include lower rated securities

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<sup>1</sup> Am. Comp. P35 (quoting prospectus).

which may provide the potential for higher yield and therefore may entail higher risk. In addition, the Partnership may engage in . . . options and futures transactions, foreign currency transactions and leveraging for either hedging or other purposes. <sup>2</sup>

The information statement also indicated that the broadening of American Real Estate's [\*9] investments could endanger the tax status of the Partnership.

The purpose of the Amendment was articulated as follows:

The Partnership intends to continue to invest its assets available for investment in undervalued assets in the real estate market. . . [However,] *while the Partnership believes opportunistic real estate investments continue to remain available, such investments have become more competitive to source and the increased competition may have an adverse impact on the spreads and the ability to find quality assets that provide returns sought by the Partnership.* In addition. . . the Partnership Agreement only permits the Partnership to invest in assets related to real estate unless such investments are of a short-term nature pending investment in real estate assets, such as deposit accounts and money market funds. The General Partner believes that it is in the best interests of the Partnership and the Unitholders for the Partnership to [\*10] be permitted to invest a portion of the Partnership's funds in assets outside the real estate market that may provide returns on its funds in excess of those available to the Partnership in the current real estate market or those currently received on investments in government securities. <sup>3</sup>

The public unitholders were also informed, however, that High Coast's reasons for voting their units to consent to the Amendment to the

Partnership Agreement were not entirely related to furthering the interests of American Real Estate as a partnership. Rather,

Icahn's approval of the Amendment to the Partnership Agreement through High Coast and the General Partner's selection of non-real estate investments may be influenced by factors other than the best interests of the Partnership and maximization of Unitholder value. Such factors may include whether the General Partner and its affiliates, including Icahn, have independent investments in such assets which may benefit from investments by the Partnership. <sup>4</sup>

[\*11] The unitholders were also told that the Partnership "anticipated that Mr. Icahn, as Chairman, and personnel of the General Partner and the Partnership will be responsible for selecting non-real estate investments by the Partnership as they have with respect to real estate related investments." <sup>5</sup> The Information Statement further warned that "the General Partner's selection of non-real estate investments may be subject to conflicts of interest, including those relating to whether the General Partner or its affiliates have independent investments in such assets which may benefit from investments by the Partnership." <sup>6</sup>

The unitholders were also told that the Audit Committee of the General Partner had approved the Amendment, acting independently of the General Partner's management. The Audit Committee was comprised of defendants Alfred D. Kingsley, William A. Leidesdorf, and Jack G. Wasserman. According to the Information Statement, the Audit Committee, upon advice [\*12] from Coopers & Lybrand, concluded that the expansion of American Real Estate's permissible investments was in the best interests of the Partnership because of the limited opportunities available in the real estate

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<sup>4</sup> Information Statement at 5.

<sup>5</sup> Information Statement at 2.

<sup>6</sup> *Id.*

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<sup>2</sup> Am. Comp. P53 (quoting information statement).

<sup>3</sup> Information Statement at 4 (emphasis added).



market; the benefits of a more diversified investment portfolio; and the potential gains that could come from non-real estate investments. After Audit Committee approval, the full board of the General Partner, including Icahn, approved the Amendment and submitted it to High Coast for the necessary votes to adopt it.

#### D. High Coast Makes A Tender Offer

In November 1998, High Coast made a tender offer for 10,000,000 -- or nearly 40% of all -- American Real Estate units at \$ 10.50 per unit. That offer was successful and resulted in High Coast upping its holdings to 89.7% of all units.

According to the plaintiffs -- *who did not sell in the offer* -- the \$ 10.50 per-unit price was well below the \$ 18.00 per-unit net asset value of American Real Estate. They say that High Coast was able to buy at this allegedly unfair price because Icahn had left unitholders with no option. Because Icahn controlled American Real Estate, had cut all distributions, had announced that he [\*13] would invest the Partnership's cash in non-real estate ventures for reasons that were self-interested, and had begun to make such investments, plaintiffs contend that the unitholders had no real choice but to accept what they were being offered.

#### E. Icahn's Investments On Behalf Of American Real Estate

The plaintiffs argue that Icahn and the General Partner have "intentionally and willfully" caused American Real Estate "to make investments which: ([1]) are high risk; (2) have no financial benefit to the Partnership; and (3) have depressed the value of the Units." <sup>7</sup> In particular, the plaintiffs contend that American Real Estate has been used as a financing tool to aid Icahn in his efforts to obtain a control position in a number of companies, including RJR Nabisco and Phillips Services Corp. Icahn also caused the Partnership to purchase the bonds of several bankrupt Atlantic City casinos, with the

hopes of obtaining control. The complaint further asserts that Icahn caused American Real Estate to purchase an Icahn-owned land development company for over \$ 84 million.

[\*14] The plaintiffs argue that these investments were risky (*e.g.*, Phillips Services Corp. was bankrupt), and were an imprudent use of cash. Despite impressive cash flow from Partnership operations, Icahn continues to refrain from making distributions, eschewing that choice in favor of using Partnership cash as a source of capital in furtherance of the interests of other entities he controls.

The plaintiffs also allege the Icahn and the General Partner have intentionally disseminated -- *unidentified* -- negative news about the Partnership in order to depress the market value of units. They further claim that Icahn took advantage of this depression by having High Coast purchase another 400,000 units at less than \$ 8 per unit in early 2000.

#### F. The Plaintiffs' Claims And The Defendants' Motion

The complaint pleads the story recited above with broad strokes. Most of the allegations are cursory, and unsupported by pled facts. The relief sought by the plaintiffs is pled in a like manner.

The plaintiffs contend that the defendants have violated the Partnership Agreement and their fiduciary duties by effecting the scheme outlined above. As relief, the plaintiffs seek:

- . [\*15] unspecified damages;
- . a permanent injunction disabling the General Partner from acting as such;
- . dissolution of American Real Estate;
- . a mandatory injunction requiring the General Partner to make distributions or to undertake unspecified measures to increase unit value; and/or
- . their attorneys fees and costs.

The amended complaint was not served on the

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<sup>7</sup> Am. Comp. P73.



defendants until September 22, 2000. The original complaint in this action had been filed on November 18, 1998, but was never served on any of the defendants. The impetus for filing and serving an amended complaint appears to have come mostly from the court, which had inquired as to the status of this matter. The court's inquiry coincided with attempts by the plaintiffs and the defendants to settle this action, efforts which ultimately failed some time after the filing of the original complaint.

After the service of the amended complaint, the defendants filed and briefed a motion to dismiss. In their brief, the defendants have understandably tried to address the plaintiffs' rather unfocused claims on a transaction-by-transaction basis. The defendants argue that each of the transactions challenged was authorized [\*16] by the Partnership Agreement, and that the provisions of the Partnership Agreement set forth specific standards of conduct that supplant traditional fiduciary duties. Because the General Partner and the other defendants acted in conformity with the contractually specified standards of conduct, the defendants argue that the amended complaint fails to state a claim upon which relief can be granted. In the alternative, the defendants argue that the complaint does not state a claim even if the defendants owed fiduciary duties to the unitholders. Additionally, the defendants argue that some aspects of plaintiffs' claims are time-barred, because the plaintiffs did not serve their complaint until three years after the events in question.

## II. Procedural Standards

On a motion to dismiss, this court must assume the truth of all well-pled allegations of fact.<sup>8</sup> The court, however, need not give weight to conclusory allegations that are unsupported by specific allegations of fact.<sup>9</sup> After examining the complaint

in this pro-plaintiff manner, the court may dismiss the complaint only if it is reasonably certain that the facts pled in the complaint would not support any claim for relief. [\*17]<sup>10</sup>

## III. Legal Analysis

### A. The Plaintiffs' Claims Related To The Rights Offering Are Time-Barred

The complaint pleads that the Rights Offering occurred in February 1995. The original, un-served complaint was not filed until November 1998, more than three years after the consummation of the Rights Offering.

There can be no excuse for such late filing. The plaintiffs have failed to allege that the applicable legal limitations period of three years -- to which this court ordinarily looks in order to apply the doctrine of laches -- was equitably tolled.<sup>11</sup> This failure is understandable given the fact that there was litigation filed in this court that contributed to an alteration of the Rights Offering in favor of the limited partners.<sup>12</sup> Not only that, [\*18] the plaintiffs have stood by while High Coast and other investors have conducted transactions pursuant to the Rights Offering and accepted the market risk that came with exercising the Rights. There being no just reason for plaintiffs to attack the Rights Offering in an untimely manner, the plaintiffs challenge to that Offering is dismissed.<sup>13</sup>

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(1991).

<sup>10</sup> *Rabkin*, 498 A.2d at 1104.

<sup>11</sup> *United States Cellular v. Bell Atl. Mobile Sys., Inc.*, Del. Supr., 677 A.2d 497, 502 (1996).

<sup>12</sup> See *In re American Real Estate Partners, L.P. Litig.*, 1997 Del. Ch. LEXIS 171, Del. Ch., Cons. C.A. No. 13687, mem. op., 1997 WL 770718, Chandler, C. (Dec. 3, 1997).

<sup>13</sup> The defendants also argued in their opening brief that all claims addressing actions taken by the defendants more than three years before the service of the complaint in September 2000 are barred by laches. That argument has force because the mere filing of a complaint is ordinarily insufficient to toll a statute of limitations, even if service is withheld because of some belief that the defendants

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<sup>8</sup> *Rabkin v. Philip A. Hunt Chemical Corp.*, Del. Supr., 498 A.2d 1099, 1104 (1985).

<sup>9</sup> *In re Tri-Star Pictures, Inc. Litig.*, Del. Supr., 634 A.2d 319, 326

**[\*19] B. Does The Complaint State A Claim?**

**1. Does The Partnership Agreement Eliminate The General Partner's Fiduciary Duty Of Loyalty?**

The defendants' contention that the plaintiffs have failed to plead a cognizable claim depends heavily on their argument that the Partnership Agreement eliminated any default fiduciary duty of loyalty owed by the General Partner, Icahn, and the other defendant directors to the limited partners of American Real Estate. The defendants base their argument on § 6.13 of the Agreement, and in particular subsection (d). The subsection reads as follows:

*Whenever in this Agreement the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion", with "absolute discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership, the Operating Partnership or the Record Holders, or (ii) in its "good faith" or under another express standard, the General Partner shall act under such express [\*20] standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein.*<sup>14</sup>

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would be benefited by a delay. See *Robertson v. Gest*, Del. Supr., 608 A.2d 729, 1991 WL 316950, Order, Walsh, J. (1991); *Russell v. Olmedo*, Del. Supr., 275 A.2d 249 (1971). The plaintiffs have suggested, however, that the defendants did not wish for the complaint to be served and that plaintiffs held off from effecting service based on an agreement with defendants' counsel and in deference to the parties' settlement discussions. At oral argument, defendants' counsel acknowledged that this issue is not ripe for disposition at this time because the precise nature of the discussions between plaintiffs and defendants about service is unclear. Some factual record might be necessary to determine whether some tolling accord had been reached, and additional briefing would be helpful on whether the approach taken in *Robertson v. Gest* and *Russell v. Olmedo* applies in the equitable context of a laches argument.

According to the defendants, § 6.13(d) sweeps away all default principles of fiduciary duty when the sole and complete discretion standard governs the General Partner's actions. The sole and complete discretion standard, they contend, is utterly inconsistent with the default duty of loyalty, which would require that the General Partner treat the limited partners fairly in any conflict situation. How can one square that duty of fairness with § 6.13(d)'s statement that the General Partner need not consider any particular factor in making decisions subject to the sole and complete discretion standard?

The defendants' focus on this question is logical. As they note, several of the acts the plaintiffs complain of fall under the "sole and complete discretion" standard. For example, under the Agreement, the General [\*21] Partner has sole and complete discretion to make or withhold distributions.<sup>15</sup> Therefore, § 6.13(d) is implicated by the plaintiffs' challenge to the General Partner's decision to cease distributions.

Likewise, the Agreement contains the following broad provision stating:

6.01 Management and Control of Partnership. Except as otherwise expressly provided or limited by the provisions of this Agreement (including, without limitation, the provisions of Article VII), the General Partner shall have full, exclusive and complete discretion to manage and control the business and affairs of the Partnership, to make all decisions affecting the business and affairs of the Partnership, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Partnership as set forth herein. The General Partner shall use reasonable efforts to carry out the purposes of the Partnership as set forth herein. The General Partner shall use reasonable efforts [\*22] to carry out the

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<sup>14</sup> Partnership Agreement, § 6.13(d) (emphasis added).

<sup>15</sup> Partnership Agreement, § 6.05.

purposes of the Partnership and shall devote to the management of the business and affairs of the Partnership such time as the General Partner, in its sole and absolute discretion, shall deem to be reasonably required for the operation thereof. No Limited Partner, Record Holder, Non-Consenting Investor or Subsequent Transferee shall have any authority, right or power to bind the Partnership, or to manage or control, or to participate in the management or control of, the business and affairs of the Partnership in any manner whatsoever.<sup>16</sup>

The defendants argue that this section applies to the General Partner's investment decisions. Because the core purpose of the Partnership is to make investments in real estate and (under the contested Amendment, non-real estate) investments, the defendants argue that § 6.13(d) applies to the plaintiffs' challenges to specific investment decisions made by the General Partner.

Once again, therefore, this court faces [\*23] a situation where an agreement which does not expressly preclude the application of default principles of fiduciary is argued to do so by implication. Indeed, this case presents the court with an opportunity to address a contractual provision similar to the one it interpreted on two occasions in *Gotham Partners, L.P. v. Hallwood Realty Corp.*,<sup>17</sup> and contemporaneously with this case in *Gelfman v. Weeden Investors, L.P.*<sup>18</sup> In each of those cases, this court held that the traditional fiduciary entire fairness standard could not be applied because it was inconsistent with a contractual provision providing a general partner with sole and complete discretion to effect certain actions subject solely to a contract-specific liability

standard. The court's decision was based on two factors. First, the court noted the difference between the sole and complete discretion standard articulated in the agreements, which explicitly stated that the general partner had no duty to consider the interests of the partnership or the limited partner in making its decisions, and the traditional notion that a fiduciary acting in a conflict situation has a duty to prove that it acted in a procedurally [\*24] and substantively fair manner.<sup>19</sup> Second, and even more critically, however, each of the agreements indicated that when the sole and complete discretion standard applied, any other conflicting standards in the agreements, other contracts, or under law (including the DRULPA) were to give way if it would interfere with the general partners' freedom of action under the sole and complete discretion standard.<sup>20</sup> That is, in each case, the agreement expressly stated that default principles of fiduciary duty would be supplanted if they conflicted with the operation of the sole and complete discretion standard.<sup>21</sup>

[\*25] This case presents a twist on *Gotham Partners* and *Gelfman*. Like the provisions in *Gotham Partners* and *Gelfman*, § 6.13(d) sets forth a sole discretion standard that appears to be quite different from the duty of a fiduciary to act with procedural and substantive fairness in a conflict situation. What is different about § 6.13(d), however, is that it does not expressly state that

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<sup>16</sup> Partnership Agreement, § 6.01.

<sup>17</sup> 2001 Del. Ch. LEXIS 98, Del. Ch., C.A. No. 15754, mem. op., 2001 WL 846054, Strine, V.C. (July 18, 2001 corr. Aug. 1, 2001); 2000 Del. Ch. LEXIS 146, Del. Ch., C.A. No. 15754, mem. op., 2000 WL 1521371 Strine, V.C., (Sept. 27, 2000).

<sup>18</sup> 2001 Del. Ch. LEXIS 108, Del. Ch., C.A. No. 18519, mem. op., Strine, V.C. (Aug. 23, 2001).

<sup>19</sup> *Gotham*, 2001 Del. Ch. LEXIS 98, \*42, 2001 WL 846054 at \*24; *Gelfman*, 2001 Del. Ch. LEXIS 108, \*18.

<sup>20</sup> *Gotham*, 2001 Del. Ch. LEXIS 98, \*72, 2001 WL 846054 at \*26; *Gelfman*, 2001 Del. Ch. LEXIS 108, \*19.

<sup>21</sup> *Gotham*, 2001 Del. Ch. LEXIS 98, \*9-10, 2001 WL 846054 at \*3 (quoting agreement provision stating that each limited partner agreed that "any standard of care or duty . . . under the Delaware RULPA or any other applicable law . . . shall be modified, waived or limited . . . as required to permit the General Partner to act" under the sole and complete discretion standard so long as the General Partner's action "does not constitute willful misconduct and is reasonably believed to be consistent with the overall purposes of the Partnership"); *Gelfman*, 2001 Del. Ch. LEXIS 108, \*20 (quoting agreement language that is essentially identical to that in *Gotham*, but which also subjects the general partner to liability for gross negligence).

default provisions of law must give way if they hinder the General Partner's ability to act under the sole discretion standard. Rather, § 6.13(d) merely states that other standards in the Agreement or agreements contemplated by the agreement give way to the sole discretion standard. By its own terms, § 6.13(d) says nothing about default principles of law being subordinated when the sole discretion standard applies.

This omission is of legal significance. In prior cases, this court has held that default principles of fiduciary duty will apply unless a partnership agreement plainly provides otherwise.<sup>22</sup> As the defendants would have it, when the Partnership Agreement says that the General Partner has sole discretion, it means that the General Partner has unreviewable power to act in any [\*26] manner whatsoever, however advantageous to the General Partner and however disadvantageous to the Partnership. According to the defendants, the General Partner could choose to invest Partnership funds in a failing venture solely to ensure that the General Partner's own investment in that venture is not lost, and turn its back on a less risky and more profitable opportunity for the Partnership.

This court has made clear that it will not be tempted by the piteous pleas of limited partners who are seeking to escape the consequences of their own decisions to become investors in a partnership whose general partner has clearly exempted itself from traditional fiduciary duties.<sup>23</sup> [\*28] The

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<sup>22</sup> See, e.g., *Sonet v. Timber Company, L.P.*, Del. Ch., 722 A.2d 319, 322 (1998).

<sup>23</sup> *Sonet*, 722 A.2d at 327; see also *In re Cencom Cable Income Partners, L.P. Litig.*, 1997 Del. Ch. LEXIS 146, \*13-14, Del. Ch., C.A. No. 14634, 1997 WL 666970 at \*4, Steele, V.C. (Oct. 15, 1997) (In rejecting argument that the entire fairness standard applied to a sale covered by specific contractual provision, the court stated that "plaintiffs have failed to show why the written terms of the sale process should be subject to some court-approved, after-the-fact, moralistic 'entirely fair' standard, when the parties defined the desired process in the Partnership Agreement and could have, but did not, require the General Partner to include the specific provisions that Garber testified would be desirable in a purchase agreement negotiated at arms-length.")

DRULPA puts investors on notice that fiduciary duties may be altered by partnership agreements, and therefore that investors should be careful to read partnership agreements before buying units.<sup>24</sup> In large measure, the DRULPA reflects the [\*27] doctrine of *caveat emptor*, as is fitting given that investors in limited partnerships have countless other investment opportunities available to them that involve less risk and/or more legal protection. For example, any investor who wishes to retain the protection of traditional fiduciary duties can always invest in corporate stock.

But just as investors must use due care, so must the drafter of a partnership agreement who wishes to supplant the operation of traditional fiduciary duties. In view of the great freedom afforded to such drafters and the reality that most publicly traded limited partnerships are governed by agreements drafted exclusively by the original general partner, it is fair to expect that restrictions on fiduciary duties be set forth clearly and unambiguously.<sup>25</sup> A topic as important as this should not be addressed coyly.

[\*29] Here, I conclude that the Partnership Agreement fails to preclude the operation of the fiduciary duty of loyalty with sufficient clarity, even in situations when the General Partner has the contractual power to act in its sole discretion. The reasons I reach this conclusion are several. First, I again note the absence of any express indication that default principles of law must give way when the sole discretion standard applies. This absence is striking given the prevalence of such express provisions, and their use in concert with contractual

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<sup>24</sup> That is, if the investors wish to protect themselves through legal means. Many investors protect themselves by diversifying their portfolios. One suspects that investment funds and other sophisticated investors also protect themselves by refusing to invest their money in entities controlled by persons who have burned them in the past, and that reputational factors might therefore play some role in deterring opportunistic behavior.

<sup>25</sup> *Sonet*, 722 A.2d at 322 ("Principles of contract preempt fiduciary principles where the parties to a limited partnership have made their intentions to do so plain.")



language markedly similar to § 6.13(d).<sup>26</sup> The drafter's decision to preempt conflicting provisions of the Agreement and of other contracts, but not those of default law can thus be viewed as intentional.

[\*30] Second, other provisions of the Agreement imply that concepts of fiduciary duty will apply except when the Agreement clearly modifies them. For example, the Agreement contains an exculpatory provision -- § 6.14 -- that exempts the General Partner and its directors and officers from liability

except for liability (i) for any breach of such Person's duty of loyalty to the Partnership, as such duty may be set forth in or modified by this Agreement, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law or (iii) for any transaction from which such Person derived an improper benefit.<sup>27</sup>

While to some extent my reference to § 6.14 may be seen as begging the question since the application of § 6.14 itself raises the question of whether the Agreement has "modified" the duty of loyalty, the section seems to me to undercut the notion that § 6.13(d) provides the General Partner with the limitless scope of action [\*31] for which the defendants contend. Given the breadth of actions to which the sole discretion standard applies, § 6.14 would have little scope if the defendants are correct about what § 6.13(d) means.

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<sup>26</sup> Aside from *Gotham Partners* and *Gelfman*, I note that the leading treatise on the DRULPA includes a section of forms. That section advocates the use of contractual provisions like § 6.13(c), which state that when a sole discretion standard applies, other standards are to give way. Unlike § 6.13(c), however, the treatise form expressly states that the sole discretion standard applies to the exclusion of "any other or different standards imposed by this Agreement or any other agreement contemplated herein or by relevant provisions of law or equity or otherwise." Martin I. Lubaroff & Paul Altman, *Lubaroff & Altman on Delaware Limited Partnerships*, at F-38 (2000 Supp.) (emphasis added); see also *id.* at F-99 (essentially the same except using the term "applicable law" rather than "relevant provisions of law or equity").

<sup>27</sup> Partnership Agreement, § 6.14.

Its presence in the contract and its preservation of liability for situations when the General Partner has breached its duty of loyalty or acted in bad faith is, on balance, more consistent with a reading of § 6.13(d) that leaves room for the application of the fiduciary duty of loyalty, at least as to its substantive aspects.

Finally, this interpretation is consistent with the Registration Statement provided to investors when the Partnership was first formed. That Statement contains a section stating:

6.12. Transactions with General Partner or Affiliates. In addition to transactions specifically contemplated by the terms and provisions of this Agreement, the Partnership is expressly permitted to enter into other transactions with the General Partner or any of its Affiliates, including, without limitation, buying and selling properties from or to the General Partner or any of its Affiliates, subject to the Limitations contained in this Agreement, the Delaware Act and in the [\*32] Registration Statement.<sup>28</sup>

By its own terms, the Partnership Agreement indicates that the Registration Statement is contractually relevant:

The General Partner is accountable to the Partnership and the Unitholders as a fiduciary and, consequently, must exercise good faith and integrity in handling Partnership affairs. This is a rapidly developing and changing area of the law and API Investors who have questions concerning the duties of the General Partner should consult with their counsel. Under appropriate circumstances, a Unitholder may file a class action on behalf of all Unitholders for alleged violations by a General Partner of its fiduciary responsibility or of Federal or state securities laws.

The Partnership Agreement provides that the General Partner and its affiliates and all of their

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<sup>28</sup> Registration Statement at B-18.



officers, directors, employees and agents will not be liable to the Partnership or to any Unitholder for any losses sustained or liabilities incurred as a result of any action that does not constitute (i) a breach of that person's duty of loyalty to the Partnership, as that duty of loyalty may be specified in or modified by the Partnership Agreement, (ii) an act or omission [\*33] in bad faith which involves intentional misconduct or a knowing violation of law or (iii) a transaction from which an improper personal benefit is derived.<sup>29</sup>

These provisions indicate that the drafters of the Partnership Agreement did not eliminate fiduciary duties in the sweeping manner contended for by the defendants. Because the Partnership Agreement must be read in accordance with the reasonable expectations of the investors, and because the Agreement does not clearly eliminate the application of the fiduciary duty of loyalty, I conclude that the General Partner owed certain loyalty-based duties to the limited partners.

The question is, exactly what elements of the traditional duty of loyalty apply? The parties have not shed much light on this topic, having confronted the basic question in starker terms. Therefore, I speak tentatively.

At first blush, however, it appears that the Agreement does have some effect on the [\*34] traditional duty of loyalty. For one thing, the Agreement seems to preclude the application of any "fair process" test to a decision made by the General Partner that is subject to the sole discretion standard, even if such decision is conflicted. Typically, the fairness of a procedure would turn largely on the extent to which the interests of the minority (or in this case, the limited partners) were given due consideration in the decision-making machinery.<sup>30</sup> Because the sole discretion standard

in the Agreement authorizes the General Partner to make decisions without giving any consideration to particular interests, including those of the limited partners, the application of a procedural fairness test conflicts directly with the contract.<sup>31</sup>

Less certain is whether the sole discretion [\*35] standard obviates the duty of the General Partner to act with substantive fairness in a transaction between the General Partner (or an affiliate) and the Partnership. The parties have shed little light on this question, and I hesitate to answer it without additional help. Without prejudice to the defendants' ability to renew their argument at a later time if the need arises, I believe it prudent not to foreclose the possibility that something akin to a fairness standard applies in an interested transaction. The fact that § 6.14 does not exculpate the General Partner "for any transaction from which [it] derived an improper personal benefit" buttresses my hesitance to conclude that the General Partner may effect a self-dealing transaction on terms unduly favorable to itself.

Likewise, I conclude that the Partnership Agreement preserves that core aspect of the duty of loyalty which prohibits a fiduciary from taking bad faith action to injure the Partnership for his own personal advantage. Again, the specific indication in § 6.14 that the Agreement does not generally exculpate acts of bad faith supports this conclusion. So does a less case-specific, normative proposition. To the extent [\*36] that an Agreement purports to insulate a General Partner from liability even for acts of bad faith towards the Partnership, it should do so in the most painstakingly clear terms. Whether an Agreement that permits a General Partner -- by its unmistakable terms -- to exercise its discretion in bad faith is consistent with Delaware public policy is in itself an important question. But no court need reach that question until a Partnership Agreement plainly provides the

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<sup>29</sup> Registration Statement at 75-76.

<sup>30</sup> *E.g., Weinberger v. UOP, Inc.*, Del. Supr., 457 A.2d 701, 711 (1983).

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<sup>31</sup> *R.S.M., Inc. v. Alliance Capital Management Holdings L.P.*, 2001 Del. Ch. LEXIS 45, \*55, Del. Ch., C.A. No. 17449, Strine, V.C. (Apr. 10, 2001).

General Partner with authority to act in bad faith with impunity. The Partnership Agreement at issue in this case does not do so.

## 2. Does The Complaint State A Claim For Breach Of The Fiduciary Duty Of Loyalty?

Having concluded that the plaintiffs may state a cognizable claim if they allege facts that support a breach of the more substantive aspects of the traditional fiduciary duty of loyalty, I now turn to the task of analyzing the plaintiffs' claims. This task is complicated by the cursory nature of the complaint, which is redolent with accusations of bad faith schemes but short on the pleading of specific facts that support the inference that these alleged schemes may indeed exist.

In evaluating the plaintiffs' [\*37] claims, I start with the fact that they do not allege that any of the General Partner's actions were beyond the contractual power of the General Partner, assuming that those actions were properly motivated and did not confer an improper benefit on the General Partner. Rather, the plaintiffs' ability to plead claims is based entirely on their ability to set forth facts supporting an inference that the General Partner breached its duty of loyalty. Indeed, the complaint alleges a breach of the Partnership Agreement in only two respects. The first is odd, in sense that the complaint alleges that the General Partner breached the Agreement by acting in a manner not exculpated by § 6.14. The second is more general, and consists in the proposition that the implied covenant of good faith and fair dealing precludes all of the actions challenged by the plaintiffs.<sup>32</sup> Taken together, I have difficulty

distinguishing these two "contractual claims" from the plaintiffs' claim that the General Partner and the other defendants breached their fiduciary duty of loyalty. For this reason, the rest of this opinion focuses on the question of whether the complaint pleads facts that support a breach of the [\*38] substantive aspects of the duty of loyalty.

### a. The General Partner's Termination Of Distributions

The plaintiffs allege that the General Partner initially halved distributions in 1993 and then terminated them altogether in [\*39] December 1995. The General Partner's alleged motives for these reductions were: (i) to free up cash to invest in projects in which Icahn was investing through other entities he controlled; and (ii) to put downward pressure on the unit price of the Partnership's units and thus enable High Coast to conduct a tender offer for units at a bargain price.

As pernicious as this alleged conduct sounds in the abstract, the complaint does not plead a cognizable claim that the General Partner's decision to reduce and then terminate distributions was a breach of the duty of loyalty. Although the complaint's allegations are undoubtedly inflammatory, they are not backed up with pled facts.

Many businesses decide to eliminate dividends or distributions in order to use free cash for growth. Their shares or units then trade on the premise that the entity is a growth-oriented vehicle. In this case, American Real Estate units are publicly traded on a major stock market.

The complaint contains no facts that suggest that there were not potentially lucrative uses for the Partnership's cash. Under § 6.05 of the Agreement, the General Partner has "the sole and absolute discretion" to retain Partnership [\*40] cash as "may be required to satisfy the anticipated present and future cash needs of the Partnership, whether

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<sup>32</sup> The complaint does not use the implied covenant of good faith and fair dealing in any precise manner. That is, the complaint does not explain why a particular act of the General Partner could be seen, in view of the particular express provisions of the Agreement, as so repugnant to the reasonable expectations of the contracting parties as to be precluded by the implied covenant. Rather, the complaint pleads the implied covenant as a substitute for fiduciary duties, which at the very least precludes the General Partner from exercising its contractual powers in bad faith so as to advantage itself at the expense of the Partnership and the limited partners. As so used by

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the plaintiffs, the implied covenant becomes indistinguishable from a core aspect of the fiduciary duty of loyalty.

for operations, expansion, improvements, acquisitions or otherwise."

What the plaintiffs at best allege is that they have a difference of opinion with the General Partner about the mission of the Partnership. The plaintiffs contend that the Partnership should be managed in a more balanced fashion, in which the Partnership makes regular cash distributions and pursues more modest growth. Instead of doing as the plaintiffs wish, the General Partner has decided to take a long-term approach that focuses on capital growth. Without more, pleading that the General Partner of a limited partnership adopted such a strategy does not suffice to state a claim.

Certainly, however, such a strategy could be deemed a breach of the duty of loyalty, if well-pled facts indicated that the strategy was designed to provide benefits to the General Partner, to the detriment of other unitholders. Such facts are not pled here, however.

As will be noted later, the plaintiffs have failed to plead facts that indicate that Partnership cash has been invested in projects solely so as to bail out or enrich [\*41] Icahn, or with any intent to otherwise injure the Partnership. Likewise, even under the pro-plaintiff standards of Rule 12(b)(6), I cannot draw the inference that the General Partner's decision to eliminate distributions *in 1995* was designed to enable High Coast to make a low-ball tender offer *in 1998*.

Nor have the plaintiffs alleged any other more specific form of harm flowing from the termination of distributions. For example, they have not claimed that the General Partner retained the cash and attempted to grow the Partnership because that would result in an increase of management fees to the General Partner, which would more than offset any costs to High Coast from the termination of distributions. Nor have the plaintiffs alleged that the termination of distributions has caused limited partners adverse tax consequences.

b. The Amendment To The Partnership Agreement

The plaintiffs claim that the General Partner had a bad faith reason to amend the Partnership Agreement to permit the Partnership to invest in non-real estate projects: the amendment was necessary if Icahn was to be able to use the Partnership as a source of funding for his various efforts to acquire control [\*42] of entities in diverse business fields. The Partnership itself, plaintiffs insist, had no reason to look beyond real estate for places to invest its cash. Indeed, the plaintiffs allege that Icahn admitted that the General Partner's proposal of the Amendment was a breach of fiduciary duty, because the Information Statement expressly indicated that High Coast's consent to the Amendment was influenced by factors other than "the best interests of the Partnership and maximization of Unitholder value."<sup>33</sup> These factors included "whether the General Partner and its affiliates, including Icahn, have independent [non-real estate] assets which may benefit from investments by the Partnership."<sup>34</sup> Based on little more than these statements, the plaintiffs allege that the General Partner breached its duty of loyalty by proposing the Amendment in the first place.

There is no doubt that Icahn admitted that his own reasons for approving the Amendment in his capacity as High [\*43] Coast's owner were self-interested and not in perfect alignment with the Partnership's other unitholders.<sup>35</sup> But the plaintiffs ask me to infer from this the fact that the General Partner *qua* General Partner proposed the Amendment so as to advantage Icahn and disadvantage the Partnership. This I cannot do.

The Information Statement that the complaint cites many times identifies a perfectly legitimate rationale for the Amendment: the Partnership could

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<sup>33</sup> Information Statement at 5.

<sup>34</sup> *Id.*.

<sup>35</sup> Under Delaware corporation law, to which the plaintiffs look for support in sustaining their claims, a stockholder is entitled to vote its shares in its own self-interest. *See, e.g., Stroud v. Grace*, Del. Ch., 606 A.2d 75, 84 (1992).

obtain better results if it could also invest its cash in potentially higher-yielding non-real estate investments. The complaint does not plead any facts that support an inference that this was not the motive of the General Partner. Tellingly, the complaint does not allege any facts about the process that was [\*44] undertaken by the General Partner in deciding to propose the Amendment. This omission is interesting because the Information Statement upon which the plaintiffs place so much reliance does describe the process.

According to the Information Statement, the General Partner's Audit Committee, acting with advice from independent financial advisors, studied the advisability of the Amendment and decided that it was a favorable initiative from the perspective of the Partnership.<sup>36</sup> The Audit Committee was comprised of directors of the General Partner who, according to the complaint, had no affiliation with any Icahn-controlled entities other than the General Partner as of the time they made their decision. It is also noteworthy that the Amendment did not diminish any of the protections that the Agreement provided to unitholders against self-dealing by the General Partner. Rather, it simply had the effect of increasing the universe of investments that the Partnership could make.

Absent [\*45] well-pled allegations that the purpose of the Amendment was to broaden the purposes of the Partnership so that it could make investments that were not beneficial to it, but were beneficial to Icahn and his affiliates, I believe that the plaintiffs have failed to state a claim. The mere fact that the Amendment permitted the Partnership to invest in a wider array of opportunities, and that those opportunities could include those which with other Icahn affiliates were involved, does not suffice. In this regard, my conclusion is closely linked to my later finding that the plaintiffs have failed to plead facts from which an inference can be drawn that the General Partner invested Partnership funds in Icahn-recommended investments on terms that

were unfair to the Partnership and advantageous to Icahn.

Finally, I note another troubling aspect of this part of plaintiffs' claim, which must be addressed if this claim is later resurrected. That possibility exists because my dismissal order will be made without prejudice. The plaintiffs' complaint was filed some two years after the 1996 Amendment was enacted and was not served until four years thereafter. In that time, the Partnership has made [\*46] investments in reliance on the Amendment. Public investors have bought units in the Partnership based on the expectation that the Partnership's purposes extended beyond real estate.

The defendants have not focussed their laches claim specifically on the Amendment. In the future, they may renew that motion (if plaintiffs replead) with this issue in mind. I have difficulty conceiving of how this court can practicably rescind an Amendment that has been in effect for five years. Certainly, any relief that would be available would be prospective in nature only. When unitholders wish to challenge a partnership agreement amendment they should do so promptly and with vigor, not with the torpor that has characterized this litigation.

#### c. The 1998 High Coast Tender Offer

In the most cursory of terms, the plaintiffs challenge the November 1998 tender offer by High Coast as coercive and undervalued. They assert that the unitholders felt that they had no other choice than to tender because the General Partner had cut off distributions and was investing in Icahn-directed investments. The plaintiffs also allege that the offer did not fairly reflect the net asset value ("NAV") of the Partnership, [\*47] but do not allege that limited partnership units generally trade at a price equaling or even approaching NAV. The plaintiffs also do not identify whether the offer included a premium to the unaffected trading price.

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<sup>36</sup> Information Statement at 14.

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<sup>37</sup> The defendants insist that the \$ 10.50-per-unit offer represented a



I do not believe that these allegations state a claim. For one thing, the tender offer was made by High Coast. The plaintiffs ask me to draw the inference that the General Partner's termination of distributions in 1995 was designed to set the stage for a tender offer by High Coast in 1998. Even under liberal pleading standards, that inference is not a reasonable one. Nor have the plaintiffs identified public disclosures of the Partnership that were coercive in nature; at most, the plaintiffs have pointed to the 1996 Information Statement as involving disclosures that coerced investors in [\*48] the 1998 tender offer. But the fact that the Partnership had disclosed two years earlier that High Coast's motives for approving the 1996 Amendment were not in total alignment with other unitholders does not rise to the level sufficient to constitute actionable coercion in connection with a 1998 tender offer by High Coast. Put bluntly, the complaint does not allege facts that support the inference that the General Partner took wrongful coercive actions in connection with High Coast's 1998 tender offer.

Even more fundamentally, the plaintiffs before the court do not allege that they tendered into the offer or otherwise suffered any injury on account of it. According to the plaintiffs, High Coast already owned a majority of the Partnership's units before the tender offer. As a result, it is difficult to conceive of how non-tendering unitholders were injured by the tender offer.

d. The Partnership's Investments

As a final matter, I reach the plaintiffs' claim that particular investments made by the General Partner resulted from breaches of fiduciary duty. This is a critical aspect of the plaintiffs' complaint. In large measure, my decision about the Amendment is influenced by the [\*49] failure of the plaintiffs to plead facts that support an inference that the General Partner's investments were wrongful.

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significant premium over the previously traded unit price of \$ 7.25. Mem. in Supp. of Defs.' Mot. to Dismiss Am. Class Action Compl. at 6.

The best way to illustrate this is to set forth the most relevant paragraphs of the plaintiffs' complaint verbatim:

73. Since 1997, consistent with its admonition in the Information Statement, Icahn and the General Partner have intentionally and willfully caused the Partnership to make investments which: [1] are high risk; (2) have no financial benefit to the Partnership; and (3) have depressed the value of the Units.

74. As a result, the trading price of the Partnership's Units have [sic] been depressed, and the market for the Units has been highly illiquid.

75. For instance, the Partnership has earned sufficient net cash flow beyond its daily needs to make substantial distributions and/or dividends which would have resulted in a significant increase in the trading value of the Units.

76. According to the Partnership's Form 10-K for the year ended December 31, 1999, (the "1999 10-K"), filed with the U.S. Securities and Exchange Commission on March 30, 2000, in 1999, AREP generated net cash flow after payment of maturing debt obligation [\*50] and capital expenditures of approximately \$ 35,400,000.

77. According to the 1999 10-K, during 1998, AREP had a net cash flow of \$ 30,000,000. Some of this cash flow was generated by way of sale of the Partnership's properties, and some of the cash flow was generated interest earned from the proceeds of the Rights Offering.

78. Notwithstanding these substantial net cash flows, the General Partner refused to make distributions or declare a dividend, or take other steps which would have lead to a rise in the Units' trading price and maximization of value.

79. Rather, as the General Partner, Icahn and the Individual Defendants admit in the 1999 10-K, the net cash flow was added to AREP's operating cash reserve, which was over \$ 100,000,000 by December 31, 1999.

80. These cash reserves have not been used for



the financial well being of AREP or its Unitholders, but rather to further Icahn's takeover schemes.

81. For instance, in 1998 and 1999, AREP invested approximately \$ 175,300,000 in the stock of RJR Nabisco in order to aid Icahn in his efforts to take control of that company, financing this purchase at least in part with its cash reserves or cash flow.

82. [\*51] During the period of 1997 through 1998, Icahn and the General Partner further caused AREP to invest over \$ 100,000,00 of AREP's cash in bonds of certain bankrupt Atlantic City casinos, with the goal of obtaining control of these casinos, including the Sands, the Claridge and Stratosphere.

83. With regard to these Gaming Investments, Icahn has diverted and misappropriated AREP's cash reserves and thus monies which could be distributed to Unitholders to enable himself to cheaply gain control of these entities.

84. Similarly, Icahn cause AREP to make a significant investment in a bankrupt Canadian corporation, Philips Services, Corp. ("Philips") and intends to use AREP to help him gain control of Philips.

85. Icahn has further cause AREP to invest in capital intensive real estate companies, which do not generate current income.

86. For instance, during the first quarter of 2000, Icahn cause AREP to purchase Bayswater Realty & Capital Corp. ("Bayswater") a land development company which he owned, for \$ 84,500,000.

87. Such investment in undeveloped land involve more risk than land upon which developments have been completed, and do not generate operating revenue, [\*52] while incurring costs to develop the properties.

88. Such investment do not result in the maximization of value for the Unitholders, and do not and have not resulted in higher Unit prices or liquidity for Unitholders.

89. At the same time, the General Partner and

Icahn have caused AREP to make these investments, Icahn and the General Partner have failed to take any steps which would increase liquidity for AREP's Unitholders or increase the market price or trading value of the Units.<sup>38</sup>

What is striking about these paragraphs is how conclusory and non-specific they are. Given the nature of the plaintiffs' conspiracy theory, one would have expected them to have identified particular Partnership investments of the following kinds:

- . An investment in which Partnership money was substituted in for the funds of another Icahn affiliate, so that the Icahn affiliate could gain cash flow while Icahn retained control of the entity in which the investment was made;

- . An [\*53] investment in which the Partnership infused capital in an Icahn-controlled entity that needed capital to avoid a restructuring or a loss of control by Icahn;

- . The purchase by the Partnership of an entity that was already owned by another Icahn-controlled entity at an unfair price; or

- . A scenario in which a group of Icahn affiliates purchased control of an entity, and in which the Partnership's portion of the investment had the least attractive features. That is, a situation where the Partnership assumed a great deal of risk or a low return, in order to allow other Icahn-controlled entities to receive better terms and for Icahn to obtain control.

Instead, what the complaint gives the court is cursory allegations that the Partnership invested in risky projects along with other Icahn-controlled entities, when it could have been paying out cash distributions (*the bulk of which would have gone to High Coast*). Even when the complaint alleges that the Partnership purchased an entity from another Icahn affiliate, the Bayswater Realty & Capital Corp., the complaint fails to allege that the

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<sup>38</sup> Am. Comp. PP73-89.

purchase price was unfair.

It is unclear to me what is wrong with the Partnership [\*54] co-investing with other Icahn-controlled entities in situations that are potentially advantageous to all concerned. For example, the complaint alleges that the Partnership invested over \$ 175 million in the stock of RJR Nabisco as part of Icahn's effort to obtain control of that entity.<sup>39</sup> But the complaint does not allege that the investment turned out poorly for the Partnership.

In their briefs, the plaintiffs go a bit further and point in an unclear, but troubling way, to potential facts about one Partnership investment that might suggest that the General Partner used Partnership funds to make an investment that was principally motivated by a desire to aid Icahn, without providing any benefit to the Partnership itself. The words of the brief insinuate that this investment involved the Partnership assuming an equity or creditor position towards a troubled entity that Icahn already controlled, thus preserving Icahn's control and providing him with cash flow at great risk and little upside [\*55] to the Partnership. But these allegations are not in the complaint and are, to be frank, confusingly stated in the brief.

As of now, the complaint simply alleges that the General Partner is co-investing with other Icahn affiliates in risky projects and that these investments have not yet produced an increase in unit prices. I am not unaware that Icahn had personal reasons which could have motivated him to have caused the General Partner to make investments that were not in the best interests of the Partnership. Investments of the nature I outlined above are illustrative of my understanding of the core concerns raised by the plaintiffs.

That said, it remains the fact that Icahn, through High Coast, has a strong interest in the success of the Partnership, since he owns 90% of its units. The plaintiffs are resourceful enough to have identified and pled facts that support an inference that the

General Partner has breached its duty of loyalty by making investments to advantage Icahn at the expense of the Partnership. They could have sought books and records to aid them in this effort.

Given the slow speed of this litigation, it is tempting to dismiss with prejudice. The pace of this [\*56] case, however, is not solely the fault of the plaintiffs; they and the defendants were engaged in negotiations for two years which did not break down until last fall. The plaintiffs have also sketched the outlines of a factual scenario that involved the potential for serious abuse of the unitholders by the defendants. Given this factor, there is the prospect that the plaintiffs might be able to plead a cognizable claim using guidance from this opinion. Therefore, I will dismiss this action without prejudice.<sup>40</sup>

#### [\*57] IV. Conclusion

For the foregoing reasons, the defendants' motion to dismiss the complaint is GRANTED. The defendants' motion to dismiss is granted with prejudice as to any actions of the defendants arising on or before three years before the filing of the complaint on November 18, 1998. The defendants'

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<sup>40</sup>I urge the plaintiffs to give careful thought to who they name as defendants in any new complaint. In the existing complaint, the plaintiffs have pled claims against non-employee directors of the General Partner, and have not alleged any motive for purposeful wrongdoing on their part. Although these directors face a structural conflict, they had no personal interest in advantaging Icahn or High Coast. *Gelfman*, 2001 Del. Ch. LEXIS 108, \*38 n.24; *Gotham*, 2001 Del. Ch. LEXIS 98, \*42, 2001 WL 846054 at \*30. As a result, they are likely protected from liability by § 6.14 of the Agreement, since any complaint against them would implicate only the duty of care.

As to any directors of the General Partner named in the amended complaint, the plaintiffs should also give thought to whether it is necessary to plead a redundant "aiding and abetting claim" against them. One would think that the directors either owed fiduciary duties to the unitholders or that they did not. If only the General Partner was owed such duties directly, its directors would simply be the means through which the General Partner acted.

Finally, I dismiss without further discussion the plaintiffs' dissolution claim, which lacks merit. The plaintiffs should give careful thought before reasserting that claim.

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<sup>39</sup>Complaint, § 81.

motion to dismiss is otherwise granted without prejudice to the plaintiffs' right to file an amended complaint. IT IS SO ORDERED.

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ATTORNEYS FOR JAMES DONDERO

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

<b>IN RE:</b>	§	
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	§	<b>Case No. 19-34054</b>
	§	
<b>Debtor.</b>	§	<b>Chapter 11</b>

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**JAMES DONDERO’S OBJECTION TO DEBTOR’S MOTION FOR ENTRY  
OF AN ORDER APPROVING SETTLEMENT WITH UBS SECURITIES LLC AND UBS  
AG LONDON BRANCH AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**  
[Relates to Docket No. 2199]

James Dondero (“Mr. Dondero”), a creditor, indirect equity security holder, and party in interest in the above-captioned bankruptcy case, hereby files this Objection<sup>1</sup> to *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] (the “Motion”)<sup>2</sup> filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks entry

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<sup>1</sup> Mr. Dondero also asserts, and incorporates herein by reference, all arguments and assertions made in (i) the *Limited Preliminary Objection to the Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2268]; and the (ii) *Supplemental Opposition to Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* filed by The Dugaboy Investment Trust and Get Good Trust.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Debtor’s Motion.

of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving a settlement agreement entered into between the Debtor and certain of its related entities, on the one hand, and UBS Securities LLC and UBS AG London Branch (collectively, “UBS”), on the other hand. In support of this objection, Mr. Dondero respectfully represents as follows:

## **I. INTRODUCTION**

1. Under Bankruptcy Rule 9019, the Bankruptcy Court is tasked with making an independent judgment on the merits of a proposed settlement to ensure that the proposed settlement is “fair, equitable, and in the best interest of the estate.”<sup>3</sup> While Mr. Dondero recognizes the Debtor’s efforts in arranging a settlement and potentially concluding contentious litigation spanning more than 10 years, the settlement proposed by the Debtor and UBS is not the typical garden variety settlement and, as set forth below, goes too far in a number of respects. For these reasons, the Court should carefully scrutinize each provision of the proposed settlement, and the settlement agreement as a whole, to ensure that it means the appropriate standards for approval under Fifth Circuit law. Mr. Dondero believes upon close scrutiny that the settlement is not approvable under Rule 9019 and Fifth Circuit precedent.

2. There are several significant issues with the terms of the settlement that concern Mr. Dondero and which merit denial of the Motion. Primarily, however, Mr. Dondero is concerned the proposed settlement improperly inflates UBS’s claim against the estate by giving it two large allowed claims, a large cash payment from Multi-Strat, and potential additional significant additional support and consideration as described in the settlement far in excess of what the Debtor has represented the value of the UBS Claim to be.

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<sup>3</sup> See *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).



3. For these reasons, the settlement does not satisfy the standards of Rule 9019 and other applicable law, and the Motion should be denied.

## II. STANDING

4. Mr. Dondero, as a creditor, indirect equity security holder, and party in interest, has standing to file this response and be heard on the Motion pursuant to section 1109(b) of the Bankruptcy Code and Rule 9019 of the Bankruptcy Rules.

5. While neither section 1109 nor any other section in the Bankruptcy Code specifically defines the term “party in interest,” section 1109(b) provides a non-exclusive list of entities that fall within the meaning of “party in interest” for the purposes of a chapter 11 proceeding. *See Kipp Flores Architects, L.L.C. v. Mid-Continent Cas. Co.*, 852 F.3d 405, 413 (5th Cir. 2017) (“The Bankruptcy Code does not provide an exclusive definition of a party in interest, but the Code broadly includes debtors, creditors, trustees, indenture trustees, and equity security holders among the parties entitled, *e.g.*, to notice of proceedings in the case.”).

6. Specifically, section 1109(b) provides that “[a] party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee may raise and may appear and be heard on any issue in a case under [Chapter 11].” 11 U.S.C. § 1109(b). This section “has been construed to create a broad right of participation in Chapter 11 cases.” *In re Global Industrial Technologies, Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) (quoting *In re Combustion Engineering, Inc.*, 391 F.3d 190, 214 n.21 (3d Cir. 2004)). Parties in interest “include not only the debtor, but anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.” *Adair v. Sherman*, 230 F.3d 890, 894 n. 3 (7th Cir. 2000). *See also* 4 COLLIER ON BANKRUPTCY P 502.02 (16th ed. 2020) (“In the context of a chapter 11 case in particular, the term ‘party in interest’ expressly

includes the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee.”).

7. Further, in the context of a court's evaluation of a proposed settlement under Rule 9019, the input and interests of creditors are of particular importance. *See In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1996).

8. Here, Mr. Dondero has standing to be heard on any issue in this Chapter 11 case, including related to the Motion, because he is (i) a creditor; (ii) an indirect equity security holder; and (iii) a party in interest as those terms are interpreted under the Bankruptcy Code.

9. Mr. Dondero is a creditor of the Debtor because he has prepetition claims against the Debtor and its estate, including those asserted through proof of claim number 141 and 142 filed by Mr. Dondero on April 8, 2020.

10. In addition, in this particular case, Mr. Dondero also is a direct or indirect investor in Multi-Strat, and therefore has an interest in the management of the fund and the terms of its proposed settlement with UBS.

11. Mr. Dondero is also an indirect equity security holder through his role as the sole shareholder of Debtor's General Partner, Strand Advisors, Inc. (“Strand”). As the Debtor's General Partner, Strand maintains a 0.2508% partnership interest in the Debtor.

12. Accordingly, as both a creditor and equity security holder, Mr. Dondero qualifies as a “party in interest” under the Bankruptcy Code and has the right to file this response and be heard on Debtor's Motion.

13. Finally, Mr. Dondero also has standing as a “person aggrieved” as he would be “directly and adversely affected pecuniarily” by approval of this settlement. Mr. Dondero is subject to suit by the Debtor's unsecured creditors for claims that cannot be satisfied by the estate.

In addition, the proposed settlement provides that UBS and the Debtor will coordinate to pursue potential claims against Mr. Dondero and others. Mr. Dondero, then, has a pecuniary interest in the assets of the estate as the greater the value of the allowed claims, the more financial risk Mr. Dondero faces.

### III. BACKGROUND

14. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

15. On June 26, 2020, UBS filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the “UBS Claim”). The UBS Claim asserts a general unsecured claim against the Debtor for \$1,039,957,799.40.

16. On August 7, 2020, the Debtor filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the “Redeemer Committee”), objected to the UBS Claim [Docket No. 933].

17. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105].

18. On November 6, 2020, UBS filed *UBS’s Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the “3018 Motion”), and on November 16, 2020, the Debtor and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively]

19. On December 8, 2020, the Bankruptcy Court entered an order granting the 3018 Motion and allowing the UBS Claim, on a temporary basis and for voting purposes only, in the amount of \$94,761,076 [Docket No. 1518].

20. On December 9, 2020, the Bankruptcy Court entered an order granting, as set forth therein, the motions for partial summary judgment filed by the Debtor and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526].

21. On January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan").

22. On February 22, 2021, the Court entered an order confirming the Plan. [Docket No. 1943]. The Plan has not yet gone effective.

#### IV. LEGAL STANDARD

23. The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *TMT Trailer* requires that a compromise must be "fair and equitable." *TMT Trailer*, 390 U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1984). The terms "fair and equitable," commonly referred to as the "absolute priority rule," mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the compromise is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

24. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

*TMT Trailer*, 390 U.S. at 424.

25. In considering whether to approve a proposed compromise, the bankruptcy judge “may not simply accept the trustee’s word that the settlement is reasonable, nor may he merely ‘rubber stamp’ the trustee’s proposal.” *In re Am. Res. Corp.*, 841 F.2d 159, 162 (7th Cir. 1987). “[T]he bankruptcy judge must apprise himself of all facts necessary to evaluate the settlement and make an informed and independent judgment about the settlement.” *See TMT Trailer*, 390 U.S. at 424, 434.

26. While the trustee’s business judgment is entitled to a certain deference, “business judgment is not alone determinative of the issue of court approval.” *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). Further, the business judgment rule does not provide a debtor with “unfettered freedom” to do as it wishes. *See In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) (“[A]s a fiduciary holding its estate in trust and responsible to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.”). The Court must conduct an “intelligent, objective and educated evaluation”<sup>4</sup> of the proposed settlement “to ensure that the settlement is fair, equitable, and in the best interest of the estate and creditors.” *See In re*

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<sup>4</sup> *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (“To assure a proper compromise the bankruptcy judge, must be apprised of all the necessary facts for an intelligent, objective and educated evaluation. He must compare the terms of the compromise with the likely rewards of litigation.”).



*Mirant Corp.*, 348 B.R. 725, 739 (Bankr. N.D. Tex. 2006) (quoting *Conn. Gen. Life Ins. Co. v. Foster Mortgage Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995)).

## **V. ARGUMENT AND AUTHORITIES**

### **A. The proposed settlement unfairly inflates the UBS Claim to the detriment of creditors and other parties in interest.**

27. The Motion lacks a sufficient foundation to demonstrate that UBS is entitled to the inflated claim proposed under the settlement. Under the settlement, UBS will obtain an allowed claim in two classes: \$65 million in Class 8 and \$60 million in Class 9. UBS will also receive a direct payment of \$18,500,000 from a non-Debtor fund, Multi-Strat. Finally, UBS is also receiving additional material support from the Debtor regarding purported claims against third parties. Combined, this consideration to UBS vastly exceeds the claim that UBS has shown itself entitled and that which the Court estimated for voting purposes, and which the Debtor has represented previously that the UBS Claim is worth. Not only does the settlement provide UBS with additional consideration far in excess of which it is entitled, it provides inappropriate favoritism to UBS at the expense of other creditors and parties in interest. Accordingly, the Motion should be denied.

28. In essence, the settlement appears to inflate UBS's claim against this Debtor's estate as a result of claims UBS may have (which are unproven) against non-Debtor entities. Then, the settlement proposes that the Debtor will assist UBS in collecting on its judgment against these same entities and purportedly pursuing these new claims against these funds.

29. While the Debtor asserts in the Motion that these alleged new allegations regarding the Transferred Assets play a large part in the total consideration to be given to UBS under the settlement, the Motion does not sufficiently demonstrate the nexus between the purported Transferred Assets and the pending UBS Claim and why it should increase UBS's recovery against this estate.

30. The UBS Claim filed against the estate relates to allegations from a lawsuit filed in 2008 and 2009, amended in 2011. Increasing the payment to UBS on these issues may not be warranted because the payments do not relate to claims against the estate and it is unclear whether UBS has a claim against the estate relating to these alleged allegations. The Motion does not clearly state how these purported newly-discovered allegations should increase UBS's recovery against the estate, or whether UBS even has a filed claim against the estate related to these allegations.

31. Indeed, the Debtor acknowledges this position in its papers,<sup>5</sup> saying that it disputes that UBS's implied covenant and fair dealing claim can relate to transfers other than the March 2009 transfers. UBS, after learning of the purported transfers to Sentinel, is apparently trying to tack on these additional claims after the fact as a purported additional basis for its implied covenant claim, despite the fact that the purported transfers occurred approximately eight years after the UBS litigation was commenced and six years after UBS filed its Second Amended Complaint in the State Court Action. Notably, there is no assertion or allegation in the Debtor's papers that the Funds held the purported Transferred Assets at the time the March 2009 transfers were made.

32. This is a significant problem for UBS because the settlement, and the increased amount to be paid, and the purported cooperation to be given by the Debtor to UBS, according to the Debtor, relate entirely to these purported new allegations which may not be properly asserted under the UBS Claim or preserved against the estate. On this basis, it is not clear from the papers whether there is any basis to increase UBS's claim against this estate as a result of its own inability to collect on its judgment against the non-Debtor Funds.

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<sup>5</sup> See Settlement Agreement, para. 46.

33. This is supported also by the fact that the allowance of the UBS Claim for voting purposes does not address assets held in the Funds after March 2009. Part of the foundation of the UBS Claim against the Debtor is that, at the time (March 2009) the Funds were required to satisfy margin calls to UBS, the Debtor transferred assets away from the Funds or otherwise caused the Funds not to be able to satisfy their obligations to UBS under the relevant agreements.

34. The ultimate amount of consideration to be given to UBS under the settlement is again vastly inflated from the Debtor's contention that the maximum amount should be \$35,742,978.978, and exceeds even the Court's determination as to the amount to be allowed for voting purposes. Under the settlement, UBS is given a claim approximately four times that, a direct cash payment of \$18.5 million from a non-debtor, and substantial and material help on collecting on UBS's judgment against the non-Debtor funds. While Mr. Dondero understands that half of UBS's allowed claim is a subordinated claim, which may not receive a large recovery, the allowance of an inflated claim in this class is still dilutive of other creditors and equity security holders. Mr. Dondero does not believe such a large claim is justified under the facts.

35. As another example of the issues with the settlement and the allegations made by the Debtor in its Motion, the purported value of the alleged Transferred Assets is not segregated between parties that UBS has claims against. The settlement agreement states that the Transferred Assets were not made *only* by the Funds (which are the subject to UBS's judgment) and HFP (which is a defendant in the state court action), but also by three entities which do not appear to be defendants in the UBS Claim: Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp. It is not clear which Transferred Assets were purportedly transferred from which entities, and the Debtor's Motion seems to gloss over this fact by failing to mention which assets the Funds themselves actually purportedly transferred. While the Debtor's

Motion insinuates that the Funds transferred the full value of the Transferred Assets—it is not explicitly stated and in fact is undercut by the recitals in the settlement itself, which concedes that the purported transfers were made by several other non-debtor entities which were not subject to litigation by UBS.

36. For the reasons set forth above, the proposed settlement is not reasonable because it provides UBS a larger claim than it is entitled and, through certain of the settlement provisions, favors UBS at the expense of other creditors and parties in interest.

**B. There Are Other Reasons for the Court to Closely Scrutinize the Proposed Settlement that May Warrant Denial of the Motion**

37. There are a number of other reasons for the Court to closely scrutinize the proposed settlement that may warrant denial of the Motion.

38. First, the proposed settlement may also violate the Fifth Circuit’s “fair and equitable” standard and contravene the Plan’s classification of claims and interests. Specifically, by giving UBS a direct payment from Multi-Strat, one of its managed funds which the Debtor asserts it owns 59% and controls, the proposed settlement may also violate the Fifth Circuit’s “fair and equitable” standard and contravene the Plan’s classification of claims and interests

39. The Multi-Strat payment also may conflict with investor desires and the Debtor’s management agreement with Multi-Strat. By giving UBS a direct payment of \$18,500,000 from Multi-Strat, the Debtor potentially dilutes the recovery of other unsecured creditors in the Debtor’s case by reducing the Debtor’s interest in this fund. The payment to Multi-Strat is, per capita, much larger and a greater recovery than UBS would receive if it was provided a direct payment along the lines of its allowed claims against the Debtor. As the Debtor, per its papers, has alleged it only owns 59% of Multi-Strat, there is a question as to whether this payment is in line with investor expectations, in compliance with its investment management agreement, and whether it satisfies

the priority scheme of the Bankruptcy Code. While the Debtor asserts that the payment is to satisfy UBS's claims against Multi-Strat, the amount appears high in relation to Multi-Strat's individual liability, and the estate is necessarily impacted by the payment since the Debtor's ownership interest in Multi-Strat *is* property of the estate. Accordingly, the Court should scrutinize whether this payment satisfies the Fifth Circuit's "fair and equitable" standard and complies with the terms of the Debtor's confirmed Plan.

40. Finally, the releases by the MSCF Parties under the settlement agreement are unclear and not identified. Accordingly, parties are not under fair notice of which parties are releasing claims against UBS under the settlement. Under the settlement, MSCF Parties is defined as Multi-Strat, "together with its general partner and its direct and indirect wholly-owned subsidiaries."<sup>6</sup> However, the purported "direct and indirect wholly-owned subsidiaries" of Multi-Strat are not identified by name in the settlement, and it is not clear whether any or all of them are made a party to the agreement.<sup>7</sup> Accordingly, it is unclear who are parties to the releases between the MSCF Parties and UBS. While this may simply be a drafting issue, Mr. Dondero objects to the extent the settlement purports to effectuate releases of unidentified third parties and those who have not signed the agreement.

### **CONCLUSION**

For the reasons set forth above, Mr. Dondero respectfully requests that the Court enter an order denying the Motion and providing Mr. Dondero such other and further relief to which he may be justly entitled.

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<sup>6</sup> Settlement Agreement, p. 1.

<sup>7</sup> The signature page of the Settlement Agreement includes, on the Debtor's side, HCMLP, Multi-Strat, Highland Credit Opportunities CDO, Ltd., Highland Credit Opportunities CDO Asset Holdings, L.P., and Strand Advisors, Inc.



Dated: May 12, 2021

Respectfully submitted,

/s/ Bryan C. Assink

John Y. Bonds, III

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**ATTORNEYS FOR JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on May 12, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

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*Counsel for UBS Securities LLC and UBS  
AG London Branch*

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

-----	X	
<i>In re</i>	:	
	:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	:	
	:	Case No. 19-34054-sgj11
Debtor.	:	
-----	X	

**UBS'S WITNESS AND EXHIBIT LIST FOR MAY 21, 2021 HEARING**

UBS Securities LLC and UBS AG London Branch (together, "UBS"), by and through their undersigned counsel, submit the following witness and exhibit list for the hearing set for 9:00 am

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<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Central Time on May 21, 2021 in connection with the *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] filed by Highland Capital Management, L.P. (the "Debtor").

**A. WITNESSES:**

1. Any witness designated or called by any other party; and
2. Any witness necessary for impeachment or rebuttal.

**B. EXHIBITS:**

No.	Exhibit	Offered	Admitted
1	<i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> [Docket No. 2199]		
2	<i>Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith</i> , and exhibits attached thereto [Docket No. 2200]		
3	<i>Order Granting UBS's Motion for Temporary Allowance of Claims for Voting Purposes pursuant to Federal Rule of Bankruptcy Procedure 3018</i> [Docket No. 1518]		
4	Transcript of November 20, 2020 Hearing regarding Motions for Partial Summary Judgment and Motion to Allow Claims for Voting Purposes [Docket No. 1482]		
5	Any pleadings, reports, or other documents entered or filed in this action, including any exhibits thereto		
6	All exhibits identified by or offered by any other party at the hearing		
7	All exhibits necessary for impeachment and/or rebuttal purposes		

UBS reserves the right to amend or supplement this witness and exhibit list prior to the hearing.

DATED this 14th day of May 2021.

**LATHAM & WATKINS LLP**

By /s/ Sarah Tomkowiak

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*Counsel for UBS Securities LLC and UBS  
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**CERTIFICATE OF SERVICE**

I, Martin Sosland, certify that *UBS's Witness and Exhibit List For May 21, 2021 Hearing* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: May 14, 2021.

/s/ Martin Sosland



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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	<b>Re: Docket Nos. 2199, 2268, 2293,</b>
	)	<b>2295</b>

**DEBTOR'S OMNIBUS REPLY IN SUPPORT OF DEBTOR'S MOTION FOR  
ENTRY OF AN ORDER APPROVING SETTLEMENT WITH UBS SECURITIES  
AND UBS AG LONDON BRANCH AND AUTHORIZING ACTIONS CONSISTENT  
THEREWITH**

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

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this reply (the “Reply”) (a) in response to (i) the *Limited Preliminary Objection to the Debtor’s Motion for Entry of an Order Approving Settlement With UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2268] (the “Initial Dugaboy Objection”), (ii) the *Supplemental Opposition to Debtor’s Motion for Entry of an Order Approving Settlement With UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2293] (the “Supplemental Dugaboy Objection,” and together with the Initial Dugaboy Objection, the “Dugaboy Objection”), and (iii) *James Dondero’s Objection to Debtor’s Motion for Entry of an Order Approving Settlement With UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2295] (the “Dondero Objection,” and together with the Dugaboy Objection, the “Objections”) and (b) in support of its *Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] (the “Motion”).<sup>2</sup> In further support of the Motion, the Debtor respectfully states as follows:

### **PRELIMINARY STATEMENT**

1. As set forth in the Motion, the Settlement Agreement provides UBS with a Class 8 (General Unsecured Claim) of \$65 million and a Class 9 (Subordinated Claim) of \$60 million. The Settlement Agreement also provides that Multi-Strat will pay \$18.5 million to UBS in satisfaction of UBS’s claims against Multi-Strat. This is an extraordinary achievement that is supported by the Debtor’s major creditors. It resolves over a decade of highly acrimonious litigation, including extensive litigation in this Court, and UBS’s \$1 billion plus claim against the Debtor as well as its claim against Multi-Strat. The settlement paves the way for the Debtor to

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings given to them in the Motion.

begin making long-overdue distributions to creditors following the effective date of the Plan. It is opposed by no one except Mr. Dondero and the “family trust” – The Dugaboy Investment Trust (“Dugaboy”) – that he controls (together, the “Dondero Objectors”).<sup>3</sup>

2. And, while the Debtor believed, and continues to believe, that it has defenses to UBS’s claims, those defenses would be (i) subject to substantial factual disputes, (ii) require the cooperation of now-adverse parties whose credibility has already been questioned, and (iii) require expensive, time-consuming litigation that would likely be resolved only after a lengthy trial (and likely rounds of appeals) all while the Debtor (or its successor) assumes the risk that the defenses might fail.

3. The Dondero Objectors do not (and cannot) dispute that the proposed settlement is the product of substantial, arm’s length – and sometimes quite heated – negotiations between and among the principals and their counsel. The Debtor believes that the proposed settlement is fair and reasonable, results from the valid and proper exercise of its business judgment, and represents the successful resolution of an incredibly complicated and substantial claim.

4. The facts underlying the Settlement Agreement are well known to this Court, but some bear repeating:

- In late 2008, CDO Fund and SOHC breached certain warehouse agreements;
- After years of litigation, in November 2019, UBS secured a judgment in the State Court against CDO Fund and SOHC on account of that breach of over \$1 billion (inclusive of interest);
- As part of this litigation, UBS alleged that certain entities managed and/or controlled by the Debtor, including Multi-Strat, engaged in a series of orchestrated

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<sup>3</sup> See *Order Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”) ¶ 19. As this Court has previously found, and as set forth below, Mr. Dondero and Dugaboy have only the most tenuous economic interest in and connection to the Debtor’s estate. *Id.* ¶¶ 17-18.

fraudulent conveyances with the goal of moving assets away from the Funds and outside the reach of UBS;

- UBS also alleged that the Debtor (then under Mr. Dondero's control) breached the implied covenant of good faith and fair dealing by interfering with CDO Fund and SOHC's payment of its obligations to UBS under the warehouse agreement;
- In December 2020, this Court entered an order estimating UBS's claim against the Debtor at \$94,761,076 (the "Estimated Claim"), which included an estimation that UBS had a 90% chance of recovering \$25,782,988 (plus interest) from Multi-Strat (resulting in a risk-adjusted claim against Multi-Strat of approximately \$23.2 million) on account of UBS's fraudulent conveyance claim against it;
- After reaching an agreement in principle with UBS, the Debtor uncovered a secret scheme by the Debtor's former management (a) to transfer more than \$300 million in face amount of securities and cash from the Funds to Sentinel – a Cayman-based reinsurance company owned and controlled by Mr. Dondero and Scott Ellington – and (b) to hide that transfer from the Independent Directors, UBS, and this Court; and
- But for that transfer, CDO Fund and SOHC could have used the value of such fraudulently transferred securities and cash to satisfy UBS's judgment.

Despite the facts set forth above, Mr. Dondero – directly and through Dugaboy – has the audacity to file the Objections and object to the UBS settlement.

5. Dugaboy's objection also questions the Debtor's corporate authority and business judgment and accuses the Debtor (now under the control of the Independent Directors) of having breached its duties and obligations by settling with UBS. As set forth below, there is absolutely no basis for this contention. Dugaboy is a limited partner in Multi-Strat and knows (or should know) that Multi-Strat's governing documents provide the Debtor, as investment manager, and indirect owner of Multi-Strat's general partner with complete authority to manage Multi-Strat's property and to "*settle or compromise suits and administrative proceedings and other similar matters.*"

6. Mr. Dondero's efforts to litigate every issue in this case – directly and by proxy – and to disenfranchise this Court by questioning its authority should be rebuffed, and the objections

overruled. The Debtor asks this Court to (once again) see through the pretense of the Dondero-controlled entities' objections to the USB settlement and approve it as a fair settlement and valid exercise of the Debtor's business judgment.

### **ADDITIONAL BACKGROUND ON MULTI-STRAT**

7. Multi-Strat is a pooled investment fund that is structured as a “mini master.”<sup>4</sup> A “mini master” consists of an offshore feeder fund and onshore master fund. Generally speaking, foreign investors and tax-exempt entities invest in the foreign feeder for tax reasons, and the foreign feeder fund in turn invests substantially all of its assets in the onshore master fund as a limited partner together with the other direct limited partners in the master fund. The master fund is the dominant entity within the “mini master” structure (and the entity most commonly referenced in the structure) as it holds and invests all the assets, including those of the feeder fund. Here, Multi-Strat's “master fund” is Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “Master Fund”),<sup>5</sup> and its offshore feeder fund is Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “Feeder Fund”). The Master Fund, the Feeder Fund, their direct and indirect subsidiaries, and their respective general partners are referred to in the Settlement Agreement, collectively, as “Multi-Strat.”<sup>6</sup> All of Multi-Strat's investment activity is conducted through the Master Fund and all of its investable assets are held by the Master Fund (either directly or indirectly). Investors in the Master Fund and in the Feeder Fund generally have the same rights and liquidity. *See* Feeder PPM at 5 (“Aside from the differences described

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<sup>4</sup> Additional background on Multi-Strat is included in the *Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P.*, dated November 2014 (the “Master PPM”) and the *Confidential Private Offering Memorandum of Highland Multi Strategy Credit Fund, Ltd.*, dated November 2014 (the “Feeder PPM”) and together with the Master PPM, the “PPMs”). Copies of the Master PPM and Feeder PPM are attached as Exhibits 1 and 2, respectively.

<sup>5</sup> Multi-Strat was originally called Highland Credit Opportunities CDO, L.P. but changed its name in 2014.

<sup>6</sup> Multi-Strat has a number of offshore and onshore wholly-owned direct and indirect subsidiaries. An organizational chart showing Multi-Strat's corporate structure is attached hereto as Exhibit 3.



in this Memorandum, an investment in the [Feeder] Fund will have substantially similar terms and risks to an investment in the [Master Fund], as described in the [Master PPM].”)

8. Multi-Strat is managed by its investment manager – the Debtor – and its general partner – Highland Multi Strategy Credit Fund GP, L.P. (the “MSCF GP”). The MSCF GP is 100% owned – indirectly – by the Debtor, and the sole officer of MSCF GP is James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer. The Debtor’s rights, duties, and obligations as investment manager are set forth in the *Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P.*, dated November 1, 2013 (the “IMA”), the *Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P.*, dated November 1, 2014 (the “LPA”), the PPMs, and the *Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd.*, as adopted on 1 November 2014 (the “Articles” and together with the IMA, the LPA, and the PPMs, the “Governing Documents”).<sup>7</sup> MSCF GP’s rights, duties, and obligations are set forth in the LPA, the Master PPM, and general Delaware partnership law.

9. Multi-Strat’s investors include both the limited partners in the Master Fund and the shareholders of the Feeder Fund (which itself is a limited partner of the Master Fund). Nevertheless, for convenience of reference, the ultimate investors, whether direct or through the Feeder Fund, are commonly referred to as Multi-Strat’s limited partners. Multi-Strat’s current limited partners are:

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<sup>7</sup> Copies of the IMA, LPA, and Articles are attached hereto as Exhibits 4, 5, and 6, respectively. These documents were created at Mr. Dondero’s direction years before the Petition Date, severely undermining his challenge to the Debtor’s authority and again calling into substantial question his credibility and motivations.

<u>Limited Partner</u>	<u>Ownership %</u> <sup>8</sup>
Debtor	58.70%
CLO Holdco, Ltd. (“ <u>CLOH</u> ”)	4.06%
Dugaboy	1.71%
Highland Capital Management Services, Inc. (“ <u>HCMS</u> ”)	35.10%
Mark Okada	0.43%

As this Court knows, CLOH, Dugaboy, and HCMS are all directly owned and/or controlled by Mr. Dondero. Mr. Okada, in turn, is Mr. Dondero’s long-time business partner. As such, besides the Debtor, the *only* limited partners in Multi-Strat are (directly or indirectly) owned and/or controlled by Mr. Dondero. There are no third-party limited partners.

10. In addition to the current limited partners, there are a number of former “redeemed” limited partners of Multi-Strat, which are referred to as the “redeemers.” Under the terms of the LPA and Articles, limited partners are allowed to redeem their limited partnership interests under certain circumstances. Once redeemed, a limited partnership interest is extinguished and the balance of the amount owed to the redeemer is “crystallized,” *i.e.*, reduced to a fixed dollar amount (based on the value of Multi-Strat’s assets at the time of redemption) and is treated similar to a debt obligation of the fund, *i.e.*, the redeemer no longer participates in the appreciation of the fund’s assets and only has a claim for its set dollar amount. Currently, Multi-Strat owes its redeemers approximately \$90 million on account of their unpaid redemptions.

11. Prior to 2021, the Debtor believed – because that is what it was told by certain of the Debtor’s then-employees – that *all* the redeemers were third party investors unaffiliated with the Debtor. As the Debtor recently discovered, however, that is not true. In fact, the largest redeemer is Sentinel – the entity owned by Mr. Dondero and Mr. Ellington – which is purportedly

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<sup>8</sup> Ownership is provided on a consolidated basis without regard to whether a party is invested in the Master Fund or the Feeder Fund. The Debtor reserves the right to challenge the purported Dondero and/or Okada controlled limited partnership interests.

owed approximately \$33 million, or one-third of the total redeemed interests. The majority of Sentinel's interest in Multi-Strat was originally owned by CDO Fund but was fraudulently taken from CDO Fund and moved to Sentinel in August 2017. Sentinel purportedly redeemed its Multi-Strat interest in November 2019 as the State Court was entering its judgment against the Funds. Sentinel's redeemed interest is referred to as the "MSCF Interests" in the Settlement Agreement. On information and belief, the other redeemers are unaffiliated third party investors.

## **REPLY**

### **A. Standing**

12. In the Dondero Objection, Mr. Dondero goes to great lengths to prove that he has standing to object to the UBS settlement asserting that he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. Dondero Obj. ¶¶4-13. This Court has already made substantial findings of fact concerning Mr. Dondero and Dugaboy's interests in the estate, finding that "the remoteness of their interests is noteworthy." Confirmation Order ¶¶ 17-18. In light of Mr. Dondero's misleading statements, the Debtor must again address Mr. Dondero and Dugaboy's purported "standing."<sup>9</sup>

13. **James Dondero.** On April 8, 2020, Mr. Dondero filed three unliquidated, contingent claims that he promised to update "in the next ninety days."<sup>10</sup> Over a year later, Mr.

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<sup>9</sup> The following analysis should look familiar as it is nearly verbatim the analysis included in *Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1731] (the "HarbourVest Motion"). Mr. Dondero – directly and through his proxies – was also the only person to object to the Debtor's settlement with HarbourVest (as defined in the HarbourVest Motion). Dugaboy and Mr. Dondero's other family trust – The Get Good Trust – are currently appealing the settlement with HarbourVest. Two of Mr. Dondero's other entities – The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. – recently filed a complaint in the District Court for the Northern District of Texas, which seeks to have the District Court undertake a reconsideration or *de facto* appeal of the settlement with HarbourVest. *See Original Complaint*, Case No. 21-00842-B, Docket No. 1 (N.D. Tex. Apr. 12, 2001).

<sup>10</sup> Mr. Dondero filed two other proofs of claim that he has since withdrawn with prejudice. *See* Docket No. 1460.

Dondero has yet to “update” those claims to assert an actual claim against the Debtor’s estate.<sup>11</sup> Mr. Dondero’s claim as an “indirect equity security holder” is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor’s Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero’s recovery on his indirect equity interest is junior to any claims against Strand itself, including any indemnification claims asserted against Strand by the Independent Directors or their agents. Consequently, before Mr. Dondero can recover on his “indirect” equity interest, the Debtor’s estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be satisfied. And, if all of that occurred, Mr. Dondero would recover 0.25% of the net distributions from the estate.

14. **Dugaboy.** Dugaboy is a sham Dondero “trust” with only the most attenuated standing. Dugaboy filed three proofs of claim (Claim Nos. 113; 131; 177). In two of these claims, Dugaboy argues that (a) the Debtor is liable to Dugaboy for its postpetition mismanagement of Multi-Strat, and (b) this Court should pierce the corporate veil and allow Dugaboy to sue the Debtor for a claim it ostensibly has against the Highland Select Equity Master Fund, L.P. – a Debtor-managed investment vehicle. These claims are frivolous, and the Debtor has objected to them. [Docket No. 906]. In its third claim, Dugaboy asserts a claim against the Debtor arising from its Class A limited partnership interest in the Debtor (which represents just 0.1866% of the total limited partnership interests in the Debtor). Like Mr. Dondero, Dugaboy can recover on its

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<sup>11</sup> Without knowing the nature of the “updates,” the Debtor does not concede that any “updates” would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero’s claims.

equity interest only if the Debtor is solvent and all priority distributions to Class B and Class C creditors and all claims against Strand are satisfied. Then, and only then, would Dugaboy recover 0.1866% of the net distributions from the estate. Dugaboy also claims to own 1.71% of the limited partnership interests in Multi-Strat (as discussed above).

15. Consequently, the Dondero Objectors' standing to object to the UBS settlement is extremely attenuated and their chances of recovery in this case are, at best, theoretical and speculative thereby calling into question the Dondero Objectors' motivation. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had a "pecuniary interest . . . directly affected by the bankruptcy proceeding"); *see also In re Flintkote Co.*, 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff'd*, 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing). Mr. Dondero and Dugaboy's minimal interest in the estate should not allow them to overrule the estate's business judgment or veto settlements with creditors, especially when no actual creditors and constituents have objected. "[A] bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors . . . and . . . act to further the diverse interests of the debtor, creditors and equity holders, alike." *In re Lionel*, 722 F.2d 1063, 1071 (2d Cir. 1983).

**B. The Objections Fail on the Merits**

16. As discussed in the Motion, under applicable Fifth Circuit precedent, a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See, e.g., In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). In making this determination, courts look to the following factors:

- probability of success in the litigation, with due consideration for the uncertainty of law and fact;



- complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- all other factors bearing on the wisdom of the compromise, including (i) “the paramount interest of creditors with proper deference to their reasonable views” and (ii) whether the settlement is the product of arm’s length bargaining and not of fraud or collusion.

*Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citations omitted); *see also Age Ref. Inc.*, 801 F.3d at 540; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 918 (5th Cir. 1995).

**1. The Dugaboy Objection Is Without Merit**

17. In its Objection, Dugaboy presses various arguments and makes various factual assertions but neglects to disclose its affiliation with Mr. Dondero and its interest in Multi-Strat. Those neglected facts undermine the majority of the Dugaboy Objection.

**a. Dugaboy is a Limited Partner in Multi-Strat**

18. Pursuant to a subscription agreement (the “Subscription”), Dugaboy subscribed for shares in the Feeder Fund by investing \$180,000. A copy of the Subscription is attached as Exhibit 7. Because Dugaboy is a “revocable grantor trust,” the Subscription required that it be signed by Dugaboy’s beneficiary as if the beneficiary was the one subscribing to Multi Strat in his individual capacity. Mr. Dondero is Dugaboy’s beneficiary and therefore signed the Subscription on behalf of Dugaboy. By signing the Subscription, Mr. Dondero represented that he had received a copy of the Governing Documents on behalf of Dugaboy. Consequently, Dugaboy has no excuse not to know how Multi-Strat is governed.

19. As Mr. Dondero knows and intended, Multi-Strat’s Governing Documents vest in the Debtor (as investment manager) and MSCF GP (as general partner) the exclusive authority (and obligation) to manage and bind Multi-Strat, including the authority to settle claims against

Multi-Strat. For example, in the section titled “Risk Factors and Potential Conflicts of Interest,” the Master PPM states that “[s]ubstantially all decisions with respect to the management of the Fund are made by the General Partner and the Investment Manager. Limited Partners have no right or power to take part in the management of the Fund.” Master PPM at 25; *see also* Feeder PPM at 6 (“[T]he [Feeder] Fund’s management, as well as investment decisions at the [Master Fund] level, are effectively controlled by the Investment Manager or its affiliates.”).

20. Further, among other things:

- Section 2(a) of the IMA requires that the Feeder Fund invest all of its assets in the Master Fund to be managed by the Debtor as investment manager.<sup>12</sup> IMA, § 2(a)
- Section 2(c)(i) of the IMA grants the Debtor, as investment manager, full discretion and authority on behalf of both the Master Fund and the Feeder Fund to “exercise all rights, powers, privileges and other incidents of ownership or possession” with respect to Multi-Strat’s investments and “other property and funds held or owned by the Master Fund.” *Id.* § 2(c).
- Section 2(c)(i) of the IMA also expressly and explicitly grants the Debtor, as investment manager, the authority to “*institute and settle or compromise suits and administrative proceedings and other similar matters.*” *Id.* (emphasis added).
- Under Section 4.1 of the LPA, the MSCF GP:
  - has “complete and exclusive power and responsibility, to the fullest extent permitted” by Delaware law to manage and administer the affairs of the Partnership, and “to do all things that the General Partner considers necessary or desirable to carry out its duties” under the LPA “whether or not such action or authority is expressly provided for in [the LPA].”
  - has full power and authority “to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.”
  - may delegate “to any other Person, including the Investment Manager,” any power and authority vested in the MSCF GP pursuant to the LPA.

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<sup>12</sup> IMA, § 2(a) (“All of the investable assets of the [Feeder] Fund must be invested in, and the investment program of the [Feeder] Fund is to be conducted by the Investment Manager through the [Master] Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the [Feeder] Fund and the investment activities of the Investment Manager will be conducted at the [Master] Fund level as the investment manager to the [Master] Fund.”).

The LPA also provides that Multi-Strat’s limited partners, such as Dugaboy (and the Feeder Fund), have **no** right to manage, control, or operate Multi-Strat or to act on its behalf until expressly stated otherwise. *See* LPA, § 4.3 (“The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.”).

**b. UBS Has Direct Claims Against Multi-Strat**

21. Dugaboy alleges that the Debtor used Multi-Strat to decrease the Debtor’s liability to UBS. This ignores (a) UBS’s substantial, direct claims against Multi-Strat arising from an alleged fraudulent conveyance of assets to Multi-Strat – a fraudulent conveyance that was done to frustrate UBS’s ability to recover on its claims against the Funds – and (b) the extensive arguments and judicial findings concerning UBS’s direct claims against Multi-Strat in connection with the 3018 Motion.<sup>13</sup>

22. The assets conveyed to Multi-Strat did not belong to the Debtor, and they were not conveyed to Multi-Strat by the Debtor. These claims have not yet been litigated and would have been addressed in “Phase II” of the UBS litigation if the Debtor had not filed bankruptcy. Consequently, UBS has a claim against the Debtor, under various theories, for \$1 billion **and** a separate and distinct claim against Multi-Strat for approximately \$26 million (plus interest). Notably, Dugaboy admits that UBS has separate and distinct claims against Multi-Strat. Dugaboy Obj. ¶12.

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<sup>13</sup> Dugaboy attempts to paint this fraudulent transfer as somehow benefiting the Debtor. “What the Debtor received for the transfer of its interest in Multi-Strat is unknown, however, and in assessing the value the Debtor received for its interest in Multi-Strat it is safe to assume that in some measure the Debtor received the benefit of the so-called fraudulently transferred assets.” Dugaboy Obj. ¶9. This misrepresents the facts. The Debtor did not transfer its interests in Multi-Strat (although it did sell a small amount of its interest to Sentinel prior to the 2017 fraudulent conveyance).

23. Indeed, this Court previously estimated the value of UBS's claim against Multi-Strat at approximately \$23 million, excluding interest. As such, Multi-Strat would be required to either settle or litigate to conclusion UBS's claims against it – regardless of whether the Debtor settled UBS's claims against the Debtor. Mr. Dondero knows this. In fact, Mr. Dondero approached the Debtor and certain of its creditors in late 2020 with the hope of effectuating his “pot plan.” As part of his “pot plan,” Mr. Dondero required that the “UBS settlement . . . be global and inclusive of all affiliated entities, including offshore entities and the Multi Strat Credit Fund” to avoid this exact result.

**c. The Debtor Satisfied Its Fiduciary Duty**

24. Dugaboy alleges that the Debtor breached its fiduciary duties to Multi-Strat under the Investment Advisers Act of 1940 (the “Advisers Act”) by, among other things, causing Multi-Strat to settle with UBS. These allegations are false, but as importantly, they are a smokescreen.

25. Multi-Strat's redeemers have approximately \$90 million in redemption claims (including Sentinel's putative redemption claim), but they will not be affected by Multi-Strat's settlement with UBS. Multi-Strat has approximately \$120 million in assets. The redeemers' claims therefore will be paid in full even if Multi-Strat pays UBS \$18.5 million to satisfy UBS's claims. In terms of Multi-Strat's remaining limited partners, as set forth above, there are functionally only two: (a) the Debtor (59%) and (b) Mr. Dondero's controlled entities (41%).<sup>14</sup> The Settlement Agreement – as evidenced by the lack of objection by the Debtor's creditors – is in the best interests of Multi-Strat as a whole, Mr. Dondero's objections notwithstanding. There is simply no point in continuing to engage in costly, time-consuming litigation with UBS that Multi-Strat might well lose.

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<sup>14</sup> As evidenced by Mr. Dondero's objection to the UBS settlement, each of the investors in Multi-Strat had notice of the Settlement Agreement and the chance to object.

26. Because the Debtor – as investment manager – settled UBS’s claims against Multi-Strat in the best interests of Multi-Strat, there can be no breach of fiduciary duty (particularly since the settlement value (\$18.5 million) is materially less than the Court’s estimated value of the claim (\$23 million plus interest)). Moreover, it is black-letter law that the Debtor’s fiduciary duties under the Advisers Act run to Multi-Strat only, not to any individual investor in Multi-Strat such as Dugaboy.<sup>15</sup> Further, even if an adviser has a conflict of interest, such conflict does not constitute a breach of the adviser’s duty to its client if it is either eliminated *or* fully and fairly disclosed.<sup>16</sup> Here, the required disclosures concerning the Debtor’s potential conflicts of interests were made.<sup>17</sup>

27. Finally, Dugaboy alleges that the Settlement Agreement puts the Debtor in direct conflict with Multi-Strat because (a) the Debtor is not releasing claims against Multi-Strat for the assets fraudulently transferred to Multi-Strat, (b) the Settlement Agreement obligates the Debtor to investigate and participate in the prosecution of claims against Multi-Strat, and (c) the Settlement Agreement is unclear if UBS is releasing all claims against Multi-Strat. These can be quickly dispatched.

28. *First*, the Debtor is not releasing claims against Multi-Strat arising from Multi-

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<sup>15</sup> See *Goldstein v. SEC*, 451 F.3d 873, 879 (D.C. Cir. 2006) (“An investor in a private fund may benefit from the adviser’s advice (or he may suffer from it) but he does not receive the advice directly. He invests a portion of his assets in the fund. The fund manager – the adviser – controls the disposition of the pool of capital in the fund. The adviser does not tell the investor how to spend his money; the investor made that decision when he invested in the fund. Having bought into the fund, the investor fades into the background; his role is completely passive. If the person or entity controlling the fund is not an “investment adviser” to each individual investor, then a fortiori each investor cannot be a “client” of that person or entity.”).

<sup>16</sup> *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* (the “Release”), Release No. IA-5248; File No. S7-07-18, effective July 12, 2019 at 8 (“Under its duty of loyalty, an investment adviser must eliminate *or* make full and fair disclosure of all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which is not disinterested such that a client can provide informed consent to the conflict.”) (emphasis added).

<sup>17</sup> Each of the PPMs includes pages of disclosures on potential conflicts of interests. None of these disclosures were even acknowledged by Dugaboy in its objection. See generally Master PPM “Risk Factors and Potential Conflicts of Interest” at 49-53; Feeder PPM “Risk Factors and Potential Conflicts of Interest” at 26. The Feeder PPM cross references to and incorporates the disclosures contained in the Master PPM. “The [Master PPM] contains further disclosures concerning potential conflicts of interests. Such disclosures are incorporated herein by reference and should be read in their entirety prior to making a decision to invest in the [Feeder] Fund.” Feeder PPM at 26.



Strat's receipt of fraudulently conveyed assets because the Debtor has no claim to the fraudulently conveyed assets (unlike UBS) and therefore has no claim against Multi-Strat as the recipient of such assets.<sup>18</sup> *Second*, Dugaboy is confused by the language of the Settlement Agreement. The Settlement Agreement provides that the Debtor will cooperate with respect to claims relating to the MSCF Interests and any injunctive relief necessary to ensure that additional money and assets are not transferred to Sentinel, among others. Settlement Agreement at § 1(c). Similarly, UBS has released all claims against Multi-Strat but has preserved its claims with respect to the MSCF Interests. *Id.* at § 3(a). As discussed above, the MSCF Interests are the interests in Multi-Strat that were fraudulently conveyed to Sentinel from CDO Fund in 2017. By preserving its claims with respect to the MSCF Interest, UBS has preserved its right to seek recovery of the MSCF Interests from Sentinel, not to sue Multi-Strat.

**d. This Court Has Jurisdiction to Approve All Aspects of the Settlement**

29. Dugaboy also objects to the settlement between UBS and Multi-Strat “on the ground that the Bankruptcy Court lacks jurisdiction to approve a settlement between non-debtors.” Dugaboy Obj. ¶12.<sup>19</sup> As support for this objection, Dugaboy states that (a) linking UBS's separate settlements with Multi-Strat and the Debtor does not create “arising in, under, or related to” jurisdiction;<sup>20</sup> (b) the automatic stay does not apply to co-defendants, and (c) the Debtor has

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<sup>18</sup> Dugaboy makes the nonsensical argument that the Debtor could settle its claims against Multi-Strat for “\$18,000,000 [sic]” in lieu of Multi-Strat settling its claim against UBS. In Dugaboy's mind, this settlement would provide a cash inflow to the estate of \$18 million and the failure to do this settlement somehow constitutes an impermissible plan modification under 11 U.S.C. § 1127. Dugaboy Obj. ¶ 11. For the reasons set forth above, this makes no sense. The Debtor does not have a claim against Multi-Strat on account of the fraudulently conveyed assets. The Debtor did not convey those assets to Multi-Strat nor were those assets fraudulently transferred out of an entity that the Debtor had a claim against.

<sup>19</sup> This position is ironic. Mr. Dondero has consistently argued to this Court that the Debtor has violated, among other statutes, 11 U.S.C. § 363 by *not* seeking this Court's authority before causing its managed funds and CLOs to sell assets. *See, e.g., James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1439].

<sup>20</sup> Because Multi-Strat's settlement with UBS could conceivably have an impact on the estate, at a minimum, “related to” jurisdiction exists. *See, e.g., Burch v. Freedom Mortg. Corp. (In re Burch)*, 835 Fed. Appx. 741, 748 (5th Cir.

admitted to this Court's lack of jurisdiction. Each of these arguments evinces a clear misunderstanding of the facts and the relief sought.

30. The Debtor does not contend that this Court has jurisdiction over Multi-Strat's assets. Multi-Strat's assets are not "property of the estate" under 11 U.S.C. § 541 or for purposes of 11 U.S.C. § 363(b). *See, e.g., In re Guyana Dev. Corp.*, 68 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."). However, the Motion recognizes that 11 U.S.C. § 363(b) might still apply to the Debtor's exercise of its contractual rights under the IMA to manage and govern Multi-Strat (Motion ¶53), as those rights *do* constitute property of the estate. *See In re Thomas*, 2020 Bankr. LEXIS 1364 at \*31 (Bankr. W.D. Tenn. 2020) (a debtor's membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989).

31. This is consistent with the Debtor's position throughout this case that: (a) assets of non-debtor subsidiaries and funds are not "property of the estate;" (b) the Debtor's contractual right to manage and control the disposition of those assets is "property of the estate;" and (c) the Debtor generally does not need Court approval to exercise those rights because causing the managed funds to sell assets is in the "ordinary course of [the Debtor's] business" and exempt from approval under 11 U.S.C. § 363(c).<sup>21</sup> *See generally Debtor's Response to Mr. James*

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2021) (finding that a proceeding "relates to" a case under Title 11 if "the outcome of [the non-bankruptcy] proceeding could conceivably have any effect on the estate being administered in bankruptcy.").

<sup>21</sup> Dugaboy cites to the "May 20, 2020 settlement between UBS, the Debtor and Multi-Strat" as an example of an agreement that was not brought to this Court for approval under 11 U.S.C. § 363. A true and correct copy of the May 20, 2020 settlement agreement (the "May Agreement") is attached hereto as Exhibit 8. As an initial matter, the Debtor was not party to that agreement; it was executed solely by UBS, Multi-Strat, and certain of Multi-Strat's wholly-

*Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1546].

32. The difference here is that the Debtor is exercising its management and control rights to cause Multi-Strat to settle a material litigation claim against it. That does not involve the sale of an asset or an investment and is arguably outside the ordinary course of the Debtor's business, necessitating this Court's approval under 11 U.S.C. § 363(b). *See, e.g., In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013) (finding that a transaction is "ordinary course" if it does not "subject[] a hypothetical creditor to a different economic risk than existed when the creditor originally extended credit" and is "of the sort commonly undertaken in the industry."). The Debtor respectfully submits that the settlement between UBS and Multi-Strat as negotiated by the Debtor in an exercise of its management rights should be approved pursuant to 11 U.S.C. § 363(b) for the reasons set forth herein and in the Motion.

**2. The Dondero Objection Is Without Merit**

33. Mr. Dondero generally objects to the UBS settlement on two purported grounds: (a) the settlement impermissibly inflates UBS's claim, and (b) Multi-Strat's settlement of UBS's claims against Multi-Strat potentially violate the Bankruptcy Code and are contrary to investor interests. Mr. Dondero's objections are without merit.

**a. The Settlement Does Not Inflate UBS's Claims**

34. Mr. Dondero argues that the Motion "lacks a sufficient foundation to demonstrate

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owned subsidiaries. Further, the May Agreement was entered into to allow Multi-Strat to sell certain assets that were the subject of UBS's claim against Multi-Strat. Consequently, the May Agreement was not brought to this Court because it involved Multi-Strat executing an agreement with a non-debtor that would allow Multi-Strat to sell assets. The May Agreement was thus executed in the ordinary course of business and did not require this Court's approval pursuant to 11 U.S.C. § 363(c).

Dugaboy cannot assert that it did not have notice of the May Agreement. Dugaboy filed a proof of claim (Claim No. 177) alleging that the transactions effectuated through the May Agreement constituted a breach of the Debtor's duty to Dugaboy. Dugaboy, therefore, cannot *not* have had notice of the May Agreement.

that UBS is entitled to the inflated claim proposed under the settlement.” Dondero Obj. ¶27. In other words, Mr. Dondero does *not* object to the proposed settlement with UBS that was announced at the hearing on the Debtor’s Plan, which included a \$50 million general unsecured claim and a \$25 million subordinated claim being provided to UBS. Instead, Mr. Dondero objects, without irony, to the additional \$15 million general unsecured claim and \$35 million subordinated claim. Mr. Dondero clearly misunderstands the relevant facts and law.

35. UBS has asserted claims against the Debtor alleging, among other things, that the Debtor caused the Funds *not* to pay the amounts they owed to UBS. Recently, the Debtor discovered that Dondero and the Dondero-controlled Debtor actually and intentionally caused the Funds to transfer over \$300 million in face amount of the Funds’ assets to an offshore entity owned and controlled by Mr. Dondero and Mr. Ellington. The Dondero and Dondero-controlled Debtor then covered up that transaction during this Bankruptcy Case. These facts are undeniable and damning; substantially undercut the Debtor’s defense that it did not impede the Funds’ ability to pay UBS’s judgment; and caused the Debtor to agree to increase the consideration under the proposed settlement.

36. Mr. Dondero also argues that the August 2017 transfer to Sentinel cannot relate to UBS’s claim because that claim arose out of actions taken in 2008 and 2009. Mr. Dondero, however, misunderstands UBS’s claim, which includes a broad reservation of rights “to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery.” See Claim Nos. 190, 191, Annex ¶28. Just because the Sentinel fraud occurred *after* 2009 and potentially included assets not held by the Funds in 2009 does not mean that the Debtor escapes all potential liability for those transfers (especially

when they were hidden from UBS, the Independent Directors, and this Court).

37. Mr. Dondero next argues that the settlement is “vastly inflated from the Debtor’s contention that the maximum amount should be \$35,742,978.978 [sic] and exceeds even the Court’s determination as to the amount to be allowed for voting purposes.” Dondero Obj. ¶34. Mr. Dondero again ignores the facts. This Court estimated UBS’s claim at approximately \$95 million, which included approximately \$23 million (exclusive of interest) from Multi-Strat. The proposed settlement provides for (a) an \$18.5 million payment from Multi-Strat and (b) a \$65 million general unsecured claim and a \$60 million subordinated claim against the estate. As such, Mr. Dondero ignores the fact that Multi-Strat will pay substantially less under the settlement than was estimated by this Court. Mr. Dondero also assumes that the \$65 million general unsecured claim and the \$60 million subordinated claim will obtain the same rate of recovery under the Plan; they may not. As such, the Settlement Agreement is substantially in line with the Court’s Estimated Claim (even after subtracting amounts allocable to Multi-Strat).

**b. The Settlement Does Not Contravene the Plan’s Classification of Claims and Interests**

38. Mr. Dondero states – without case law or support – that because the UBS settlement provides a “direct payment from Multi-Strat, one of its managed funds which the Debtor asserts it owns 59% and controls” it may violate the “fair and equitable” standard and the Plan’s classification scheme. Dondero Obj. ¶38. Admittedly, the Debtor does not fully understand this argument. Nevertheless, Mr. Dondero plainly ignores UBS’s substantial and direct claims against Multi-Strat. There is nothing improper about Multi-Strat – a non-debtor – paying cash to one of its creditors outside of the Plan, and there is no need to classify UBS’s claim against Multi-Strat under the Debtor’s Plan. *See Guyana.*, 168 B.R. at 905.



**c. “Investor Desires” Are Irrelevant**

39. Mr. Dondero next argues that the “Multi-Strat payment also may conflict with investor desires and the Debtor’s management agreement with Multi-Strat.” Dondero Obj. ¶39. In light of the fraud discussed above, this argument is absurd.

40. *First*, and as discussed above, the only limited partners in Multi-Strat are the Debtor and entities controlled by Mr. Dondero. Moreover, the Debtor and MSCF GP have the sole and exclusive right to manage and control Multi-Strat, including to settle litigation. The fact that the settlement may reduce the value of Mr. Dondero’s indirect, minority interests in Multi-Strat does not give Mr. Dondero the authority to block Multi-Strat’s settlement of claims against it. *Second*, the Multi-Strat settlement with UBS is well in line with this Court’s estimation of Multi-Strat’s liability to UBS. *Third*, Mr. Dondero has no direct interest in Multi-Strat, and, unless he is finally ready to admit that there is no distinction between him and CLOH, Dugaboy, and HCMS (which is clear notwithstanding a formal admission), he has no standing to object on behalf of Multi-Strat’s investors. *Fourth*, if Mr. Dondero is implying that the Debtor’s creditors do not support the settlement, he should note that he is the *only* (purported) creditor objecting. The foregoing applies equally to Mr. Dondero’s claim that the releases under the Settlement Agreement with respect to Multi-Strat are vague.

**C. Mr. Dondero and Dugaboy Ignore the “Paramount Interest of Creditors”**

41. Despite spending considerable time and expense objecting to the UBS settlement, neither Mr. Dondero nor Dugaboy even address the third factor analyzed by the Fifth Circuit when approving settlements – all other factors bearing on the wisdom of the compromise, including “the paramount interest of creditors with proper deference to their reasonable views.” *Cajun Elec.*, 119 F.3d at 356. This omission is telling. Except for Mr. Dondero and Dugaboy – one of Mr. Dondero’s proxies – no creditor or party in interest has objected to the settlement. And Mr.

Dondero and Dugaboy can barely be classified as creditors as they have no cognizable pecuniary interest in the estate. Mr. Dondero's desire to re-assert control over the estate or to "burn the place down" should not, in any circumstance, outweigh the preferences of the Debtor and its legitimate creditors. Those creditors have not objected to the settlement, and their preference for a reasonable and expeditious settlement of UBS's claims and the start of distributions under the Plan is clear.

*[Remainder of Page Intentionally Blank]*

WHEREFORE, for the reasons set forth above and in the Motion, the Debtor respectfully requests that the Court grant the Motion.

Dated: May 14, 2021.

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*/s/ Zachery Z. Annable*

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## **EXHIBIT 1**

Memorandum Number \_\_\_\_\_

## **Confidential Private Placement Memorandum**

*Series B, Series C and Series D Limited Partner Interests in*

### **Highland Multi Strategy Credit Fund, L.P.**

*General Partner*

Highland Multi Strategy Credit Fund GP, L.P.

*Investment Manager*

Highland Capital Management, L.P.

**November 2014**

000839



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## NOTICE

This Confidential Private Placement Memorandum (this “**Memorandum**”) is being furnished on a confidential basis solely to selected qualified investors (or their respective authorized representatives) considering the purchase of limited partner interests (the “**Interests**”) in Highland Multi Strategy Credit Fund, L.P. (the “**Fund**”). This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of Highland Multi Strategy Credit Fund GP, L.P. (the “**General Partner**”) (other than to professional advisors and employees of the prospective investor receiving this Memorandum from the General Partner or its authorized representative or such prospective investor).

Each recipient agrees to keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment in the Fund. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Interests other than the information contained in this Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund or the General Partner. Prospective investors should not construe the contents of this Memorandum as legal, tax or financial advice. Each prospective investor should consult its own professional advisors as to the legal, financial, tax, ERISA (as defined herein) or other related matters relevant to the suitability of an investment in the Fund for such investor. In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering contemplated by this Memorandum. The Interests have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

This Memorandum does not constitute an offer to sell, or the solicitation of an offer to buy, any Interests in any state or other jurisdiction where, or to or from any person to or from whom, such offer or solicitation is unlawful or not authorized. The Interests have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), or the securities laws of any of the states of the United States. The offering and any potential sale contemplated by this Memorandum will be made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering and analogous exemptions under state securities laws. There will be no public market for the Interests, and there is no obligation on the part of any person to register the Interests under the Securities Act or any state securities laws. The Fund has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended. Interests are suitable only for sophisticated investors who do not require immediate liquidity for their investments, for whom an investment in the Fund does not constitute a complete investment program and who fully understand and are willing to assume the risks involved in the Fund’s investment program. The Fund’s investment practices, by their nature, may be considered to involve a

substantial degree of risk. See “*Risk Factors and Potential Conflicts of Interest*” beginning at page 25. No assurance can be given that the Fund’s investment objectives will be achieved or that investors will receive a return of their capital.

The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and any applicable state or other securities laws, pursuant to registration or an exemption therefrom. The transferability of the Interests will be further restricted by the terms of the limited partnership agreement of the Fund. Investors should be aware that they will be required to bear the financial risks of an investment in the Interests for an extended period of time.

This Memorandum does not purport to be, and should not be construed as, a complete description of the limited partnership agreement of the Fund or the investment management agreement by and among the Fund’s investment manager, the General Partner and the Fund. Each prospective investor in the Fund is encouraged to review the Fund’s limited partnership agreement carefully, in addition to consulting appropriate legal and tax advisors. To the extent of any inconsistency between this Memorandum and the Fund’s limited partnership agreement, the terms of the Fund’s limited partnership agreement control.

Certain information contained in this Memorandum constitutes “forward-looking statements,” which can be identified by the use of forward-looking terminology such as “may,” “will,” “should,” “expect,” “anticipate,” “project,” “estimate,” “intend,” or “believe” or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in “*Risk Factors and Potential Conflicts of Interest*,” actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements.

Pursuant to an exemption from the Commodity Futures Trading Commission, neither the General Partner nor the Investment Manager is registered with as a commodity pool operator and therefore, unlike a registered commodity pool operator, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund’s portfolio; or (b) the aggregate net notional value of the Fund’s commodity interest positions does not exceed 100% of the liquidation value of the Fund’s portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors.

All references herein to “\$” refer to U.S. dollars.

This Memorandum is accurate as of its date, and no representation or warranty is made as to its continued accuracy after such date.

## DIRECTORY

<b>General Partner</b>	<b>Highland Multi Strategy Credit Fund GP, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Investment Manager</b>	<b>Highland Capital Management, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Prime Broker</b>	<b>BNY Mellon Trust Company N.A.</b> 601 Travis Street, 16th FL (775-1700) Houston, Texas 77002
<b>Administrator</b>	<b>SEI Global Services, Inc.</b> One Freedom Valley Drive Oaks, Pennsylvania 19456
<b>Auditors</b>	<b>PricewaterhouseCoopers LLP</b> 2001 Ross Avenue, Suite 1800 Dallas, Texas 75201
<b>Legal Counsel</b>	<b>Akin Gump Strauss Hauer &amp; Feld LLP</b> 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201

\* \* \* \* \*

*This Memorandum does not purport to be and should not be construed as a complete description of the Fund's limited partnership agreement, a copy of which is attached hereto as Appendix A. Any potential investor in the Fund is encouraged to review the Fund's limited partnership agreement carefully, in addition to consulting appropriate legal and tax counselors.*

## EXECUTIVE SUMMARY OF PRINCIPAL TERMS

<b>The Fund</b>	Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “ <i>Fund</i> ”).
<b>General Partner</b>	Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “ <i>General Partner</i> ”).
<b>Investment Manager</b>	Highland Capital Management, L.P., a Delaware limited partnership (the “ <i>Investment Manager</i> ”).
<b>Investor Eligibility</b>	Investors must be both “accredited investors” and “qualified purchasers.”
<b>Offshore Feeder Fund</b>	In order to facilitate investments by non-U.S. and other tax-exempt investors, the Investment Manager has sponsored the formation of Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “ <i>Offshore Fund</i> ”). The Offshore Fund places all of its assets in and conducts all of its investment and trading activities through the Fund as a limited partner of the Fund.
<b>Investment Objective</b>	The Fund seeks attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.
<b>Series of Interests</b>	The Fund has four series of Interests and is offering Series B Interests, Series C Interests and Series D Interests pursuant to this Memorandum.
<b>Minimum Investment</b>	The initial minimum investment is \$1,000,000.00, although the General Partner has the right to accept lesser amounts.
<b>Management Fee</b>	Annual rate of 1.5% for Series B Interests, 1.0% for Series C Interests, and 2.0% for Series D Interests, calculated and payable quarterly in advance.
<b>Performance Allocation</b>	Highland Capital Management, L.P., as a special limited partner of the Fund, is entitled to receive an annual performance-based profit allocation at the end of each year equal to 20% of the Fund’s net profits, subject to a “high water mark.”
<b>Withdrawals</b>	Withdrawal rights vary by Series and are subject to timing restrictions, reserves for contingencies, partial hold-back pending completion of an annual audit and suspension restrictions as further described in “ <i>Summary of Terms</i> .”
<b>Variation of Terms</b>	The General Partner and/or the Investment Manager (as applicable) may agree with certain limited partners to a variation of the terms set forth in this Memorandum or establish additional classes or series of limited partner interests that have terms that differ from those described herein, including different management fees, performance allocations and withdrawal rights.



## INVESTMENT PROGRAM

### Investment Objective

The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management. No assurance can be given, however that the Fund will achieve this objective.

### Investment Strategy

#### *Investment Asset Classes*

The following is a description of the principal types of securities in which the Fund may invest and certain trading techniques the Fund may employ. The following description is merely a summary and the Investment Manager has discretion to cause the Fund to invest in other types of securities and to follow other investment criteria and guidelines. However, consistent with the investment strategy of the Fund, all new investments made by the Fund must, at the time of purchase, (i) trade over-the-counter or on an exchange, (ii) have a third-party quote or valuation available, and (iii) be considered a marketable investment in the reasonable opinion of the Investment Manager. An investment is a marketable investment if in the reasonable opinion of the Investment Manager it can be sold at the mark within 30 calendar days. Notwithstanding the foregoing, the Fund may invest up to 20% of its net asset value in non-marketable investments if and when the Fund's net asset value reaches \$1 billion.

*Debt and Debt-Like Securities.* The Investment Manager intends for debt securities to be the Fund's primary focus, with a target allocation of 40-60% of net asset value of the Fund, although this may vary depending on market conditions. The Fund may invest (both long and short) in debt securities of any kind, including debt securities of varying maturities, debt securities paying a fixed or fluctuating rate of interest, inflation-indexed bonds, structured notes, loan assignments, loan participations, asset-backed securities, collateralized loan obligation ("**CLO**") securities (including, rated and unrated, debt, equity and preference share instruments relating to collateralized loan obligations ("**CLO Securities**")), debt securities convertible into equity securities, and securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, by foreign governments or international agencies or supranational entities or by domestic or private issuers.

The Fund may invest in debt securities of any credit quality, including below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("**NRSRO**") or are unrated but deemed by the Investment Manager to be of comparable quality. The Fund may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

*Equity and Equity-Like Securities.* The Fund may invest (both long and short) in common stock, preferred stock, securities convertible into common stock, rights and warrants or securities or other instruments whose price is linked to the value of common stock. Although the equity securities in which the Fund invests may have any capitalization, may be dominated in any currency, and may be located in emerging markets without limit, the Fund will primarily invest in equity securities of large capitalization companies that are located in developed markets. Additionally, the Fund may invest in equity or subordinated tranches of asset-backed securities, including CLOs, and may also invest in life settlement

policies and other instruments that have equity-like characteristics that meet the investment objective of the Fund.

*Investment Themes*

The Investment Manager's investment philosophy is based on the belief that thorough, fundamental research and a disciplined research methodology increase the likelihood of producing attractive long-term results. The Investment Manager uses this research in an attempt to anticipate long-term secular trends and identify those investments that have the highest relative value characteristics across four primary investment themes.

- 1) Convergence – Investments in market sectors in which the Investment Manager believes are mispriced and will converge to historic norms over time.
- 2) Deep Value – Investments in companies that the Investment Manager believes the market has undervalued. Through thorough research the Investment Manager believes the current market value does not correspond with the company's long-term fundamentals.
- 3) Event Driven – The Investment Manager will generally focus on equity and debt investments with catalysts that could include, but are not limited to, asset sales, covenant violations, liability management, amend/extend, refinancing, tenders and mergers/acquisitions.
- 4) Activism – Material holdings or controlling interests in companies, including the potential to obtain representation on the company's board, with the goal of affecting a change in the company in order to drive future profitability and value realization.

The Investment Manager may also manage interest rate, default, currency and other risks through a variety of trading methods and market tools, including security shorting and derivative hedging instruments, as it deems appropriate.

Although the Investment Manager expects to maintain a diversified portfolio of investments, it does not intend to limit itself to any one particular investment theme or asset class. Rather, the Investment Manager intends to follow a flexible approach in order to place itself in the best position to capitalize on opportunities in the financial markets.

*The investment objectives and methods summarized above represent the General Partner's and Investment Manager's current intentions. Depending on conditions and trends in the securities markets and the economy in general, the General Partner and the Investment Manager may pursue any objectives, employ any investment techniques or purchase any type of security that they consider appropriate and in the best interests of the Fund whether or not described in this section. The foregoing discussion includes and is based upon numerous assumptions and opinions of the General Partner and Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. **There can be no assurance that the Fund's investment strategy will achieve profitable results.***

## MANAGEMENT

### The General Partner and the Investment Manager

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “**General Partner**”), serves as the general partner of the Fund. Highland Capital Management, L.P., a Delaware partnership (the “**Investment Manager**” or “**Highland**”), serves as the investment manager of the Fund and has responsibility for the Fund’s investment program. James D. Dondero ultimately controls the General Partner and the Investment Manager.

The General Partner has the full authority of a general partner under Delaware law. The powers of the General Partner described in this Memorandum and the Partnership Agreement are not exhaustive and are not limited to the specific authorities described therein. Thus, subject to applicable law, the General Partner may make certain decisions or take certain actions even where those decisions or actions are not expressly granted in the Partnership Agreement or described in this Memorandum.

### The Investment Management Agreement

The Investment Manager serves pursuant to an investment management agreement with the Fund, the Offshore Fund and the General Partner (the “**Investment Management Agreement**”). Under the Investment Management Agreement, the Investment Manager has full discretion to invest the assets of the Fund in pursuit of the investment objective and strategy described in this Memorandum.

The Investment Management Agreement provides that, in the absence of willful misconduct, fraud or gross negligence, each of the Investment Manager, its principals, shareholders, managers, employees and affiliates will be indemnified by the Fund and/or the Offshore Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement. For its services the Investment Manager is entitled to the Management Fee and reimbursement of any expenses incurred on behalf of the Fund or the Offshore Fund.

### Investment Personnel

The key investment professionals of the Investment Manager who will be responsible for the Fund’s investments are described below.

#### James Dondero, CFA, Co-Founder, President

James Dondero is Co-founder and President of Highland Capital Management, L.P. (an alternative asset manager specializing in high-yield fixed income investments). Jim has over 30 years of experience in the credit markets. Prior to founding Highland in 1993, Jim served as Chief Investment Officer of Protective Life’s GIC subsidiary and helped grow the business from concept to over \$2 billion between 1989 and 1993. His portfolio management experience includes mortgage-backed securities, investment grade corporates, leveraged bank loans, high-yield bonds, emerging market debt, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately \$1 billion in fixed income funds for American Express. Prior to American Express, he completed the financial training program at JP Morgan. Jim received a BS in Commerce (Accounting and Finance) from the University of Virginia. Jim is a Certified Public Accountant, a Certified Managerial Accountant, and a Chartered Financial Analyst. He currently serves as Chairman for CCS Medical and NexBank and serves on the

Board of Directors of American Banknote Corporation, Cornerstone Healthcare Group and Metro-Goldwyn-Mayer.

**Mark Okada, CFA, Co-Founder, Chief Investment Officer**

Mr. Okada is Chief Investment Officer of Highland Capital Management, L.P. and is responsible for overseeing Highland's investment activities for its various strategies. Mr. Okada is a pioneer in the development of the bank loan market and has over 30 years of credit experience. He is responsible for structuring one of the industry's first arbitrage CLOs and was actively involved in the development of Highland's bank loan separate account and mutual fund platforms. Mr. Okada received a BA in Economics and a BA in Psychology, cum laude, from the University of California, Los Angeles. He has earned the right to use the Chartered Financial Analyst designation. Mr. Okada is a Director of NexBank, Chairman of the Board of Directors of Common Grace Ministries, Inc., is on the Board of Directors for Education is Freedom, and also serves on the GrowSouth Fund Advisory board.

**Josh Terry, CFA, Head of Structured Products and Trading**

Mr. Terry is Head of Structured Products and Trading at Highland Capital Management, L.P. He leads the trading desk, structured products and CLO fund management teams. Since joining Highland in July 2005, Mr. Terry has served in various roles, including Senior Portfolio Analyst on the Distressed & Special Situations investment team, trading loans, bonds and equities on Highland's trading desk, and leading the sector rotation and fund management process for Highland's par credit funds. Prior to joining Highland in July 2005, Mr. Terry worked as an Investment Banking Analyst at Stephens Inc., where he focused on M&A transactions and equity financings for public and private middle-market companies. Mr. Terry serves as Chairman of the Finance Committee on the Board of Governors of Uplift Education, a network of charter schools in the Dallas-Fort Worth area. He received a BBA in Finance and Economics, summa cum laude, from Baylor University. Mr. Terry has earned the right to use the Chartered Financial Analyst designation.

**Trey Parker, Managing Director**

Mr. Parker is Managing Director and Head of Credit Research at Highland Capital Management, L.P. Mr. Parker is responsible for managing the Credit Research Team/Platform. Prior to his current role, Mr. Parker was a Portfolio Manager covering a number of the industrial verticals, as well as parts of Tech, Media and Telecom; he also worked as a Senior Portfolio Analyst on the Distressed & Special Situations investment team. Prior to joining Highland in March 2007, Mr. Parker was a Senior Associate at Hunt Special Situations Group, L.P., a Private Equity group focused on distressed and special situation investing. Mr. Parker was responsible for sourcing, executing and monitoring control Private Equity investments across a variety of industries. Prior to joining Hunt in 2004, Mr. Parker was an analyst at BMO Merchant Banking, a Private Equity group affiliated with the Bank of Montreal. While at BMO, Mr. Parker completed a number of LBO and mezzanine investment transactions. Prior to joining BMO, Mr. Parker worked in sales and trading for First Union Securities and Morgan Stanley. Mr. Parker received an MBA with concentrations in Finance, Strategy and Entrepreneurship from the University of Chicago Booth School of Business and a BA in Economics and Business from the Virginia Military Institute. Mr. Parker serves on the Board of Directors of Euramax Holdings, Inc., TerreStar Corporation, JHT Holdings, Inc., and a non-profit organization, the Juvenile Diabetes Research Foundation (Dallas chapter).

## **Advisory Committee**

The General Partner and/or the Investment Manager may appoint, or cause to be appointed, a committee (the “**Advisory Committee**”) consisting of one or more individuals selected by the General Partner and/or the Investment Manager, none of whom is affiliated with the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in the Fund or an affiliate thereof). If established, the Advisory Committee will have the authority, at the request of the General Partner and/or the Investment Manager, to consult with the General Partner and/or the Investment Manager on any matters that may involve a conflict of interest between the General Partner and/or the Investment Manager (or their affiliates) on the one hand and the Limited Partners (or shareholders of the Offshore Fund) and the Fund on the other. Any consent given by a majority of the Advisory Committee on behalf of the Fund in good faith after consultation with the General Partner and/or the Investment Manager is binding on the Fund and the Limited Partners or shareholders of the Offshore Fund (so long as such majority consists of persons independent of the General Partner and/or the Investment Manager and their affiliates). The Fund will have the authority to agree to reimburse members of the Advisory Committee for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

## **Administrator**

SEI Investments is a leading global provider of investment processing, investment management and investment operations solutions for institutional and personal wealth management. For more than 40 years, SEI has helped corporations, financial institutions, financial advisors and ultra-high-net-worth families create and manage wealth by providing comprehensive, innovative, investment and investment-business solutions. SEI manages or administers \$601.9 billion in funds and separately managed assets. SEI is a public company and is listed on the NASDAQ exchange under the symbol SEIC. SEI has been retained to perform certain administrative, accounting and investor services for the Fund and the Offshore Fund (in such capacity, the “**Administrator**”). In its capacity as Administrator, it will receive customary fees that will be paid out of the assets of the Fund. The Administrator will also be reimbursed for all reasonable out-of-pocket expenses.

The Fund will enter into an administration agreement (the “**Administration Agreement**”) with the Administrator. The Administrator will be under no duty to take any action on behalf of the Fund except as specifically set forth in the Administration Agreement or as may be specifically agreed to by the Administrator and the Fund in a written amendment thereto.

The Administrator will act as liaison with the Fund’s accountants and auditors and will provide account analyses, fiscal year summaries, and other audit-related schedules with respect to the Fund. The Administrator will take all reasonable action in the performance of its duties under the Administration Agreement to assure that the necessary information is made available to such accountants and auditors for the expression of their opinion, as required by the Fund.

The Administrator will enter into and will maintain in effect with appropriate parties one or more agreements making reasonable provisions for emergency use of electronic data processing equipment to the extent appropriate equipment is available. In the event of equipment failures, the Administrator will, at no additional expense to the Fund, take reasonable steps to minimize service interruptions. The Administrator will have no liability with respect to the loss of data or service interruptions caused by equipment failure, provided such loss or interruption is not caused by the Administrator’s own willful misfeasance, bad faith, gross negligence or reckless disregard of its duties or obligations under the Administration Agreement.



Subject to the terms of the Administration Agreement, the Administrator will be liable to the Fund (or any person or entity claiming through the Fund) for damages only to the extent caused by the Administrator's own fraud or willful misconduct under the Administration Agreement ("***Standard of Care***"). The Administrator will not be liable for damages (including, without limitation, damages caused by delays, failure, errors, interruption or loss of data) occurring directly or indirectly by reason of circumstances beyond its reasonable control. The Administrator will not be under any duty or obligation to inquire into and will not be liable for the validity or invalidity, authority or lack thereof, or truthfulness or accuracy or lack thereof, of any instruction, direction, notice, instrument or other information which the Administrator reasonably believes to be genuine. The Administrator will not be liable for any damages that are caused by actions or omissions taken by the Administrator in accordance with written instructions by authorized persons of the Fund or advice of counsel. The Administrator will not be liable for any damages arising out of any action or omission to act by any prior service provider of the Fund or for any failure to discover any such error or omission. Neither the Administrator nor its affiliates will be liable for any consequential, incidental, exemplary, punitive, special or indirect damages, whether or not the likelihood of such damages was known by the Administrator or its affiliates. Both the Fund and the Administrator will have a duty to mitigate damages for which the other party may become responsible.

Absent the Administrator's failure to meet its Standard of Care, the Fund agrees to indemnify, defend and hold harmless the Administrator and its affiliates and their respective directors, trustees, officers, agents and employees from certain claims, suits, actions, damages, losses, liabilities, obligations, costs and reasonable expenses (including attorneys' fees and court costs, travel costs and other reasonable out-of-pocket costs related to dispute resolution) arising directly or indirectly from any actions taken or omitted to be taken by the Administrator in connection with the provision of services to the Fund.

The Offshore Fund will also enter into an administration agreement with the Administrator, under which the terms will be substantially as above.

## SUMMARY OF TERMS

*The following Summary of Terms summarizes the principal terms of an investment in the Fund, and is subject, and qualified in its entirety by reference, to the limited partnership agreement of the Fund, as amended (the “**Partnership Agreement**”) and the subscription documents (the “**Subscription Documents**”). This summary is intended to be brief and does not purport to provide a comprehensive explanation of the Partnership Agreement and the Subscription Documents. Accordingly, statements made in this Memorandum are subject to the detailed provisions of those agreements. Prospective investors are urged to review those agreements in their entirety prior to determining whether to invest in the Fund.*

### **The Fund**

The Fund is a limited partnership formed on December 1, 2005 under the laws of the State of Delaware with the name “Highland Credit Opportunities CDO, L.P.” The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”

### **Recent Amendments; Series of Interests**

The General Partner and the existing Limited Partners of the Fund adopted the Fourth Amended and Restated Limited Partnership Agreement of the Fund, effective November 1, 2014 (the “**Effective Date**”), whereby all existing limited partner interests were re-designated as “Series A Interests” and three new series of limited partner interests were created – “Series B Interests,” “Series C Interests” and “Series D Interests” (the “**Amendments**”).

As of the Effective Date, all existing Limited Partners will hold Series A Interests, the terms of which are set forth in a supplement to this Memorandum. The Fund is currently offering for subscription Series B Interests, Series C Interests and Series D Interests pursuant to this Memorandum.

The Fund may issue additional series of Interests over time (each, a “**Series**”). Not all Series of Interests will be available for subscription at the same time and the terms among the Series of Interests will vary. New Series of Interests may be established by the General Partner without notice to or approval of the Limited Partners.

Except with respect to management fees, performance-based profit allocations and withdrawal rights (each as discussed below), the rights and privileges attributable to Series A Interests, Series B Interests, Series C Interests and Series D Interests are identical.

References herein to “Interests” or “Limited Partners” shall include all Series of Interests and Limited Partners unless otherwise specified or context so requires.

**General Partner** Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership. The general partner of the General Partner is Highland Multi Strategy Credit GP, LLC, a Delaware limited liability company of which the Investment Manager is currently the sole member.

**Investment Manager** Highland Capital Management, L.P., a Delaware limited partnership.

**Eligible Investors** Limited partner interests (“**Interests**”) may be purchased by investors who are “accredited investors” and “qualified purchasers,” as defined in the Fund’s Subscription Documents. Subscribers will be required to complete the Fund’s Subscription Documents consisting of the subscription agreement and the subscriber information form to determine their eligibility. The General Partner reserves the right to reject any investor for any reason or for no reason in its sole discretion.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

**Subscriptions** Subscriptions for Interests may be accepted as of the first Business Day of each calendar month and/or such other days as the General Partner may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. The initial minimum investment is \$1,000,000, although the General Partner may accept investments in a lesser amount. Capital contributions may be made in cash or, with the consent of the General Partner, in securities or partly in cash and partly in securities.

“**Business Day**” means any day other than Saturdays, Sundays or any other day banks located in New York, New York are required or authorized to be closed.

A subscriber admitted to the Fund (a “**Limited Partner**”) receives, in exchange for its initial capital contribution and any subsequent capital contribution, an Interest representing a proportionate share of the net assets of the Fund at that time.

There is no minimum aggregate amount of subscriptions that is required for the initial acceptance of subscriptions, nor has the General Partner established any maximum aggregate amount of subscriptions that may be accepted.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and

Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56) and other applicable anti-money laundering regulations as further described in the Subscription Documents.

#### **Offshore Feeder Fund**

In order to facilitate investments by non-U.S. and other tax-exempt investors, the Investment Manager has sponsored the formation of Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “*Offshore Fund*”). The Offshore Fund places all of its assets in and conducts all of its investment and trading activities through the Fund as a limited partner of the Fund.

Investors in the Offshore Fund will be issued participating non-voting shares of the Offshore Fund; provided that in the event that the Fund seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a limited partner of the Fund under the Partnership Agreement, the Offshore Fund: (i) shall submit such matter for the consent of the holders of shares in the Offshore Fund and (ii) shall cause the Offshore Fund to vote its Interest proportionally for and against such matter in the same proportion that the shareholders in the Offshore Fund voted for and against such matter.

The Investment Manager may establish one or more additional feeder vehicles to invest in the Fund.

#### **Capital Accounts**

The Fund will maintain a book capital account (a “*Capital Account*”) for the General Partner and each Limited Partner (each, a “*Partner*” and collectively, the “*Partners*”) to reflect contributions, withdrawals, distributions and allocations of net profit and net loss. The initial balance of each Partner’s Capital Account will be equal to the amount of cash or net value of any property contributed to the Fund by such Partner.

If a Partner invests in more than one Series of Interests, the Fund will maintain a separate Capital Account on behalf of such Partner with respect to each such Series and each Capital Account will be treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights applicable to each Series Capital Account.

If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights applicable to each capital sub-account. References herein to a Partner’s “Capital Account” include any such separately maintained capital sub-accounts.

The Fund will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares (as defined in the Partnership Agreement) and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

**Alternative Investment Vehicles**

The General Partner will have the right, in connection with any investment, to direct the capital contributions of some or all of the subscribers to be made through one or more alternative investment vehicles (each an “*Alternative Investment Vehicle*”), and, in the case of an existing investment, transfer all or a portion of such investment to an Alternative Investment Vehicle, if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Fund to overcome legal or regulatory constraints, invest in a more tax-efficient manner or would facilitate participation in certain types of investments. Any Alternative Investment Vehicle will be subject to terms and conditions substantially similar to those of the Fund (including Management Fees and the Performance Allocation defined below) and will be managed by the Investment Manager or an affiliate thereof.

**Affiliated Investors**

Interests in the Fund held by the Investment Manager or its affiliates (collectively, “*Affiliated Investors*”) may not be assessed the management fees or the performance allocations that are applicable to other investors in the Fund, but share pro rata in other applicable expenses of the Fund (as more fully described in the Partnership Agreement).

**Borrowing and Leverage**

The Fund may buy securities on margin and arrange with banks, brokers and others to borrow money against a pledge of securities in order to employ leverage when the Investment Manager deems such action appropriate.

**Management Fee**

For its services to the Fund, the Investment Manager is entitled to a management fee (the “*Management Fee*”), calculated and payable quarterly in advance, equal to: (i) 1.5% (per annum) of each Capital Account attributable to a Series B Interest, (ii) 1.0% (per annum) of each Capital Account attributable to a Series C Interest and (iii) 2.0% (per annum) of each Capital Account attributable to a Series D Interest.

Management Fees will be appropriately adjusted for any partial quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Limited Partner (or Capital Account) in its sole discretion.

**Other Fees and Expenses**

The Fund bears the reasonable, out-of-pocket expenses of the offering of the Interests contemplated hereunder and the recent Amendments, described above, including expenses associated with obtaining any requisite investor consent to such Amendments. To the extent the General Partner deems appropriate, expenses related to the



Amendments may be capitalized and amortized by the Fund over a 36-month period from the Effective Date, even though such capitalization and amortization may be a divergence from U.S. generally accepted accounting principles (“GAAP”). Amortization of such expenses over a 36-month period may, in certain circumstances, result in a qualification of the Fund’s annual audited financial statements. In such instances, the General Partner may decide to (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP conforming changes for financial reporting purposes, but amortize expenses for purposes of calculating the Fund’s net asset value. There will be a divergence in the Fund’s fiscal year-end net asset value and in the net asset value reported in the Fund’s financial statements in any year where, pursuant to clause (ii), GAAP conforming changes are made only to the Fund’s financial statements for financial reporting purposes.

If the Fund is terminated within 36 months of the Effective Date, any unamortized expenses will be recognized.

Investment and Operational Expenses. The Fund bears all reasonable costs and expenses directly related to its investment program, including expenses related to research, due diligence, proxies, underwriting and private placements, brokerage commissions, interest on debt balances or borrowings, custody fees, travel fees and expenses related to the Fund’s offering and any withholding or transfer taxes imposed on the Fund. The Fund also bears all reasonable, out-of-pocket costs of the administration of the Fund, including (i) accounting, audit and legal expenses (including those incurred for the Fund, the General Partner or the Investment Manager to comply with applicable law, rule or regulation), (ii) costs of any litigation or investigation involving the Fund’s activities, (iii) the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Fund’s investments and (iv) costs associated with reporting and providing information to existing and prospective Limited Partners. However, the General Partner or the Investment Manager may, in its sole discretion, choose to absorb any such expenses incurred on behalf of the Fund.

The Fund does not have its own separate employees or office. Except as described above and provided for in the Partnership Agreement, the Fund generally does not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment Manager. However, a portion of the commissions generated on the Fund’s brokerage transactions may generate “soft dollar” credits that the General Partner and the Investment Manager are authorized to use to pay for research and research-related services and products used by the General Partner or the Investment Manager. In the event that the Investment Manager elects to use soft dollars, it intends to limit such use to services that fall

within the safe harbor afforded by Section 28(e) of the United States Securities Exchange Act of 1934, as amended. See “*Brokerage and Custody*.”

#### **Allocation of Net Profit and Loss**

Net profit or net loss of the Fund (including unrealized gains or losses and Fund expenses) is allocated among the Capital Accounts of the General Partner and the Limited Partners (collectively, the “**Partners**”) as of the close of each calendar month, at such times as the Fund receives an additional capital contribution or effects a withdrawal or distribution, or at such other times as the General Partner may determine.

Profit and loss attributable and any Restricted New Issues (as described below) and are determined and allocated among the Partners separately and are not reflected in the determinations and allocations of net profit or net loss attributable to the remainder of the Fund’s net assets.

As of the close of each accounting period, the net profit or net loss (other than any profit or loss attributable to Restricted New Issues, which are allocated as per below) will be allocated *pro rata* among the Capital Accounts of the Partners in proportion to their percentage interests in the Fund as of the commencement of the period. Each Partner’s percentage interest in the Fund as of the commencement of any period is based on the value of the Partner’s Capital Account at such time (excluding any amount attributable to such Partner’s share of Restricted New Issues), in relation to the total value of the Fund’s net assets at such time (excluding the aggregate amount of net assets attributable to Restricted New Issues).

If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Limited Partner may agree such Limited Partner should not participate (or should receive a reduced participation) in the net profit or net loss with respect to any investment, the General Partner may allocate net profit or net loss, if any, with respect to the investment to Limited Partners to the extent to which the above restrictions do not apply.

The Management Fee is calculated based on the Capital Account balance of each Limited Partner and is debited from each Limited Partner’s Capital Account. Allocations to each Partner of net profit or net loss of the Fund will be subject to periodic adjustment to give effect to the Performance Allocation, as described below.

#### **Restricted New Issues**

The Fund may from time to time purchase securities in public offerings made through member firms of the Financial Industry Regulatory Authority, Inc. (“**FINRA**”). FINRA member firms are not permitted to sell certain new issues (“**Restricted New Issues**”) to accounts in which certain persons have a significant beneficial interest that are involved in the securities industry or to executive officers or directors

of companies that are current, recent, or prospective investment banking clients of the relevant underwriters (“***Restricted Persons***”). In order to enable the Fund to participate in Restricted New Issues, the Fund will require each Limited Partner to provide information to enable the Fund to determine whether the Limited Partner is a Restricted Person. When the Fund invests in a Restricted New Issue, the profits and losses associated with the investment will specifically be allocated to those Partners who are permitted by the FINRA rules to have a beneficial interest therein.

The FINRA rules permit Restricted Persons that are involved in the securities industry to have in the aggregate up to a 10% participation in Restricted New Issues and Restricted Persons affiliated with a FINRA member’s investment banking clients to have up to 25% participation in Restricted New Issues. If the ownership of the Fund by Restricted Persons exceeds the maximum percentage, the General Partner will allocate such excess amount *pro rata* among the Capital Accounts of Partners who are not Restricted Persons or on such other basis that the General Partner reasonably determines ensures compliance with the FINRA Rules.

If a Restricted New Issue in which participation by Restricted Persons has been capped is not promptly sold, the investment may be reallocated among all Partners on a *pro rata* basis (including all Restricted Persons) after a secondary market develops at such secondary market price.

#### **Performance Allocation**

The Investment Manager, in its capacity as a special limited partner in the Fund, is entitled to a performance allocation at the end of each calendar year (the “***Performance Allocation***”), which is calculated and charged separately with respect to each Capital Account of each Limited Partner, equal to 20% of the amount by which the Capital Account’s “Performance Change Amount” (if positive) for the current calendar year exceeds the Capital Account’s “Loss Carryforward Amount.”

A Capital Account’s “***Performance Change Amount***” for any calendar year equals such Capital Account’s *pro rata* allocation of net profit or net loss (including Management Fees, Restricted New Issues and/or other items of income or expense specially allocable to the Capital Account).

The “***Loss Carryforward Amount***” for any calendar year equals the aggregate Performance Change Amounts, if negative, allocated to a Capital Account during any preceding calendar year, minus any subsequent positive Performance Change Amounts on which no Performance Allocation was charged. If a Limited Partner makes a withdrawal from its Capital Account at a time when there is a Loss Carryforward Amount, such Loss Carryforward Amount will be reduced in the same proportion that the withdrawal amount bears to the

Limited Partner's total Capital Account balance immediately prior to the withdrawal.

The Performance Allocation is calculated and charged to each Capital Account as of the last day of each calendar year. The Performance Allocation is also calculated and charged with respect to any Capital Account from which there is a permitted or required withdrawal as of any time other than the last day of a calendar year on the basis of net profits allocated to such Capital Account through the applicable date of withdrawal. In the case of a partial withdrawal, the Performance Allocation is calculated and charged only with respect to the portion of the Capital Account being withdrawn.

The Performance Allocation and Loss Carryforward Amount will be computed separately for each Capital Account (and each separately maintained capital sub-account reflecting additional contributions by a Limited Partner). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Allocation and Loss Carryforward will be computed separately for each Capital Account, and the Capital Accounts will not be netted against one another for purposes of calculating the Performance Allocation. Accordingly, Limited Partners with multiple Capital Accounts may be charged a Performance Allocation in respect of one or more Capital Accounts for a year in which the aggregate net profits allocated to all of such Limited Partner's Capital Accounts do not exceed the aggregate Loss Carryforward Amount allocated to all of such Limited Partner's Capital Accounts.

The Performance Allocation with respect to any Limited Partner may be waived or altered by the Investment Manager in its sole discretion.

**Distributions**

Subject to the withdrawal privilege described below, all earnings of the Fund are ordinarily retained for investment. Other than distributions made pursuant to a withdrawal described below, Limited Partners should not expect the Fund to make any distributions.

**Withdrawals Generally**

Withdrawal rights vary by Series. For the purposes of establishing the withdrawal privileges below, withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable) of a Limited Partner.

**Series Withdrawal Dates**

Subject to certain withdrawal restrictions described below, Limited Partners have the following withdrawal rights:

Series B Interests: Annual Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series B Interests upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The "***Series B Withdrawal Date***" means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of

the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (i.e., if capital was contributed to the Fund on November 1, 2014, such capital would be eligible for withdrawal on October 31, 2015 and every year thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series C Interests: Two Year Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series C Interests upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “*Series C Withdrawal Date*” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (i.e., if capital was contributed to the Fund on November 1, 2014, such capital would be eligible for withdrawal on October 31, 2016 and every two years thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series D Interests: One Year Hard Lock-Up; Quarterly Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series D Interest as of the last Business Day of each calendar quarter (and/or such other days as the General Partner may determine in its sole discretion) (each, a “*Series D Withdrawal Date*”) following the one-year anniversary of the contribution of the capital to be withdrawn. Notice of any withdrawal of Series D Interests must be provided in writing to the General Partner at least 90 calendar days prior to the requested Series D Withdrawal Date.

The General Partner may, at any time and in its sole discretion, waive or modify the foregoing withdrawal and distribution restrictions with respect to any Limited Partner.

#### **Settlement of Withdrawal Proceeds**

With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Fund or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable date of withdrawal, and withdrawn amounts will be fixed as of the effective date of withdrawal, except as otherwise provided in the Partnership Agreement with respect to reserves for contingencies.

At least 90% of the estimated amount due with respect to the Fund’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Fund, within 30 Business Days after the date of withdrawal, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Fund or the remaining Capital Accounts. The General Partner is entitled to deduct from such



settlement an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Fund's financial statements for such fiscal year, or sooner in the General Partner's discretion.

In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner's interest in the Fund's marketable investments, no settlements occur with respect to any of such Limited Partner's interest in the Fund's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, in its sole discretion, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Fund. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

The General Partner may withhold for the benefit of the Fund from any distribution to a withdrawing Limited Partner an amount representing the actual or estimated costs incurred by the Fund with respect to such withdrawal.

#### **Withdrawal Conditions**

The General Partner may refuse to accept a withdrawal request if it is not accompanied by such additional information as the General Partner or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where withdrawal proceeds are requested to be remitted to an account which is not in the name of the investor, the General Partner and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the withdrawal proceeds will be paid. The withdrawal proceeds will not

be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

**Compulsory Withdrawals** The General Partner reserves the right, in its sole discretion, to compel the withdrawal of any Limited Partner's Interest, in part or in its entirety, on not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Fund may cause the Fund, the Investment Manager or the General Partner to violate any applicable law). Settlements are made in the same manner as voluntary withdrawals.

**Suspension of Valuations, Withdrawals and Withdrawal Payments** The General Partner may suspend the issuance of Interests, the Partners' withdrawal privileges, the payment of withdrawal proceeds and the valuation of the Fund's net assets:

- (i) during any period when any stock exchange or over-the-counter market on which the Fund's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;
- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of investments by the Fund, or the determination of the value of the assets of the Fund, would not be reasonably practicable;
- (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Fund's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Fund cannot reasonably be accurately ascertained within a reasonable time frame;
- (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
- (v) in other circumstances where the General Partner is unable to fairly value the Fund's assets due to extreme market conditions; or
- (vi) automatically upon liquidation of the Fund.

Upon the reasonable determination by the General Partner that conditions leading to suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be

honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.

### **Soft Wind Down**

It is anticipated that any suspension in the circumstances described above in “Suspension of Valuations, Withdrawals and Withdrawal Payments” (each, a “*Suspension*”) would ordinarily be temporary (other than in connection with a decision to proceed with the liquidation of the Fund). However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the General Partner, in consultation with the Investment Manager, considers it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the General Partner to cause the Fund to return the Fund’s assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Fund) (an “*Orderly Realization*”). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Fund as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund’s portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the Limited Partners. The General Partner will notify Limited Partners of any decision to proceed with an Orderly Realization of the Fund. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Fund as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the “*Realization Period*”). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime. The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. Management Fees shall be payable and Performance Allocations shall

be made during an Orderly Realization on the same basis as described herein.

**Transfers**

Interests are not transferable except with the prior written consent of the General Partner, which consent may be withheld in the General Partner's sole discretion. The General Partner in its sole discretion may require any transferee or assignee of any Limited Partner to agree in writing to be bound by the Partnership Agreement. Interests of any Affiliated Investors may be transferred to other affiliates thereof without restriction.

**Duty of Care;  
Indemnification**

The Partnership Agreement provides that the General Partner, the Investment Manager and each of their affiliates are not liable to the Fund or the Limited Partners for any loss or damage arising by reason of being or having been the General Partner or the Investment Manager or from any acts or omissions in the performance of its services as General Partner or Investment Manager, as applicable, in the absence of willful misconduct, fraud or gross negligence or as otherwise required by law, and contains provisions for the indemnification of the General Partner, the Investment Manager and each of their affiliates by the Fund (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been the General Partner or the Investment Manager or in connection with the Partnership Agreement or the Fund's business or affairs to the fullest extent permitted by law. The General Partner is not personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the federal or state income tax laws applicable to the Fund or its investors.

**Valuations**

In general, the Fund's financial statements will be prepared in accordance with GAAP. The General Partner has delegated the valuation of the Fund's assets to the Investment Manager who values the Fund's assets as of the close of each accounting period in accordance with its valuation policies and procedures. Valuations may be suspended as set forth above in "Suspension of Valuations, Withdrawals and Withdrawal Payments."

**Reserves**

Appropriate reserves may be accrued and charged against net assets and proportionately against the Capital Accounts of the Partners for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the General Partner in its sole discretion deems necessary or appropriate. In the sole discretion of the General Partner, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Capital Accounts of those investors who are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were

Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were Partners during any such prior period.

**Fiscal Year**

The Fund has a fiscal year ending on December 31 of each calendar year.

**Reports to Partners**

The Fund furnishes to its Partners as soon as practicable after the end of each taxable year (or as otherwise required by law) annual reports containing financial statements examined by the Fund's independent auditors as well as such tax information as is necessary for each Partner to complete federal and state income tax or information returns, along with any other tax information required by law. The Fund also furnishes monthly reports reviewing the Fund's performance for such calendar month. The General Partner selects the Fund's independent accountants in its sole discretion.

**Advisory Committee**

The General Partner and/or the Investment Manager may appoint, or cause to be appointed, a committee (the "**Advisory Committee**") consisting of one or more individuals selected by the General Partner and/or the Investment Manager, none of whom is affiliated with the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in the Fund or an affiliate thereof). If established, the Advisory Committee will have the authority, at the request of the General Partner and/or the Investment Manager, to consult with the General Partner and/or the Investment Manager on any matters that may involve a conflict of interest between the General Partner and/or the Investment Manager (or their affiliates) on the one hand and the Limited Partners (or shareholders of the Offshore Fund) and the Fund on the other. Any consent given by a majority of the Advisory Committee on behalf of the Fund in good faith after consultation with the General Partner and/or the Investment Manager is binding on the Fund and the Limited Partners or shareholders of the Offshore Fund (so long as such majority consists of persons independent of the General Partner and/or the Investment Manager and their affiliates). The Fund will have the authority to agree to reimburse members of the Advisory Committee for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.



## **Dissolution and Liquidation**

In the event an Orderly Realization lasts longer than three years, Limited Partners with a combined percentage interest in the Fund of at least 75% may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Fund. The Limited Partners will not have any other right to bring an action in court to dissolve the Fund.

Dissolution of the Fund may also occur upon the General Partner's election, in its sole discretion, to dissolve the Fund or upon the occurrence of any event which results in the General Partner (or a successor to its business) ceasing to be the general partner of the Fund. Upon the occurrence of any such event, the General Partner (or a liquidator elected by a majority in interest of the Limited Partners, if the General Partner is unable to perform this function) is charged with winding up the affairs of the Fund, liquidating its assets to the extent feasible and making liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with each Partner's Capital Account balance.

## **Placement Agents**

The Investment Manager may engage third parties to solicit investors and act as placement agents for the Fund. Placement agents may charge a placement fee directly to investors solicited by any such placement agent, but such fees will not affect the subscription amount and will not be collected by or from the Fund. The placement agent may be reimbursed for its expenses and indemnified by the Fund.

Furthermore, placement agents may be paid a portion of the Management Fee or Performance Allocation attributable to such investors solicited by them, thereby reducing the Management Fee or Performance Allocation received by the Investment Manager. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent must comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

## **Tax Status**

The General Partner believes that the Fund should be treated as a partnership for U.S. federal income tax purposes and that it should not itself be subject to U.S. federal income taxation. Each Limited Partner otherwise subject to U.S. federal income tax is required to include in such Limited Partner's taxable income such Limited Partner's share of the Fund's income and gains, when realized by the Fund (regardless of cash distributions from the Fund to such investor), and may claim, to the extent allowable, such Limited Partner's share of the Fund's losses and deductions. Due to the nature of the Fund's activities, the Fund's income or loss for U.S. federal income tax purposes for a particular taxable period may differ from its financial or economic results. The

deductibility of a Limited Partner's share of any Fund losses or deductions may be limited. See "*Tax Considerations*."

## **ERISA**

The General Partner intends to limit investment in the Fund by "benefit plan investors" so that the assets of the Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). See "*ERISA and Other Regulatory Considerations*."

## **Amendment of the Limited Partnership Agreement**

The Partnership Agreement may be amended by the General Partner with the consent of a majority in interest of the Limited Partners, which consent may be obtained through negative consent. However, the Fund may not: (a) increase the obligation of a Limited Partner to make any contribution to the capital of the Fund; (b) reduce the Capital Account of any Limited Partner other than as contemplated by the Partnership Agreement; or (c) reduce any Limited Partner's right to share in net profits or assets of the Fund without the consent of each Limited Partner adversely affected thereby. The above consent may be obtained by negative consent (affording the Limited Partners notice and opportunity to object).

Notwithstanding the foregoing, the General Partner may amend the Partnership Agreement at any time without the consent of any Limited Partner: (a) to comply with applicable laws and regulations; (b) to make changes that do not adversely affect the rights or obligations of any Limited Partner; (c) to cure any ambiguity or correct or supplement any conflicting provisions of the Partnership Agreement; or (d) with respect to any other amendment, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Fund as of a date that is not less than 30 days after the General Partner has furnished written notice of such amendment to each Limited Partner and that is prior to the effective date of the amendment.

## **Variation of Terms**

The General Partner, in its sole discretion, may enter into a side letter or similar agreement to or with one or more Limited Partners that has the effect of establishing rights under, or altering or supplementing the terms of the Partnership Agreement or the Subscription Documents (including those relating to Management Fees, the Performance Allocation, transparency, and withdrawals) with respect to such Limited Partner. The General Partner generally grants waivers of the Management Fees, Performance Allocation and withdrawal restrictions to principals and employees of the Investment Manager and its affiliates, as well as their related family members and affiliates.

## **Dispute Resolution**

Any controversy or claim ("**Dispute**") out of or relating to or in connection with the Partnership Agreement or otherwise involving the Fund, its Partners and/or any Indemnified Party (as defined in the Partnership Agreement) shall be submitted to mediation in accordance

with the Partnership Agreement and if such dispute has not been resolved within 90 days, will be resolved by binding arbitration in accordance with the Partnership Agreement. Mediation and arbitration shall be held in Dallas, Texas and Delaware law shall apply to any dispute, except as otherwise provided in the Partnership Agreement.

## RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

*Investment in the Fund is speculative and involves certain risks. Certain of these risks are summarized below. The Fund may not be suitable for all investors and is intended for sophisticated investors who can accept the risks associated with its investments. An investment in the Fund does not constitute a complete investment program. Investors will not have recourse except with respect to the assets of the Fund. Prospective investors should consider, among others, the risk factors and potential conflicts of interest described in this section. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.*

### Fund Risks

*Investment Judgment; Market Risk.* The profitability of a significant portion of the Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Fund, there is always some, and occasionally a significant, degree of market risk.

*Reliance on Key Persons.* The Fund will be substantially dependent on the services of James Dondero, Mark Okada and Joshua Terry (the "**Key Man Group**"). In the event of the death, disability, departure or insolvency of a member of the Key Man Group, or the complete transfer of a member's interest in the Investment Manager, the business of the Fund may be adversely affected. Each member of the Key Man Group will devote such time and effort as he deems necessary for the management and administration of the Fund's business. However, the members of the Key Man Group may engage in various other business activities in addition to managing the Fund, and consequently may not devote all time to Fund business.

*Investment Authority.* Substantially all decisions with respect to the management of the Fund are made by the General Partner and the Investment Manager. Limited Partners have no right or power to take part in the management of the Fund. The Investment Manager also makes all of the trading and investment decisions of the Fund. In the event of the withdrawal or bankruptcy of the General Partner, generally the Fund will be liquidated.

*Performance Allocation.* The Performance Allocation made to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

*Withdrawal Restrictions.* There are severe restrictions on withdrawals from the Fund (which may be settled in securities rather than cash) and on transfers of Interests. The prior written consent of the General Partner is required for a transfer of the Interest of any Limited Partner and the General Partner, in its sole discretion, may require any transferee or assignee of any Limited Partner to agree in writing to be bound by the Partnership Agreement. Because of the restrictions on withdrawals and transfers, an investment in the Fund is a relatively illiquid investment and involves a high degree of risk. There is no independent market for the purchase or sale of Interests and none is expected to develop. Limited Partners must represent that they are purchasing Interests for investment. A subscription for Interests should be considered only by persons financially able to maintain their investment and who can accept a loss of all of their investment.

*No Distributions.* Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current distributions of income. Moreover, an investor is required to report and pay taxes on its allocable share of income from the Fund, even though no cash is distributed by the Fund.

*In-Kind Distributions.* The Partnership Agreement authorizes the General Partner to make distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Diversification.* Since the Fund's portfolio will not necessarily be widely diversified, the investment portfolio of the Fund may be subject to more rapid changes in value than would be the case if the Fund were required to maintain a wide diversification among companies, securities and types of securities.

*Valuations.* From time to time, certain situations affecting the valuation of the Fund's investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Fund) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or withdrawal transactions or Management Fees or Performance Allocations based on subsequent valuation data.

*Non-Public Information.* From time to time, the Investment Manager may come into possession of non-public information concerning specific companies. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

*Soft Dollars.* The Investment Manager may enter into "soft dollar" arrangements with one or more broker-dealers whereby the Investment Manager will direct securities transactions to the broker-dealer in return for research products and services from the broker-dealer. Although the Investment Manager will use the research and services in making investment decisions for the Fund, the Investment Manager may use such research or services for other accounts and the Fund will generally pay more than the lowest available commissions for execution of these transactions. The Investment Manager may also enter into "soft dollar" arrangements to cover Fund expenses or costs and expenses of the Investment Manager to the extent such arrangements are permitted by law and described in this Memorandum. See "*Brokerage and Custody.*"

*Absence of Registration.* The Fund has not and will not register under the Investment Company Act. Accordingly, the provisions of the Investment Company Act which, among other things, require that a fund's board of directors, including a majority of disinterested directors, approve certain of the fund's activities and contractual relationships, prohibit certain trading and investment activities and prohibit the fund from engaging in certain transactions with its affiliates, will not be applicable. Neither the General Partner nor the Investment Manager is registered as a CPO or a CTA with the NFA in reliance on an exemption from registration pursuant to CFTC Regulation 4.13(a)(3). Accordingly, the provisions of the Commodity Exchange Act and the regulations promulgated thereunder applicable to registered persons will not be applicable to the General Partner or the Investment Manager.



*Recent Developments in the Financial Services Industry.* Recent developments in the U.S. financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty for the financial services industry. In July of 2010, the Dodd-Frank Financial Reform Act was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. The implications of the passage of the Dodd-Frank Financial Reform Act for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Fund's business, operations and performance.

## **Investment Strategy Risks**

### Risks Associated With Investing in CLOs

*Risks of Investment Focus.* The Fund's portfolio may consist of CLO Securities. A cash flow CLO is generally analogous to a special purpose finance company. The CLO owns a portfolio consisting of corporate loans and other investments typically from which it receives interest income, together with capital gains and losses. The CLO is often financed with equity, which may be in the form of preference shares or income notes ("**CLO Equity**") and several levels of long-term debt ("**CLO Debt**"). CLO Debt is typically rated by the rating agencies based on the deal structure as well as outstanding principal amount of portfolio securities and, in most cases, is not contingent on the market value of the underlying portfolio. CLO Equity is almost always unrated.

CLO Securities are subject to, among other risks, credit, liquidity and interest rate risks. The CLO Equity that the Fund may purchase may be unrated or non-investment grade. In addition, as a holder of CLO Equity, the Fund may have limited remedies available upon the default of the CLO.

The value of the CLO Securities that the Fund may own generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the CLO Securities' underlying portfolio of assets ("**CLO Collateral**"), general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. CLO Securities are issued on a non-recourse basis and holders of CLO Securities must rely solely on distributions on the CLO Collateral or proceeds thereof for payment in respect thereof. If distributions on the CLO Collateral are insufficient to make payments on the CLO Securities, no other assets will be available for payment of the deficiency and following realization of the CLO Securities, the obligations of such issuer to pay such deficiency generally will be extinguished.

Issuers of CLO Securities may acquire interests in loans and other debt obligations by way of sale, assignment or participation. The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the loan or debt obligation; however, its rights can be more restricted than those of the assigning institution.

CLO Collateral may consist of corporate loans, leveraged loans and other instruments, which often are rated below investment grade (or of equivalent credit quality). Loans may be unsecured and may be subordinated to certain other obligations of the issuer thereof. The lower ratings of below

investment grade loans reflect a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the related issuer or obligor to make payments of principal or interest. Such investments may be speculative.

*Dependence Upon Other Unrelated Managers.* The success of a CLO may depend on the management talents and efforts of one person or a small group of persons whose management could adversely affect the CLO and, accordingly, the Fund as an investor in such CLO. Given that the Investment Manager will not have an active role in the management of these CLOs, the return on the Fund's investments in such CLOs will depend on the performance of unrelated managers.

*Investments in CLOs Managed by the Investment Manager or its Affiliates.* The Fund may invest a significant portion of its capital in structured investments, including CLO tranches originated and managed by third parties and CLO tranches managed by the Investment Manager or its affiliates (the "**Affiliated CLOs**"). If the Fund invests in Affiliated CLOs, the Limited Partners will indirectly pay the fees (senior and subordinated) (but only if such investment is in the equity tranche of such Affiliated CLO), expenses and any carried interest at primary issuance. The Investment Manager or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Affiliated CLOs. If the Fund provides all of the equity for an Affiliated CLO, there may be no third party with whom the amount of such fees, expenses and carried interest can be negotiated on an arm's-length basis. The Investment Manager will have conflicting division of loyalties and responsibilities regarding the Fund and an Affiliated CLO, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Fund would not be subordinated to those of an Affiliated CLO or to other interests of the Investment Manager.

*Multiple Levels of Fees.* The Fund and the CLOs (including Affiliated CLOs) are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if Limited Partners were able to invest directly in the CLOs or underlying investments. Limited Partners should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a CLO (including a member of the Highland Group (defined below)) may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (e.g., break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees). Additionally, some of the CLOs may invest themselves in underlying hedge funds or CLOs. In such case, additional management costs and other administrative expenses may be incurred.

*Limited Diversification.* CLOs may invest in concentrated portfolios of assets. The concentration of an underlying portfolio in any one obligor would subject the related CLO Securities (the related CLO Equity in particular) to a greater degree of risk with respect to defaults by such obligor and the concentration of a portfolio in any one industry would subject the related CLOs (the related CLO Equity in particular) to a greater degree of risk with respect to economic downturns relating to such industry. The Fund may have a concentrated exposure to CLOs of a particular type of CLO.

*CLO Embedded Leverage Risk.* The Fund's participation in CLOs involves varying amounts of leverage. Leverage is embedded in all classes of a CLO other than the most senior tranche. If the Fund retains either the most or one of the most subordinate tranches of the CLO's securities, it will hold the most leveraged investment in the CLO. While leverage presents opportunities for increasing the Fund's total return, it has the effect of potentially increasing losses as well. Accordingly, any event which

adversely affects the value of an investment in a CLO would be magnified to the extent such CLO is leveraged. The cumulative effect of the use of leverage by a CLO in a market that moves adversely to the CLO's investments could result in a substantial loss to the CLO which would be greater than if the CLO were not leveraged. The borrowing arrangements of CLOs will contain events of default that, under certain circumstances, could result in early amortization or in the acceleration of the maturities of these obligations. In the event of acceleration of the borrowing arrangements of a CLO, in whole or in part, it may be required to dispose of all or a significant portion of its investments. Such a forced disposal of securities could result in realization of value of such investments significantly below the anticipated market values for such securities. When the Fund invests in derivative transactions, it may also gain leverage through such derivative transactions, which will expose the Fund to a greater risk of loss.

*Interest Rate Mismatch.* CLOs may be subject to interest rate risk. The CLO Collateral of an issuer of a CLO may bear interest at a fixed or floating rate, while the CLO Debt may bear interest at a floating or fixed rate. As a result, there could be a floating/fixed rate or basis mismatch between such CLO Debt and the CLO Collateral which bears interest at a fixed rate ("**Fixed Rate Assets**"), and there may be a timing mismatch between such CLO Debt and the assets that are not Fixed Rate Assets ("**Floating Rate Assets**"). In addition, the interest rate on Floating Rate Assets may adjust more frequently or less frequently, on different dates and based on different indices than the interest rates on the CLO Debt. As a result of such mismatches, an increase or decrease in the level of the floating rate indices could adversely impact the ability to make payments on such CLO Debt or Equity. Although many CLOs attempt to hedge this interest rate risk, the hedges may not eliminate this risk and payments by the CLO under the hedges may significantly reduce the distributions on the CLO securities. In addition, these hedges may have additional risks, such as counterparty risk, that are not present without these hedges.

*Lower Credit Quality Securities.* There are no restrictions on the credit quality of the investments of the Fund. CLO Securities in which the Fund will invest may have no ratings or may be deemed by rating agencies to have substantial vulnerability to default in payment of interest and/or principal and have the lowest quality ratings. The Fund may purchase CLO Securities which have ratings that have been downgraded or placed on "credit watch" for future downgrading. Lower rated and unrated securities in which the Fund may invest have large uncertainties or major risk exposures to adverse conditions and are considered to be predominantly speculative and may become a defaulted asset for a variety of reasons. Generally, such securities offer a higher return potential than higher rated securities, but involve greater volatility of price and greater risk of loss of income and principal.

The market values of certain of these securities (such as subordinated securities) also tend to be more sensitive to changes in economic conditions than higher rated securities. The value of leveraged loans and other assets underlying a CLO may also be affected by changes in the market's perception of the entity issuing or guaranteeing them, or by changes in government regulations and tax policies. Additionally, loans and interests in loans have significant liquidity and market value risks since they are not generally traded in organized exchange markets but are traded by banks and other institutional investors engaged in loan syndications. Because loans are privately syndicated and loan agreements are privately negotiated and customized, loans are not purchased or sold as easily as publicly traded securities. In addition, historically the trading volume in the loan market has been small relative to the high-yield debt securities market, and such illiquidity has been exacerbated during the current liquidity crisis.

Leveraged loans have historically experienced greater default rates than has been the case for investment grade securities. There can be no assurance as to the levels of defaults and/or recoveries that may be experienced on the assets underlying CLO Securities.

In general, the ratings of nationally recognized rating organizations represent the opinions of such agencies as to the quality of securities that they rate. Such ratings may be used by the Investment Manager as an initial basis for the selection of portfolio securities. Such ratings, however, are relative and subjective; they are not absolute standards of quality and do not evaluate the market value risk of the securities. Such ratings also do not reflect macroeconomic or systematic risk, including the risk of increased illiquidity in the credit markets. It is also possible that a rating agency might not change its rating of a particular issue on a timely basis to reflect subsequent events.

*Defaulted Assets Underlying CLO Securities.* If the assets underlying a CLO Security become defaulted assets, such defaulted assets may become subject to either substantial workout negotiations or restructuring, which may entail, among other things, a substantial reduction in the interest rate, a substantial write-down of principal, and a substantial change in the terms, conditions and covenants with respect to such defaulted asset. In addition, such negotiations or restructuring may be quite extensive and protracted over time, and therefore may result in substantial uncertainty with respect to the ultimate recovery on such defaulted asset. The liquidity for defaulted assets may be limited, and to the extent that defaulted assets are sold, it is highly unlikely that the proceeds from such sale will be equal to the amount of unpaid principal and interest thereon. Furthermore, there can be no assurance that the ultimate recovery on any defaulted assets will be at least equal to either the minimum recovery rate assumed by any rating agency that rates the notes of the CLO security. Therefore, if any CLO security has defaulted assets which correspond to the exposure of the Fund's interest in the CLO security, the Fund may be adversely affected.

There exist significant additional risks for CLO Securities and investors in such securities as a result of the current liquidity crisis. Those risks include, among others, (i) the likelihood that the issuer of the CLO Security will find it harder to sell any of its assets in the secondary market, thus rendering it more difficult to dispose of assets which it has the discretion to manage, including credit risk obligations, credit improved obligations or defaulted obligations, (ii) the possibility that the price at which assets can be sold by the issuer of the CLO Security will have deteriorated from their effective purchase price and (iii) the increased illiquidity of the notes issued by the CLO Security. These additional risks may affect the returns on the investments in the Fund's portfolio.

*Subordination of CLO Debt and CLO Equity.* The Fund's portfolio may consist of CLO Equity and subordinate CLO Debt. Subordinate CLO Debt generally is fully subordinated to the related CLO senior tranches. CLO Equity generally is fully subordinated to any related CLO Debt. Thus, some of the investments of the Fund in a CLO may rank behind other creditors of the CLO and an investment by the Fund in the equity tranche of a CLO may rank behind all creditors of the CLO. To the extent that any losses are incurred by a CLO in respect of its related CLO Collateral, such losses are likely to be borne first by the holders of the related CLO Equity, next by the holders of any related subordinated CLO debt and finally by the holders of the related CLO senior tranches. In addition, if an event of default occurs under the governing instrument or underlying investment, as long as any CLO senior tranches are outstanding, the holders thereof generally are likely to be entitled to determine the remedies to be exercised under the instrument governing the CLO. Remedies pursued by such holders could be adverse to the interests of the holders of any related subordinated CLO Debt and/or the holders of the related CLO Equity, as applicable. Investments of the Fund may be the first to absorb any losses by the



CLO on its underlying portfolio. This may result in losses on the invested proceeds of the Fund and could result in the complete loss of invested proceeds.

*Mandatory Redemption of CLO Senior Tranches and CLO Debt.* Under certain circumstances, cash flows from CLO Collateral that otherwise would have been paid to the holders of any related CLO Debt and the related CLO Equity will be used to redeem the related CLO senior tranches. This could result in an elimination, deferral or reduction in the interest payments, principal repayments or other payments made to the holders of such CLO Debt or such CLO Equity, which could adversely impact the returns to the holders of such CLO Debt or such CLO Equity.

*Optional Redemption of CLO Senior Tranches and CLO Debt.* An optional redemption by a CLO of its securities and, in particular, the exercise of rights by the holders of one or more classes of its securities (or the requisite percentages thereof) so as to effect any such optional redemption, could require the collateral or portfolio manager of the related CLO to liquidate positions more rapidly than would otherwise be desirable, which is likely to materially and adversely affect the realized value of the items of CLO Collateral sold (and which in turn is likely to materially and adversely impact the holders of any related CLO securities, including the Fund). As a result of any such rapid liquidation of a CLO, a holder of the related CLO securities (including the Fund) could lose all or a substantial portion of its investment in such CLO securities.

*Insolvency Risks.* Various laws enacted for the protection of creditors may apply to the issuers of the CLO Collateral (solely for purposes of this risk factor, an “*Insolvent Company*”). The information in this paragraph and the following paragraph is applicable with respect to U.S. issuers of CLO Collateral. Insolvency considerations may differ with respect to non-U.S. issuers of CLO Collateral. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an Insolvent Company, such as a trustee in bankruptcy, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the CLO or CLO Collateral (as applicable) and, after giving effect to such indebtedness, the Insolvent Company (i) was insolvent, (ii) was engaged in a business for which the remaining assets of the Insolvent Company constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the Insolvent Company or to recover amounts previously paid by such issuer in satisfaction of such indebtedness. The measure of insolvency for purposes of the foregoing will vary. Generally, an Insolvent Company would be considered insolvent at a particular time if the sum of its debts were then greater than all of its property at a fair valuation or if the present fair saleable value of its assets were then less than the amount that would be required to pay its probable liabilities on its existing debts as they became absolute and matured. There can be no assurance as to what standard a court would apply in order to determine whether the Insolvent Company was “insolvent” after giving effect to the incurrence of the indebtedness constituting the CLO or CLO Collateral (as applicable) or that, regardless of the method of valuation, a court would not determine that the Insolvent Company was “insolvent” upon giving effect to such incurrence. In addition, in the event of the insolvency of an Insolvent Company, payments made on such CLO or CLO Collateral (as applicable) could be subject to avoidance as a “preference” if made within a certain period of time (which may be as long as one year) before insolvency.

In general, if payments on a CLO or CLO Collateral (as applicable) are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Fund) or from subsequent transferees of such payments (such as the Limited Partners).



However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from a Limited Partner only to the extent that such court has jurisdiction over such holder or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from a holder that has given value in exchange for its interest, in good faith and without knowledge that the payments were avoidable. Nevertheless, there can be no assurance that a Limited Partner will be able to avoid recapture on this or any other basis.

The preceding discussion is based upon principles of United States Federal and state laws. Insofar as the Fund's portfolio consists of the obligations of non-United States obligors, the laws of certain foreign jurisdictions may provide for avoidance remedies under factual circumstances similar to those described above or under different circumstances, with consequences that may or may not be analogous to those described above under United States Federal and state laws.

*"Widening" Risk.* For reasons not necessarily attributable to any of the risks set forth herein (for example, supply/demand imbalances or other market forces), the prices of the CLO Securities in which the Fund invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even lower levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

*There Is Limited Disclosure About the CLO Securities and the Underlying CLO Collateral in this Memorandum.* The Investment Manager will not be required to provide the investors in the Fund with financial or other information (which may include material non-public information) it receives related to the CLO Securities. The Investment Manager also may not disclose to investors notices the Investment Manager receives and it will not have any obligation to keep investors informed as to defaults in the CLO Securities, failure by the Fund to receive any payment of principal, interest, or other amounts or to disclose the portfolio or the decisions of which CLO Securities were not purchased in general to any investor. In addition, the investors will not have any right to inspect any records relating to the CLO Securities, and the Investment Manager will not be obligated to disclose any further information or evidence regarding the existence or terms of, or the identity of any obligor on, any CLO Securities.

*Impact of the Volcker Rule on the Liquidity of the Notes.* Section 619 of the Dodd-Frank Act added a provision, commonly referred to (together with the final regulations with respect thereto adopted on December 10, 2013) as the Volcker Rule, to federal banking laws to generally prohibit various covered banking entities from engaging in proprietary trading or acquiring or retaining an ownership interest in "covered funds" which generally include, sponsoring or having certain relationships with a hedge fund or private equity fund (defined in final regulations adopted on December 10, 2013 as any entity relying on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act to be exempt from registration under the Investment Company Act), subject to certain exemptions. The Volcker Rule also provides for certain supervised nonbank financial companies that engage in such activities or have such interests or relationships to be subject to additional capital requirements, quantitative limits or other restrictions. The conformance period for the Volcker Rule has been extended to July 21, 2015, and to July 21, 2017 for CLOs. Certain CLOs may be considered "covered funds" under the Volcker rule and therefore the most senior tranche of the CLO may be a restricted security for various banking and nonbanking entities. This may restrict the liquidity of certain non-Volcker compliant CLOs in the future and may affect the Fund's ability to liquidate these positions on a timely basis.

## Investment Strategy and Investment Risks

*General Economic and Market Conditions.* The success of the Fund's activities will be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of the Fund's investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of the Fund's investments. Volatility or illiquidity could impair the Fund's profitability or result in losses. The Fund may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets; the larger the positions, the greater the potential for loss.

Unpredictable or unstable market conditions may result in reduced opportunities to find suitable investments to deploy capital or make it more difficult to exit and realize value (or avoid significant losses) from the Fund's existing investments. It is important to understand that the Fund can incur material losses even if it reacts quickly to difficult market conditions and there can be no assurance that the Fund will not suffer material adverse effects from broad and rapid changes in market conditions.

*Recent Developments in Global Credit Markets.* Recently, declines in the market value of asset-backed securities, especially securities backed by subprime mortgages, have been concomitant with significant market events. Increasing credit and valuation problems in the subprime mortgage market have generated extreme volatility and illiquidity in the markets for securities directly or indirectly exposed to subprime mortgage loans. This volatility and illiquidity has extended to the global credit and equity markets generally, and, in particular, to the high-yield bond and loan markets, exacerbated by, among other things, growing uncertainty regarding the extent of the problems in the mortgage industry and the degree of exposure of financial institutions and others, decreased risk tolerance by investors and significantly tightened availability of credit. The duration and ultimate effect of current market conditions cannot be predicted, nor is it known whether or the degree to which such conditions may worsen. However, the continuation of current market conditions, uncertainty or further deterioration could result in further declines in the market values of potential Fund investments or declines in the market values of subsequently purchased Fund investments. Such declines could lead to diminished investment opportunities for the Fund, prevent the Fund from successfully executing its investment strategies or require the Fund to dispose of investments at a loss while such adverse market conditions prevail.

*Illiquidity.* The investments made by the Fund may be or become very illiquid, and consequently the Fund may not be able to sell such investments at prices that reflect the Investment Manager's assessment of their value or the amount paid for such investments by the Fund. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale by the Fund and other factors. Furthermore, the nature of the Fund's investments, especially those in financially distressed companies, may require a long holding period prior to profitability. The Partnership Agreement authorizes the General Partner to make distributions in kind (including interests in affiliated liquidating vehicles) of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Short Sales.* The Fund may enter into transactions, known as "short sales," in which it sells a security it does not own in anticipation of a decline in the market value of the security. Short sales by the Fund that are not made "against the box" theoretically involve unlimited loss potential since the

market price of securities sold short may continuously increase. The Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Fund might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales.

*Derivatives.* Derivative instruments, or “derivatives,” include futures, options, swaps, structured securities and other instruments and contracts that are derived from, or the value of which is related to, one or more underlying securities, financial benchmarks, currencies or indices. Derivatives allow an investor to hedge or speculate upon the price movements of a particular security, financial benchmark currency or index at a fraction of the cost of investing in the underlying asset. The value of a derivative depends largely upon price movements in the underlying asset. Therefore, many of the risks applicable to trading the underlying asset are also applicable to derivatives of such asset. However, there are a number of other risks associated with derivatives trading. For example, because many derivatives are “leveraged,” and thus provide significantly more market exposure than the money paid or deposited when the transaction is entered into, a relatively small adverse market movement can not only result in the loss of the entire investment, but may also expose the Fund to the possibility of a loss exceeding the original amount invested. Derivatives may also expose investors to liquidity risk, as there may not be a liquid market within which to close or dispose of outstanding derivatives contracts, and to counterparty risk. The counterparty risk lies with each party with whom the Fund contracts for the purpose of making derivative investments (the “*Counterparty*”). In the event of the Counterparty’s default, the Fund will only rank as an unsecured creditor and risks the loss of all or a portion of the amounts it is contractually entitled to receive.

*Life Settlement Investments.* The Fund may invest in life settlements or own companies that may invest in life settlements, which are the transfers of the beneficial interest in a life insurance policy by the underlying insured person to a third party. The Fund will generally purchase the beneficial interest in a life insurance policy for more than its cash surrender value but at a discount to its face value (i.e., the payment amount set forth in the life insurance policy that is payable on the death of the insured or upon maturity of the life insurance policy). After purchase the Fund will be responsible for premiums payable on the life insurance policy and will be entitled to receive the full face value from the insurance company upon maturation (i.e., upon the death of the insured). Accordingly, if the Fund is unable to make premium payments on a purchased life insurance policy due to liquidity issues or for any other reason, the policy will lapse, and the Fund will lose its ownership interest in the policy. In addition, the Fund’s investments in life settlement policies involve certain additional risks, including inaccurate estimations of life expectancy of the insured individuals, liquidity risk, credit risk of the insurance company, risks of any policies purchased being unenforceable and risks of adverse regulatory and legal changes.

The actual rate of return on a life settlement policy cannot be calculated before the insured dies and the longer the insured lives, the lower the rate of return on the related life settlement policy will be. Current privacy laws may limit the information available to the Fund about insureds and may cause the Fund to inaccurately estimate the value of particular policies. The Fund’s inability to predict with certainty the life expectancies of the pool of underlying insured persons tied to purchased life settlement policies may cause unanticipated delays in the collection of a substantial number of life settlement policies. Life settlements are also generally considered illiquid because there is a limited secondary market for such policies to be bought and sold. Accordingly, the Fund may be limited in its ability to sell policies in its portfolio in a timely fashion and/or at a favorable price. In addition, if a life insurance company declares bankruptcy or otherwise is insolvent, there may not be sufficient funds for it to pay

its liability, and while many states have an insurance guarantee fund to provide payments to beneficiaries of insurance companies that declare bankruptcy, the collection process can be prolonged and complicated, and collection may not be possible in all circumstances.

Life settlement policies may also be subject to contest by the issuing life insurance company. If the insurance company successfully contests a policy, the policy will be rescinded and declared void. For example, insurers may refuse to pay benefits on certain life insurance policies on the basis that there was no “insurable interest” on the part of the purchaser of a life insurance policy at the time such policy was issued. Recently the issue of a lack of insurable interest has been raised by insurers and beneficiaries of irrevocable life insurance trusts, in the context of so-called “stranger originated life insurance” policies. It is possible that courts may void certain life settlement policies for these or other reasons. The market for life settlement policies may also be subject to new government regulation that may impact the ability of the Fund to obtain life settlement policies. Insurance companies may seek regulation or changes of law restricting or otherwise encumbering the transfer of life insurance policies in life settlement policy transactions. No assurance can be made that insurance companies will not be successful in limiting the supply of life insurance policies available for purchase in life settlement policy transactions.

Any or all of the risks described above could have a material adverse effect on the Fund’s investment returns and, therefore, on its ability to make distributions to its shareholders. In addition, it is unclear under a variety of federal income tax principles whether the income from life settlements or the Fund’s ownership in a non-U.S. company that makes distributions resulting from such life settlement investments is qualifying income for purposes of the IRS 90% gross income test the Fund must satisfy each year to qualify as a regulated investment company (“**RIC**”). Further, the Fund’s ownership in a non-U.S. company that invests in life settlements, it is unclear whether the U.S. will respect the non-U.S. company reliance on the applicable U.S. tax treaty for purposes of the avoidance of certain withholding tax or whether the non-U.S. company is deemed to be engaged in a U.S. trade or business within the U.S. If any such was the case, the Fund could be materially adversely effected by such determination on the non-U.S. company with respect to the Fund’s investments returns and its ability to make distributions to its shareholders. The Fund intends to monitor its investments to ensure that the Fund remains qualified as a RIC.

*Foreign Securities.* Investments in foreign securities involve certain factors not typically associated with investing in U.S. securities, such as risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar (the currency in which the books of the Fund are maintained) and the various foreign currencies in which the Fund’s portfolio securities will be denominated and costs associated with conversion of investment principal and income from one currency into another; (ii) differences between the U.S. and foreign securities markets, including the absence of uniform accounting, auditing and financial reporting standards and practices and disclosure requirements, and less government supervision and regulation; (iii) political, social or economic instability; (iv) imposition of foreign income, withholding or other taxes; and (v) the extension of credit, especially in the case of sovereign debt.

*Commodities and Futures.* The Fund may trade on a limited basis in commodities and futures. Such trading activity is regulated by the Commodity Futures Trading Commission (the “**CFTC**”). Pursuant to an exemption from registration under CFTC regulations, neither the General Partner nor the Investment Manager is required to register, and neither is registered, with the CFTC or the National Futures Association (“**NFA**”) as a commodity pool operator (a “**CPO**”) or as a commodity trading advisor (“**CTA**”). To comply with the exemption, the Investment Manager is subject to specific



limitations on the amount of commodities and futures that it can trade on behalf of the Fund. Should the Fund's investments in commodities or futures instruments exceed the limits provided by the applicable exemption from registration, the Investment Manager will either have to register with the NFA or cease providing commodity interest trading advice to the Fund and liquidate the Fund's holdings of commodities and futures which could result in losses and additional costs to the Fund.

*Leverage.* Subject to applicable margin and other limitations, the Fund may borrow funds in order to make additional investments and thereby increase both the possibility of gain and risk of loss. Consequently, the effect of fluctuations in the market value of the Fund's portfolio would be amplified. Interest on borrowings will be a portfolio expense of the Fund and will affect the operating results of the Fund. Also, the Fund could potentially create leverage via the use of instruments such as options and other derivative instruments.

*Options.* Investing in options can provide a greater potential for profit or loss than an equivalent investment in the underlying asset. The value of an option may decline because of a change in the value of the underlying asset relative to the strike price, the passage of time, changes in the market's perception as to the future price behavior of the underlying asset, or any combination thereof. In the case of the purchase of an option, the risk of loss of an investor's entire investment (*i.e.*, the premium paid plus transaction charges) reflects the nature of an option as a wasting asset that may become worthless when the option expires. Where an option is written or granted (*i.e.*, sold) uncovered, the seller may be liable to pay substantial additional margin, and the risk of loss is unlimited, as the seller will be obligated to deliver, or take delivery of, an asset at a predetermined price which may, upon exercise of the option, be significantly different from the market value.

*Currency Exposure.* The Interests will be issued and generally withdrawal proceeds will be paid in U.S. Dollars. A limited amount of the assets of the Fund may, however, be invested in securities and other investments which are denominated in currencies other than U.S. Dollars. Accordingly, the value of such assets may be affected favorably or unfavorably by fluctuations in currency rates. The Investment Manager may hedge the non-U.S. currency exposure of the Fund using Currency Hedging Instruments, as described in "Investment Program" above. However, the assets of the Fund will necessarily be subject to foreign exchange risks. In addition, prospective investors whose assets and liabilities are predominately in other currencies should take into account the potential risk of loss arising from fluctuations in value between the U.S. Dollar and other currencies.

To the extent unhedged, the value of the Fund's positions in non-U.S. investments will fluctuate with U.S. Dollar exchange rates as well as with the price changes of the investments in the various local markets and currencies. In such cases, an increase in the value of the U.S. Dollar compared to the other currencies in which the Fund makes investments will reduce the effect of any increases and magnify the effect of any decreases in the prices of the Fund's financial instruments in their local markets and may result in a loss to the Fund. Conversely, a decrease in the value of the U.S. Dollar will have the opposite effect on the Fund's non-U.S. Dollar investments.

*Concentration of the Fund's Portfolio.* The Fund may be highly concentrated in CLO Securities. The concentration of the Fund's portfolio in CLO Securities subjects the Fund to a greater degree of risk than if the Fund's portfolio was diversified with respect to several investment strategies. Also, the concentration of the Fund's portfolio in any one obligor would subject the Fund to a greater degree of risk with respect to defaults by such obligor.



*Volatility Risk.* The Fund's investment program may involve the purchase and sale of relatively volatile instruments such as derivatives, which are frequently valued based on implied volatilities of such derivatives compared to the historical volatility of underlying financial instruments. Fluctuations or prolonged changes in the volatility of such instruments, therefore, can adversely affect the value of investments held by the Fund. In addition, many non-U.S. financial markets are not as developed or as efficient as those in the U.S., and as a result, price volatility may be higher for the Fund's investments.

*Long-Biased Investment Program.* The Fund expects that its strategy will have a long bias. Therefore, any decline in the overall market may result in a decline in the value of the Fund's assets.

*Leverage.* Leverage may take a variety of forms, including but not limited to the following: long-term loans, convertible notes and repurchase arrangements. Leverage arrangements used by the Fund when financing is contingent on the market value of the financed assets may include those which may be subject to mark to market collateral or margin calls.

While leverage presents the opportunity for increasing the total return on investments, it has the effect of potentially increasing losses as well. Accordingly, any event that adversely affects the value of an investment could be magnified to the extent leverage is utilized. The cumulative effect of the use of leverage with respect to investments in a market that moves adversely to such investments could result in a substantial loss, which would be greater than if the investments were not leveraged.

In the futures markets, margin deposits are typically low relative to the value of the futures contracts purchased or sold. Such low margin deposits are indicative of the fact that any commodity futures contract trading is typically accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a futures contract may result in immediate and substantial losses to the investor. For example, if at the time of purchase 10 percent of the price of a futures contract is deposited as margin, a 10 percent decrease in the price of the futures contract would, if the contract is then closed out, result in a total loss of the margin deposit before any deduction for the brokerage commission. Thus, like other leveraged investments, any purchase or sale of a commodity contract may result in losses in excess of the amount invested.

The use of short-term margin borrowings results in certain additional risks to the Fund. For example, should the securities pledged to brokers to secure the Fund's margin accounts decline in value, the Fund could be subject to a "margin call," pursuant to which the Fund must either deposit additional funds or securities with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden drop in the value of the Fund's assets, the Fund might not be able to liquidate assets quickly enough to satisfy its margin requirements.

The Fund may borrow by entering into reverse repurchase agreements. Under a reverse repurchase agreement, the Fund sells securities and agrees to repurchase them at a mutually agreed date and price. Reverse repurchase agreements may involve the risk that the market value of the securities retained in lieu of sale by the Fund may decline below the price of the securities the Fund has sold but is obligated to repurchase. In the event the buyer of securities under a reverse repurchase agreement files for bankruptcy or becomes insolvent, such buyer or its trustee or receiver may receive an extension of time to determine whether to enforce the Fund's obligation to repurchase the securities and the Fund's use of the proceeds of the reverse repurchase agreement may effectively be restricted pending such decision. To the extent that, in the meantime, the value of the securities that the Fund has purchased has decreased, the Fund could experience a loss.

The financing used by the Fund to leverage its portfolio include those extended by securities brokers and dealers in the marketplace in which the Fund will invest. While the Fund attempts to negotiate the terms of these financing arrangements with such brokers and dealers, its ability to do so is limited. The Fund is therefore subject to changes in the value that the broker-dealer ascribes to a given security or position, the amount of margin required to support such security or position, the borrowing rate to finance such security or position and/or such broker-dealer's willingness to continue to provide any such credit to the Fund. In addition, the Fund could be forced to liquidate its portfolio on short notice to meet its financing obligations. The forced liquidation of all or a portion of the Fund's portfolio at distressed prices could result in significant losses to the Fund.

*Market Liquidity and Leverage.* The Fund may be adversely affected by a decrease in market liquidity for the instruments in which it invests which may impair the Fund's ability to adjust its positions. The size of the Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by the prime brokers and custodians, or other counterparties with which the Fund enters into repurchase/reverse repurchase agreements or derivative transactions, to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Fund's portfolio.

*Risks Associated with Bankruptcies.* Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Fund. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Fund; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. Although the Fund intends to invest primarily in debt, the debt of companies in financial reorganization will, in most cases, not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental value. Such investments can result in a total loss of principal.

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that the Fund's influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where the Fund, by virtue of such action, is found to exercise "domination and control" of a debtor, the Fund may lose its priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by the Fund.

The Fund may invest in companies based outside the United States. Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain.

The General Partner, on behalf of the Fund, may elect to serve on creditors' committees, equity holders' committees or other groups to ensure preservation or enhancement of the Fund position as a creditor or equity holder. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If the General Partner concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Fund, it will resign from that committee or group, and the Fund may not realize the benefits, if any, of participation on the committee or group. In addition, and also as discussed above, if the Fund is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of or increasing its investments in such company while it continues to be represented on such committee or group.

The Fund may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

*Equitable Subordination.* Under common law principles that in some cases form the basis for lender liability claims, if a lender (a) intentionally takes an action that results in the undercapitalization of a borrower or issuer to the detriment of other creditors of such borrower or issuer, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower or issuer to the detriment of other creditors of such borrower or issuer, a court may elect to subordinate the claim of the offending lender or bondholder to the claims of the disadvantaged creditor or creditors (a remedy called "*equitable subordination*"). The Fund does not intend to engage in conduct that would form the basis for a successful cause of action based upon the equitable subordination doctrine; however, because of the nature of the debt obligations, the Fund may be subject to claims from creditors of an obligor that debt obligations of such obligor which are held by the issuer should be equitably subordinated.

*Fraud.* Of paramount concern in lending is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Fund to perfect or effectuate a lien on the collateral securing the loan. The Fund will rely upon the accuracy and completeness of representations made by borrowers to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to the Fund may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

*Interest Rate Risk.* The value of the fixed rate securities in which the Fund may invest generally will have an inverse relationship with interest rates. Accordingly, if interest rates rise the value of such securities may decline. In addition, to the extent that the receivables or loans underlying specific

securities are prepayable without penalty or premium, the value of such securities may be negatively affected by increasing prepayments, which generally occur when interest rates decline.

*Reinvestment Risk.* The Fund reinvests the cash flows received from a security. The additional income from such reinvestment, sometimes called interest-on-interest, is reliant on the prevailing interest rate levels at the time of reinvestment. There is a risk that the interest rate at which interim cash flows can be reinvested will fall. Reinvestment risk is greater for longer holding periods and for securities with large, early cash flows such as high-coupon bonds. Reinvestment risk also applies generally to the reinvestment of the proceeds the Fund receives upon the maturity or sale of a portfolio security.

The amount and timing of the addition of investments will affect the cash flows available to make payments on the Interests. Reduced liquidity and lower volumes of trading in certain investments, in addition to restrictions on investment represented by the Fund's investment criteria, could result in periods of time during which the Fund has not been able to maximize its exposure to investments. The longer the period before reinvestment of cash in investments, the greater the adverse impact may be on aggregate interest collected and distributed by the Fund, thereby resulting in lower yield than could have been obtained if the net proceeds associated with the offering of the Interests were immediately reinvested. In addition, the timing of the addition of investments, the scheduled interest payment dates of the investments and the amount of the net proceeds associated with the offering of the Interests invested in lower-yielding alternate short-term investments until applied to the addition of investments, may have a material impact on the amount of interest payments collected during any accrual period, which could affect payments on the Interests.

Further, obligors of investments may be more likely to exercise any rights they may have to prepay such obligations when interest rates or credit spreads are declining. Any decrease in the yield on the investments will have the effect of reducing the amounts available to make payments on the Interests.

*Timing Risk.* Many agency, corporate and municipal bonds, and all mortgage-backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Fund is exposed to reinvestment rate risk, *i.e.*, the Fund will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

*Maturity Risk.* In certain situations, the Fund may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these circumstances, the Fund will make an adjustment to account for the differential interest rate risks in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield-curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

*Inflation Risk.* Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Fund purchases a five



(5) year bond in which it can realize a coupon rate of five percent (5%), but the rate of inflation is six percent (6%), then the purchasing power of the cash flow has declined. For all but adjustable bonds or floating rate bonds, the Fund is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk.

*Over-the-Counter-Trading.* Financial instruments that may be purchased or sold by the Fund may include instruments not traded on an exchange, including, but not limited to, swap transactions, and forward foreign currency transactions. Over-the-counter options, unlike exchange-traded options, are two-party contracts with price and other terms negotiated by the buyer and seller. The risk of nonperformance by the obligor on such an instrument may be greater and the ease with which the Fund can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between “bid” and “asked” prices for financial instruments that are not traded on an exchange. Financial instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

To the extent that the Fund engages in these transactions, the Fund must rely on the creditworthiness of its counterparty. In certain instances, counterparty or credit risk is affected by the lack of a central clearinghouse for foreign exchange trades. To reduce their credit risk exposure, the Fund may trade in the forward foreign currency market through money center banks and leading brokerage firms.

*Position Limits.* “Position limits” imposed by various regulators or regulations may also limit the Fund’s ability to effect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular financial instrument. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Fund does not intend to exceed applicable position limits, it is possible that different accounts managed by the General Partner or its affiliates may be aggregated. If at any time positions managed by the General Partner were to exceed applicable position limits, the General Partner would be required to liquidate positions, which might include positions of the Fund, to the extent necessary to come within those limits. Further, to avoid exceeding the position limits, the Fund might have to forego or modify certain of its contemplated trades.

*Material, Nonpublic Information.* From time to time, certain personnel of the Investment Manager may come into possession of material, nonpublic information (including in connection with other investments or proposed investments not intended to benefit the Fund) that would limit the Investment Manager’s ability to buy and sell investments. The Fund’s investment flexibility may be constrained as a consequence of the Investment Manager’s inability to take certain actions because of such information. The Fund may experience losses if it is unable to sell an investment that it holds because certain personnel of the Investment Manager have obtained material, nonpublic information about such investment.

*Co-Investments with Third Parties.* The Fund may co-invest with third parties through joint ventures or other entities. Such investments may involve risks in connection with such third-party involvement, including the possibility that a third-party co-venturer may have financial difficulties resulting in a negative impact on such investment, economic or business interests or goals that are



inconsistent with those of the Fund or be in a position to take (or block) action in a manner contrary to the Fund's investment objectives. In those circumstances where such third parties involve a management group, such third parties may enter into compensation arrangements relating to such investments, including incentive compensation arrangements. Such compensation arrangements will reduce the returns to participants in the investments.

*Other Investment Vehicles.* The Investment Manager may allocate a portion of the Fund's assets to pooled investment vehicles that may be managed by the Investment Manager or its affiliates or unaffiliated managers. Since the Fund may not have full transparency with respect to the trading activities of such investment vehicles, it may be limited in its ability to hedge its exposure or to prevent concentration of its assets within the same issuer, asset or asset class, industry, section, strategy, currency, country or geographic region. Further, the Investment Manager may be limited with respect to its ability to monitor unaffiliated managers, including their adherence to their respective trading and risk guidelines (if such guidelines exist). Even in the event that such information may be available to the Fund, the Fund's investment in such investment vehicles may be "locked up" and subject to limitations on withdrawals, and in light of the broad exculpation and indemnification provisions typically contained in the governing documents of such investment vehicles, may have limited recourse against the managers of such investment vehicles.

The managers of pooled investment vehicles with which the Fund may invest may be subject to asset-based fees and performance-based compensation. Such fees or compensation may be higher than the fees or compensation of comparable investment vehicles.

Performance-based compensation is typically paid or allocated at the investment vehicle level on the basis of the performance of each individual investment vehicle, not on the basis of the overall performance of the Fund. Consequently, performance-based compensation could be payable to a particular investment vehicle in respect of its performance during periods when the Fund as a whole incurs losses. The existence of performance-based compensation also could cause the manager of such investment vehicle to trade in a more aggressive manner than it otherwise might.

*Futures Contracts.* The value of futures depends upon the price of the financial instruments, such as commodities, underlying them. The prices of futures are highly volatile, and price movements of futures contracts can be influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, investments in futures are also subject to the risk of the failure of any of the exchanges on which the Fund's positions trade or of its clearing houses or counterparties.

Futures positions may be illiquid because certain commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as "daily price fluctuation limits" or "daily limits." Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a particular futures contract has increased or decreased by an amount equal to the daily limit, positions in that contract can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. This could prevent the Fund from promptly liquidating unfavorable positions and subject the Fund to substantial losses or prevent it from entering into desired trades. In extraordinary circumstances, a futures exchange or the Commodities Futures Trading Commission could suspend trading in a particular futures contract, or order liquidation or settlement of all open positions in such contract.

*Forward Trading.* Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and “cash” trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by the Fund due to unusual trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward trading to less than that which the General Partner would otherwise recommend, to the possible detriment of the Fund. Market illiquidity or disruption could result in major losses to the Fund.

*Hedging Transactions.* The Fund may (but is not required to) utilize financial instruments both for investment purposes and for risk management purposes in order to (i) protect against possible changes in the market value of the Fund’s investment portfolios resulting from fluctuations in the markets and changes in interest rates; (ii) protect the Fund’s unrealized gains in the value of its investment portfolio; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in the Fund’s portfolios; (v) hedge against a directional trade; (vi) hedge the interest rate, credit or currency exchange rate on any of the Fund’s financial instruments; (vii) protect against any increase in the price of any financial instruments the Fund anticipates purchasing at a later date; or (viii) act for any other reason that the Investment Manager deems appropriate. The Fund will not be required to hedge any particular risk in connection with a particular transaction or its portfolios generally.

The success of the Fund’s hedging strategy will be subject to the Investment Manager’s ability to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the investments in the portfolio being hedged. Since the characteristics of many securities change as markets change or time passes, the success of the Fund’s hedging strategy will also be subject to the Investment Manager’s ability to continually recalculate, readjust, and execute hedges in an efficient and timely manner. While the Fund may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Fund than if it had not engaged in any such hedging transactions. For a variety of reasons, the Investment Manager may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent the Fund from achieving the intended hedge or expose the Fund to risk of loss. The successful utilization of hedging and risk management transactions requires skills complementary to those needed in the selection of the Fund’s portfolio holdings. Moreover, it should be noted that the portfolio will always be exposed to certain risks that cannot be hedged.

*Use of Derivatives and Other Specialized Techniques.* The Fund may engage in a variety of swaps and related derivative transactions including, but not limited to, total return swaps, interest rate swaps, credit derivative swaps, the use of forward contracts, put and call options, floors, collars or other similar arrangements and derivative transactions. While some swaps will be required to be cleared and entered into through exchanges once the U.S. Commodity Futures Trading Commission (the “CFTC”) makes its final clearing determination, swap contracts excluded from the clearing determination will not be traded on exchanges and will not be subject to margin and clearing requirements or the same type of

government regulation as exchange markets. As a result, many of the protections afforded to participants on organized exchanges and in a regulated environment are not available in connection with these transactions. The swap markets with respect to noncleared swaps are “principals’ markets”, in which performance with respect to a swap contract is the responsibility only of the counterparty to the contract, and not of any exchange or clearinghouse. As a result, the Fund will be subject to the risk of the inability or refusal to perform with respect to non-cleared swap contracts on the part of the counterparties with whom the Fund will trade.

There are no limitations on daily price movements in swap transactions. Speculative position limits are not currently applicable to swap transactions, although the Fund’s swap counterparties may limit the size or duration of positions available to the Fund as a consequence of credit considerations. In addition, the CFTC has sought to impose federal speculative position limits on futures, swaps that reference those futures and contracts on non-U.S. boards of trade that settle against those contracts. While the CFTC adopted final position limits, the rulemaking was vacated due to the CFTC’s failure to perform proper cost benefit analysis. If the CFTC re-adopts rules or the above referenced discussion is overturned on appeal, the Fund may be limited in its ability to concentrate its positions in certain swaps. Furthermore, the Fund may also be subject to position limits pursuant to current or pending non-U.S. regulations.

Participants in the swap markets are not required to make continuous markets in the swap contracts in which they trade. Participants could refuse to quote prices for swap contracts or quote prices with an unusually wide spread between the price at which they are prepared to buy and the price at which they are prepared to sell. If an event of default or an additional termination event were to occur with respect to the Fund under an ISDA master agreement governing the Fund’s swap transactions, the relevant swap counterparty and other swap counterparties may terminate all transactions with the Fund at significant losses to the Fund.

In addition to the foregoing, the investment techniques related to derivative instruments are highly specialized and may be considered speculative. Such techniques often involve forecasts and complex judgments regarding relative price movements and other economic developments. The success or failure of these investment techniques may turn on small changes in exogenous factors not within the control of any of the Investment Manager. For all the foregoing reasons, the use of derivatives and related techniques can expose the Fund to significant risk of loss.

Moreover, trading in swaps and other derivative instruments offers scope for a high degree of synthetic leverage. Accordingly, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by the Fund. Thus, like other leveraged investments, a derivatives trade may result in losses in excess of the amount invested. Any increase in the amount of leverage applied will increase the risk of loss due to the amount of additional leverage applied. Also, swap agreements tend to shift the investment exposure from one type of investment to another. Depending on how they are used, swap agreements may increase or decrease the overall volatility of the Fund. The most significant factor in the performance of swap agreements is the change in the specific factors that determine the amounts of payments due to and from the Fund. If a swap agreement calls for payments by the Fund, the Fund must be prepared to make such payments when due. In addition, if a counterparty’s creditworthiness declines, the value of swap agreements with such counterparty can be expected to decline, potentially resulting in losses to the Fund.

Finally, counterparties to the Fund may be subject to capital and other requirements as a “swap dealer” or “major swap participant” which may increase their costs of doing of business, a portion of which increase may be passed on to the Fund. If a person is deemed to (i) enter into swaps as its ordinary course of business, (ii) be a market maker for any type of swaps, (iii) maintain a “substantial position” in any type of swap for speculative purposes, (iv) otherwise create counterparty risk that could have serious adverse consequences on the financial stability of the United States, or (v) be a financial entity that is highly leveraged relevant to its capital, the person may be deemed to be a swap dealer (in the case of (i) or (ii)) or a major swap participant (in the case of (iii), (iv) or (v)). Persons deemed to be swap dealers or major swap participants are required to register with the CFTC as such and would be subject to a number of regulatory requirements, such as specific recordkeeping, back-office and reporting requirements, margin collection requirements for swaps that are not cleared, capital requirements, disclosure obligations, specific compliance obligations and special obligations to governmental entities. While it is unlikely that the Fund would be subject to these requirements, the requirements will likely apply to many of the Fund’s counterparties which may increase the cost of trading swaps through increased fees to offset the counterparties’ trading and compliance costs.

*Counterparty Insolvency.* The Fund’s assets may be held in one or more accounts maintained for the Fund by counterparties, including its prime brokers. There is a risk that any of such counterparties could become insolvent. In September 2008, Lehman Brothers Holdings Inc., a major investment bank based in the United States, filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. While none of its U.S. broker-dealer subsidiaries was included in the Chapter 11 filing and all of its U.S. registered broker-dealer subsidiaries currently continue to operate, certain of Lehman Brothers subsidiaries, including Lehman Brothers International (Europe) (“**LBIE**”) have been placed under the administration chartered to wind down their respective business. To date, it is uncertain what percentage of the assets custodied with LBIE by its trading counterparties (including hedge funds) will ultimately be recovered and when. The insolvency of the Fund’s counterparties is likely to impair the operational capabilities or the assets of the Fund. Although the Investment Manager regularly monitors the financial condition of the counterparties it uses, if one or more of the Fund’s counterparties were to become insolvent or the subject of liquidation proceedings in the United States (either under the Securities Investor Protection Act or the United States Bankruptcy Code), there exists the risk that the recovery of the Fund’s securities and other assets from such prime broker or broker-dealer will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer.

In addition, the Fund may use counterparties located in various jurisdictions outside the United States like LBIE. Such local counterparties are subject to various laws and regulations in various jurisdictions that are designed to protect their customers in the event of their insolvency. However, the practical effect of these laws and their application to the Fund’s assets are subject to substantial limitations and uncertainties. Because of the large number of entities and jurisdictions involved and the range of possible factual scenarios involving the insolvency of a counterparty, it is impossible to generalize about the effect of their insolvency on the Fund and its assets. Investors should assume that the insolvency of any counterparty would result in a loss to the Fund and the Fund, which could be material.

*Counterparty Risk.* Some of the markets in which the Fund may effect transactions are “over-the-counter” or “interdealer” markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as are members of “exchange-based” markets. This exposes the Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not *bona fide*) or because of a



credit or liquidity problem, thus causing the Fund to suffer a loss. Such “counterparty risk” is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Fund has concentrated its transactions with a single or small group of counterparties. The Fund is not restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty. Moreover, the Fund’s internal credit function which evaluates the creditworthiness of its counterparties may prove insufficient. The lack of a complete and “foolproof” evaluation of the financial capabilities of the Fund’s counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Fund.

*Exchange-Traded Funds.* The Fund may invest in exchange-traded funds (“*ETFs*”), which are shares of publicly-traded unit investment trusts, open-end funds, or depository receipts that seek to track the performance and dividend yield of specific indices or companies in related industries. These indices may be either broad-based, sector, or international. ETF shareholders are generally subject to the same risk as holders of the underlying securities they are designed to track. ETFs are also subject to certain additional risks, including, without limitation, the risk that their prices may not correlate perfectly with changes in the prices of the underlying securities they are designed to track, and the risk of trading in an ETF halting due to market conditions or other reasons, based on the policies of the exchange upon which the ETF trades. In addition, the Fund may bear, along with other shareholders of an ETF, its *pro rata* portion of the ETF’s expenses, including management fees. Accordingly, in addition to bearing their proportionate share of the Fund’s expenses (e.g., Management Fees and operating expenses), Partners may also indirectly bear similar expenses of an ETF, which may have a material adverse effect on the performance of the Fund.

*Non-U.S. Investments and Emerging Markets.* Investing in the securities of companies located outside the U.S. (including, western countries, “emerging market” countries and underdeveloped countries) involves certain considerations not usually associated with investing in securities of U.S. companies, including political and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments; the possibility of imposition of withholding or other taxes on dividends, interest, capital gain or other income; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict the Fund’s investment opportunities.

In addition, accounting and financial reporting standards that prevail in non-U.S. countries generally are not equivalent to U.S. standards and, consequently, less information is available to shareholders of companies located in such countries than is available to shareholders of companies located in the U.S. Moreover, an issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associate risks, are not expected to be highly correlated with each other and may behave in unpredictable ways. There is also less regulation, generally, of the securities markets in non-U.S. countries.

The Fund may be subject to additional risks which include possible adverse political and economic developments, possible seizure or nationalization of non-U.S. deposits and possible adoption of governmental restrictions which might adversely affect the payment of principal and interest to investors located outside the country of the issuer, whether from currency blockage or otherwise. Furthermore, some of the securities may be subject to brokerage, stamp or other taxes levied by



governments, which has the effect of increasing the cost of such investment and reducing the realized gain or increasing the realized loss on such securities at the time of sale. Furthermore, a non-U.S. issuer of debt or the non-U.S. governmental authorities that control the repayment of the debt may be unable or unwilling to repay principal or interest when due, and the Fund may have limited recourse in the event of a default. Some of these risks do not apply equally to issuers in larger, more developed countries. These risks are more pronounced in investments in issuers in countries with emerging markets or if the Fund invests significantly in a particular country.

Investment in emerging market securities and underdeveloped markets involves a greater degree of risk than an investment in securities of issuers based in developed countries. Among other things, emerging market securities investments may carry the risks of less publicly available information, more volatile markets, less strict securities market regulation, less favorable tax provisions and a greater likelihood of severe inflation, unstable currency, war and expropriation of personal property than investments in securities of issuers based in developed countries. In addition, the Fund's investment opportunities in certain emerging markets may be restricted by legal limits on foreign investment in local securities.

Emerging markets generally are not as efficient as those in developed countries. In some cases, a market for the security may not exist locally, and transactions will need to be made on a neighboring exchange. Volume and liquidity levels in emerging markets are lower than in developed countries. When seeking to sell emerging market securities, little or no market may exist for the securities. In addition, issuers based in emerging markets are not generally subject to uniform accounting and financial reporting standards, practices and requirements comparable to those applicable to issuers based in developed countries, thereby potentially increasing the risk of fraud or other deceptive practices. Furthermore, the quality and reliability of official data published by the government or securities exchanges in emerging markets may not accurately reflect the actual circumstances being reported.

The issuers of some non-U.S. securities, such as banks and other financial institutions, may be subject to less stringent regulations in emerging markets than would be the case for issuers in developed countries and therefore potentially carry greater risk. Custodial expenses for a portfolio of emerging markets securities generally are higher than for a portfolio of securities of issuers based in developed countries.

While the General Partner will take these factors into consideration in making investment decisions for the Fund, no assurance can be given that they will be able to fully avoid these risks.

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

## **Tax Related Risks**

*Tax Uncertainty.* The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

*Uncertainty and Complexity of Tax Treatment.* The tax aspects of an investment in a partnership are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative

regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles.

*Risk of Adverse Determination.* There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the Internal Revenue Service (the "*Service*"), or significantly modified by new legislation, changes in the Service's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the General Partner with respect to the federal income tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

*Risk of Tax Audit.* An audit of the Fund by the Service or another taxing authority could result in adjustments to the tax consequences initially reported by the Fund and may result in an audit of the returns of some or all of the Limited Partners, which examination could affect items not related to a Limited Partner's investment in the Fund. If audit adjustments result in an increase in a Limited Partner's income tax liability for any year, such Limited Partner may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund. The cost of any audit of a Limited Partner's tax return will be borne solely by that Limited Partner.

*Tax Considerations Taken into Account.* The General Partner may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

*Tax Liabilities Without Distributions.* If the Fund has taxable income in a fiscal year, each Limited Partner will be taxed on that income in accordance with its distributive share of the Fund's profits, whether or not such profits have been distributed. Because the General Partner anticipates that there will be no cash distributions to the Limited Partners, an investor may incur tax liability with respect to activities of the Fund without receiving sufficient distributions from the Fund to defray such tax liabilities. In order to satisfy its tax liability in such a case, a Limited Partner would need sufficient funds from sources other than the Fund. Furthermore, the Fund may make investments with respect to which the Fund recognizes income for U.S. federal income tax purposes prior to receiving the cash or realizing the income as an economic matter. In addition, the Fund may recognize income for U.S. federal income tax purposes that does not reflect income as an economic matter. Such recognition of income prior to receipt of an economic benefit, if any, may result in increased tax liability for the Partners.

*Delayed Schedules K-1.* The Fund will provide Schedules K-1 as soon as practical after receipt of all of the necessary information. However, the Fund may be unable to provide final Schedules K-1 to Limited Partners for any given tax year until significantly after April 15 of the following year. The

General Partner will endeavor to provide Limited Partners with estimates of the taxable income or loss allocated to their investment in the Fund on or before such date, but final Schedules K-1 may not be available until completion of the Fund's annual audit. Limited Partners should be prepared to obtain extensions of the filing date for their income tax returns at the federal, state and local levels.

*Unrelated Business Taxable Income.* The Fund may make investments or engage in activities that will give rise to unrelated business taxable income ("**UBTI**"). Thus, an investment in the Fund may not be desirable for certain tax-exempt investors. The Fund may participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the "flow-through" principles applicable to partnerships, if UBTI is earned by the Fund, a tax-exempt investor in the Fund will realize UBTI. Because of the Investment Manager's objective of maximizing the pre-tax returns of all the Limited Partners, the Investment Manager may be required to make certain decisions to maximize pre-tax returns that result in Tax-Exempt U.S. Investors (as defined below) recognizing more UBTI than might otherwise be the case. In some cases, the Investment Manager may forego actions with regard to the acquisition, financing, management and disposition of assets that would reduce UBTI because such actions would reduce the overall pre-tax returns to all the Limited Partners.

*Tax Changes.* Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Internal Revenue Code of 1986, as amended (the "**Code**") may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or the Limited Partners. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

***The foregoing is not intended to be an exhaustive analysis or listing of the tax risks associated with an investment in the Fund. Many of the relevant tax considerations will vary depending on a prospective Limited Partner's individual circumstances. The tax aspects associated with such an investment are complex and complicated and are subject to a variety of interpretations. Prospective investors are strongly urged to review the discussions below under "Tax Considerations" and "ERISA and Other Regulatory Considerations" for a more complete discussion of certain of the tax risks inherent in the acquisition of Interests, and to seek and rely upon the advice of their own tax advisor who is qualified to discuss the foregoing and other possible tax risks.***

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

## **Potential Conflicts of Interest**

The scope of the activities of the Investment Manager, its affiliates, and the funds and clients managed or advised by the Investment Manager or any of its affiliates may give rise to conflicts of interest or other restrictions and/or limitations imposed on the Fund in the future that cannot be foreseen

or mitigated at this time. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the “**Highland Group**”) is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. The Investment Manager is permitted to manage other client accounts, some of which may have objectives similar or identical to those of the Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, “**CDOs**”) and other vehicles managed by members of the Highland Group (“**Highland Accounts**”) in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group’s compensation arrangements) to favor certain Highland Accounts over the Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and its portfolio investments; (vi) Affiliated Investors may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Fund and, therefore, may compete with the Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Fund; (viii) the Fund may invest in CDOs and Highland Accounts managed by members of the Highland Group; and (ix) the Investment Manager will devote to the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Fund’s business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund’s investors.

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) whether the risk-return profile of the proposed investment is consistent with the account’s objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio’s overall holdings; (ii) the potential for the proposed investment to create an imbalance in the account’s portfolio (taking into account expected inflows and outflows of capital); (iii) liquidity requirements of the account; (iv) potentially adverse tax consequences; (v) regulatory and other restrictions that would or could limit an account’s ability to participate in a proposed investment; and (vi) the need to re-size risk in the account’s portfolio. The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may



allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Fund and one or more Highland Accounts on other than a *pari passu* basis.

The General Partner and/or its affiliates may open “average price” accounts with brokers. In an “average price” account, purchase and sale orders placed during a trading day on behalf of the Fund, the Highland Accounts or affiliates of the General Partner are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

As part of their regular business, the members of the Highland Group hold, purchase, sell, trade or take other related actions both for their respective accounts and for the accounts of their respective clients, on a principal or agency basis, with respect to loans, securities and other investments and financial instruments of all types. The members of the Highland Group also provide investment advisory services, among other services, and engage in private equity, real estate and capital markets-oriented investment activities. The members of the Highland Group will not be restricted in their performance of any such services or in the types of debt or equity investments which they may make. The members of the Highland Group may have economic interests in or other relationships with obligors or issuers in whose obligations or securities or credit exposures the Fund may invest. In particular, such persons may make and/or hold an investment in an obligor’s or issuer’s securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor’s or issuer’s securities made and/or held by the Fund or in which partners, security holders, members, officers, directors, agents, personnel or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities by the Fund and otherwise create conflicts of interest for the Fund. In such instances, the members of the Highland Group may in their discretion make investment recommendations and decisions that may be the same as or different from those made with respect to the Fund’s investments. In connection with any such activities described above, the members of the Highland Group may hold, purchase, sell, trade or take other related actions in securities or investments of a type that may be suitable to investments for the Fund. The members of the Highland Group will not be required to offer such securities or investments to the Fund or provide notice of such activities to the Fund. In addition, in managing the Fund’s portfolio, the Investment Manager may take into account its relationship or the relationships of its affiliates with obligors and their respective affiliates, which may create conflicts of interest. Furthermore, in connection with actions taken in the ordinary course of business of the Investment Manager in accordance with its fiduciary duties to its other clients, the Investment Manager may take, or be required to take, actions which adversely affect the interests of the Fund.

In connection with the foregoing activities the Highland Group may from time to time come into possession of material nonpublic information that limits the ability of the Investment Manager to effect a transaction for the Fund, and the Fund’s investments may be constrained as a consequence of the Investment Manager’s inability to use such information for advisory purposes or otherwise to effect transactions that otherwise may have been initiated on behalf of its clients, including the Fund.

Although the professional staff of the Investment Manager will devote as much time to the Fund as the Investment Manager deems appropriate to perform its duties in accordance with the Investment Management Agreement and in accordance with reasonable commercial standards, the staff may have conflicts in allocating its time and services among the Fund and the Investment Manager’s other accounts.



The directors, officers, personnel, employees and agents of the Investment Manager and its affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories, and receive arm's length fees in connection with such service, for the Fund or other entities that operate in the same or a related line of business as the Fund, for other clients managed by the Investment Manager or its affiliates, or for any obligor or issuer in respect of the CLOs, to the extent permitted by their governing instruments, or by any resolutions duly adopted by the Fund, such affiliated entities or any obligor or issuer in respect of any of the CLOs pursuant to their respective governing instruments, and the Fund shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund.

There is no limitation or restriction on the Investment Manager or any of its affiliates with regard to acting as investment adviser or collateral manager (or in a similar role) to other parties or persons. This and other future activities of the Investment Manager and/or its affiliates may give rise to additional conflicts of interest. Such conflicts may relate to obligations that the Investment Manager's investment committee, the Investment Manager or its affiliates have to other clients.

The Investment Manager and/or its affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of CLOs and Highland Accounts purchased by the Fund. Such transactions are on an arm's-length basis and shall be subject to fees that are no greater than arm's-length fees. There is no expectation for preferential access to transactions involving CLOs and Highland Accounts that are underwritten, originated, arranged or placed by the Investment Manager and/or its affiliates and the Fund shall not have any right to any such fees.

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Fund any time that the Investment Manager believes such transaction to be fair to the Fund and such other client. By purchasing an Interest in the Fund, a Limited Partner is deemed to have consented to such client cross-transactions between the Fund and another client of the Investment Manager or one of its affiliates.

As further described below, the Investment Manager may effect principal transactions where the Fund acquires securities from or sells securities to the Investment Manager and/or its affiliates, in each case in accordance with applicable law, which may include the Investment Manager obtaining the consent and approval of the Advisory Committee prior to engaging in any such principal transaction between the Fund and the Investment Manager or its affiliates. By subscribing for Interests, the Limited Partners are deemed to have consented to such procedures relating to principal transactions between the Fund and the Investment Manager or its affiliates.

The Investment Manager may direct the Fund to acquire or dispose of securities in cross trades between the Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the

Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Fund and for the other party to the transaction, to the extent permitted under applicable law. The Investment Manager may obtain the Fund's written consent through the Advisory Committee if any such transaction requires the consent of the Fund under Section 206(3) of the Advisers Act.

There are generally no ethical screens or information barriers among the Investment Manager and certain of its affiliates of the type that many firms implement to separate persons who make investment decisions from others who might possess material, non-public information that could influence such decisions. If the Investment Manager, any of its personnel or its affiliates were to receive material non-public information about a particular obligor, issuer or CLO, or have an interest in causing the Fund to acquire a particular CLO Security, the Investment Manager may be prevented from causing the Fund to purchase or sell such asset due to internal restrictions imposed on the Investment Manager. Notwithstanding the maintenance of certain internal controls relating to the management of material non-public information, it is possible that such controls could fail and result in the Investment Manager, or one of its investment professionals, buying or selling an asset while, at least constructively, in possession of material non-public information. Inadvertent trading on material non-public information could have adverse effects on the Investment Manager's reputation, result in the imposition of regulatory or financial sanctions, and as a consequence, negatively impact the Investment Manager's ability to perform its portfolio management services to the Fund. In addition, while the Investment Manager and certain of its affiliates currently operate without information barriers on an integrated basis, such entities could be required by certain regulations, or decide that it is advisable, to establish information barriers. In such event, the Investment Manager's ability to operate as an integrated platform could also be impaired, which would limit the Investment Manager's access to personnel of its affiliates and potentially impair its ability to manage the Fund's investments.

Akin Gump Strauss Hauer & Feld LLP ("*Akin Gump*") serves as counsel to the Fund, the Investment Manager, the General Partner and certain of their Affiliates (the "*Clients*") in connection with the formation of the Fund and certain other Clients, the offering of Interests as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any Limited Partners nor does it purport to represent their interests. No independent counsel has been retained to represent the Limited Partners. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the principal's biographical data, summaries of market conditions, the planned investment strategy of the Fund and the performance of the Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

## BROKERAGE AND CUSTODY

### Portfolio Transactions

Substantially all of the Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held at The Bank of New York Mellon ("**BNY Mellon**").

BNY Mellon and other prime brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including the broker-dealer's research capabilities and the success of prior research recommendations, ability to efficiently execute difficult trades (such as those in illiquid markets or trades of substantial size), the broker's risk in positioning a block of securities, commitment of capital, access to new issues, nature and frequency of sales coverage, depth of services provided, including economic or political coverage, arbitrage and option operations, back office and processing capabilities, financial strength, stability and responsibility, efficiency, reputation, access to markets, confidentiality, commission rate, responsiveness to the Investment Manager and the value of research and brokerage and research products and services provided by such brokers.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Fund.

Broker-dealers may provide research that may include written or oral proprietary research. Broker-dealers may also provide research products that include software and related support services for use in research and trading, quotation boards, computer databases and quotation equipment, in each case to access research or which provide research directly. Research services may include, among other things, research concerning market, economic and financial data, statistical information, data on pricing and availability of securities, financial publications, attendance at conferences and meetings, electronic market quotations, performance measurement services, analyses and/or due diligence concerning specific securities, companies or sectors, including due diligence on specific aspects of a company's operations or finances, analyses on issues raised in proxy statements and market, economic and financial studies and forecasts. Research services may be in written or oral form or on-line and may be produced by broker-dealers or third parties such as attorneys, accountants or consultants. Brokerage products and services may include certain order management system components and order routing.

The receipt of brokerage and research products from broker-dealers through client commission payments is commonly referred to as "soft dollars." Broker-dealers may provide products and services paid for through soft dollars either directly or through credits deposited into an account that may be used for research developed by the broker-dealer, third-party research and brokerage services. Section 28(e) of the Exchange Act provides a safe harbor from liability for breach of fiduciary duties relating to the purchase of limited research or brokerage services using soft dollars so long as the products and services received constitute lawful and appropriate assistance and the amount indirectly paid for those products or services is reasonable. If the Investment Manager uses research or

brokerage products or services, it intends to limit research and brokerage to those services included in the safe harbor under Section 28(e) of the Exchange Act.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from brokers will be supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Fund's and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients.

The Investment Manager will be responsible for the placement of the portfolio transactions of the Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion.

## **Custody**

Custody of the Fund's assets is maintained by brokers and banks selected by the Investment Manager in its sole discretion. The custodian or custodians may be changed at any time and from time to time by the Investment Manager without the consent of the Fund. Currently, the custodian is BNY Mellon. The Fund is eligible for insurance coverage against loss with respect to assets held in the custody of BNY Mellon in the event of the bankruptcy or liquidation of BNY Mellon to the same extent BNY Mellon's other customers.

## TAX CONSIDERATIONS

### Introduction

The following is a summary of certain aspects of the taxation of the Fund and its Limited Partners arising from the purchase, ownership and disposition of an Interest that should be considered by a prospective Limited Partner. The Fund has not sought a ruling from the Service or any similar state, local or foreign authority with respect to any of the tax issues affecting Limited Partners or the Fund, nor has it obtained an opinion of counsel with respect to any U.S. federal, state, local or foreign tax issues.

This summary is based on the Code, the Treasury regulations promulgated under the Code (the “**Treasury Regulations**”), judicial decisions, administrative rulings, and state and local tax laws in force on the date of this Memorandum, all of which are subject to change (possibly with retroactive effect). Changes in existing laws or regulations and their interpretation may occur after the date of this Memorandum and could alter the income tax consequences of an investment in the Fund. This discussion does not address all of the tax consequences that may be relevant to a particular investor, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Interests as part of a position in a “straddle” or as part of a “hedging,” “conversion” or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. dollar or (iv) persons that do not hold Interests as capital assets within the meaning of Code section 1221.

Further, this discussion assumes that all non-U.S. persons will invest in the Offshore Fund and will not invest in the Fund and, therefore, does not address the tax considerations relevant to an investment in the Fund by a non-U.S. person.

If a partnership holds an Interest in the Fund, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. Prospective investors who are partners of a partnership should consult their own tax advisors.

Unless otherwise expressly provided herein, this discussion does not address possible state, local or non-U.S. tax consequences of the purchase, ownership or disposition of Interests, some or all of which may be material to particular investors. This discussion also does not address the potential application of the U.S. federal alternative minimum tax (“**AMT**”) to the Limited Partners. There is uncertainty concerning certain tax aspects of the Fund, and there can be no assurance that the Service will not challenge the positions taken by the Fund.

*The tax consequences of an investment in the Fund are particularly complex. Accordingly, prospective investors should not consider this discussion as a substitute for careful tax planning. Prospective investors should consult with their own tax advisors, attorneys or accountants on matters relating to an investment in the Fund with special references to such investor’s particular situation.*



## Certain United States Taxation Matters

### Classification of the Fund

The General Partner believes that, under the provisions of the Code and the Treasury Regulations as currently in effect, the Fund should be treated for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

Certain “publicly traded partnerships” are treated as associations that are taxable as corporations for U.S. federal income tax purposes. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). Interests in the Fund are not and will not be traded on an established securities market. Treasury Regulations concerning the classification of partnerships as publicly traded partnerships provide certain safe harbors under which interests in a partnership will not be considered readily tradable on a secondary market (or the substantial equivalent thereof). Depending on the number of Partners, the Fund may qualify for a safe harbor exemption for partnerships that are offered to investors in a private placement.

The remainder of this discussion assumes that the Fund will be treated, for U.S. federal income tax purposes, as a partnership and not as a publicly traded partnership treated as an association that is taxable as a corporation.

### U.S. Federal Income Taxation of the Fund and Partners Generally

As a partnership, the Fund will not be subject to U.S. federal income tax. Each Limited Partner will be required to report separately on its income tax return its distributive share of the Fund’s net long-term capital gain or loss, net short-term capital gain or loss, and net ordinary income and deductions and credits in accordance with the allocations set forth in the Partnership Agreement. Each Limited Partner will be liable for any taxes owed upon its distributive share of the income or gains realized by the Fund, and may claim deductions for its distributive share of the Fund’s losses and deductions and credits for its distributive share of the Fund’s credits, to the extent allowed under the Code. Each Limited Partner will be taxed on its distributive share of the Fund’s taxable income and gain regardless of whether it has received or will receive a distribution from the Fund. Consequently, a Limited Partner may be subject to tax with respect to its share of the taxable income of the Fund for a taxable year and may not receive a corresponding distribution of cash from the Fund in such year with which to satisfy its tax liability in respect of such taxable income.

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund’s items of income, gain, loss, deduction or credit. The General Partner will have the authority to decide how to report these items on the Fund’s tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. An audit by the Service of the tax treatment of the Fund’s income and deductions generally will be determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. In this regard, the General Partner, as the “***Tax Matters Partner***,” will have the authority to bind certain Limited Partners to settlement agreements and the right on behalf of all Limited Partners to extend the statute of limitations relating to the Limited Partners’ tax liabilities with respect to Fund items.

Under the Partnership Agreement, for U.S. federal income tax purposes, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deduction) to a withdrawing Partner to the extent that the Partner's Capital Account differs either positively or negatively from its U.S. federal income tax basis in its Interest. There can be no assurance that, if the General Partner makes such a special allocation, the Service will accept such allocation. If such allocation is successfully challenged by the Service, the Fund's allocations to the remaining Partners would be affected as well.

The Fund expects to act as a trader or investor, and not as a dealer, with respect to its securities transactions. Generally, the gains and losses realized by a trader or investor on the sale of securities are capital gains and losses. Thus, in general, the Fund expects that its gains and losses from its securities transactions typically will be capital gains and capital losses. These capital gains and losses may be long-term or short-term depending, in general, upon the length of time the Fund maintains a particular investment position and, in some cases, upon the nature of the transaction. Property held for more than 12 months generally will be eligible for long-term capital gain or loss treatment. Long term capital gains may be eligible for favorable tax rates in the hands of non-corporate U.S. Limited Partners. Limited Partners should consult with their own tax advisors to determine the tax rates applicable to them in their particular tax situations.

In addition, individuals who are U.S. persons with "modified adjusted gross income" that exceeds certain thresholds (for example, \$250,000 for married individuals filing jointly, \$200,000 for single individuals) are subject to a Medicare tax of 3.8% on the lesser of (i) their investment income, net of deductions properly allocable to such income, and (ii) the excess of their "modified adjusted gross income" above the applicable threshold. The General Partner expects that most or all of the Fund's income will be treated as investment income for this purpose, and as a result Limited Partners receiving allocations of income from the Fund for these taxable years will be subject to this tax. This tax will be in addition to any U.S. federal income tax imposed on such Limited Partners with respect to their allocable share of income of the Fund. Trusts and estates also may be subject to this additional tax.

The Fund may be involved in a variety of hedging transactions to reduce the risk of changes in value in the Fund's investments. Special rules may apply to determine the tax treatment of such hedging transactions, which may affect the Fund's holding period attributable to such property, the characterization of gain or loss as ordinary or capital and, if capital, as long-term or short-term, and the timing of the realization of gains or losses on the actual or deemed sale of the property, including, in some cases, property owned by a Limited Partner outside of the Fund. For instance, gain or loss from a short sale of property generally will be considered as capital gain or loss to the extent the property used to close the short sale constitutes a capital asset in the Fund's hands. Except with respect to certain situations where the property used by the Fund to close a short sale has a long-term holding period on the date of the short sale, gains on short sales will be treated as short-term capital gains. These rules also may terminate the running of the holding period of "substantially identical property" held by the Fund. Moreover, a loss on a short sale will be treated as a long-term capital loss if, on the date of the short sale, "substantially identical property" has been held by the Fund for more than one year. Certain hedging transactions also may cause a constructive sale of the Fund's long position that is the subject of the hedge.

The Fund may derive ordinary interest income and dividends on securities, and may be required to recognize income in respect of certain securities prior to receipt of any payment in respect of such securities. For instance, the Fund may hold debt obligations with "original issue discount." In such case, the Fund will be required to include a portion of such discount in its taxable income on a current

basis, and the Fund must allocate such income to the Limited Partners, even though receipt of such amounts by the Fund may occur in a subsequent tax year. The Fund also may acquire debt obligations with “market discount.” Upon disposition of such an obligation, which might include the receipt of securities of the issuer in a recapitalization exchange, the Fund generally will be required to treat any gain realized (and required to be recognized) as ordinary interest income to the extent of the market discount that accrued during the period the debt obligation was held by the Fund. Recapitalization exchanges involving securities held by the Fund also may result in the recognition of taxable gains prior to the receipt of cash or readily tradable property.

If the Fund is treated as a trader, it may, in its discretion, make an election under Code section 475(f) to apply a mark to market system of recognizing unrealized gains and losses on securities as if the securities were sold for fair market value at the close of any taxable year of the Fund. The amount recognized when gain or loss is subsequently realized would be adjusted for amounts recognized in marking to market. The election would apply with respect to securities held in connection with the Fund’s trade or business as a trader in securities. The election would not apply to any securities with respect to which the Fund could demonstrate, to the satisfaction of the Service, that they are held for investment. Once a Code section 475(f) election is made, it can be revoked only with the consent of the Service. In the event that the Fund makes such an election, the Fund’s gains and losses from marking securities to market (and gain or loss recognized before the end of the taxable year with respect to any security that would have been marked to market) would be treated as ordinary income and losses. The rules relating to appreciated financial positions under Code section 1259 and wash sales under Code section 1091 would not apply to the securities to which the election applies and the Code section 1092 straddle rules would not have any effect where all the offsetting positions of a straddle are marked to market.

The Fund may be required to purchase foreign currency with which to make its investments and may receive foreign currency when a security is sold or when an interest payment is made on a security. These transactions may give rise to gains and losses because of fluctuations in the value of the foreign currency relative to the U.S. dollar during the Fund’s holding period of an investment. Foreign currency gain or loss in respect of certain types of transactions must be accounted for separately, apart from any gain or loss on the underlying transaction, and the Code contains special rules which treat, in most circumstances, such gains and losses as ordinary income or losses rather than capital gains or losses.

The U.S. federal income tax treatment of the Fund’s investment in swaps or other derivatives is subject to significant uncertainty and depends in large part on the terms of the specific swap or other derivative. In particular, it is possible that the Fund may enter into so-called “bullet swaps” or other swaps that provide for non-periodic payments. In certain circumstances, income from a swap can be treated as ordinary income and not capital gain if the swap is treated as a “constructive ownership transaction” under Code section 1260. The Fund intends to take positions that are reasonable under the law that provide for optimal tax treatment of the Limited Partners. However, there can be no assurance that the Service or a court would agree with the Fund’s position. Moreover, the Service might take the contrary position that the Fund is subject to U.S. federal income tax in respect of some or all of the income earned from the swap investments on the theory that the Fund should be treated as the owner for U.S. federal income tax purposes of the property underlying certain swaps, in which case the after-tax return on the swap investments could be significantly reduced.

Pursuant to various “anti-deferral” provisions of the Code (*e.g.*, the “Subpart F” and “passive foreign investment company” provisions), any investments by the Fund in certain foreign corporations may cause a Limited Partner to (i) recognize taxable income prior to the Fund’s receipt of distributable

proceeds, (ii) pay an interest charge on receipts that are deemed as having been deferred or (iii) recognize ordinary income that, but for the “anti-deferral” provisions, would have been treated as long-term or short-term capital gain.

Under the Partnership Agreement, the General Partner has the authority to elect on behalf of the Fund, under Code section 754, to adjust the tax basis of the Fund’s assets in connection with certain distributions to Limited Partners or certain transfers of Interests. Such an election, if made, could affect the amount of a Limited Partner’s distributive share of the gain or loss recognized by the Fund upon the disposition of its assets. Because of the complexity and additional expense involved in making a section 754 election, the General Partner has no present intention to make such election on behalf of the Fund.

Prospective investors that are subject to the AMT should consider the tax consequences of an investment in the Fund in view of their AMT position, taking into account the special rules that apply in computing the AMT.

#### Taxation of Distributions and Withdrawals

Cash non-liquidating distributions and withdrawals, to the extent they do not exceed a Limited Partner’s basis in its Interest, will not result in taxable income to that Limited Partner, but will reduce its tax basis in its Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the basis of its Interest is generally taxable as capital gain.

Prospective Limited Partners should be aware that a Limited Partner’s share of the taxable income of the Fund for any year may exceed the amount of cash distributed to such Limited Partner for that year, which may require that the Limited Partner make an out-of-pocket expenditure to cover its tax liability. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner’s tax basis of its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner’s investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

The Fund’s ability to make cash distributions to a withdrawing Limited Partner or to the Partners, if applicable, may be limited by, among other things, the terms of the investment leverage entered into by the Fund for the purpose of making portfolio investments on a leveraged basis.

Upon the withdrawal of a Limited Partner receiving a cash liquidating distribution from the Fund, such Limited Partner generally will recognize capital gain or loss to the extent of the difference between the proceeds received by the withdrawing Limited Partner and such Partner’s adjusted tax basis in its Interest. Such capital gain or loss will be short-term or long-term depending upon the Partner’s holding period (or holding periods) for its Interest. However, a withdrawing Limited Partner will recognize ordinary income to the extent such Partner’s allocable share of the Fund’s “unrealized receivables” exceeds the Partner’s basis in such unrealized receivables (as determined pursuant to the Treasury Regulations). For these purposes, accrued but untaxed market discount, if any, on securities held by the Fund will be treated as an unrealized receivable, with respect to which a withdrawing Partner would recognize ordinary income.



Distributions of property other than cash, whether in complete or partial liquidation of a Limited Partner's Interest, generally will not result in the recognition of taxable income or loss to the Limited Partner (except to the extent such distribution is treated as made in exchange for such Limited Partner's share of the Fund's unrealized receivables). However, a distribution of marketable securities will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient Limited Partner), unless the distributing partnership is an "investment partnership" and the recipient is an "eligible partner" as defined in Code section 731(c). Although the General Partner cannot provide any assurances of whether the Fund is an "investment partnership" for these purposes, the General Partner anticipates that the Fund should qualify as an "investment partnership." Thus, if a Limited Partner is an "eligible partner," which term should include a Limited Partner whose sole contributions to the Fund consisted of cash, a distribution of marketable securities to such Limited Partner should not require the recognition of gain by such Limited Partner.

As discussed above, under the Partnership Agreement, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deductions) for U.S. federal income tax purposes to a withdrawing Partner to the extent that the Partner's capital account differs from its U.S. federal income tax basis in its Interest. Such a special allocation may result in the withdrawing Partner recognizing more or less taxable income, which may include short-term gain, in the Partner's last taxable year in the Fund, thereby reducing, or increasing, as applicable, the amount of long-term capital gain recognized during the tax year in which it receives its liquidating distribution upon withdrawal. In certain circumstances, special allocations of net gains (or items of income or gain) to a withdrawing Partner may result in a greater allocation of losses, or a lower allocation of taxable income or gain, to the remaining Partners. Likewise, special allocations of net losses (or items of expense, loss or deduction) to a withdrawing Partner may result in a greater allocation of taxable income or gain, or a lower allocation of losses, to the remaining Partners.

Assuming the Fund has not made an election pursuant to Code section 754 and the General Partner does not exercise its discretion to specially allocate losses to a withdrawing Limited Partner, distributions of property or cash by the Fund to a Limited Partner in redemption of its Interest in certain circumstances where the Fund has a substantial built-in loss may require the Fund to reduce the tax basis of its remaining property.

#### Limitations on Losses and Deductions

Limited Partners that are individuals or certain types of corporations may be limited in their ability to deduct expenses or losses of the Fund. For instance, if or to the extent that the Fund's operations do not constitute a "trade or business" within the meaning of Code section 162 and other provisions of the Code, an individual Limited Partner's distributive share of the Fund's expenses (including any amounts that are treated for tax purposes as expenses of the Fund) would be deductible only as itemized deductions, subject to the limitations of Code sections 67 and 68. In this regard, if all or a portion of the Performance Allocation to the General Partner were re-characterized for tax purposes as an expense of the Fund, each non-corporate Limited Partner's share of such expense could be subject to such limitations. Itemized deductions are non-deductible in computing such Limited Partner's alternative minimum taxable income and alternative minimum tax liability.

Further, income, gains and losses of the Fund generally will not be treated as passive income or losses for purposes of the passive activity loss limitations of Code section 469. Accordingly, individuals, personal service corporations and certain closely-held corporations that have passive activity



losses from other activities are restricted in their ability to use such losses to offset income and gains from the Fund, although losses of the Fund will not be subject to the passive activity loss limitation.

The ability of a non-corporate Limited Partner to deduct its share of the Fund's ordinary losses attributable to interest and certain short sale expenses may be subject to the "investment interest limitation" under Section 163(d) of the Code. In general, a non-corporate taxpayer's investment interest (including interest and certain short sale expenses) in the current year is not deductible to the extent it exceeds its "net investment income," consisting of net gain and ordinary income derived from investments in the current year less certain directly connected expenses (other than interest or short sale expenses). For this purpose, any long-term capital gain and qualified dividend income is excluded from net investment income unless the taxpayer elects to pay tax on such amount at ordinary income tax rates. The Fund's activities are expected to be treated as giving rise to investment income for a Limited Partner, and the investment interest limitation would apply to a non-corporate Limited Partner's share of the interest and short sale expenses attributable to the Fund's operation. Accordingly, a non-corporate Limited Partner would be denied a deduction for all or a part of its distributive share of the Fund's ordinary losses attributable to interest and short sale expenses unless it has sufficient investment income from all sources including the Fund. Any amount not deducted as a result of the application of the investment interest limitation may be carried forward to future years, subject to certain limitations. The Fund may incur certain expenses in connection with its organization and the marketing of its Interests. Amounts paid or incurred to organize a partnership are not deductible, but may, by election of the Fund, be capitalized and amortized over a period of not less than 180 months. Amounts paid or incurred to market interests in the Fund that qualify as "syndication expenses" are not deductible or amortizable.

#### Tax Consequences for Tax-Exempt U.S. Investors

A Limited Partner that is an organization exempt from tax under Code section 501(a) (a "***Tax-Exempt U.S. Investor***") will be subject to tax on its allocable share of the Fund's income that is considered to be "unrelated business taxable income" ("***UBTI***") as defined in Code section 512, and may be subject to the AMT with respect to items of tax preference which enter into the computation of UBTI. Code section 512(b) provides that UBTI generally does not include dividends, interest, and gain or loss from the disposition of property other than stock in trade or property held for sale in the ordinary course of the unrelated trade or business. The Fund may invest in entities that are treated as partnerships or other pass-through entities. UBTI generated by such entities would generally flow up to Tax-Exempt U.S. Investors, causing the realization of UBTI by such investors. Therefore, in light of the Fund's investment program, a Tax-Exempt U.S. Investor should not realize UBTI to the extent that its distributive share of the Fund's income consists of dividends, interest, capital gains and certain other items which are excluded from UBTI under Code section 512(b) (except to the extent any such income constitutes "UDFI," as discussed in the next paragraph).

A Tax-Exempt U.S. Investor is also subject to tax with respect to its, and its allocable share of the Fund's, "unrelated debt-financed income" pursuant to Code section 514 ("***UDFI***"). In general, UDFI consists of (i) income derived by a tax-exempt organization (directly or through a partnership) from income-producing property with respect to which there is "acquisition indebtedness" at any time during the taxable year and (ii) gains derived by a tax-exempt organization (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness." In addition, a tax-exempt organization that borrows money to finance its investment in the Fund would be subject to tax on the portion of its income that is UDFI. Income and gains derived by a tax-exempt organization from the ownership and sale of debt-financed property is taxable in the

proportion to which such property is financed by acquisition indebtedness during the relevant period of time.

The Fund expects to generate income attributable to debt-financed property which will be attributed to the Partners, including any Tax-Exempt U.S. Investors. A Tax-Exempt U.S. Investor's share of the Fund's income that is treated as UBTI will vary depending upon the degree of leverage utilized by the Fund and could be significant. In addition to other relevant considerations, fiduciaries of employee pension trusts and other prospective tax-exempt investors should consider the consequences of realizing UBTI in making a decision whether to invest in the Fund.

***We urge prospective Tax-Exempt U.S. Investors that are sensitive to UBTI or UDFI to consult their tax advisors as to the tax consequences of investing in the Fund and as to the comparative tax treatment of an investment in the Offshore Fund.***

#### Investor Tax Filings and Record Retention.

The U.S. Treasury Department has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, these Treasury Regulations require investors in specified transactions (including partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties (in addition to penalties that generally may be applicable as a result of a failure to comply with the applicable Treasury Regulations) may be imposed for failure to comply with these tax filing and record retention rules.

These Treasury Regulations are broad in scope, and it is conceivable that the Fund may enter into transactions that will subject the Fund and certain investors to the special tax filing and record retention rules. Additionally, under these Treasury Regulations, an investor's recognition of loss upon its disposition of its Interest could cause the investor to become subject to special tax filing and record retention rules. The General Partner intends to use its reasonable efforts to provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Fund.

#### Reporting under FATCA

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("**IGA**") and related statutes, regulations, rules and other guidance thereunder, "**FATCA**") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("**FFI**"), unless such FFI enters into an agreement with the IRS (an "**FFI Agreement**"), and/or complies with an IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources since July 1, 2014, and will apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends after December 31, 2016.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. Additional guidance is forthcoming.

It is possible that a lower-tier non-U.S. entity in which the Fund invests may be considered an FFI. The Fund intends to assist lower-tier non-U.S. entities in complying with FATCA, but can give no assurance that it will be able to provide such assistance or that such an entity will be able to avoid the imposition of this withholding tax on it.

Further, the Fund may be required to act as a withholding agent for the Service under FATCA and therefore be required to withhold on income and proceeds paid or allocated to an investor that fails to comply with FATCA, which could occur if an investor that is an FFI does not enter into an FFI Agreement, is not otherwise exempt from such withholding, and/or does not provide the appropriate information and documentation (including the prescribed forms) to the Fund or its agents showing its exemption from such withholding or compliance with FATCA. The General Partner intends to collect the appropriate documentation from all investors in the Fund in order to determine whether it is required to withhold under FATCA with respect to distributions or allocations of income and gains made to investors.

The General Partner and the Fund reserve the right to take any action and/or pursue all remedies at their disposal to avoid withholding requirements or otherwise to mitigate the consequences of an investor's failure to comply with FATCA, including compulsory redemption or withdrawal of the investor concerned. In this regard, the General Partner and the Fund have certain rights to request, and the investors have certain obligations to provide, information and documentation that may be used by the General Partner and the Fund in complying with their obligations under FATCA. In addition, no investor affected by any action or remedy by the Fund shall have any claim against the Fund, the General Partner, and the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

**Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests of the Fund.**

#### State and Local Taxes

In addition to the U.S. federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Fund. State and local laws often differ from U.S. federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Fund generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which it is a resident.

Limited Partners or the Fund may be subject to state and/or local franchise, withholding, income, capital gain or other tax payment obligations and filing requirements in those jurisdictions where the Fund owns real estate assets or is otherwise regarded as doing business or earning income. Credits for these taxes may not be available (or may be subject to limitations) in the jurisdictions in which Limited Partners, or the Fund, as applicable, are residents. Each potential investor is urged to consult with its own tax advisor in this regard.

**Each prospective Limited Partner should consult its own tax advisor with respect to its state and local tax consequences and filing obligations as a result of an investment in the Fund.**

**Other Taxes**

The Fund and its Limited Partners may be subject to other taxes, such as the AMT, and estate, inheritance or intangible property taxes that may be imposed by various domestic jurisdictions, as well as foreign withholding or gains taxes. Each prospective investor should consider the potential consequences of such taxes on an investment in the Fund. It is the responsibility of each prospective investor to satisfy itself as to, among other things, the legal and tax consequences of an investment in the Fund, under the laws of the various jurisdictions of its domicile and its residence, by obtaining advice from its own tax counsel or other advisor, and to file all appropriate tax returns that may be required.

**Tax Returns; Tax Audits**

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund's items of income, gain, loss, deduction or credit. The General Partner has the authority to decide how to report these items on the Fund's tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. If the income tax returns of the Fund are audited by the Service, the tax treatment of the Fund's income and deductions is generally determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. In this regard, the General Partner, as the "Tax Matters Partner," has considerable authority to make decisions affecting the tax treatment and procedural rights of all Limited Partners. In addition, the Tax Matters Partner has the authority to bind certain Limited Partners to settlement agreements and the right on behalf of all Limited Partners to extend the statute of limitations relating to the Limited Partners' tax liabilities with respect to Fund items.

In certain cases, the Fund may be required to file a statement with the Service, disclosing one or more positions taken on its tax return, generally where the tax law is uncertain or a position lacks clear authority. All Partners are required under the Code to treat the partnership items consistently on their own returns, unless they file a statement with the Service disclosing the inconsistency. Given the uncertainty and complexity of the tax laws, it is possible that the Service may not agree with the manner in which the Fund's items have been reported.

**Other Income Taxation**

Although there can be no assurance, it is intended that the affairs of the Fund will be conducted such that the Fund will not be subject to regular income taxation in any foreign jurisdiction. However, income and gains from investments held by the Fund may be subject to withholding taxes or taxes in jurisdictions other than those described herein, subject to the possibility of reduction under applicable tax treaties. Limited Partners generally may be entitled, subject to applicable limitations, to a credit against U.S. income tax for creditable foreign income taxes paid on the foreign source income and gains of the Fund (which may not include all of the Fund's gains). The foreign tax credit rules are complex, and may, depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. Prospective investors are advised to consult their own tax advisors regarding the application of the foreign tax credit rules.

## **Future Tax Legislation; Necessity of Obtaining Professional Advice**

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Limited Partners will vary with the particular circumstances of each Limited Partner and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

Accordingly, each prospective investor must consult with and rely solely on its professional tax advisors with respect to the tax results of its investment in the Fund. In no event will the Fund, the General Partner, the Investment Manager, or their Affiliates, counsel or other professional advisors be liable to any Limited Partner for any U.S. federal, state, local or foreign tax consequences of an investment in the Fund, whether or not such consequences are as described above.

*The foregoing is a summary of some of the important tax rules and considerations affecting the Limited Partners, the Fund, and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each Limited Partner, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding an Interest. The foregoing does not address tax considerations affecting investors that are not U.S. persons. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any foreign tax consequences of such an investment in its particular situation.*



## ERISA AND OTHER REGULATORY CONSIDERATIONS

### ERISA Considerations

#### General

Fiduciaries and other persons who are proposing to invest in Interests on behalf of retirement plans, IRAs and other employee benefit plans (“**Plans**”) covered by the U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or the Code must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan’s portfolio, taking into consideration whether the investment is designed to reasonably further the Plan’s purposes, the investment’s risk and return factors, the portfolio’s composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan’s objectives, the limited right of Limited Partners to withdraw all or any part of their capital or to transfer their Interests and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

#### Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor (“**DOL**”) has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as “plan assets” for purposes of Title I of ERISA and Section 4975 of the Code (“**Plan Assets**”). Section 3(42) of ERISA defines the term “Plan Assets” to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by “Benefit Plan Investors” (the “**significant participation test**”). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term “**Benefit Plan Investors**” means any employee benefit plan subject to part 4 of Title I of ERISA (*i.e.*, plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (*e.g.*, IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan’s investment in such entity (a “**Plan Asset Entity**”).

In order to prevent the assets of the Fund from being considered Plan Assets under ERISA, it is the intention of the Fund to monitor the investments in the Fund and prohibit the acquisition, withdrawal or transfer of any Interests by any Limited Partner, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of Interests of any class owned by Benefit Plan Investors would be less than 25% of the aggregate value of the class of Interests (determined, as described above, by excluding certain Interests held by the General Partner, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of Interests by Benefit Plan Investors to less than 25%, the Fund may require the compulsory withdrawal of Interests of any class. Each Limited Partner that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires

Interests the maximum percentage of such general account or Plan Asset Entity that will constitute Plan Assets (the “*Maximum Percentage*”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Interests, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the General Partner of that occurrence and shall, if and as directed by the General Partner, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Interests held in its general account or Plan Asset Entity by the end of the next following calendar month (or such earlier period directed by the General Partner).

If the Fund’s assets were considered Plan Assets, then, under ERISA and the Code, the General Partner would be a fiduciary, and certain employees, partners and officers of the General Partner as well as certain affiliates would become “parties in interest” and “disqualified persons,” with respect to the investing Plans, with the result that the rendering of services to certain related parties, the lending of money or other extensions of credit, the sale, exchange or leasing of property by the Fund or certain related parties or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in Interests by persons who are fiduciaries, and/or parties-in-interest and disqualified persons, to a Plan might be deemed to constitute prohibited transactions under such circumstances.

#### Representation by Plans

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund’s investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

#### Ineligible Purchasers

Interests may not be purchased with Plan Assets if the General Partner, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a “prohibited transaction” under ERISA and the Code.

#### Plans’ Reporting Obligations

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting obligation for “eligible indirect compensation” on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

*Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.*

## **Other Regulatory Matters**

### Securities Act of 1933

Interests are not registered under the U.S. Securities Act of 1933, as amended, or any other securities law, including state securities or blue sky laws. Interests are offered without registration in reliance upon the exemption contained in Regulation D of this act and/or rules and regulations of the Securities and Exchange Commission applicable to transactions not involving a public offering. Each investor is required, in the Fund's Subscription Documents pursuant to which such investor subscribes for an Interest, to make customary Regulation D representations.

### Investment Company Act of 1940

The Fund is not registered under the U.S. Investment Company Act of 1940, as amended, in reliance upon relief from registration afforded to collective investment vehicles whose outstanding securities are not publicly offered and are beneficially owned exclusively by investors that are considered "qualified purchasers" within the meaning of the Investment Company Act. "Qualified purchasers" generally include individuals and certain family-owned companies owning total investments in excess of \$5 million and entities owning total investments in excess of \$25 million. Each investor will be required to complete the Fund's Subscription Documents to enable the Fund to determine its eligibility.

### Investment Adviser Registration

The Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the "**Advisers Act**"). Each prospective investor will be required to make a representation to indicate that it is a "qualified client" as defined in the Advisers Act.

### Commodity Exchange Act

Neither the General Partner nor the Investment Manager is required to register as a commodity pool operator or commodity trading adviser under the U.S. Commodity Exchange Act because the Fund is limiting participation to certain qualified investors, is restricting the Fund's commodity interest trading, and the Investment Manager only provides commodity trading advice to the Fund (or other pools for which it is an exempt commodity pool operator). Therefore, unlike a registered commodity pool operator, there is no requirement to deliver this Memorandum or other disclosure document or any certified annual report to the Fund's investors.

### Anti-Money Laundering Regulations

All subscriptions for Interests will be subject to applicable anti-money laundering regulations. Investors will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56).

As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the General Partner or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

The General Partner reserves the right to request such information as is necessary to verify the identity of a prospective investor. The General Partner also reserves the right to request such identification evidence in respect of a transferee of Interests. In the event of delay or failure by the prospective investor or transferee to produce any information required for verification purposes, the General Partner may refuse to accept the application or (as the case may be) to register the relevant transfer and (in the case of a subscription of Interests) any funds received will be returned without interest to the account from which the monies were originally debited.

The General Partner also reserves the right to refuse to make any withdrawal payment or distribution to a Limited Partner, if the General Partner suspects or is advised that the payment of any withdrawal or distribution moneys to such Limited Partner might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund, the General Partner and the Investment Manager with any such laws or regulations in any relevant jurisdiction.

## **EXHIBIT 2**



Memorandum Number \_\_\_\_\_

## **Confidential Private Offering Memorandum**

*Series B, Series C and Series D Shares of*

### **Highland Multi Strategy Credit Fund, Ltd.**

*A Cayman Islands Exempted Company*

*Investment Manager*

Highland Capital Management, L.P.

**November 2014**

*This Confidential Private Offering Memorandum must be read in conjunction with the Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P.*

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Attachment: Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P.

## NOTICE

This Private Offering Memorandum (this “**Memorandum**”) is confidential and intended solely for the use of the person to whom it has been delivered by Highland Multi Strategy Credit Fund, Ltd. (the “**Fund**”) for the purpose of enabling the recipient to evaluate an investment in the Fund. The purpose of the Fund is to invest all of its assets in, and carry out its investment program through, Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “**Partnership**”). Accordingly, this Memorandum must be read in conjunction with the Partnership’s Confidential Private Placement Memorandum, as amended and supplemented from time to time (the “**Partnership Memorandum**”).

This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of the Fund (other than to professional advisors and employees of the investor receiving this Memorandum from the Fund or its authorized representative or such investor) and all recipients agree they will keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment and monitoring a subsequent investment in the Fund. Notwithstanding the foregoing, each investor (and each employee, representative or other agent of each investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment or tax structure. Acceptance of this Memorandum and the Partnership Memorandum by a recipient constitutes an agreement to be bound by the foregoing terms. No person is authorized to make any representations concerning the Fund which are inconsistent with those contained in this Memorandum.

Prospective investors are not to construe the contents of this Memorandum or the Partnership Memorandum as legal, tax, investment or other advice. Each prospective investor should consult its own advisors as to legal, financial, tax, ERISA and other related matters concerning an investment in the Fund.

In making an investment decision, investors must review both this Memorandum and the Partnership Memorandum and must rely on their own examination of the Fund and the Partnership and the terms of the offering, including the merits and risks involved. The shares in the Fund (the “**Shares**”) have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

Neither this Memorandum nor the Shares described herein have been qualified for offer, sale or distribution under the laws of any jurisdiction governing the offer or sale of mutual fund shares or other securities, and this Memorandum shall not constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of Shares in any jurisdiction in which such offer, solicitation or sale is not authorized or to any person to whom it is unlawful to make such offer, solicitation or sale.

In each member state of the European Economic Area (each a “**Relevant Member State**”) that has implemented EU Directive 2011/61/EU on Alternative Investment Fund Managers (the “**AIFM Directive**”), the Fund may only be offered to investors in accordance with local measures implementing

the AIFM Directive. Investors in a Relevant Member State where the Fund is not being offered pursuant to private placement rules implementing the AIFM Directive may invest in the Fund, but only in circumstances where they do so at their own initiative.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Shares other than the information contained in the Memorandum and the Partnership Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund.

The Shares have not been, and will not, be registered under the United States Securities Act of 1933, as amended, or the securities laws of any of the states of the United States, and the Fund has not been and will not be registered under the United States Investment Company Act of 1940, as amended. Direct or indirect acquisition or ownership of Shares by “*U.S. Persons*” (as defined herein) without compliance with applicable U.S. securities laws or in contravention of the relevant provisions of the constituent documents of the Fund is prohibited.

The Fund is not a recognized collective investment scheme for the purposes of Section 264 of the Financial Services and Markets Act 2000 of the United Kingdom (the “*Act*”). The promotion of the Fund and the distribution of this Memorandum in the United Kingdom are accordingly restricted by law. This Memorandum is directed at persons to whom it may lawfully be issued or directed at under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, including persons who are authorized under the Act, certain persons having professional experience in matters relating to investments, high net worth companies, high net worth unincorporated associations or partnerships, trustees of high value trusts and persons who qualify as certified sophisticated investors. The Shares are only available to such persons in the United Kingdom and this Memorandum must not be relied or acted upon by any other persons in the United Kingdom. In order to qualify as a certified sophisticated investor a person must (i) have a certificate in writing or other legible form signed by an authorized person to the effect that he or she is sufficiently knowledgeable to understand the risks associated with participating in unrecognized collective investment schemes and (ii) have signed, within the last 12 months, a statement in a prescribed form declaring, amongst other things, that he or she qualifies as a sophisticated investor in relation to such investments. This Memorandum is exempt from the general restriction in Section 21 of the Act on the communication of invitations or inducements to engage in investment activity on the grounds that it is being issued to and/or directed at only the types of persons referred to above. The content of this Memorandum has not been approved by an authorized person and such approval is, save where this Memorandum is directed at or issued to the types of persons referred to above, required by Section 21 of the Act.

The Shares described in this Memorandum are not the subject of a public offering in the Cayman Islands. No offer or invitation to subscribe for Shares may be made to the public in the Cayman Islands.

Any information forwarded to the Fund by any potential shareholder will be treated on a confidential basis except that such information may be passed on to a relevant third party by the Fund where so required by law or regulation and each shareholder upon subscribing for Shares shall be deemed to have consented to such release of such confidential information pursuant to the terms of the Confidential Relationships (Preservation) Law (as amended) of the Cayman Islands (or any amendment thereto).

An investment in the Shares involves significant risks. Prospective investors should pay particular attention to the risk factors disclosed in this Memorandum and the Partnership Memorandum. Investment in the Fund is suitable only for sophisticated investors and requires the financial ability and willingness to accept the high risks inherent in an investment in the Fund. No assurance can be given that the Fund's investment objective will be achieved.

Each prospective investor is invited to meet with representatives of the Fund and to discuss with, ask questions of and receive answers from such representatives concerning the terms and conditions of this offering and to obtain any additional information, to the extent that such representatives possess such information or can acquire it without unreasonable effort or expense, necessary to verify the information contained herein.

The Fund is a registered mutual fund for the purposes of the Mutual Funds Law (2013 Revision) of the Cayman Islands. The Fund is registered with the Cayman Islands Monetary Authority pursuant to Section 4(3) of that law and the prescribed details in respect of this Memorandum have been filed with the Cayman Islands Monetary Authority. Such registration does not imply that the Cayman Islands Monetary Authority has approved this Memorandum or the offering of Shares hereunder.

This Memorandum does not purport to be, and should not be construed as, a complete description of the memorandum of association and articles of association of the Fund (the "**Articles**") or the Partnership's limited partnership agreement, as amended and supplemented from time to time (the "**Partnership Agreement**"), copies of which will be provided to each prospective investor upon request. Each prospective investor in the Fund is encouraged to review the Articles and the Partnership Agreement carefully, in addition to consulting appropriate legal and tax counselors. To the extent of any inconsistency between this Memorandum, the Articles and the Partnership Agreement, the terms of the Articles and the Partnership Agreement control.

Pursuant to an exemption from the Commodity Futures Trading Commission (the "**CFTC**"), neither the General Partner nor the Investment Manager (each as defined herein) is registered with the CFTC as a commodity pool operator ("**CPO**") or as a commodity trading advisor and therefore, unlike a registered CPO, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund's portfolio; or (b) the aggregate net notional value of the Fund's commodity interest positions does not exceed 100% of the liquidation value of the Fund's portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors.

The delivery of this Memorandum does not, under any circumstances, create any implication that there has been no change in the circumstances affecting the Fund since the date hereof. An amended or updated Memorandum will be provided to reflect any material changes to the information contained herein.

Except as otherwise noted, all monetary amounts set forth herein are expressed in United States ("**U.S.**") dollars.



## **DIRECTORY**

<b>Registered Office</b>	<b>Highland Multi Strategy Credit Fund, Ltd.</b> c/o Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman, KY-1109 Cayman Islands
<b>Investment Manager</b>	<b>Highland Capital Management, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Directors</b>	James D. Dondero Mark K. Okada
<b>Administrator</b>	<b>SEI Global Services, Inc.</b> One Freedom Valley Drive Oaks, Pennsylvania 19456
<b>Auditors</b>	<b>PricewaterhouseCoopers LLP</b> P.O. Box 258 Strathvale House, George Town Grand Cayman KY1-1104 Cayman Islands
<b>Legal Counsel</b>	<i>In the United States</i> <b>Akin Gump Strauss Hauer &amp; Feld LLP</b> 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201  <i>In the Cayman Islands</i> <b>Maples and Calder</b> PO Box 309 Ugland House Grand Cayman, KY-1104 Cayman Islands

## INTRODUCTION

Highland Multi Strategy Credit Fund, Ltd. (the “**Fund**”) is a Cayman Islands exempted company offering participating shares of the Fund (“**Shares**”) for the purpose of enabling qualified non-U.S. investors and U.S. tax-exempt investors to participate in the investment program of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “**Partnership**”), on a more tax efficient basis. The Partnership seeks attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “**General Partner**”), serves as the general partner of the Partnership. Highland Capital Management, L.P., a Delaware partnership (the “**Investment Manager**”), serves as the investment manager of the Partnership and has responsibility for the Partnership’s investment program. James D. Dondero ultimately controls the General Partner and the Investment Manager.

The Fund is a limited partner in the Partnership and invests all of its investible assets in, and conducts all of its operations through, the Partnership. Therefore, to be fully informed about an investment in the Fund, an investor must first understand the terms of an investment in the Partnership. Prospective investors are therefore urged to carefully review the current Confidential Private Placement Memorandum of the Partnership, as amended and supplemented from time to time (the “**Partnership Memorandum**”), the Limited Partnership Agreement of the Partnership, as amended and supplemented from time to time (the “**Partnership Agreement**”) and the Investment Management Agreement by and among the Partnership, the General Partner, the Fund and the Investment Manager, as amended and supplemented from time to time (the “**Investment Management Agreement**”). A copy of the Partnership Memorandum is being provided to investors with this Memorandum. Copies of the Partnership Agreement and the Investment Management Agreement will be provided to investors upon request. The Partnership Memorandum, together with the Partnership Agreement and the Investment Management Agreement, describe the material terms of an investment in the Partnership. Aside from the differences described in this Memorandum, an investment in the Fund will have substantially similar terms and risks to an investment in the Partnership, as described in the Partnership Memorandum.

The Fund is seeking subscriptions from non-U.S. investors and U.S. tax-exempt investors that qualify as “accredited investors” and “qualified purchasers” (as defined in the Fund’s subscription materials), generally in minimum amounts of at least \$1,000,000. The Fund generally accepts subscriptions on the first business day of each calendar month.

Pursuant to recent amendments adopted by the Fund, as further explained in this Memorandum and the Partnership Memorandum, all outstanding Shares held as of the effective date of the amendments were, notwithstanding their designation prior to the amendments, re-designated as “Series A Shares.” Additionally, under these amendments, the Fund created three additional series of Shares – “Series B Shares,” “Series C Shares” and “Series D Shares.” The Fund is offering Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum. The terms applicable to the Series A Shares are set forth in a Supplement to this Memorandum.

This Memorandum describes the principal terms that apply to an investment in the Fund in Series B, Series C and Series D Shares and certain other information that relates specifically to the offering of Shares. **This is not an offering of limited partner interests in the Partnership, although an investor should be fully informed about the Partnership in making an investment decision.**

## MANAGEMENT

### Board of Directors

The Fund's board of directors (the "***Board of Directors***") consists of two (2) directors (collectively, the "***Directors***"). The members of the Board of Directors are James D. Dondero and Mark K. Okada. The biographies of the Directors are set forth in the Partnership Memorandum.

The Fund's Board of Directors does not currently consist of any directors that are not affiliated with the Investment Manager, and thus the Fund's management, as well as investment decisions at the Partnership level, are effectively controlled by the Investment Manager or its affiliates.

The Board of Directors has the full authority of a board under Cayman law. The powers of the Board of Directors described in this Memorandum and the Articles are not exhaustive and are not limited to the specific authorities described therein. Thus, subject to applicable law, the Board of Directors may take certain decisions or actions even where those decisions or actions are not expressly granted in the Articles or described in this Memorandum.

It is anticipated that the Board of Directors will meet, in person or by conference telephone, at least once a year to review the investment and administrative affairs of the Fund. The Directors will delegate investment of the Fund's assets to the Investment Manager, and the Directors are not responsible for the day to day conduct of the Fund's trading program. The Directors will also delegate certain day to day administrative and clerical affairs of the Fund to the Administrator or others.

The Directors each serve in a non-executive capacity. Any Director may hold any other office in connection with the Fund (other than the office of the Fund's independent auditors) in conjunction with his office of Director on such terms as to tenure of office and otherwise as the Directors may determine. Any Director may also act in a professional capacity (other than as the Fund's independent auditors) and he or its firm will be entitled to remuneration for such services as if he were not a Director. A Director may contract with the Fund provided that the Director declares his or its interest or gives notice of his or its interest as soon as practicable after the Director obtains such interest.

Each of the Directors has been duly registered, as applicable, under the Cayman Islands Directors Registration and Licensing Law, 2014.

A Director may vote at, or be counted in the quorum of, any meeting of the Board of Directors to consider any contract in which the Director is interested other than as a shareholder, provided that such Director declares such interest prior to the taking of the vote at such meeting.

Independent, third-party Directors, if any, will be entitled to remuneration for their services at such rate not exceeding the customary rate for the provision of services of a director as may be approved by the Fund. The Directors will be reimbursed for all out of pocket costs and expenses properly incurred by them, including in connection with attending meetings of the Directors or any committee of the Directors or any general meeting or any meeting held in connection with the business of the Fund. The Fund will indemnify the Directors for all liabilities, costs or expenses of

whatsoever kind incurred or suffered by them (other than those arising by reason of fraud, willful neglect or willful default on the part of a Director or servant or agent thereof).

### **Administrator**

SEI Investments is a leading global provider of investment processing, investment management and investment operations solutions for institutional and personal wealth management. For more than 40 years, SEI has helped corporations, financial institutions, financial advisors and ultra-high-net-worth families create and manage wealth by providing comprehensive, innovative, investment and investment-business solutions. SEI manages or administers \$601.9 billion in funds and separately managed assets. SEI is a public company and is listed on the NASDAQ exchange under the symbol SEIC. SEI has been retained to perform certain administrative, accounting and investor services for the Fund and the Partnership (in such capacity, the “**Administrator**”). In its capacity as Administrator, it will receive customary fees that will be paid out of the assets of the Fund. The Administrator will also be reimbursed for all reasonable out-of-pocket expenses.

The Fund will enter into an administration agreement (the “**Administration Agreement**”) with the Administrator. The Administrator will be under no duty to take any action on behalf of the Fund except as specifically set forth in the Administration Agreement or as may be specifically agreed to by the Administrator and the Fund in a written amendment thereto.

The Administrator will act as liaison with the Fund’s accountants and auditors and will provide account analyses, fiscal year summaries, and other audit-related schedules with respect to the Fund. The Administrator will take all reasonable action in the performance of its duties under the Administration Agreement to assure that the necessary information is made available to such accountants and auditors for the expression of their opinion, as required by the Fund.

The Administrator will enter into and will maintain in effect with appropriate parties one or more agreements making reasonable provisions for emergency use of electronic data processing equipment to the extent appropriate equipment is available. In the event of equipment failures, the Administrator will, at no additional expense to the Fund, take reasonable steps to minimize service interruptions. The Administrator will have no liability with respect to the loss of data or service interruptions caused by equipment failure, provided such loss or interruption is not caused by the Administrator’s own willful misfeasance, bad faith, gross negligence or reckless disregard of its duties or obligations under the Administration Agreement.

Subject to the terms of the Administration Agreement, the Administrator will be liable to the Fund (or any person or entity claiming through the Fund) for damages only to the extent caused by the Administrator’s own fraud or willful misconduct under the Administration Agreement (“**Standard of Care**”). The Administrator will not be liable for damages (including, without limitation, damages caused by delays, failure, errors, interruption or loss of data) occurring directly or indirectly by reason of circumstances beyond its reasonable control. The Administrator will not be under any duty or obligation to inquire into and will not be liable for the validity or invalidity, authority or lack thereof, or truthfulness or accuracy or lack thereof, of any instruction, direction, notice, instrument or other information which the Administrator reasonably believes to be genuine. The Administrator will not be liable for any damages that are caused by actions or omissions taken by the Administrator in accordance with written instructions by authorized persons of the Fund or advice of counsel. The Administrator will not be liable for any damages arising out of any action or omission to act by any prior service provider of the Fund or for any failure to discover any such error or omission. Neither the

Administrator nor its affiliates will be liable for any consequential, incidental, exemplary, punitive, special or indirect damages, whether or not the likelihood of such damages was known by the Administrator or its affiliates. Both the Fund and the Administrator will have a duty to mitigate damages for which the other party may become responsible.

Absent the Administrator's failure to meet its Standard of Care, the Fund agrees to indemnify, defend and hold harmless the Administrator and its affiliates and their respective directors, trustees, officers, agents and employees from certain claims, suits, actions, damages, losses, liabilities, obligations, costs and reasonable expenses (including attorneys' fees and court costs, travel costs and other reasonable out-of-pocket costs related to dispute resolution) arising directly or indirectly from any actions taken or omitted to be taken by the Administrator in connection with the provision of services to the Fund.

The Partnership will also enter into an administration agreement with the Administrator, under which the terms will be substantially as above.



## SUMMARY OF TERMS

*To understand this investment opportunity, a prospective investor should read both the Partnership Memorandum and the following summary. The information in the Partnership Memorandum is important to a prospective investor's investment decision because: (i) the purpose of the Fund is to invest in the Partnership and therefore the underlying investment opportunity is in the Partnership; (ii) an investment in the Fund will (aside from the differences described below) have substantially similar terms to those applicable to a direct investment in the Partnership; and (iii) many terms relevant to an investment in the Fund, including the information concerning compensation, expenses, distributions, risk factors and conflicts of interest, are set forth in the Partnership Memorandum and not in this Memorandum.*

*The following summary highlights certain differences from the terms that would apply were the investor to hold a limited partner interest in the Partnership directly, and does not purport to provide a summary of the investment terms or risks of an investment in the Partnership, which is provided in the Partnership Memorandum. The summary of differences does not purport to be, and should not be construed as, a complete description of the Fund's Articles. To the extent of any inconsistency between this Memorandum and the Articles, the terms of the Articles control. Moreover, this summary and the summary set forth in the Partnership Memorandum are subject to the detailed provisions of the Partnership Agreement and are qualified in their entirety by the terms of the Partnership Agreement. Capitalized terms used but not defined herein have the meanings ascribed to them in the Partnership Memorandum.*

<b>The Fund</b>	Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company.
<b>The Partnership</b>	Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership. The Fund is a limited partner in the Partnership and invests all of its investible assets in, and conducts all of its investment activities through, the Partnership. As a limited partner of the Partnership, the Fund is subject to all of the terms and conditions of the Partnership applicable to limited partners of the Partnership. The Partnership will issue to the Fund an Interest in the Partnership and maintain capital sub-accounts that correspond to each Sub-Series of Shares (defined below).
<b>General Partner of the Partnership</b>	Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership. The general partner of the General Partner is Highland Multi Strategy Credit GP, LLC, a Delaware limited liability company of which the Investment Manager is currently the sole member.
<b>Investment Manager</b>	Highland Capital Management, L.P., a Delaware limited partnership.
<b>Recent Amendments; Series of Shares</b>	Effective November 1, 2014, the Board of Directors amended the terms of the Fund, whereby all outstanding Shares in the Fund were re-designated as "Series A Shares" and three new series of Shares were created – "Series B Shares," "Series C Shares" and "Series D Shares" (the " <b>Amendments</b> "). The General Partner and limited partners of the Partnership adopted similar amendments.

As of the effective date of the Amendments (the “**Effective Date**”), all existing shareholders will hold Series A Shares, the terms of which are set forth in a supplement to this Memorandum. The Fund is currently offering for subscription Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum.

The Fund may issue additional series (each, a “**Series**”) of Shares over time. Not all Series of Shares will be available for subscription at the same time and the terms among the Series of Shares will vary. New Series of Shares may be established by the Fund without notice to or approval of the shareholders.

Except with respect to management fees, performance-based profit allocations and redemption rights (each as discussed below), the rights and privileges attributable to Series A Shares, Series B Shares, Series C Shares and Series D Shares are identical.

References herein to “Shares” or “shareholders” shall include all Series of Shares and shareholders unless otherwise specified or context so requires.

#### **Eligible Investors**

Participating, redeemable, non-voting shares of the Fund (the “**Shares**”) are being offered to investors that are not U.S. Persons and to selected U.S. investors that are tax-exempt persons who qualify both as “accredited investors” and as “qualified purchasers,” as defined in the Fund’s subscription application materials. The Fund reserves the right to reject any investor for any reason or for no reason in its discretion.

No Shares may be offered to the public in the Cayman Islands (which shall not include an exempted or ordinary non-resident company incorporated in the Cayman Islands). Shares of the Fund may be purchased only by eligible investors who are sophisticated individual or institutional investors. Each subscriber for Shares of the Fund must certify that the beneficial owner of such Shares will not be a “**U.S. Person**” as defined in Annex A attached to this Memorandum; provided, however, that subscriptions for Shares of the Fund may also be accepted from certain qualified U.S. tax-exempt organizations. The Fund reserves the right to reject subscriptions in its sole discretion.

Shares of the Fund will not be registered under the U.S. Securities Act of 1933, as amended, any state “blue sky” laws, or the securities laws of any other jurisdiction. Shares may be offered privately (i) outside the United States of America, its territories or possessions, or areas subject to its jurisdiction (the “**United States**”), or to or for the benefit of an investor that is not a U.S. Person, only in accordance with relevant laws of the jurisdiction where the offer is made, or (ii) within the United States or to a U.S. Person only in a transaction that does not require the registration of the Shares or the Fund under applicable U.S. federal or state securities laws.

More detailed information concerning the applicable suitability criteria is set forth in the Fund's subscription application materials (the "***Subscription Documents***").

The Fund or the Administrator reserves the right to request such information as is necessary to verify the identity and the source of funds of an applicant. To ensure compliance with statutory and other requirements relating to anti-money laundering, the Fund or the Administrator may require verification of identity and/or source of funds from any person submitting completed Subscription Documents. Pending the provision of evidence satisfactory to the Fund or the Administrator as to identity, the evidence of title in respect of Shares may be retained at the absolute discretion of the Fund or the Administrator. If within a reasonable period of time following a request for verification of identity, the Fund or the Administrator has not received evidence satisfactory to it as aforesaid, it may, in its absolute discretion, refuse to allot the Shares applied for in which event subscription monies will be returned without interest to the account from which such monies were originally debited. Subscription monies may be rejected by the Fund or the Administrator if the remitting bank or financial institution is unknown to the Fund or the Administrator.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum and the Partnership Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

## **Subscriptions**

Subscriptions for Shares are accepted on the first Business Day of each calendar month and/or such other days as the Board of Directors may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. Each investor will be required to invest a minimum of US\$1,000,000 in the Fund, although the Fund may accept investments of a lesser amount in its discretion, subject to compliance with the applicable Cayman Islands Mutual Funds Law (2013 Revision) ("***Mutual Funds Law***"). Subscription payments may be made in cash or, with the consent of the Fund, in securities or partly in cash and partly in securities. The Fund reserves the right to reject subscriptions in its sole discretion.

"***Business Day***" means any day other than Saturdays, Sundays or any other day banks located in in New York, New York are required or authorized to be closed.

A subscriber admitted to the Fund (a "***shareholder***") receives, in exchange for the initial capital contribution and any subsequent capital

contribution, Shares representing a proportionate share of the net assets of the Fund at that time.

Where a subscription for Shares is accepted, the Shares will be treated as having been issued with effect from the relevant subscription date notwithstanding that the subscriber for those Shares may not be entered in the Fund's register of members until after the relevant subscription date. The subscription monies paid by a subscriber for Shares will accordingly be subject to investment risk in the Fund from the relevant subscription date.

There is no minimum aggregate amount of subscriptions that is required for the initial acceptance of subscriptions, nor has the Fund established any maximum aggregate amount of subscriptions that may be accepted.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56) and other applicable anti-money laundering regulations as further described in the Subscription Documents.

#### **Share Sub-Series**

The Fund may issue Shares as a separate sub-series of the relevant Series on each subscription date (each, a "**Sub-Series**") at \$1,000 per Share. The Fund may issue Shares as a separate Sub-Series for purposes of, among others, accounting for any profits and losses attributable to each individual shareholder and for the purpose of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received at different times. Each separate Sub-Series will be identified and referable to each shareholder and by its date of issue. In general, each Sub-Series will participate in the Fund's profits and losses in the same manner as all other Sub-Series of Shares, except that the Performance Allocation to be charged to each Sub-Series of Shares will be calculated separately on the basis of the performance of the Sub-Series.

The Partnership maintains capital sub-accounts that correspond to each Sub-Series of Shares issued to shareholders of the Fund and each such capital sub-account is treated separately for purposes of determining Management Fees, Performance Allocations and redemption rights and restrictions (each as described in the Partnership Memorandum).

#### **Alternative Investment Vehicles**

The Directors will have the right, in connection with any investment, to direct the capital contributions of some or all of the subscribers to be made through one or more alternative investment vehicles (each an "**Alternative Investment Vehicle**"), and, in the case of an existing investment, transfer all or a portion of such investment to an Alternative Investment Vehicle, if, in the judgment of the Directors, the use of such vehicle or vehicles would allow the Fund to overcome legal or regulatory

constraints, invest in a more tax-efficient manner or would facilitate participation in certain types of investments. Any Alternative Investment Vehicle will be subject to terms and conditions substantially similar to those of the Fund and will be managed by the Investment Manager or an affiliate thereof.

**Affiliated Investors**

Shares held by the Investment Manager or its affiliates (collectively, “*Affiliated Investors*”) may not be assessed the Management Fee or the Performance Allocations that are applicable to other investors in the Fund, but share pro rata in other applicable expenses of the Fund (as more fully described in the Partnership Agreement).

**Management Fee**

Although the Fund will not pay an asset-based fee directly to the Investment Manager, it will, as a limited partner in the Partnership, bear its pro rata share of the Management Fee paid by the Partnership to the Investment Manager in its capacity as investment manager of the Partnership. Accordingly, the Management Fee will be paid at the Partnership level by assessing such fee to the appropriate capital sub-account. The Management Fee is calculated and payable quarterly in advance at an annual rate of (i) 1.5% of the net asset value of each Series B Share, (ii) 1.0% of the net asset value of each Series C Share and (iii) 2.0% of the net asset value of each Series D Share. The Management Fee may be waived or reduced by the Investment Manager in its sole discretion.

**Other Fees and Expenses**

The Fund bears the reasonable, out-of-pocket expenses of the offering of the Shares contemplated hereunder and the recent Amendments, described above, including expenses associated with obtaining any requisite investor consent to such Amendments. To the extent the Directors deem appropriate, these expenses may be capitalized and amortized by the Fund over a 36-month period from the Effective Date, even though such capitalization and amortization may be a divergence from U.S. generally accepted accounting principles (“GAAP”). Amortization of such expenses over a 36-month period may, in certain circumstances, result in a qualification of the Fund’s annual audited financial statements. In such instances, the Directors may decide to (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP conforming changes for financial reporting purposes, but amortize expenses for purposes of calculating the Fund’s net asset value. There will be a divergence in the Fund’s fiscal year-end net asset value and in the net asset value reported in the Fund’s financial statements in any year where, pursuant to clause (ii), GAAP conforming changes are made only to the Fund’s financial statements for financial reporting purposes.

If the Fund is terminated within 36 months of the Effective Date, any unamortized expenses will be recognized.



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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 4**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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\*

Debtor

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**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith* [Dkt. # 2389]:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

Investment and Operational Expenses. The Fund bears all reasonable costs and expenses directly related to its operations, including its pro rata share of all Partnership expenses, including the Management Fee paid by the Partnership to the Investment Manager. The Fund also bears all reasonable, out-of-pocket costs of the administration of the Fund, including accounting, audit and legal expenses, costs of any litigation or investigation involving the Fund's activities, and costs associated with reporting and providing information to existing and prospective investors. However, the General Partner or the Investment Manager may, in its sole discretion, choose to absorb any such expenses incurred on behalf of the Fund.

The Fund does not have its own separate employees or office. Except as described above and provided for in the Partnership Agreement, the Fund generally does not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment Manager.

#### **Restricted New Issues**

The Partnership may from time to time purchase securities in public offerings made through member firms of the Financial Industry Regulatory Authority, Inc. ("**FINRA**"). FINRA member firms are not permitted to sell certain new issues ("**Restricted New Issues**") to accounts in which certain persons have a significant beneficial interest that are involved in the securities industry or to executive officers or directors of companies that are current, recent or prospective investment banking client of the relevant underwriters ("**Restricted Persons**"). In order to enable the Partnership to participate in Restricted New Issues, the Fund will require each shareholder to provide information to enable the Fund to determine whether the shareholder is a Restricted Person. When the Partnership invests in a Restricted New Issue, the profits and losses associated with the investment will be specially allocated exclusively to those shareholders who are permitted by the FINRA rules to have a beneficial interest therein.

The FINRA rules permit Restricted Persons that are involved in the securities industry to have in the aggregate up to a 10% participation in Restricted New Issues and Restricted Persons affiliated with a particular investment banking client to have up to 25% participation in Restricted New Issues. If the ownership of the Partnership by Restricted Persons exceeds the maximum percentage, the Investment Manager will allocate such excess amount pro rata among the shareholders and the Partners of the Partnership who are not Restricted Persons or on such other basis that the Investment Manager reasonably determines ensures compliance with the FINRA rules.

If a Restricted New Issue in which participation by Restricted Persons has been capped is not promptly sold, the investment may be reallocated among all shareholders and the Partners of the Partnership on a pro rata

basis (including all Restricted Persons) after a secondary market develops at such secondary market price.

#### **Performance Allocation**

As further described in the Partnership Agreement, the Investment Manager, in its capacity as a special limited partner of the Partnership, is entitled to receive an annual performance-based profit allocation at the end of each year equal to 20% of the Partnership's net profits attributable to the Limited Partners of the Partnership, subject to a "high water mark" limitation.

The Performance Allocation is made at the Partnership level by deducting the Performance Allocation from the capital sub-account relating to each Sub-Series of Shares. The Performance Change (as defined in the Partnership Agreement) of each Sub-Series will not be netted against one another for purposes of determining the applicability of the "high water mark."

#### **Distributions**

Subject to the redemption privilege described below, all earnings of the Fund are ordinarily retained for investment. Other than distributions made pursuant to a redemption described below, shareholders should not expect the Fund to make any distributions.

#### **Redemptions Generally**

Redemptions from the Fund are subject to the withdrawal restrictions contained in the Partnership Agreement, whereby the Series A Interests in the Partnership correspond to the Series A Shares of the Fund, Series B Interests in the Partnership correspond to the Series B Shares of the Fund, the Series C Interests in the Partnership correspond to the Series C Shares of the Fund and the Series D Interests in the Partnership correspond to the Series D Shares of the Fund.

#### **Series Redemption Dates**

Subject to certain redemption restrictions described below, shareholders have the following redemption rights:

Series B Shares: Annual Liquidity. A shareholder is permitted to make complete or partial redemptions of its Series B Shares upon written notice to the Administrator at least 180 days prior to the applicable Series B Redemption Date. The "***Series B Redemption Date***" means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of date of the issuance of the Shares being redeemed; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Redemption Date (i.e., if Shares were issued on November 1, 2014, such Shares would be eligible for redemption on October 31, 2015 and every one year thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series C Shares: Two Year Liquidity. A shareholder is permitted to make complete or partial redemptions of its Series C Shares upon written notice to the Administrator at least 180 days prior to the applicable Series C Redemption Date. The "***Series C Redemption Date***" means: (i) the end

of the day on the last Business Day of the calendar month that immediately precedes the two-year anniversary of the date of issuance of the Shares being redeemed; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Redemption Date (or the last Business Day of that month) (i.e., if Shares were issued on November 1, 2014, such Shares would be eligible for redemption on October 31, 2016 and every two years thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series D Shares: One Year Hard Lock-Up; Quarterly Liquidity. A shareholder is permitted to make complete or partial redemptions of Series D Shares as of the last Business Day of each calendar quarter (each, a “*Series D Redemption Date*”) following the one-year anniversary of the date of issuance of the Shares being redeemed. Notice of any redemption of Series D Shares must be provided in writing to the Administrator at least 90 calendar days prior to the requested Series D Redemption Date.

The Board of Directors may, at any time and in its sole discretion, waive or modify the foregoing redemption and distribution restrictions with respect to any shareholder.

**Settlement of  
Redemption Proceeds**

Redemption proceeds will be paid promptly following receipt by the Fund of the withdrawal proceeds from the Partnership in accordance with the Partnership Agreement.

**Redemption Conditions**

The Fund may refuse to accept a redemption request if it is not accompanied by such additional information as the Fund or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where redemption proceeds are requested to be remitted to an account which is not in the name of the investor, each of the Fund and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the redemption proceeds will be paid. The redemption proceeds will not be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

**Compulsory  
Redemptions**

The Board of Directors reserves the right, in its sole discretion, to compel the redemption of any shareholder’s Shares for any or no reason, in part or in their entirety, on not less than five days’ prior written notice (or immediately if the Board of Directors determines in its sole discretion that such shareholder’s continued participation in the Fund may cause the Fund, the Partnership, the General Partner or the Investment Manager to violate any applicable law). Settlements are made in the same manner as voluntary redemptions.



**Suspension of Valuations,  
Redemption and  
Redemption Payments**

The Board of Directors may suspend the issuance of Shares, the shareholders' redemption privileges, the payment of redemption proceeds and the valuation of the Fund's net assets in the same circumstances as described in the Partnership Memorandum and set forth in the Partnership Agreement with respect to the suspension of valuations or of withdrawal privileges.

Upon the reasonable determination by the Board of Directors that conditions leading to suspension no longer apply, redemption rights for all shareholders shall be promptly reinstated, and any pending redemption requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which redemptions have recommenced, subject to the application of the redemption limitations described herein.

**Soft Wind Down**

It is anticipated that any suspension in the circumstances described above in "Suspension of Valuations, Redemptions and Redemption Payments" (each, a "***Suspension***") would ordinarily be temporary. However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the Board of Directors, in consultation with the Investment Manager, considers it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the Directors may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the Board of Directors that the Fund be managed with the objective of returning the Fund's assets to shareholders in an orderly manner (an "***Orderly Realisation***"). The Board of Directors may, in such circumstances, resolve to effect an Orderly Realisation should they determine that doing so is in the best interests of the shareholders. Such Orderly Realisation shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the shareholders. The Board of Directors shall promptly communicate to shareholders any resolution to proceed with an Orderly Realisation of the Fund. During an Orderly Realisation, the Investment Manager may, in consultation with the Board of Directors, take such steps as are considered appropriate in the best interests of the Fund's shareholders to effect the Orderly Realisation. The Board of Directors, in consultation with the Investment Manager shall establish what they consider to be a reasonable time by which the Orderly Realisation should be effected (the "***Realisation Period***"). Any resolution to undertake an Orderly Realisation and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under the

Companies Law or any other applicable bankruptcy or insolvency regime. The Board of Directors, in consultation with the Investment Manager, may resolve to cease the Orderly Realisation within the Realisation Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. Management Fees shall be payable and Performance Allocations shall be made during an Orderly Realisation on the same basis as described herein.

#### **Transfers**

Shares may not be transferred without the prior written consent of the Board of Directors, which consent may be withheld in the sole discretion of the Board of Directors. Any transferee or assignee of any investor will be required to execute a subscription agreement in the same form as required to be completed and executed by a subscriber for Shares in the Fund.

#### **Duty of Care; Indemnification**

The Partnership Agreement provides that the General Partner, the Investment Manager and each of their affiliates are not liable to the Partnership and the Limited Partners (including the Fund) for any loss or damage arising by reason of being or having been the General Partner or the Investment Manager or from any acts or omissions in the performance of its services as General Partner or Investment Manager, as applicable, in the absence of willful misconduct, fraud or gross negligence (as construed in accordance with the laws of the state of Delaware) or as otherwise required by law, and contains provisions for the indemnification of the General Partner, the Investment Manager and each of their affiliates by the Partnership (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been the General Partner or the Investment Manager or in connection with the Partnership Agreement or the Partnership's business or affairs to the fullest extent permitted by law. The General Partner is not personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the federal or state income tax laws applicable to the Fund or its investors.

Neither the Board of Directors of the Fund nor the Administrator shall be liable to the Fund or its shareholders for any loss or damage occasioned by any acts or omissions in the performance of its services on behalf of the Fund, except under certain limited circumstances. In addition, the Board of Directors and the Administrator and their respective affiliates will be indemnified by the Fund (but not by the shareholders individually) against any liabilities arising in connection with the performance of their activities on behalf of the Fund to the extent permitted by the Articles.

<b>Valuations</b>	The Fund's assets are valued based on the value of the Partnership's assets as set forth in the Partnership Memorandum.
<b>Reserves</b>	<p>Appropriate reserves may be accrued and charged against net assets and proportionately against the Shares of the shareholders for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the Board of Directors in its sole discretion deems necessary or appropriate. At the sole discretion of the Board of Directors, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Shares of those investors who are shareholders at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were shareholders at the time of the act or omission giving rise to the contingent liability for which the reserve was established.</p> <p>If the Board of Directors determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were shareholders during any such prior period.</p>
<b>Fiscal Year</b>	The Fund has a fiscal year ending on December 31 of each calendar year.
<b>Reports to Partners</b>	The Fund furnishes to its shareholders as soon as practicable after the end of each taxable year (or as otherwise required by law) annual reports containing financial statements examined by the Fund's independent auditors as well as such tax information as is necessary for each shareholder to complete federal and state income tax or information returns, along with any other tax information required by law. The Fund also furnishes monthly reports reviewing the Fund's performance for such calendar month. The Board of Directors selects the Fund's independent accountants in its sole discretion.
<b>Dissolution and Liquidation</b>	<p>In the event an Orderly Realization lasts longer than three years, shareholders holding Shares with a combined net asset value equal to at least 75% of the total net asset value of the Fund may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Fund.</p> <p>Wind down and liquidation of the Fund shall occur as set forth in the Articles.</p>
<b>Placement Agents</b>	The Investment Manager may engage third parties to solicit investors and act as placement agents for the Fund. Placement agents may charge a placement fee directly to investors solicited by any such placement agent, but such fees will not affect the subscription amount and will not

be collected by or from the Fund. The placement agent may be reimbursed for its expenses and indemnified by the Fund.

Furthermore, placement agents may be paid a portion of the Management Fee or Performance Allocation attributable to such investors solicited by them, thereby reducing the Management Fee or Performance Allocation received by the Investment Manager. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent must comply with the legal requirements of the jurisdictions within which it offers and sells Shares.

#### **Certain Tax Considerations**

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or the shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund.

The Fund has applied for and received an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from July 10, 2012 (being the date of the undertaking), no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

The Investment Manager believes that the Fund will be treated as a non-U.S. corporation for U.S. federal income tax purposes. The Fund does not intend to be subject to U.S. federal income tax on its capital gains from securities trading. Dividends and certain interest received by the Fund may be subject to withholding at the source. See "*Tax Considerations*."

#### **ERISA**

The Fund intends to limit investment in the Fund by "benefit plan investors" so that the assets of the Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"). See "*ERISA Considerations*."

**Voting**

Shares in the Fund are participating non-voting shares; provided that in the event the Partnership seeks the approval, vote or consent of the Fund with respect to any matter to which it would be entitled to vote as a Limited Partner of the Partnership under the Partnership Agreement, the Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall cause the Fund to vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

**Variation of Terms**

The Board of Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a shareholder to waive or modify the terms applicable to such shareholder's subscription for Shares (including those relating to Management Fees, the Performance Allocation, transparency and redemptions) without obtaining the consent of any other shareholder; provided that such waiver or modification does not amount to a variation of the rights attaching to the Shares of such other shareholders. The Fund generally grants waivers of the Management Fees and Performance Allocation to the Affiliated Investors.



## RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

*Investment in the Fund, and in turn, the Partnership, is speculative and involves certain risks. There can be no assurance that the Partnership's investment objective will be achieved, or that an investor will receive a return of its Capital. Certain of these risks are summarized below. The Fund may not be suitable for all investors, and is intended for sophisticated investors who can accept the risks associated with its investments. Investors will not have recourse except with respect to the assets of the Fund. Prospective investors should consider, among others, the risk factors described in this section.*

***This discussion must be read in conjunction with the risk factors and potential conflicts of interest of the Partnership set forth in the Partnership Memorandum. The following is not meant to be an exhaustive listing of all potential risks associated with investing in the Fund. Investment-specific risks factors associated with the Partnership's investment strategy should be read in their entirety.***

***Illiquidity of Shares.*** Shares are not transferable without the approval of the Board of Directors, and there will be no secondary market for Shares. Consequently, investors may not be able to dispose of their Shares prior to the liquidation of the Fund or as described in this Memorandum and the Partnership Memorandum, and may receive securities rather than cash in exchange for their Shares.

***Side Letters.*** The Board of Directors may from time to time, with the consent of the Partnership, enter into letter agreements or other similar agreements (collectively, "***Side Letters***") with one or more investors which provide such investor(s) with additional and/or different rights than such investor(s) have pursuant to this Memorandum or the Partnership Memorandum. As a result of such Side Letters, certain investors may receive additional benefits (including, but not limited to, reduced fee/allocation obligations and/or expanded informational rights) which other investors will not receive. The Fund is not be required to notify any or all of the other investors of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund be required to offer such additional and/or different rights and/or terms to any or all of the other investors. The Fund may enter into such Side Letters with any party as the Board of Directors may determine in its discretion at any time. The other investors will have no recourse against the Fund, the Board of Directors and/or any of their affiliates in the event that certain investors receive additional and/or different rights and/or terms as a result of such Side Letters.

***Authority.*** Investors in the Fund have no right or power to take part in the management of the Fund. The Board of Directors control the Fund and the General Partner controls the Partnership. The Investment Manager is responsible for all investment decisions of the Partnership.

***Absence of Regulatory Oversight.*** The Fund is not registered under the Cayman Islands Mutual Funds Law (as amended). Neither the Cayman Islands Monetary Authority nor any other governmental authority in the Cayman Islands has commented on or approved the terms or merits of this Memorandum. There is no financial obligation or compensation scheme imposed on or by the government of the Cayman Islands in favor of or available to the investors in the Fund.

***Investment Judgment; Market Risk.*** The profitability of a significant portion of the Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Fund, there is always some, and occasionally a significant, degree of market risk.

*Performance Allocation.* The Performance Allocation made to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

*Redemption Restrictions.* There are severe restrictions on redemptions from the Fund (which may be settled in securities rather than cash) and on transfers of Shares. Because of the restrictions on redemptions, an investment in the Fund is a relatively illiquid investment and involves a high degree of risk. There is no independent market for the purchase or sale of Shares and none is expected to develop. Shareholders must represent that they are purchasing Shares for investment. A subscription for Shares should be considered only by persons financially able to maintain their investment and who can accept a loss of all of their investment.

*No Distributions.* Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current distributions of income. Moreover, an investor is required to report and pay taxes on its allocable share of income from the Fund, even though no cash is distributed by the Fund.

*In-Kind Distributions.* The Partnership Agreement authorizes the General Partner to make distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Diversification.* Since the Partnership's portfolio will not necessarily be widely diversified, the investment portfolio of the Partnership (and thus the Fund) may be subject to more rapid changes in value than would be the case if the Partnership were required to maintain a wide diversification among companies, securities and types of securities.

*Valuations.* From time to time, certain situations affecting the valuation of the Partnership's (and thus the Fund's) investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Partnership) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or redemption transactions or Management Fees or Performance Allocations based on subsequent valuation data.

*Contagion.* The Fund has the power to issue Shares in different series. The Articles provide for the manner in which the liabilities are to be attributed across the various series (liabilities are to be attributed to the specific series in respect of which the liability was incurred). However, the Fund is a single legal entity and there is no limited recourse protection for any series. Accordingly, all of the assets of the Fund will be available to meet all of its liabilities regardless of the series to which such assets or liabilities are attributable. In practice, cross-series liability is only expected to arise where liabilities referable to one series are in excess of the assets referable to such series and it is unable to meet all liabilities attributed to it. In such a case, the assets of the Fund attributable to other series may be applied to cover such liability excess and the value of the contributing classes or series will be reduced as a result.

*Handling of mail.* Mail addressed to the Fund and received at its registered office will be forwarded unopened to the Investment Manager to be dealt with. None of the Fund, its Directors,

officers, advisors or service providers (including the organization which provides registered office services in the Cayman Islands) will bear any responsibility for any delay howsoever caused in mail reaching the Investment Manager. In particular the Directors will only receive, open or deal directly with mail addressed to them personally (as opposed to mail which is addressed to just the Fund).

*Recent Developments in the Financial Services Industry.* Recent developments in the U.S. financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty for the financial services industry. In July of 2010, the Dodd-Frank Financial Reform Act was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. The implications of the passage of the Dodd-Frank Financial Reform Act for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Fund's business, operations and performance.

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

## **Tax Related Risks**

*Uncertainty and Complexity of Tax Treatment.* The tax aspects of an investment in the Fund are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Tax Considerations*" and "*ERISA Considerations*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares and to consult their own independent tax advisors.

*Risk of Adverse Determination.* There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the Internal Revenue Service (the "**Service**") or other applicable taxing authority, or significantly modified by new legislation, changes in a taxing authority's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the U.S. federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the Investment Manager with respect to the U.S. federal income tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund.

*Tax Considerations Taken into Account.* The Fund will attempt to minimize the tax burden of the Fund over the long-term. However, the Investment Manager will not overlook short-term trading opportunities. Therefore, shareholders should not expect that the Fund will make tax-efficiency a

priority. However, the Investment Manager may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

*Tax-Exempt Entities.* Certain prospective investors that are tax-exempt for U.S. income tax purposes may be subject to U.S. federal and state laws, rules and regulations that regulate their participation in the Fund, or their engaging directly or indirectly through an investment in the Fund, in certain investment strategies that the Partnership may utilize from time-to-time (e.g., short-sales of securities and the use of leverage, the purchase and sale of options and limited diversification). While the Fund believes its investment program is generally appropriate for U.S. tax-exempt investors for which an investment in the Fund would otherwise be suitable, each type of tax-exempt organization may be subject to different laws, rules and regulations, and prospective investors should consult with their own advisers as to the advisability and tax consequences of an investment in the Fund. Investments in the Fund by entities subject to ERISA, and other tax-exempt entities, require special consideration. Trustees or administrators of such entities are urged to review carefully the matters discussed in this Memorandum.

*Non-U.S. Taxation.* With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

*Tax Changes.* Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or its shareholders. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

***The foregoing is not intended to be an exhaustive analysis or listing of the tax risks associated with an investment in the Fund. Many of the relevant tax considerations will vary depending on a prospective shareholder's individual circumstances. The tax aspects associated with such an investment are complex and complicated and are subject to a variety of interpretations. Prospective investors are strongly urged to review the discussions below under "Tax Considerations" and "ERISA Considerations" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares, and to seek and rely upon the advice of their own tax advisor who is qualified to discuss the foregoing and other possible tax risks.***

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.



## Potential Conflicts of Interest

*No Independent Directors.* The Fund's Board of Directors does not currently consist of any directors that are not affiliated with the Investment Manager, and thus the Fund's management, as well as the investment decisions at the Partnership level, are effectively controlled by the Investment Manager or its affiliates. However, the Fund may establish an Advisory Committee with respect to matters in which it seeks to resolve certain conflicts of interest that may arise. See "*Management—Advisory Committee*" in the Partnership Memorandum.

*No Separate Counsel.* Akin Gump Strauss Hauer & Feld LLP ("*Akin Gump*") serves as counsel to the Fund, the Partnership, the Investment Manager, the General Partner and certain of their affiliates (the "*Clients*") in connection with the operation of the Fund and certain other Clients, the offering of Shares as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any shareholders nor does it purport to represent their interests. No independent counsel has been retained to represent the shareholders. In assisting in the preparation of the Partnership Memorandum and this Memorandum (as well as any supplements thereto), Akin Gump has relied on information provided by the Fund, the Partnership, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the biographical data of key investment personnel, summaries of market conditions, the planned investment strategy of the Fund and the performance of the Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, acts as Cayman Islands legal counsel to the Fund. In connection with the Fund's offering of Shares and subsequent advice to the Fund, Maples and Calder will not be representing shareholders. No independent legal counsel has been retained to represent the shareholders. Maples and Calder's representation of the Fund is limited to specific matters as to which it has been consulted by the Fund. There may exist other matters that could have a bearing on the Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the Investment Manager and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Fund, there are times when the interests of shareholders may differ from those of the Fund. Maples and Calder does not represent the shareholders' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the Fund and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Fund.

*The Partnership Memorandum contains further disclosures concerning potential conflicts of interests. Such disclosures are incorporated herein by reference and should be read in their entirety prior to making a decision to invest in the Fund.*

*In view of the foregoing considerations, an investment in Shares is only suitable for investors who are capable of bearing the relevant risks and who understand the potential conflicts of interest.*



## SHARES OF THE FUND

### The Fund's Share Capital

The Fund has an authorized share capital of U.S.\$50,000 divided into 100 management shares (“**Management Shares**”) of a par value of U.S.\$1.00 each and 4,990,000 participating non-voting shares (the “**Shares**”) of a par value of U.S.\$0.01. The Directors may by resolution divide the Shares into separate series (each, a “**Series**”) which may be subject to different rights, restrictions, preferences, privileges and payment obligations as between the different Series and further into separate sub-series (each, a “**Sub-Series**”) within such Series (for example, a Sub-Series of Shares which will participate in Restricted New Issues and a Sub-Series of Shares which will not participate in such Restricted New Issues). The different Series and Sub-Series thereof shall be established and designated, and the variations in the relative rights and preferences as between the different Series and Sub-Series thereof shall be fixed and determined by the Board of Directors. Sub-Series of Shares are issued for the purposes, among others, of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately to reflect different returns achieved as a result of subscriptions received at different times.

The Fund previously issued Series A Shares and currently offers Series B Shares, Series C Shares and Series D Shares, all of which generally have identical rights and privileges except for purposes of calculating Management Fees and redemption rights. The Fund is offering Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum. Certain terms that specifically apply to Series A Shares are set forth in a Supplement to this Memorandum.

Each separate Sub-Series of Shares is identified by the investor to whom it was issued and its date of issue. Shares are issued to shareholders in Sub-Series at \$1,000 per Share. Immediately following the close of any fiscal year in which a Performance Allocation is charged at the Partnership level with respect to a Sub-Series of Shares of a Series, each such Sub-Series of Shares may be compulsorily redeemed and the proceeds immediately applied to the subscription for an earlier Sub-Series of Shares of such Series; provided that such earlier Sub-Series of Shares has also been assessed as having a Performance Allocation payable at the Partnership level.

The Management Shares will carry all the voting rights but will have no right to participate in the assets of the Fund (other than to a return of the par value on a winding up). The Management Shares will be held by the Investment Manager or an affiliate, and will be voted in accordance with the instructions of the Investment Manager.

The Articles provide that, subject to the Companies Law (2013 Revision) of the Cayman Islands and the other provisions of the Articles, all or any of the class rights or other terms of offer, whether set out in this Memorandum, the Subscription Documents or otherwise (including any representations, warranties or other disclosure relating to the offer or holding of Shares) (collectively referred to as “**Share Rights**”), for the time being applicable to any class or Series of Shares in issue (unless otherwise provided by the terms of issue of those Shares) may (whether or not the Fund is being wound up) be varied without the consent of the holders of the issued Shares of that class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders’ Share Rights; otherwise, any such variation shall be made only with the prior consent in writing of the holders of not less than two-thirds by net asset value of such Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any

such variation might not have a material adverse effect, to obtain consent from the holders of such Shares. Each subscriber for Shares will be required to agree that the terms of offer set out in the Subscription Documents and the rights attaching to the Shares can be varied in accordance with the provisions of the Articles.

The Articles further provide that, in relation to any class or Series consent required pursuant to the “Variation of Share Rights” Article, the Directors in their discretion may invoke the following procedure (the “**Negative Consent Procedure**”). The Directors shall provide written notice in respect of the proposed variation (the “**Proposal**”) to the shareholders of the affected class or Series and shall specify a deadline (the “**Redemption Request Date**”), which shall be no earlier than 30 days after the date of giving such notice, by which date such shareholders may submit a written request for redemption of some or all of their Shares of the affected class and/or Series on the Redemption Date (the “**Specified Redemption Date**”) specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the “**Effective Date**”) shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the “**Affected Shares**”) shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the “**Negative Consent Shares**”). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under the “Variation of Share Rights” Article with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favor of the Proposal on the Effective Date.

The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares, be deemed to be materially adversely varied or abrogated by, inter alia, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them, the redemption or purchase of any Shares or by the passing of any Directors’ resolution to change or vary any investment objective, investment technique and strategy and/or investment policy in relation to the Shares or any modification of the fees payable to any service provider to the Fund.

In general, each Share will participate in the Fund’s profits and losses attributable to the relevant class in the same manner, except that the Performance Allocation to be charged (at the Partnership level) to Shares of a Sub-Series held by each shareholder will be calculated separately on the basis of the performance of such Shares of a Sub-Series. The Performance Allocation is calculated and charged at the Partnership level through the use of separate capital sub-accounts within the Fund’s capital account in the Partnership that correspond to the Shares of a Sub-Series of each shareholder in the Fund. Subject to the foregoing, each of the Shares will participate ratably with all other outstanding Shares in the Fund’s assets and earnings and will have the redemption rights discussed above.

The Directors may impose such restrictions as they think necessary for the purpose of ensuring that no Shares in the Fund are held by (i) any person in breach of the laws or requirements of any country or governmental authority or (ii) any person or persons in circumstances which, in the opinion of the Directors, might result in the Fund incurring any liability of taxation or suffering any other pecuniary disadvantage which the Fund might not otherwise have incurred or suffered. A person who becomes aware that he or she is holding or owning Shares in breach of any restriction mentioned in the Articles shall promptly either deliver to the Fund a written request for redemption of his or her Shares or deliver to the Fund a written request to transfer the same to a person who would not thereby be a non-qualified person.

## **Management Shares**

General meetings of the holders of Management Shares may be held to vote on various matters including to elect the Directors, to select the Fund's auditors and to attend to such other business as may properly be placed before the meeting. At any such general meeting, the favorable vote of a majority of the Management Shares present generally is sufficient for the approval of any action, unless such action is a matter requiring a special resolution, in which case two-thirds of the Management Shares shall be required, in each case as further detailed in the Articles.

## **Registration of Management Shares and Shares and Share Certificates**

Management Shares and Shares of the Fund are issued only in registered form. A current register of the names and addresses of the Fund's shareholders and their shareholdings is maintained at the office of the Administrator. No share certificates have been or will be issued.

## **Other Rights and Liabilities**

Under the terms of the Articles, the liability of the shareholders of the Fund is limited, and shareholders will not be liable for any debt, obligation or default of the Fund in excess of the amounts unpaid on their Shares.

The Fund and the Investment Manager may agree with certain investors to a fee structure, redemption rights or other terms that differ from the fee structure, redemption rights and other terms that are set forth in this Memorandum. Such different rights may, subject to applicable law, be effected by issuance of a separate Series of Shares or any other permissible means. Such rights may not be offered to all investors.

## **Calculation of Fund Net Asset Value**

The Directors have delegated to the Administrator the calculation of the net asset value of the Fund and the net asset value per Share of each Series and, if applicable, Sub-Series, subject to the overall supervision and direction of the Investment Manager and the Board of Directors. Net asset valuations of the Fund and each Series of Shares will be calculated as of the close of business on the last day of each fiscal period and any other date selected by the Board of Directors, in consultation with the Investment Manager, no less than quarterly, which shall, to avoid doubt, include each Redemption Date (each, a "**Valuation Date**").

The Fund's assets are valued based on the value of the Partnership's assets. The net asset value of the Fund is determined by taking the amount of all cash and credit balances plus the market value of all securities, commodities and other assets comprising the Fund's assets (including any interest and dividends receivable, but excluding any subscription amounts committed to the Fund from time to time to the extent such amounts are not held by or on behalf of the Fund), as calculated by the Administrator, minus all debit balances and other liabilities and obligations of the Fund. Net asset value in respect of any Series or Sub-Series of Shares is calculated by dividing the value of the account relating to that Series or Sub-Series of Shares by the number of Shares of that Series in issue. For the sole purpose of determining the number of Shares of a Series in issue, Shares of that Series which are to be redeemed on the relevant Valuation Date shall be deemed to be in issue until and including the close of business on the applicable Valuation Date. The principal amounts of the investments, cash balances and other assets of the Fund, the value of which is expressed in a currency other than that of the United States,

shall be valued after taking into account the market rate or rates of exchange in force on the Valuation Date in question.

## **TAX CONSIDERATIONS**

### **General**

The following is a general discussion of certain of the anticipated U.S. federal and Cayman Islands income tax considerations applicable to the Fund's activities and those relevant to non-U.S. persons (as defined below) and U.S. tax-exempt entities arising from the purchase, ownership and disposition of Shares. Prospective investors should consult their own tax advisors to determine the application and effect of tax laws with respect to their own particular circumstances. This discussion is based on laws and regulations currently in effect, which may change or be subject to differing interpretations (possibly on a retroactive basis). The Fund does not intend to seek a ruling from the Service, or any similar state or local authority, with respect to any of the tax issues affecting the Fund.

In view of the number of different jurisdictions where local laws may apply to shareholders, the discussion below does not address the local tax consequences to prospective investors of the purchase, ownership and disposition of Shares. Prospective investors are urged to consult their own tax advisors in determining the possible tax, exchange control or other consequences to them under the laws of the jurisdictions of which they are citizens, residents or domiciliaries or in which they conduct business.

The summary assumes that no U.S. taxable investors will invest in the Fund and, therefore, does not address the U.S. tax consequences to such investors. Potential U.S. taxable investors should be aware that the Fund does not intend to provide information to any U.S. Person for purposes of such person qualifying to make an election to treat the Fund as a "qualifying electing fund" for U.S. federal income tax purposes. Accordingly, potential U.S. shareholders are urged to consult their tax advisors in this regard.

### **United States Taxation Matters**

The Fund will be treated as a corporation for U.S. federal income tax purposes. For U.S. federal income tax purposes, the Partnership is expected to be treated as a partnership. The Fund and the Partnership will make any necessary entity classification elections for U.S. tax purposes consistent with such respective treatment. Because the Fund is organized under the laws of the Cayman Islands, it will be considered a non-U.S. person for purposes of U.S. tax laws. As such, the U.S. federal income tax treatment of the Fund will vary depending on whether the Fund derives income or gains that are effectively connected with the conduct of a trade or business in the United States. The Fund intends to structure its operations (including those conducted through the Partnership) in order to minimize to the extent consistent with its investment strategy the possibility that the Fund will be treated as being engaged in a U.S. trade or business for U.S. federal income tax purposes, although there can be no certainty that the Fund will be successful minimizing such a possibility. It is also intended that the Fund's affairs will be conducted such that no income realized by the Fund will be effectively connected with the conduct of a U.S. trade or business or otherwise subject to regular U.S. federal income taxation on a net basis.

Pursuant to a safe harbor in the Code, trading in securities or commodities on an organized commodities exchange for the Fund's own account (including through the Partnership) is not considered a U.S. trade or business. It is not certain whether this safe harbor would apply to the trading of physical commodities. Although no assurances can be given that the Service will not successfully assert an



alternative position, the Fund intends to take the position that the Partnership's trading of physical commodities is within the prescribed safe harbor and does not constitute a trade or business and as such the Fund anticipates generally that its income will not be subject to U.S. corporate income tax, except as described below. However, the Fund will be subject to a 30% U.S. withholding tax on its allocable share of certain types of the Partnership's non-effectively connected income. As described below, the types of income (to the extent not constituting effectively connected income) on which a U.S. withholding tax will be imposed generally consist of dividends, interest and certain types of investment income, but not capital gains derived from the sale of stock or other capital assets (unless such capital gains are derived from the sale of stock of a "United States Real Property Holding Company" within the meaning of Section 897 of the Code and certain other interests in real property).

In general, a non-U.S. partner, such as the Fund, that is a partner of a partnership, such as the Partnership, is subject to U.S. federal income taxation on a net basis on its allocable share of the partnership's "effectively connected income." The Fund's allocable share of the Partnership's income will constitute "effectively connected income," and thus will be subject to U.S. federal income taxation, to the extent such income is derived by the Partnership from a trade or business carried on in the United States by the Partnership. Although there can be no assurances, the Partnership does not itself expect to engage directly in activities that would constitute a U.S. trade or business.

If the Fund were treated as being engaged in a U.S. trade or business as a result of activities conducted by the Partnership, then all or a portion of the Fund's allocable share of the Partnership's income would be treated as effectively connected income subject to U.S. federal income tax on a net basis at corporate tax rates. In such a case, the Fund would be required to file a U.S. federal income tax return to report its share of such income and pay U.S. federal income tax at regular U.S. rates on this income. In addition, the Partnership would be required (and would be legally liable) to withhold and pay over to the Service on behalf of the Fund an amount equal to 35% percent of the Fund's share of the Partnership's effectively connected income. Any amount so withheld would be creditable against the Fund's ultimate U.S. federal income tax liability, and the Fund would be entitled to a refund to the extent that the amount withheld exceeded the Fund's U.S. federal income tax liability for the taxable year. Furthermore, in such event, the Fund's allocable share of any effectively connected income of the Partnership would also be subject to a 30% U.S. branch profits tax, and possibly could be subject to state and/or local taxation in the United States. Such taxation of the Fund's activities could have a material adverse effect on the Fund's returns. Prospective investors are advised to consult their tax advisors regarding the risk of the Fund being treated as engaged in a trade or business in the United States.

Because the Fund is organized under the laws of the Cayman Islands, it is considered a non-U.S. person for purposes of the U.S. tax laws. As a result, dividends received by the Fund through the Partnership from U.S. sources will be subjected to U.S. withholding tax at a 30% rate. U.S. source interest income received by the Fund through the Partnership generally will be exempt from U.S. federal income and withholding tax under the exemption for "portfolio interest" or under another statutory exemption. Interest on corporate obligations will not qualify as "portfolio interest" to a non-U.S. person that owns (directly and under certain constructive ownership rules) 10% or more of the total combined voting power of the corporation paying the interest, or, with respect to certain obligations issued after April 7, 1993, if and to the extent the interest is determined by reference to certain economic attributes of the debtor (or a person related thereto) or the underlying obligations are not in "registered form" for U.S. tax purposes. In addition, interest on U.S. bank deposits, certificates of deposit and certain obligations with maturities of 183 days or less (from original issuance) will not be subject to

withholding tax. Interest (including original issue discount) derived by the Fund or the Partnership from U.S. sources not qualifying as “portfolio interest” or not otherwise exempt under U.S. law will be subject to U.S. withholding tax at a rate of 30%. In addition, based on recent legislation, income from certain swaps directly or indirectly over certain stocks (e.g., U.S. stocks) are subject to U.S. withholding tax.

### **Taxation of Non-U.S. shareholders**

For U.S. federal income tax purposes, a shareholder of the Fund who is a non-U.S. person will not be subject to U.S. federal income taxation on amounts paid by the Fund in respect of the Shares or gains recognized on the sale, exchange or redemption of Shares, provided that such income and gains are not considered to be effectively connected with the conduct of a trade or business by the shareholder in the United States. In limited circumstances, an individual shareholder who is present in the United States for 183 days or more during a taxable year may be subject to U.S. income tax at a flat rate of 30% on gains realized on a disposition of Shares in such year. Individual shareholders who at the time of their death are not citizens, former citizens or residents of the United States should not be subject, by reason of the ownership of Shares, to any U.S. federal gift or estate taxes.

For these purposes the term “*non-U.S. person*” means any person that is not a U.S. Person for U.S. federal income tax purposes. A “*U.S. Person*” means a citizen or resident of the United States, a partnership or corporation created or organized in the United States or under the laws of the United States or any state (other than a partnership that is not treated as a U.S. Person under any applicable Treasury Regulations), an estate whose income is includable in gross income for federal income tax purposes regardless of its source or a trust if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have the authority to control all substantial decisions of the trust. In addition, to the extent provided in Treasury Regulations, certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, which elect to continue to be treated as U.S. Persons will also be U.S. Persons for these purposes.

Special rules may apply in the case of non-U.S. persons that (i) conduct a trade or business in the United States or that have an office or fixed place of business in the United States, (ii) have a tax home in the United States, (iii) are former citizens or long-term residents of the United States or (iv) are controlled foreign corporations, passive foreign investment companies, foreign insurance companies that hold Shares in connection with their U.S. business or corporations which accumulate earnings to avoid U.S. federal income tax. Such persons are urged to consult their U.S. tax advisors before investing in the Fund.

In the case of Shares held in the United States by a custodian or nominee for a non-U.S. person, U.S. “backup” withholding taxes may apply to distributions in respect of Shares held by such shareholder unless such shareholder properly certifies as to its non-U.S. status or otherwise establishes an exemption from “backup” withholding. Back-up withholding is not an additional tax. Rather, the U.S. federal income tax liability of non-U.S. persons subject to back-up withholding will be reduced by the amount of tax withheld. If back-up withholding results in an overpayment of U.S. federal income taxes, a refund may be obtained, provided the required documents are filed with the Service.

### **Taxation of U.S. Tax-Exempt shareholders**

In general, U.S. tax-exempt shareholders should not be subject to the tax on “unrelated business taxable income” (“*UBTI*”), as defined in Code section 512, in respect of income and gains from the

Shares. In general, UBTI is the excess of gross income from any unrelated trade or business conducted by a U.S. tax-exempt entity over the deductions attributable to such trade or business, with certain modifications. These modifications provide that UBTI generally does not include interest, dividends or gains from the sale of securities not held as either inventory or primarily for sale to customers in the ordinary course of business, except to the extent that any such item of income is deemed to constitute “unrelated debt-financed income” (“*UDFI*”) within the meaning of Code section 514 and the Treasury Regulations. Income that a U.S. tax-exempt shareholder derives from an investment in Shares should not give rise to UBTI under Code section 511, except to the extent that such entity’s acquisition of Shares is financed with acquisition indebtedness within the meaning of Code section 514. In addition to UBTI that may arise when a tax-exempt investor uses leverage to finance the acquisition of Shares, the United States Congress from time to time has considered legislation that could result in a tax-exempt investor realizing UBTI in respect of an investment in a foreign investment company that leverages its investments.

The Fund is expected to constitute a “passive foreign investment company” (a “*PFIC*”) for U.S. federal income tax purposes. Under the Treasury Regulations, a U.S. tax-exempt shareholder is not considered to be a shareholder in a PFIC, and thus will not be subject to the PFIC tax rules, except to the extent that a “dividend” from the PFIC would be taxable under subchapter F of the Code, for example, as UDFI. Hence, under the Treasury Regulations, a U.S. tax-exempt shareholder would be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realized on the sale of the shares of, a PFIC only under limited circumstances. Moreover, different rules may apply to certain types of tax-exempt entities, such as charitable remainder trusts. Accordingly, potential U.S. tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of an investment in the Fund.

**Prospective U.S. tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of the Shares.**

### **Information Reporting Requirements and FATCA**

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement (“*IGA*”) and related statutes, regulations, rules and other guidance thereunder, “*FATCA*”) impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution (“*FFI*”), unless such FFI enters into an agreement with the Service, and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources since July 1, 2014, and will apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends after December 31, 2016.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the “*Cayman IGA*”), which came into force on April 14, 2014, and has issued the Tax Information Authority

(International Tax Compliance) (United States of America) Regulations 2014, as updated from time to time, and draft guidance notes thereunder. Additional guidance is forthcoming. In addition, the Cayman Islands have signed a similar inter-governmental agreement with the United Kingdom (the “**UK IGA**”). The UK IGA imposes similar requirements to the Cayman IGA, so that the Fund will be required to identify accounts held directly or indirectly by “Specified United Kingdom Persons” and report information on such Specified United Kingdom Persons to the Cayman Islands authorities, which will exchange such information annually with HM Revenue & Customs (“**HMRC**”), the United Kingdom tax authority. It is anticipated that further inter-governmental agreements (“**future IGAs**”) similar to the Cayman IGA and the UK IGA may be entered into with other third countries by the Cayman Islands Government to introduce similar regimes for reporting to such third countries fiscal authorities (“**foreign fiscal authorities**”).

The Fund is likely to be considered an FFI for FATCA purposes. In order to avoid U.S. withholding tax under FATCA on amounts paid to the Fund, the Fund is generally required to register with the Service and to comply with the Cayman IGA and any Cayman Islands legislation or guidance implementing the Cayman IGA. The Fund intends to register with the Service and, therefore, generally does not expect to become subject to U.S. withholding under FATCA. The Fund also expects that it will be required to identify and report on certain direct and indirect U.S. owners or investors in order to comply with the Cayman IGA in the future. An investor will be required to provide to the Fund information which identifies its direct and indirect ownership. Any such information provided to the Fund will ultimately be shared with the Cayman Islands government and transmitted to the Service and, potentially, certain other authorities and withholding agents, as applicable.

Further, it is possible that a lower-tier non-U.S. entity in which the Partnership invests also may be considered an FFI. The Fund intends to assist lower-tier non-U.S. entities in which the Partnership invests in complying with FATCA, but the Fund can give no assurance that it will be able to provide such assistance or that such an entity will be able to avoid the imposition of this withholding tax on it.

By investing (or continuing to invest) in the Fund (and indirectly investing in the Partnership), investors will be deemed to have acknowledged, and to have given their consent to, the following:

- (i) the Fund (or its agent) may be required to disclose to the Cayman Islands authorities and withholding agents certain information (which could otherwise be deemed to be confidential) in relation to the investor or its direct or indirect owners, including the investor’s name, address, tax identification number (if any), social security number (if any) and certain additional information or documentation relating to the investor’s investment or identity, and the investor may be required to provide any such information or documentation;
- (ii) the Cayman Islands authorities may be required to automatically exchange information with, among other authorities, the Service, and to provide additional information to such authorities should they have further inquiries, and the Fund (or its agent) may be required to disclose certain information (including information that could otherwise be deemed to be confidential) when registering with such authorities and in response to a request by any such authority for further information;
- (iii) in the event an investor’s failure to comply with any FATCA related reporting requirements gives rise to any withholding tax, the Fund reserves the right to ensure that any such withholding tax and any related cost, interest, penalties and other losses or



liabilities suffered by the Fund, the Partnership, the General Partner, the Investment Manager, the Administrator or any other investor, or any agent, delegate, employee, director, officer or affiliate of any of the foregoing persons, arising from such investor's failure to provide information to the Fund, is economically borne by such investor;

- (iv) in the event an investor does not provide the information and/or documentation necessary for the Fund's (or the Partnership's) satisfaction of its FATCA related reporting requirements, whether or not that actually leads to compliance failures by the Fund, or a risk of the Fund (or the Partnership) or its investors being subject to withholding tax under the relevant FATCA regime, the Fund reserves the right to take any action and/or pursue all remedies at its disposal to mitigate the consequences of the investor's failure to comply with the requirements described above, including compulsory redemption of such investor; and
- (v) no investor affected by any such action or remedy shall have any claim against the Fund, the Partnership, the General Partner, the Investment Manager, the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

***Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests of the Fund.***

#### **Investor Tax Filings and Record Retention**

The United States Treasury Department has adopted regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, the regulations require investors in specified transactions (including certain shareholders in foreign corporations and partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be imposed (in addition to penalties that generally may be applicable as a result of a failure to comply with applicable Treasury regulations) for failure to comply with these tax filing and record retention rules.

The regulations are broad in scope and it is conceivable that the Fund or the Partnership may enter into transactions that will subject the Fund and certain investors in the Fund to the special tax filing and record retention rules. The Fund and the Investment Manager intend to use reasonable efforts to obtain and provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Fund or the Partnership.

#### **Transfer Reporting Requirements**

A U.S. Person (including in certain circumstances a U.S. tax-exempt entity) that transfers property (including cash) to the Fund in exchange for Shares will be required to file a Form 926 or a similar form with the Service. In the event a U.S. shareholder fails to file any required form, such holder could be subject to a penalty of up to 10% of the value of the property transferred, subject to a \$100,000 limit so long as the failure was not due to intentional disregard.



## **Cayman Islands Taxation**

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or its shareholders. The Cayman Islands are not party to any double taxation treaties.

The Fund has applied for and expects to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the Shares, debentures or other obligations of the Fund or (ii) by way of the withholding, in whole or in part, of a payment of dividend or other distribution of income or capital by the Fund to its shareholders or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

## **European Union Savings Directive**

Dividends and other distributions of income made by the Administrator on behalf of the Fund, together with payment of the proceeds of sale and/or redemption of Shares (“**Payments**”) are not subject to any reporting or withholding requirements that may arise as a result of the applicable legislation which implements the EU Council Directive 2003/48/EC of June 3, 2003 on taxation of savings income in the form of interest payments (the “**EUSD**”) as the Administrator is not located in the European Union (or a country that has implemented measures similar or equivalent to the EUSD).

If an investor in the Fund is based in the European Union or certain states which have similar or equivalent measures to the EUSD (including Switzerland, Channel Islands, Monaco and the Cayman Islands) and is making investments on behalf of other underlying investors who are individuals or certain unincorporated entities resident in the European Union or certain of the states which have similar equivalent measures to the EUSD, then the provisions of the EUSD or similar or equivalent measures may apply. In such circumstances such an investor may become a “paying agent” and may be required to obtain all relevant documentation relating to its underlying investors and make returns to the appropriate tax authorities or withhold tax at applicable rates from any redemption proceeds in accordance with the applicable legislation that implements the EUSD or similar or equivalent measures.

Such investors to whom the EUSD may be relevant should also be aware that on 24 March 2014, the Council of the European Union adopted a directive amending the EUSD to extend its scope to cover additional types of savings income and products that generate interest or equivalent income (including certain types of life insurance contracts) as well as a broader range of investment funds. In addition, a “look through” procedure will be established to limit the opportunities for circumventing the application of the EUSD by the use of certain intermediaries. Member States of the European Union have until 1 January 2016 to adopt domestic legislation to give effect to these changes, which must be applied from 1 January 2017. It is not yet clear as to whether those states which have similar or equivalent measures to the EUSD (including Switzerland, Channel Islands, Monaco and the Cayman Islands) will adopt such changes and if so by what date.

## **Future Changes in Applicable Law**

The foregoing description of United States and Cayman Islands income tax consequences of an investment in, and the operations of, the Fund are based on laws and regulations that are subject to change through legislative, judicial or administrative action. Other legislation could be enacted that would subject the Fund to income taxes or subject shareholders to increased income taxes.

## **Other Taxation**

A portion of the Fund's investments may be made in non-U.S. jurisdictions. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

## **Future Tax Legislation, Necessity of Obtaining Professional Advice**

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Internal Revenue Service or judicial decisions may adversely affect the federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Internal Revenue Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on shareholders will vary with the particular circumstances of each shareholder and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

It is the responsibility of all persons interested in purchasing Shares to inform themselves as to any tax consequences from their investing in the Fund and the Fund's operations or management, as well as any foreign exchange or other fiscal or legal restrictions, which are relevant to their particular circumstances in connection with the acquisition, holding or disposition of Shares. Accordingly, each prospective shareholder should therefore seek their own separate tax advice in relation to their holding of Shares. In no event will the Fund, the Partnership, the Principals or the Investment Manager, or their affiliates, counsel or other professional advisers, be liable to any shareholder for any tax consequences of an investment in the Fund, whether or not such consequences are as described above.

*The foregoing is a summary of the important tax rules and considerations affecting the shareholders, the Fund and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each shareholder, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Shares. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.*

## ERISA CONSIDERATIONS

### CIRCULAR 230 NOTICE

**The tax discussion contained in this Memorandum is not in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon the summary contained in this Memorandum for the purpose of avoiding U.S. federal tax penalties. The following summary was written to support the promotion or marketing of the transactions or matters described in this Memorandum. Each prospective investor should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.**

#### General

Fiduciaries and other persons who are proposing to invest in Shares on behalf of retirement plans, IRAs and other employee benefit plans ("**Plans**") covered by ERISA or the Code must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan's objectives, the limited right of shareholders to redeem all or any part of their capital or to transfer their Shares and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

#### Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor ("**DOL**") has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("**Plan Assets**"). Section 3(42) of ERISA defines the term "Plan Assets" to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than twenty-five percent (25%) of the total value of each class of equity interest in the entity is held by "Benefit Plan Investors" (the "**significant participation test**"). For purposes of this determination, the value of any equity interest held by a person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term "**Benefit Plan Investors**" means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (*i.e.*, plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (*e.g.*, IRAs) and any entity whose underlying assets include Plan Assets by reason of a plan's investment in such entity (a "**Plan Asset Entity**").

In order to prevent the assets of the Partnership from being considered Plan Assets under ERISA, it is the intention of the Partnership to monitor the investments in the Fund and prohibit the acquisition, redemption or transfer of any Shares by any investor, including a Benefit Plan Investor, unless, after

giving effect to such an acquisition, redemption or transfer, the total proportion of each class of equity interests of the Partnership owned by Benefit Plan Investors would be less 25% of the aggregate value of such class (determined, as described above, by excluding certain Shares held by the Investment Manager, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in each class of equity interests of the Partnership by Benefit Plan Investors to less than 25%, the Partnership may require the compulsory redemption of Shares of any Series. Each shareholder that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires Shares or equity interests of the Partnership the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the “**Maximum Percentage**”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Partnership. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Shares or equity interests of the Partnership, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Investment Manager of that occurrence and shall, if and as directed by the Investment Manager, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Shares held in its general account or Plan Asset Entity.

If the Partnership’s assets were considered Plan Assets, then, under ERISA and the Code, the Investment Manager would be a fiduciary, and certain employees, partners and officers of the Investment Manager, as well as certain affiliates, would become “parties in interest” and “disqualified persons,” with respect to the investing Plans, with the result that the rendering of services to certain related parties or the lending of money or other extensions of credit, or the sale, exchange or leasing of property by the Partnership or certain related parties, or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in equity interests of the Partnership by persons who are fiduciaries and/or parties-in-interest and disqualified persons to a Plan might be deemed to constitute prohibited transactions under such circumstances.

It is anticipated that investment in the Fund by Benefit Plan Investors may be “significant” for purposes of the DOL regulations. In such event, the underlying assets of the Fund would be deemed to constitute Plan Assets. As a general rule, if the assets of the Fund were regarded as Plan Assets of a Benefit Plan Investor, the Investment Manager would be deemed to be a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and the requirement that the Investment Manager follow the directions of the fiduciaries of each Benefit Plan Investor investing in the Fund, as set forth in each such investor’s Subscription Documents, with respect to the investment by the Fund in the Partnership, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any Benefit Plan Investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and the requirement that the Investment Manager follow the directions of the fiduciary of each Benefit Plan Investor investing in the Fund, as set forth in each such investor’s Subscription Documents, with respect to the investment by the Fund in the Partnership, the fiduciary of each such Benefit Plan Investor has retained the fiduciary authority and responsibility with respect to the Benefit

Plan Investor's initial and continuing investment in the Fund as though the Benefit Plan Investor is investing directly in the Partnership.

### **Representation by Plans**

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies, and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. In particular, exempt organizations should consider the applicability to them of the provisions relating to UBTI. By its purchase, each investor will be deemed to have represented that either (i) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (ii) it is not an entity whose assets include Plan Assets or (iii) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

### **Ineligible Purchasers**

Shares may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (i) has investment discretion with respect to the investment of such Plan Assets; (ii) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (iii) is an employer maintaining or contributing to such Plan. A party that is described in clause (i) or (ii) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

### **Plans' Reporting Obligations**

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

*Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.*



## CAYMAN ISLANDS MUTUAL FUND LAW

The Fund is regulated as a mutual fund under the Mutual Funds Law (2013 Revision) of the Cayman Islands (“**Mutual Funds Law**”). The Cayman Islands Monetary Authority (the “**Authority**”) has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Fund to have its accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the Directors and may result in the Authority applying to the court to have the Fund wound up.

The Fund will not, however, be subject to supervision in respect of its investment activities or the constitution of the Fund’s portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of Directors, to appoint a person to advise the Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Fund. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

The Fund, or any directors or agents domiciled in the Cayman Islands, may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Authority, either for itself or for a recognised overseas regulatory authority, under the Monetary Authority Law (2013 Revision), or by the Tax Information Authority, under the Tax Information Authority Law (2013 Revision) or Reporting of Savings Income information (European Union) Law (2007 Revision) and associated regulations, agreements, arrangements and memoranda of understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Fund, director or agent, may be prohibited from disclosing that the request has been made.

## ANTI-MONEY LAUNDERING COMPLIANCE

### Cayman Islands

In order to comply with legislation or regulations aimed at the prevention of money laundering the Fund is required to adopt and maintain anti-money laundering procedures, and may require subscribers to provide evidence to verify their identity and source of funds. Where permitted, and subject to certain conditions, the Fund may also delegate the maintenance of its anti-money laundering procedures (including the acquisition of due diligence information) to a suitable person.

The Fund, and the Administrator on the Fund's behalf, reserve the right to request such information as is necessary to verify the identity of a shareholder (i.e. a subscriber or a transferee). Where the circumstances permit, the Fund, or the Administrator on the Fund's behalf, may be satisfied that full due diligence may not be required where an exemption applies under the Money Laundering Regulations (2013 Revision) of the Cayman Islands, as amended and revised from time to time or any other applicable law.

In the event of delay or failure on the part of the subscriber in producing any information required for verification purposes, the Fund, or the Administrator on the Fund's behalf, may refuse to accept the application, in which case any funds received will be returned without interest to the account from which they were originally debited.

The Fund, and the Administrator on the Fund's behalf, also reserve the right to refuse to make any redemption or dividend payment to a shareholder if the Board of Directors or the Administrator suspect or are advised that the payment of redemption or dividend proceeds to such shareholder may be non-compliant with applicable laws or regulations, or if such refusal is considered necessary or appropriate to ensure the compliance by the Fund or the Administrator with any applicable laws or regulations.

If any person resident in the Cayman Islands knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct or is involved with terrorism or terrorist property and the information for that knowledge or suspicion came to their attention in the course of business in the regulated sector, or other trade, profession, business or employment, the person will be required to report such knowledge or suspicion to (i) the Financial Reporting Authority of the Cayman Islands, pursuant to the Proceeds of Crime Law, 2008 of the Cayman Islands if the disclosure relates to criminal conduct or money laundering, or (ii) a police officer of the rank of constable or higher, or the Financial Reporting Authority, pursuant to the Terrorism Law (2011 Revision) of the Cayman Islands, if the disclosure relates to involvement with terrorism or terrorist financing and property. Such a report shall not be treated as a breach of confidence or of any restriction upon the disclosure of information imposed by any enactment or otherwise.

### United States

In response to increased regulatory concerns with respect to the identification of sources of funds used to make an investment in the Fund, the Investment Manager and/or its affiliates have implemented policies and procedures ("**AML Program**") designed to guard against and identify money laundering activities. Pursuant to the Fund's AML Program, the Investment Manager and/or its affiliates will request prospective investors and, in some instances, existing shareholders to provide additional documentation verifying, among other things, such person's identity and the source of funds used to

purchase its Shares of the Fund. The Investment Manager may decline to accept a subscription based upon this information, or if this information is not provided.

Pursuant to the Fund's AML Program, the Investment Manager and/or its affiliates will undertake enhanced due diligence procedures prior to accepting investors the Investment Manager believes present high risk factors with respect to money laundering activities. Examples, although not comprehensive, of persons posing high risk factors are persons resident in or organized under the laws of a "non-cooperative jurisdiction" or other jurisdictions designated by the Department of the Treasury as warranting special measures due to money laundering concerns, and any person whose capital contributions originate from or are routed through certain banking entities organized or chartered in a non-cooperative jurisdiction.

In addition, the Fund's AML Program prohibits the acceptance of subscriptions from or on behalf of:

1. persons on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Asset Control;
2. the Annex to Executive Order 13224;
3. such other lists as may be promulgated by law or regulation; and
4. foreign banks unregulated in the jurisdiction they are domiciled in or which have no physical presence.

Governmental regulators are continuing to consider appropriate measures to implement anti-money laundering laws as they apply to private investment funds such as the Fund. The Investment Manager and/or its affiliates will take such steps as it determines are necessary to comply with applicable law, regulations, orders, directives or special measures that may be required by governmental regulators. The specific policies and procedures that the Fund may be required to implement remain unclear, although such steps may include additional measures to confirm the identity of each investor, including the principal beneficial owners of the investor, if applicable, and/or reporting suspicious transactions to governmental regulators.

The requirements for the Investment Manager to guard against and identify money laundering activities in deciding whether to accept subscriptions are in addition to the discretion that the Investment Manager has in deciding whether to accept subscriptions.

## ANNEX A

### Definition of “U.S. Person”

For purposes of the applicable prohibitions against ownership and transfer of Shares of the Fund, the term “U.S. Person” means:

- (1) a resident or citizen of the United States;
- (2) a partnership or corporation organized under the laws of the United States;
- (3) any entity not organized under the laws of the United States:
  - (a) that has its principal office or place of business in the United States; or
  - (b)
    - (i) in which citizens or residents of or entities organized under the laws of or existing in the United States directly or indirectly hold in the aggregate 50% or more of the beneficial interests; and
    - (ii) that will own directly or indirectly, either alone or together with affiliated persons, an aggregate of more than 9.9% of the Fund’s outstanding Shares; or
  - (c)
    - (i) that is organized principally for passive investment (such as an investment company, a commodity pool or other similar vehicle); and
    - (ii)
      - (A) in which the amount of units of participation held by United States Persons (other than “qualified eligible participants” as defined in Rule 4.7(a)(2) under the United States Commodity Exchange Act) represents in the aggregate 10% or more of the beneficial interest in the entity;
      - (B) that was formed for the purpose of facilitating investment by United States Persons in the Fund, or in any other commodity pool with respect to which the operator is exempt from certain requirements of Part 4 of the regulations promulgated by the United States Commodity Futures Trading Commission by virtue of its participants being non-United States Persons; or
      - (C) that was formed by United States Persons principally for the purpose of investing in securities not registered under the United States Securities Act of 1933, as amended, unless it is formed and owned by “accredited investors” (as defined in Rule 501(a) under the Securities Act of 1933, as amended) who are not natural persons, estates or trusts;
- (4) an estate or trust:
  - (a) of which an executor, administrator or trustee is a United States Person, unless:
    - (i) an executor, administrator or trustee who is not a United States Person has sole or shared investment discretion with respect to the assets of the estate or trust; and
    - (ii)
      - (A) in the case of an estate, it is governed by non-U.S. law; or

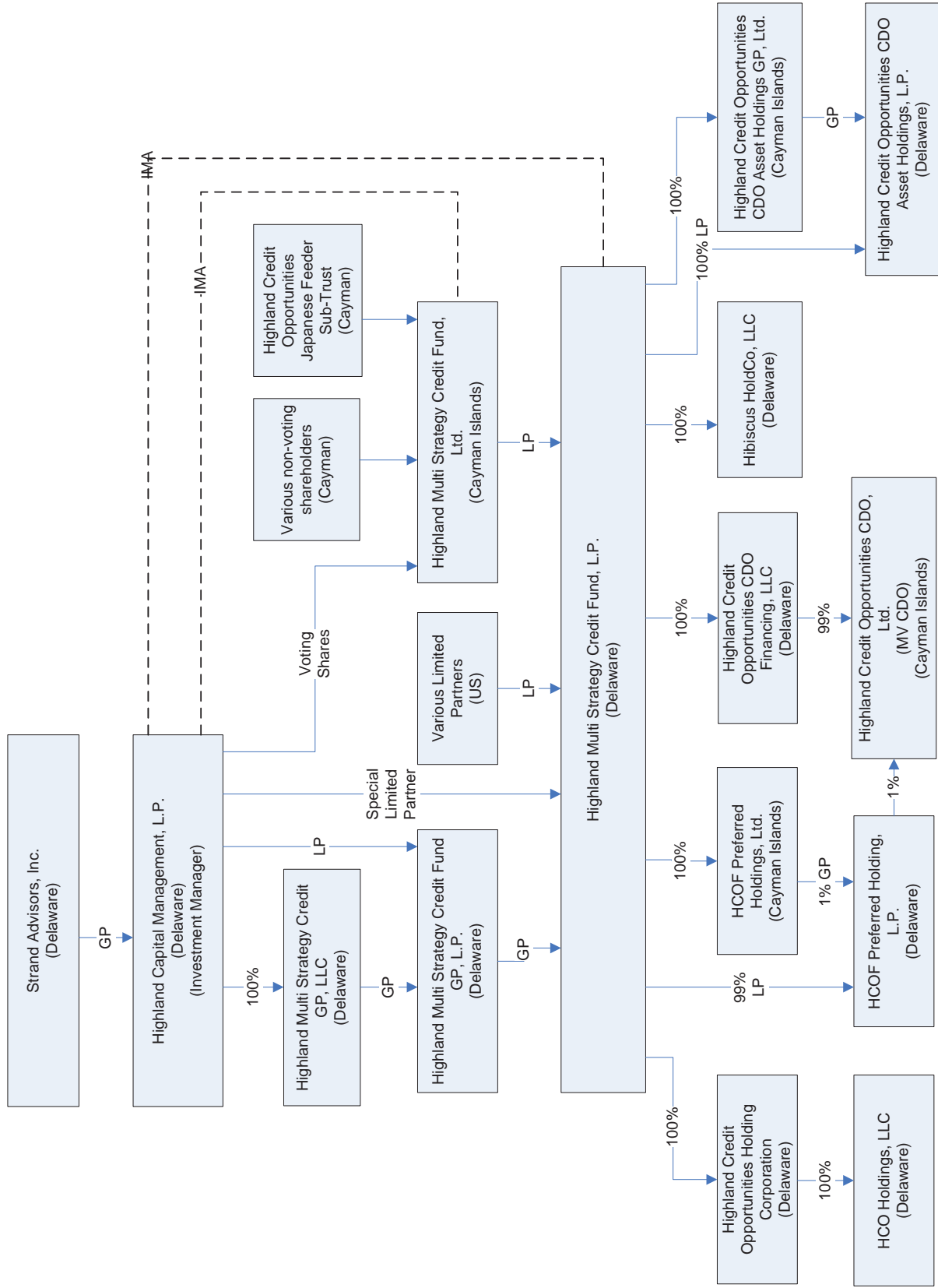
- (B) in the case of a trust, no beneficiary (and no settlor if the trust is revocable) is a United States Person; or
- (b) the income of which is subject to United States income tax regardless of source;
- (5) any agency or branch of a foreign entity located in the United States;
- (6) any non-discretionary account or similar account (other than an estate or trust) held for the benefit or account of one or more United States Persons; and
- (7) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States, unless it is held by a dealer or other professional fiduciary exclusively for the benefit or account of one or more non-United States Persons.

For purposes of the foregoing, the term “*United States*” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia. Persons requiring details regarding other terms used in the foregoing definition (such as “qualified eligible participant” and “accredited investor”) should contact the Administrator.



## **EXHIBIT 3**

# HIGHLAND MULTI STRATEGY CREDIT FUND



000964

## **EXHIBIT 4**

**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

**November 1, 2013**

000966

**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### **PRELIMINARY STATEMENTS**

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### **AGREEMENT**

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### **1. Appointment.**

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,



guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

## **2. Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non- negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “*CPO*”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “*CFTC*”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and

the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### **3. Fees and Expenses.**

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### **4. Other Activities and Investments.**

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the

Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients.

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

## 5. Account and Other Information.

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "**Authorized Representative**")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.



- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

**6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

**7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

**8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnatee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnatee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnatee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnatee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnatee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnatee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to

assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

**9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

**10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

**11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with

affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.

**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By: 

Name: James Dondero

Title: Director

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By: 

Name: James Dondero

Title: President

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: STRAND ADVISORS, INC. 

By: 

Name: James Dondero

Title: President

## **EXHIBIT 5**



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# **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

## **Fourth Amended and Restated Limited Partnership Agreement**

November 1, 2014

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THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

“**Advisers Act**” means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

“**Advisory Committee**” has the meaning set forth in Section 4.6.

“**Affiliate**” means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Affiliated Investor**” means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

“**Agreement**” means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

“**Alternative Investment Vehicle**” has the meaning set forth in Section 4.7.

“**Arbitration Rules**” has the meaning set forth in Section 8.7(b)(i).

“**Authorized Representative**” has the meaning set forth in Section 7.5(a).

“**Bad Actor Limited Partner**” means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

“**BHCA**” means the U.S. Bank Holding Company Act of 1956, as amended.

“**BHCA Subject Person**” means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

“**Business Day**” means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

“**Calculation Period**” means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation



Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

**"Capital Account"** means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

**"Carryforward Account"** means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

- (a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.
- (b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

**"Certificate"** means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

**"Code"** means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“**Dispute**” has the meaning set forth in Section 8.7.

“**Effective Date**” means the date set forth above as the effective date of this Agreement.

“**Election Notice**” has the meaning set forth in Section 8.11(c).

“**FAA**” has the meaning set forth in Section 8.7(b)(ii)

“**FATCA**” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fiscal Year**” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “**Fiscal Year**” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“**GAAP**” means generally accepted accounting principles in the United States, as amended.

“**General Partner**” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Interest**” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“**Investment Management Agreement**” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“**Investment Manager**” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“**Investments**” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

**“Limited Partners”** means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

**“Majority-in-Interest of Limited Partners”** means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

**“Management Fee”** means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

**“Negative Basis”** means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

**“Negative Basis Partner”** means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Net Assets”** means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

**“Net Loss”** means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

**“Net Profit”** means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

**“New Issue Rules”** has the meaning set forth in Section 3.8(b).

**“Nonrecourse Deductions”** has the meaning set forth in Regulations Section 1.704-2(b)(1) and (c).

**“Non-Voting Interest”** means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

**“Offshore Fund”** means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

**“Orderly Realization”** has the meaning set forth in Section 6.1.

**“Other Account”** means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

**“Partner”** means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and **“Partners”** means the General Partner and all of the Limited Partners.

**“Partnership”** means the limited partnership governed by this Agreement.

**“Partnership Minimum Gain”** has the meaning set forth in Regulations Section 1.704-2(b)(2) and (d).

**“Partnership Percentage”** means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

**“Performance Allocation”** means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

**“Performance Change”** means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a **“Positive Performance Change,”** and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a **“Negative Performance Change.”**

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).



**“Positive Basis”** means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

**“Positive Basis Partner”** means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Prior Agreement”** has the meaning set forth in the Preliminary Statements to this Agreement.

**“Realization Period”** has the meaning set forth in Section 6.1.

**“Recent Amendments”** means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

**“Regulations”** means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

**“Regulatory Allocations”** has the meaning set forth in Section 3.10(d).

**“Restricted Capital Accounts”** has the meaning set forth in Section 3.8(b).

**“Restricted Issues”** has the meaning set forth in Section 3.8(b).

**“Revocation Notice”** has the meaning set forth in Section 8.11(c).

**“RIC Limited Partner”** means a Limited Partner that is registered as an investment company under the Investment Company Act.

**“Schedule of Partners”** means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

**“Series”** means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

**“Series A Capital Account”** means the Capital Account attributable to a Limited Partner’s Series A Interest.

“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(l).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

“**Withdrawal Date**” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## **Article II ORGANIZATION**

### **2.1 Continuation of Limited Partnership**

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided herein.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.

- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other



differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely

conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.

- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("***New Issue Rules***"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("***Restricted Issues***") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("***Restricted Capital Accounts***") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items



of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### **3.9 Allocation to Avoid Capital Account Deficits**

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### **3.10 Regulatory Allocations**

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### **3.11 Allocations for Income Tax Purposes**

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal

income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the

liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### **3.12 Individual Partner's Tax Treatment**

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### **3.13 Distributions**

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the

General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any



action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

## **4.2 Expenses**

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to

trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs

of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.

- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.



- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### **4.6 Advisory Committee**

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “**Advisory Committee**”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“***Alternative Investment Vehicles***”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general

partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is

defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5:
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on of the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of

the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “***Series D Withdrawal Date***”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable



investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets:
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;

- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions; or
  - (vi) automatically upon liquidation of the Partnership.
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "***Suspension***"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "***Orderly Realization***"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "***Realization Period***"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.

## **6.2 Dissolution of Partnership**

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## **6.3 Liquidation of Assets**

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the

Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## **Article VII**

### **ACCOUNTING AND VALUATION; BOOKS AND RECORDS**

#### **7.1 Accounting and Reports**

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.



## **7.2 Valuation of Partnership Assets and Interests**

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## **7.3 Determinations by the General Partner**

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### **7.4 Books and Records**

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### **7.5 Confidentiality**

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.

- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## **Article VIII GENERAL PROVISIONS**

### **8.1 Amendment of Partnership Agreement**

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:

- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.



## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
  - (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
  - (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney,

regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

## **8.6 Not for Benefit of Creditors**

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## **8.7 Dispute Resolution**

The following procedures shall be used to resolve any controversy or claim (“*Dispute*”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### **(a) Mediation**

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### **(b) Arbitration**

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“**Arbitration Rules**”). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act (“**FAA**”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator’s fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes

it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## **8.8 Consents and Voting**

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited



Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.


**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President


**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President

## **EXHIBIT 6**



**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



**001033**

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**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



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**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

- 1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

"Administrator"	means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
"Articles"	means these articles of association of the Company.
"Auditor"	means the person (if any) for the time being performing the duties of auditor of the Company.
"Business Day"	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
"Cayman Islands"	means the British Overseas Territory of the Cayman Islands.
"Class"	means a separate class of Participating Share (and includes any sub-class of any such class).
"Company"	means the above-named Company.
"Directors"	means the directors for the time being of the Company.
"Dollars" or "US\$"	refers to the currency of the United States.
"Electronic Record"	has the same meaning as in the Electronic Transactions Law.



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**"Electronic Transactions Law"** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.

**"Eligible Investor"** means a person eligible to hold Participating Shares, as determined from time to time by the Directors.

**"FATCA"** means:

- (i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;
- (ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and
- (iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.

**"Gross Negligence"** shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.

**"Investment Manager"** means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.

**"Management Share"** means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.

**"Master Fund"** means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.

**"Member"** means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



<b>"Memorandum"</b>	means the memorandum of association of the Company.
<b>"Net Asset Value"</b>	means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.
<b>"Net Asset Value per Participating Share"</b>	means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.
<b>"New Issue"</b>	has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.
<b>"New Issue Investment"</b>	means any New Issue acquired by the Company.
<b>"New Issue Shares"</b>	means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles
<b>"Offering Memorandum"</b>	means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.
<b>"Ordinary Resolution"</b>	means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.
<b>"Participating Share"</b>	means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.
<b>"Prohibited Person"</b>	means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.
<b>"Redemption Date"</b>	means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares.





of that Class and/or Series.

<b>"Redemption Fee"</b>	means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
<b>"Redemption Notice"</b>	means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
<b>"Redemption Price"</b>	means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
<b>"Register of Members"</b>	means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
<b>"Registered Office"</b>	means the registered office for the time being of the Company.
<b>"Sales Charge"</b>	means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
<b>"Seal"</b>	means the common seal of the Company and includes every duplicate seal.
<b>"Separate Account"</b>	means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
<b>"Series"</b>	means a separate series of Participating Share (and includes any sub-series of any such series).
<b>"Share" and "Shares"</b>	means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
<b>"Share Rights"</b>	means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating



to the offer or holding of such Participating Shares).

- "Special Resolution"** has the same meaning as in the Statute and includes a unanimous written resolution.
- "Statute"** means the Companies Law (2013 Revision) of the Cayman Islands.
- "Subscriber"** means the subscriber to the Memorandum.
- "Subscription Date"** means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.
- "Subscription Price"** means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
- "Suspension"** means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a **"Calculation Suspension"**); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an **"Issue Suspension"**); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a **"Redemption Suspension"**); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a **"Payment Suspension"**).
- "Transfer"** means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and **"Transferred"** shall be construed accordingly.
- "Treasury Share"** means a Share held in the name of the Company as a treasury share in accordance with the Statute.
- "Valuation Date"** means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
- "Valuation Point"** means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.



## **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## **3 Service Providers**

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

## **4 Rights attaching to Shares**

- 4.1 The Management Shares shall have the following rights:
- (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:



- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
- (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
- (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.

4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.

## 5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including





management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
- (b) transfer that Share by an instrument of transfer to any person; and
- (c) update the Register of Members in respect of the issue and transfer of that Share.

- 5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.
- 5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.
- 5.4 The Company shall not issue Shares to bearer.
- 5.5 Fractional Shares may be issued.
- 5.6 Shares shall only be issued as fully paid-up.
- 5.7 No right of pre-emption or first refusal shall attach to any Shares.
- 5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

- 6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.
- 6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting



matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.



- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## **9 Suspensions**

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.



- 9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## **10 Transfer of Shares**

- 10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.
- 10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.
- 10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:
- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
  - (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.
- 10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## **11 Transmission of Shares**

- 11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.
- 11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:
- (a) such person's entitlement to such Shares; and/or
  - (b) such person's status as an Eligible Investor,





elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

- 11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.
- 11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## **12 Redemption of Shares**

- 12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.



- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.



- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such



Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### **13 Compulsory Redemption**

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### **14 FATCA**

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.



- 14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:
- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
  - (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
    - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
    - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
    - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
  - (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
    - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
    - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or





- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.



16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, pari passu with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second



Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

- 18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:
- (a) the creation, allotment or issue of further Shares ranking *pari passu* therewith and which may be issued with the benefit of the terms referred to below;
  - (b) the purchase or redemption of any Shares;
  - (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
  - (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
  - (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
  - (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.
- 18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.



## **19 Variation of Terms**

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## **20 Certificates for Shares**

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## **21 Register of Members**

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## **22 Closing Register of Members and Fixing Record Date**

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.



- 22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.
- 22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

## **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

- 23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.
- 23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

## **24 Lien on Shares**

- 24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.





- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;



- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate



representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,



an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.



- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the





Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.



### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.



- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### **39 Presumption of Assent**

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such



Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or



the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

## **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

## **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.





- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



## **47 Dividends, Distributions and Reserves**

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.



47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.

47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.



- 49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

- 50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.
- 50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

- 51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.
- 51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.



- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## **52 Winding Up**

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be





carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### 53 Indemnity and Insurance

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an "**Indemnified Person**") shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.



**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



## **EXHIBIT 7**

## HIGHLAND CREDIT OPPORTUNITIES FUND, LTD.

### SUBSCRIBER INFORMATION FORM

**PART A** OF THIS SUBSCRIBER INFORMATION FORM IS DIVIDED INTO THREE SECTIONS. ALL SUBSCRIBERS ARE REQUIRED TO COMPLETE SECTION I. SUBSCRIBERS WHO ARE NATURAL PERSONS, INDIVIDUAL RETIREMENT ACCOUNTS (IRAs) OR GRANTOR TRUSTS MUST COMPLETE SECTION II. ALL OTHER SUBSCRIBERS MUST COMPLETE SECTION III.

ALL SUBSCRIBERS MUST COMPLETE THE SUBSCRIBER QUALIFICATION QUESTIONS IN **PART B**.

SUBSCRIBERS SUBSCRIBING AS A CUSTODIAN OR AN AGENT ON BEHALF OF A BENEFICIAL OWNER SHOULD COMPLETE THE QUESTIONS BELOW WITH REFERENCE TO THE BENEFICIAL OWNER OF THE SHARES.

***YOUR SUBSCRIPTION WILL NOT BE DEEMED COMPLETE UNTIL ALL OF THE REQUIRED DOCUMENTATION LISTED HEREIN AND ADDITIONALLY REQUESTED DOCUMENTATION IS RECEIVED BY THE ADMINISTRATOR.***

#### PART A – SUBSCRIBER INFORMATION

#### SECTION I. TO BE COMPLETED BY ALL SUBSCRIBERS

##### 1. Identity of Subscriber

Name(s):

THE DUGARBOY

Country of domicile/  
Citizenship

USA

INVESTMENT TRUST

Please check *all* of the boxes that describe the beneficial owner(s) for whose account the Shares are being acquired.

- |   |  |
|---|--|
| <input type="checkbox"/> Individual                                     | <input type="checkbox"/> Broker-dealer                         |
| <input type="checkbox"/> Joint (spouses)                                | <input type="checkbox"/> Insurance company                     |
| <input type="checkbox"/> Joint (other)                                  | <input type="checkbox"/> Registered investment company         |
| <input checked="" type="checkbox"/> Personal trust (taxable to grantor) | <input type="checkbox"/> Tax-exempt endowment                  |
| <input type="checkbox"/> Personal trust (other)                         | <input type="checkbox"/> Other tax-exempt organization         |
| <input type="checkbox"/> Individual retirement account                  | <input type="checkbox"/> Employee benefit plan (self-directed) |



- |  |  |
|--|--|
| <input type="checkbox"/> Charitable trust              | <input type="checkbox"/> Employee benefit plan (trustee directed)            |
| <input type="checkbox"/> Private tax-exempt foundation | <input type="checkbox"/> Fund of Funds                                       |
| <input type="checkbox"/> Other private fund            | <input type="checkbox"/> Banking or thrift institution                       |
| <input type="checkbox"/> Family partnership or LLC     | <input type="checkbox"/> Sovereign wealth fund or foreign office institution |
| <input type="checkbox"/> Business entity (other)       | <input type="checkbox"/> Other   |

If "Other" or "Business entity (other)" was checked, please describe the entity or beneficial owner: \_\_\_\_\_

2. **Contact Information**

Primary Contact for Notices and Communications

Name: JAMES DONDERO  
Mailing Address: 300 CRESCENT CT STE 700  
DALLAS, TX 75201  
Telephone: 972-628-4100  
Fax: \_\_\_\_\_  
E-mail: JDONDERO@HCMLP.COM

Secondary Contact for Notices and Communications (optional)

Name: MELISSA SCHROTH  
Mailing Address: 300 CRESCENT CT STE 700  
DALLAS, TX 75201  
Telephone: 972-628-4100  
Fax: \_\_\_\_\_  
E-mail: MSCHROTH@HCMLP.COM



Send copy of Financial Statements and Tax Information Returns to (optional)

Name: MELISSA SCHROTH  
Mailing Address: 300 CRESCENT CT STE 700  
DALLAS, TX 75201  
Telephone: 972-628-4100  
Fax: \_\_\_\_\_  
E-mail: MSCHROTH@HCHLP.COM

Please set forth below the names of persons authorized by the Subscriber to give and receive instructions between the Fund (or its Administrator) and the Subscriber together with their respective signatures. Such persons are the only persons so authorized until further written notice to the Administrator signed by one or more of such persons.

Name

Signature

MELISSA SCHROTH

JAMES DONDERO

3. **Remitting Bank or Financial Institution**

Except as otherwise agreed by the Fund, all subscriptions are payable in full by wire transfer of readily available funds to the account of the Fund **at least two business days prior to the proposed date of subscription**. Please identify the bank or other financial institution (the "**Wiring Institution**") from which the Subscriber's funds will be wired. Note that any amounts paid to the Subscriber will be paid to the same account from which its subscription funds were originally remitted, which shall be in the name of the Subscriber, unless the Fund agrees otherwise.

A. Name of Wiring Institution<sup>1</sup>: NEXBANK

Address<sup>2</sup>: DALLAS TEXAS

<sup>1</sup> Important notice: please instruct your bank to ensure that the originating account and bank information is available in the wire. Your transaction may be delayed or rejected if this information is not provided.

<sup>2</sup> If the Wiring Institution is not located in a jurisdiction that is member of the Financial Action Task Force on Money Laundering (the "**FATF**"), the Administrator may require additional information. For a current list of FATF members see: [www.fatf-gafi.org](http://www.fatf-gafi.org).

ABA, Chips or SWIFT Number:

Account Name:

Account Number:

For Benefit of:

Account Representative:

Telephone:

[REDACTED]

THE DUGABOY INVESTMENT TRUST

[REDACTED]

[Subscriber Name] JAMES DONDERO  
(TRUSTEE)

B. Is the Subscriber a customer of the Wiring Institution?



Yes



No

If you responded "No," please contact the Administrator for additional information that may be required.

4. Electronic Delivery of Reports and Other Communications

The Fund may make reports and other communications available in electronic form, such as e-mail or by posting on a web site (with notification of the posting by e-mail). Do you consent to receive deliveries of reports and other communications from the Fund (including annual and other updates of our consumer privacy policies and procedures) exclusively in electronic form without separate mailing of paper copies?



Yes



No

5. Information Regarding Actual Ownership of the Shares

Is the Subscriber subscribing for the Shares with the intent to sell, distribute or transfer the Shares to any other person or persons?



Yes



No

Is the Subscriber subscribing for the Shares as agent, nominee, trustee, partner, or otherwise on behalf of, for the account of, or jointly with any other person or entity?



Yes



No



Will any other person or persons have a beneficial interest in the Shares acquired or a right to receive payments through contract or otherwise relating to the increase or decrease in value of the Shares (other than as a shareholder, partner or other beneficial owner of equity interests in the Subscriber)?

☐ Yes ☒ No

Does the Subscriber control, or is the Subscriber controlled by or under common control with, any other existing or prospective investor in the Fund?

☐ Yes ☒ No

Note: If any of the above questions were answered "Yes," please provide identifying information or contact the Administrator:

## 6. Government Entities

(a) Is the Subscriber a government entity or an officer, agent or employee thereof?

☐ Yes ☒ No

Note: Government entities include all state and local governments, their agencies and instrumentalities, and any investment programs, defined benefit plans as defined in Section 414(j) of the Internal Revenue Code of 1986, as amended (the "**Code**"), state general funds, pools of assets or plans sponsored or established by state and local governments, including all public pension plans and any participant-directed plan or program of a government entity, such as "qualified tuition plans" authorized by section 529 of the Code and retirement plans authorized by section 403(b) or 457 of the Code.

If the answer is "Yes," please answer the following question. If the answer is "No," skip to question 7.

Is the Subscriber aware of any political contributions it or any of its employees has received from Highland Capital Management, L.P. (in its capacity as investment manager of the Fund, the "**Investment Manager**") or any of the Investment Manager's employees?

☐ Yes ☐ No

If the answer is "Yes," please provide the date of the contribution:

If the answer to either or both of the above questions is "Yes," please contact the Administrator.

**7. Private Investment Fund Experience**

Has the Subscriber previously made an investment in a private investment fund such as a hedge fund, private equity or venture capital fund, commodity pool, real estate or energy partnership or fund of funds?

☒ Yes ☐ No

**8. Net Worth**

Is the Subscriber's net worth more than 10 times the amount of the subscription commitment?

☒ Yes ☐ No

**9. Ability to Bear Risk**

Does the Subscriber have the financial ability to bear the economic risk of this investment and have adequate means to provide for its current needs and contingencies?

☒ Yes ☐ No

**SECTION II. ADDITIONAL QUESTIONS FOR NATURAL PERSONS, INDIVIDUAL RETIREMENT ACCOUNTS OR GRANTOR TRUSTS**

**1. Please indicate desired type of ownership interest**

☐ Individual  
☐ Joint

☒ Individual Retirement Account  
☒ Grantor Trust

**2. Place of Residence**

(a) Indicate the state where Subscriber has his or her principal residence:

TEXAS

Note: If you are married and live in a community property state, both you and your spouse must sign the signature page of the Subscription Agreement. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin. Property held by married persons resident in Alaska may also be subject to community property law if the married persons opted into the community property regime.

(b) Is the Subscriber or trust grantor a United States citizen or permanent resident of the United States?



Yes



No

**3. Social Security Number:**



**4. Joint Subscriptions**

If you are subscribing with another person, please answer the following questions:

(a) Please indicate type of ownership interest:

☐ Joint tenants (rights of survivorship)  
☐ Tenants in common (no rights of survivorship)

(b) If you are purchasing Shares jointly with another person, please answer the following questions:

(i) Is the other person a United States citizen or permanent resident of the United States?



Yes



No

(ii) If the answer to the above question is "Yes," please provide such other person's U.S. Social Security number: \_\_\_\_\_



**5. Individual Retirement Account Investors**

- (a) If the Subscriber is subscribing as a trustee or custodian for an individual retirement account, is the Subscriber a qualified IRA custodian or trustee?

☐ Yes ☐ No

- (b) Name of qualified IRA trustee or custodian:

\_\_\_\_\_

**6. Grantor Trust Investors**

- (a) Please indicate whether the Subscriber, for federal income tax purposes, files now or has ever filed a tax or information return as a partnership, as a "grantor" trust or (if the Subscriber is a U.S. corporation) as an "S corporation" under Sections 1361-1379 of the Code.

☐ Yes ☒ No

- (b) If the answer is "Yes," will the investment in the Fund represent more than 75% of the assets of the Subscriber?

☐ Yes ☒ No

**SECTION III. ADDITIONAL QUESTIONS FOR ENTITIES AND NON-GRANTOR TRUSTS**

**1. Organizational Data**

- (a) Legal form of entity: \_\_\_\_\_
- (b) Jurisdiction of organization: \_\_\_\_\_
- (c) Year of organization: \_\_\_\_\_
- (d) Briefly identify the Subscriber's primary business: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (e) Identify the Subscriber's principal place of business: \_\_\_\_\_  
\_\_\_\_\_
- (f) Total number of shareholders, partners or other holders of equity or beneficial interests or other securities (including any debt securities other than short term paper of the Subscriber) (If the number is more than 100, it is sufficient to respond "more than 100."):  
\_\_\_\_\_
- (g) Is the Subscriber a wholly owned or majority-owned subsidiary of another entity?  
  
☐ Yes ☐ No
- If yes, please provide name and address:  
\_\_\_\_\_
- (h) Is the direct parent of the Subscriber a wholly owned or majority-owned subsidiary of another entity?  
  
☐ Yes ☐ No

If yes, please provide name and address:  
\_\_\_\_\_

- (i) Was the Subscriber organized for the specific purpose of acquiring the Shares?

☐ Yes ☐ No

- (j) Have shareholders, partners or other holders of equity or beneficial interests in the Subscriber been provided the opportunity to decide individually whether or not to participate, or the extent of their participation, in the Subscriber's investment in the Fund (*i.e.*, have investors in the Subscriber been permitted to determine whether their capital will form part of the specific capital invested by the Subscriber in the Fund)?

☐ Yes ☐ No

- (k) Is the Subscriber an entity engaged primarily in investing or trading securities?

☐ Yes ☐ No

If the answer is "Yes," please answer the following question. If the answer is "No," skip to question 2.

Does the current amount of the Subscriber's subscription to the Fund exceed 40% of the value of the Subscriber's total assets?

☐ Yes ☐ No

## 2. Benefit Plan Accounts

- (a) Is the Subscriber (1) an employee benefit plan subject to the fiduciary provisions of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), (2) a "plan" subject to Section 4975 of the Code, (3) an entity that otherwise constitutes a "benefit plan investor" within the meaning of any Department of Labor regulation promulgated under Section 3(42) of ERISA, (a party described in (1), (2), or (3), a "**Plan**"), or (4) an entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the Subscriber (a "**Plan Asset Entity**")?

☐ Yes ☐ No

- (b) Is the Subscriber a Plan that is both voluntary and contributory?

☐ Yes ☐ No



- (c) Have beneficiaries of the Plan been provided the opportunity to decide individually whether or not to participate, or the extent of their participation, in the Plan's investment in the Fund (*i.e.*, have beneficiaries of the Plan been permitted to determine whether their capital will form part of the specific capital invested by the Plan in the Fund)?

☐ Yes ☐ No

- (d) Is the Subscriber either (1) an insurance company general account the underlying assets of which include "plan assets" for purposes of ERISA or (2) a Plan Asset Entity?

☐ Yes ☐ No

If the answer is "Yes", the maximum percentage of the Subscriber constituting "plan assets" will be:

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(Note that the Subscriber has an obligation under the Subscription Agreement to promptly notify the Fund if this percentage is exceeded in any calendar month).

### 3. Regulated Institutions

- (a) Is the Subscriber a regulated institution that is subject to legal or regulatory restrictions or limitations on the nature of its investments (such as a bank or an insurance company)?

☐ Yes ☐ No

- (b) If the answer is "Yes," has the Subscriber verified that the proposed subscription is in compliance with applicable laws and regulations?

☐ Yes ☐ No

### 4. Tax Information

- (a) Employer identification number:
- 

- (b) Indicate the annual date on which the Subscriber's taxable year ends for purposes of reporting federal income tax or filing information returns:
-

- (c) Please indicate whether the Subscriber, for federal income tax purposes, files now or has ever filed a tax or information return, as a partnership, as a "grantor" trust or (if the Subscriber is a U.S. corporation) as an "S corporation" under Sections 1361-1379 of the Code.

☐ Yes ☐ No

If the answer is "Yes," will the investment in the Fund represent more than 75% of the assets of the Subscriber?

☐ Yes ☐ No

- (d) Is the Subscriber exempt from federal income tax (e.g., a qualified employee benefit plan or trust, retirement account, charitable remainder trust, or a charitable foundation or other tax-exempt organization described in Section 501(c)(3) of the Code)?

☐ Yes ☐ No

## 5. Bank Investors

- (a) Is the Subscriber an insured depository institution, as defined in the Federal Deposit Insurance Act or a company that controls directly or indirectly an insured depository institution?

☐ Yes ☐ No

- (b) Is the Subscriber treated as a bank holding company for the purposes of Section 8 of the International Banking Act of 1978?

☐ Yes ☐ No

- (c) Is the Subscriber a direct or indirect subsidiary of an entity described in (a) or (b) above?

☐ Yes ☐ No



## PART B – SUBSCRIBER QUALIFICATION

SUBSCRIPTIONS WILL BE ACCEPTED ONLY FROM PERSONS WHO QUALIFY AS ELIGIBLE INVESTORS WITHIN THE MEANING OF APPLICABLE FEDERAL AND STATE SECURITIES REGULATIONS. UNLESS OTHERWISE INDICATED, RESPONSES SHOULD BE GIVEN BY REFERENCE TO THE SPECIFIC PERSON FOR WHOSE ACCOUNT THE SHARES ARE BEING ACQUIRED. THE SUBSCRIBER MAY BE REQUIRED TO PROVIDE SUCH FURTHER INFORMATION AND EXECUTE AND DELIVER SUCH DOCUMENTS AS THE FUND OR THE ADMINISTRATOR MAY REASONABLY REQUEST TO VERIFY THAT THE SUBSCRIBER QUALIFIES AS AN ELIGIBLE INVESTOR.

### SECTION I. ACCREDITED INVESTOR STATUS

Each Subscriber must indicate whether the intended beneficial owner of the Shares qualifies as an “accredited investor” pursuant to *at least one* of the following tests. (Please check *all* that apply, or, if none applies, consult the Administrator.)

#### FOR NATURAL PERSONS:

- ☐ The Subscriber is a *natural person* whose individual net worth, or joint net worth with that person’s spouse, at the time of purchase exceeds \$1,000,000, *excluding* the value of the Subscriber’s primary residence.<sup>3</sup>
- ☐ The Subscriber is a *natural person* with individual income (without including any income of the Subscriber’s spouse) in excess of \$200,000 or joint income with that person’s spouse of \$300,000, in each of the two most recent years and who reasonably expects to reach the same income level in the current year.
- ☒ The Subscriber is an individual retirement account or a grantor trust and the owner of the individual retirement account or the grantor of the grantor trust is a *natural person* that meets the requirements described above.<sup>4</sup>

#### FOR ENTITIES:

- ☐ The Subscriber is an *entity* with total assets in excess of \$5,000,000 that was not formed for the purpose of investing in the Fund and is one of the following:
  - ☐ a corporation;
  - ☐ a partnership;
  - ☐ a limited liability company;

<sup>3</sup> An individual need not deduct from his or her net worth the amount of mortgage debt secured by an excluded primary residence other than (i) the amount by which the mortgage liability exceeds the fair value of the residence and (ii) any increase in the amount of the debt secured by the primary residence in the 60 days preceding the date hereof unless the increase was a result of the acquisition of the residence.

<sup>4</sup> Additional information may be required in connection with a grantor trust’s investment.



- ☐ a business trust; or
- ☐ a tax-exempt organization described in Section 501(c)(3) of the Code.
- ☐ The Subscriber is a personal (non-business) trust, other than an employee benefit trust, with total assets in excess of \$5,000,000 that was not formed for the purpose of investing in the Fund and whose decision to invest in the Fund has been directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the investment.
- ☐ The Subscriber is an employee benefit plan within the meaning of Title I of ERISA, (including an individual retirement account), which satisfies at least one of the following conditions:
  - ☐ it has total assets in excess of \$5,000,000;
  - ☐ the investment decision is being made by a plan fiduciary that is a bank, savings and loan association, insurance company or registered investment adviser; or
  - ☐ it is a self-directed plan (*i.e.*, a tax-qualified defined contribution plan in which a participant may exercise control over the investment of assets credited to his or her account) and the decision to invest is made by those participants investing, and each such participant qualifies as an accredited investor.
- ☐ The Subscriber is an employee benefit plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions that has total assets in excess of \$5,000,000.
- ☐ The Subscriber is licensed, or subject to supervision, by federal or state examining authorities such as a "bank," "savings and loan association," "insurance company," or "small business investment company" (as such terms are used and defined in 17 CFR §230.501(a)) or is an account for which a bank or savings and loan association is subscribing in a fiduciary capacity.
- ☐ The Subscriber is registered with the Securities and Exchange Commission as a broker or dealer or an investment company; or has elected to be treated or qualifies as a "business development company" (within the meaning of Section 2(a)(48) of the Investment Company Act of 1940, as amended (the "*Investment Company Act*"), or Section 202(a)(22) of the Investment Advisers Act of 1940, as amended (the "*Investment Advisers Act*")).
- ☐ The Subscriber is an entity in which *all* of the equity owners are persons described above.

## SECTION II. QUALIFIED CLIENT STATUS

Each subscriber must indicate whether the intended beneficial owner of the Shares qualifies as a "qualified client." IRAs and revocable grantor trusts should complete the questions for natural persons.

### FOR NATURAL PERSONS:

- ☒ The Subscriber (or the grantor, in the case of a grantor trust) is a natural person whose net worth (together, in the case of a natural person, with assets held jointly with that person's spouse), at the time of subscription exceeds \$2,000,000, *excluding* the value of the Subscriber's primary residence.<sup>5</sup>

### FOR ENTITIES:

- ☐ The Subscriber is an entity that has a net worth at the time of subscription in excess of \$2,000,000

If the entity is an entity engaged primarily in investing or trading in securities, state whether each of the shareholders, partners or other holders of equity or beneficial interests in the Subscriber (please answer both (A) and (B)):

- (A) has a net worth of at least \$2,000,000 *excluding* the value of the holder's primary residence:<sup>6</sup>

☐ Yes ☐ No

- (B) is either an entity which is not engaged primarily in investing or trading in securities or a natural person:

☐ Yes ☐ No

<sup>5</sup> An individual need not deduct from his or her net worth the amount of mortgage debt secured by an excluded primary residence other than (i) the amount by which the mortgage liability exceeds the fair value of the residence and (ii) any increase in the amount of the debt secured by the primary residence in the 60 days preceding the date hereof unless the increase was a result of the acquisition of the residence.

<sup>6</sup> See footnote immediately above.



**SECTION III. FUND INVESTMENTS IN FINRA-RESTRICTED ISSUES AND  
AFFILIATION WITH FINRA MEMBERS IN UNDERWRITTEN OFFERINGS**

The Fund may, from time to time, consider direct or indirect investing in certain publicly offered equity securities, more commonly known as “new issue” securities (“*New Issues*”), through member firms of the Financial Industry Regulatory Authority, Inc. (“*FINRA*”) in accordance with Rules 5130 and 5131 adopted by FINRA. Also, FINRA requires any member that is participating in a public offering of securities to report any affiliation between a 5% shareholder of the company whose securities are being offered with a FINRA member. In order for the Fund to be able to determine the extent to which a Subscriber is eligible to participate in New Issues and to comply with any filings required in any underwritten public offering that is conducted by any company in which the Fund invests, the Subscriber must complete the questionnaire below. *Even if the Subscriber does not wish to participate in the profits related to New Issues, the Subscriber must complete Items A and B, as the tests in each Item are conducted separately.*

**A. Determination of Restricted Person Status under Rule 5130:**

Section 1 (Restricted Persons)

The Subscriber is:

- ☐ a FINRA member or other securities broker-dealer;
- ☐ an affiliate of a broker-dealer.<sup>7</sup>
- ☐ an officer, director, general partner, associated person or employee of any member of FINRA or any other securities broker-dealer, in either case other than a limited business broker-dealer.<sup>8</sup>

If the Subscriber checked any of the preceding boxes, please describe the name and CRD number of the applicable FINRA member along with a description of the relationship between such broker-dealer or affiliate and the Subscriber including, if applicable, the percentage of the Subscriber that is owned by a FINRA member: \_\_\_\_\_

<sup>7</sup> As used herein, an “*affiliate*” means an entity which controls, is controlled by or is under common control with such broker-dealer. “*Control*” means (i) beneficial ownership of 10% or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days; (ii) the right to 10% or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days; (iii) beneficial ownership of 10% or more of the outstanding subordinated debt of an entity, including any right to receive such subordinated debt within 60 days; (iv) beneficial ownership of 10% or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days; or (v) the power to direct or cause the direction of the management or policies of an entity.

<sup>8</sup> As used herein, a “*limited business broker-dealer*” means any broker-dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities or direct participation programs.



- ☐ an agent of any member of the FINRA or any other securities broker-dealer that is engaged in the investment banking or securities business.
- ☐ a person who, directly or indirectly, owns or has contributed capital to any FINRA member or other securities broker-dealer (other than solely a limited business broker-dealer), and the Subscriber:
  - (a) is listed, or required to be listed, in Schedule A of the Form BD for such FINRA member or other securities broker-dealer, and is identified by an ownership code of at least 10%;
  - (b) is listed, or required to be listed, in Schedule B of the Form BD for such FINRA member or other securities broker-dealer, and such listing relates to a direct owner of such FINRA member or other securities broker-dealer that is identified by an ownership code of at least 10%;
  - (c) is listed, or required to be listed, in Schedule C of the Form BD of the FINRA member or other securities broker-dealer that meets any of the criteria noted in paragraphs (a) or (b) above;
  - (d) owns 10% or more of a public reporting company listed, or required to be listed, as a direct owner in Schedule A of a Form BD of any FINRA member or other securities broker-dealer (other than solely a limited business broker-dealer). For this purpose, a "public reporting company" does not include a reporting company that is listed on a national securities exchange; or
  - (e) owns 25% or more of a public reporting company listed, or required to be listed, as an indirect owner in Schedule B of a Form BD of any FINRA member or other securities broker-dealer (other than solely a limited business broker-dealer). For this purpose, a "public reporting company" does not include a reporting company that is listed on a national securities exchange.

If the Subscriber checked the immediately preceding box, please describe the name and CRD number of the FINRA member on whose form the relationship is disclosed: \_\_\_\_\_

- ☐ a person who may act as a finder with respect to any public offering of securities.
- ☐ a person, such as an attorney, accountant or financial consultant, whose professional activities may include acting in a fiduciary capacity to any managing underwriter of any public offering of securities.
- ☐ a person who has the authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor or other collective investment account (including any hedge fund, investment partnership, investment corporation or any other collective investment vehicle that



is engaged primarily in the purchase and/or sale of securities), other than a family investment account or investment club.

- ☐ a member of the immediate family of any person to whom any of the preceding paragraphs refer.<sup>9</sup>

If the Subscriber checked this box, please specify the identity and the nature of the relationship with the Restricted Person, the firm with which the Restricted Person is associated, and whether the Restricted Person either contributes directly or indirectly to the Subscriber's support or receives material support from the Subscriber.

- 
- ☐ a domestic or foreign bank, bank branch, trust company, or other conduit for an undisclosed principal. The Fund may request additional information in order to determine the eligibility of the undisclosed principal.
- ☐ an employee benefit plan qualified under ERISA, that is sponsored by a FINRA member or other securities broker-dealer or an affiliate thereof.
- ☐ an entity (including a partnership, investment fund, limited liability company or other account) which either (i) knows that one or more of its beneficial owners is a Restricted Person described in any of the preceding categories, or (ii) has not affirmatively determined that there is no Restricted Person described in any of the preceding categories that has a beneficial interest in the entity.<sup>10</sup>

A Subscriber who has checked one of the boxes above may be able to participate in New Issues to the extent an exemption in Item C applies. See C below.

#### Section 2 (Unrestricted Persons)

- ☒ None of the Restricted Person Categories in Section 1 above apply and the Subscriber is eligible to fully participate in profits and losses from investments in New Issues.

<sup>9</sup> The term "*immediate family*" includes parents; mother-in-law or father-in-law; husband or wife; brother or sister; brother-in-law or sister-in-law; son-in-law or daughter-in-law; children; whether by birth or adoption; and any other person who is supported, directly or indirectly, to a material extent by such person. For this purpose, "*material support*" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

<sup>10</sup> The term "*beneficial interest*" means any economic interest such as the right to share in gains or losses. The receipt of a management or performance-based fee for operating a collective investment account, or other fee for acting in a fiduciary capacity, is not considered a beneficial interest in the account. However, for purposes of FINRA Rule 5130 and 5131, if such fee is subsequently invested into the account (as a deferred fee arrangement or otherwise), it would then be considered a beneficial interest in the account.



B. **Determination of Covered Person Status under Rule 5131:**

Section 1 (Persons Covered by Rule 5131)

The Subscriber is:

- ☐ an executive officer or director of a public company.<sup>11</sup>
- ☒ an executive officer or director of a covered non-public company.<sup>12</sup>
- ☐ a person materially supported by an executive officer or director of a public company or a covered non-public company.<sup>13</sup>

If any of the three preceding boxes are checked, please provide the name of the "public company" or "covered non-public company" in the space below.

NEXBANK, MEM, CORNERSTONE, CCS MEDICAL, AM. BANKNOTE

If the Subscriber is an entity in which any of the above persons have a direct or indirect beneficial interest, please specify the current beneficial interest of each such person (as a percentage) and each relevant "public company" or "covered non-public company" for which the relevant investor is an executive officer or director.

Note that Subscribers checking the boxes above may not be restricted in their participation in New Issues depending on such Subscriber's Interest in the Fund and the investment banking relationships of the companies they serve.

Section 2 (Persons Not Covered by Rule 5131)

- ☐ None of the Covered Person Categories in Section 1 above apply and the Subscriber is eligible to fully participate in profits and losses from investments in New Issues.

<sup>11</sup> As used herein, a "**public company**" is any company that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or any company that files periodic reports pursuant to Section 15(d) of the Exchange Act.

<sup>12</sup> As used herein, a "**covered non-public company**" means any non-public company satisfying any of the following three criteria:

- (a) income of at least \$1 million in the previous fiscal year or in two of the three previous fiscal years *and* shareholders' equity of at least \$15 million;
- (b) shareholders' equity of at least \$30 million and an operating history of two years; or
- (c) total assets and total revenue of at least \$75 million in the latest fiscal year *or* in two of the three most recent fiscal years.

<sup>13</sup> As used herein, "**material support**" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.



C. **Determination of Exempted Entity Status under Rules 5130 and 5131:**

A Subscriber who has checked one of the boxes set forth in Item A, Section 1 or Item B, Section 1 above may be eligible to participate in New Issues if the Subscriber meets certain criteria for exempted entities. In order for the Fund to be able to determine the extent to which an exemption applies, please check all appropriate boxes that describe the Subscriber.

Section 1 (Rules 5130 and 5131)

The Subscriber is an entity that:

- ☐ is an investment company registered under the Investment Company Act;
- ☐ is a common trust fund or similar fund, as described in Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), and the fund (i) has investments from 1,000 or more accounts and (ii) does not limit beneficial interests in the fund principally to trust accounts of Restricted Persons;
- ☐ is an insurance company general, separate or investment account, and (i) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders and (ii) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to Restricted Persons, or, if a general account, the insurance company does not limit its policyholders principally to Restricted Persons;
- ☐ is a publicly traded entity (other than a broker-dealer or an affiliate of a broker-dealer where such broker-dealer is authorized to engage in the public offering of New Issues either as a selling group or underwriter) that (i) is listed on a national securities exchange, or (ii) is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange;
- ☐ is an investment company organized under the laws of a foreign jurisdiction, (i) that is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and (ii) in which no person owning more than 5% of the shares of such investment company is a Restricted Person;
- ☐ is an employee benefit plan under ERISA that is qualified under Section 401(a) of the Code, and such plan is not sponsored solely by a broker-dealer;
- ☐ is a state or municipal government benefit plan that is subject to state and/or municipal regulation;
- ☐ is a tax-exempt charitable organization under Section 501(c)(3) of the Code and has attached a copy of the IRS determination letter confirming the entity's qualification under Section 501(c)(3) of the Code, by virtue of which there are no "beneficial owners" as calculated based on the definition of "beneficial interest" under FINRA Rule 5130; or

- ☐ is a church plan under Section 414(e) of the Code.
- ☒ None of the preceding categories in this Item C apply to the Subscriber.

Section 2 (Rule 5130 only)

The Subscriber is:

- ☐ an entity that represents, based upon a representation from the beneficial account holders or a person authorized to represent the beneficial owners of the Subscriber (in either case, dated no earlier than 12 months prior to the date of the Subscription Agreement), that none of the beneficial owners of the Subscriber who participate in New Issues are persons who are not entitled to do so under FINRA Rule 5130, and the Subscriber is eligible to purchase New Issues in compliance with FINRA Rule 5130; or
- ☐ is an entity (including a private investment vehicle, such as a hedge fund or fund of hedge funds) (i) in which the beneficial interests of Restricted Persons do not exceed in the aggregate 10% of such entity or (ii) that limits participation in New Issue profits by Restricted Persons to not more than 10% of the profits from New Issues.

If the immediately preceding box is checked, please specify the current percentage of the net profits from New Issues allocable to beneficial owners of such entity who are Restricted Persons.

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# HIGHLAND CREDIT OPPORTUNITIES FUND, LTD.

## SUBSCRIPTION AGREEMENT

Highland Credit Opportunities Fund, Ltd.  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201

Ladies and Gentlemen:

### 1. Documents Received

(a) The undersigned (the “**Subscriber**”) hereby acknowledges having (i) received, read and understood the current Confidential Private Offering Memorandum, as supplemented and amended from time to time (the “**Private Offering Memorandum**”), of Highland Credit Opportunities Fund, Ltd., a Cayman Islands exempted company (the “**Fund**”), including but not limited to those sections dealing with risk factors, conflicts of interest, fees and tax consequences of an investment in the Fund, and the Memorandum and Articles of Association of the Fund, as amended to date (the “**Articles**”), (ii) received a copy of Form ADV Part 2A, the firm brochure, and Form ADV Part 2B, the brochure supplement, of Highland Capital Management, L.P. (in its capacity as the investment manager of the Fund, the “**Investment Manager**”), as amended to date (the “**Form ADV**”), prior to or simultaneously with delivery of this Subscription Agreement to the Fund and (iii) been given the opportunity to (A) ask questions of, and receive answers from the Investment Manager or one of its affiliates concerning the terms and conditions of the offering and other matters pertaining to an investment in the Fund and (B) obtain any additional information that the Investment Manager can acquire without unreasonable effort or expense that is necessary to evaluate the merits and risks of an investment in the Fund.

(b) Appendix A hereto contains the definitions of certain capitalized terms used but not otherwise defined herein and should be read by the Subscriber prior to entering into this Subscription Agreement.

### 2. Subscription Commitment

(a) The Subscriber hereby irrevocably subscribes for shares of the Fund (the “**Shares**”), subject to Articles, as may be amended from time to time, and the Private Offering Memorandum, and agrees to contribute in cash (unless otherwise agreed by the Fund) to the capital of the Fund, the amount set forth on the Signature Page of this Subscription Agreement. Such amount shall be payable in full in readily available funds by wire transfer to the bank account of the Fund at least two business days prior to the proposed date of subscription.

(b) The Subscriber understands that this subscription is not binding on the Fund until accepted by the Fund, and it may be rejected, in whole or in part, by the Fund in its absolute discretion. If and to the extent rejected, the Fund shall, to the extent permitted by law, return to the Subscriber, without interest or deduction, any payment tendered by the Subscriber, and the Fund and the Subscriber shall have no further obligation to each other hereunder. The Subscriber acknowledges and accepts that none of the Fund, the Investment Manager, the Fund’s



administrator (the “*Administrator*,” which term shall be construed to include any sub-administrator of the Fund unless the context otherwise requires) nor their respective agents, affiliates or representatives shall be responsible for any lost profit, revenue or damages of any kind due to a delayed acceptance or a rejected subscription.

### 3. Representations, Warranties and Covenants – All Subscribers

To induce the Fund to accept this subscription, the Subscriber hereby makes the following representations, warranties and covenants to the Fund:

(a) The information set forth in the subscriber information form attached hereto, which shall be considered an integral part of this Subscription Agreement (the “*Subscriber Information Form*”), is true, correct, accurate and complete, and will be relied upon by the Fund for the purpose of determining the eligibility of the Subscriber to purchase and own Shares.

(b) The Subscriber hereby represents that the information set forth in the Subscriber Information Form is true, correct, accurate and complete as of the date hereof, and the Subscriber agrees to notify the Fund immediately if any representation or warranty contained in this Subscription Agreement, or any information provided pursuant to the Subscriber Information Form becomes untrue, misleading, or otherwise requires updating at any time. For so long as the Subscriber is a shareholder of the Fund, the Subscriber further agrees to provide any revised or updated information necessary to cause the Subscriber Information Form to remain true and correct as soon as practicable upon the Subscriber becoming aware that any such change or revision is necessary. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to substantiate the Subscriber’s status as an “accredited investor” or “qualified purchaser” or to otherwise determine the eligibility of the Subscriber to purchase Shares. The Subscriber agrees to provide any additional information and execute any additional documents as may reasonably be required in connection with any subscription, credit facility or other similar borrowing arrangement by the Fund or any lender named in the credit facility or similar lending arrangement.

(c) The Subscriber consents to the disclosure of any such information, and any other information furnished to the Fund, to any governmental authority or self-regulatory organization or, to the extent required by law or deemed (subject to applicable law) by the Fund to be in the best interest of the Fund, to any other person.

(d) Except as disclosed in the accompanying Subscriber Information Form, the Subscriber is acquiring the Shares for the Subscriber’s own account; does not have any contract, undertaking or arrangement with any person or entity to sell, transfer or grant a participation with respect to any of the Shares; and is not acquiring the Shares with a view to or for sale in connection with any distribution of the Shares.

(e) The Subscriber or an advisor or consultant relied upon by the Subscriber in reaching a decision to subscribe has such knowledge and experience in financial, tax and business matters as to enable the Subscriber or such advisor or consultant to evaluate the merits and risks of an investment in the Fund (including the risks set forth in the Private Offering Memorandum) and to make an informed investment decision with respect thereto and has made its own investment decision, including decisions regarding suitability based on its own judgment



or upon the advice from such advisers as it deemed necessary and not upon the views or advice of the Fund, the Investment Manager, or their affiliates or representatives.

(f) The Subscriber understands that the Shares have not been and will not be registered under the Securities Act of 1933, as amended (the "*Securities Act*"), or any state law and that the Fund is not registered under the Investment Company Act of 1940, as amended (the "*Investment Company Act*"). The Subscriber agrees to notify the Fund prior to any proposed sale, transfer, distribution or other disposition of the Shares or any beneficial interest therein, and will not sell, transfer, distribute or otherwise dispose of the Shares (including, without limitation, by pledge, option, swap or nominee or similar relationship, and further including, without limitation, the offering or listing of any Shares on or through any placement agent, intermediary, online service, site, agent or other similar person, service or entity) without the consent of the directors of the Fund (the "*Directors*") and the Investment Manager, which may be granted or withheld in their sole discretion, and unless the Shares are registered or such sale, transfer, distribution or other disposition is exempt from registration. The Subscriber understands that any such transfers without the consent of the Directors and the Investment Manager are null and void. The Subscriber also understands that the Fund has no intention to register the Fund or the Shares with the Securities and Exchange Commission or any state and is under no obligation to assist the Subscriber in obtaining or complying with any exemption from registration. The Fund may require that a proposed transferee meet appropriate financial and other suitability standards and that the transferor furnish a legal opinion satisfactory to the Fund and its counsel that the proposed transfer complies with applicable federal, state and any other applicable securities laws. An appropriate legend evidencing such restrictions may be placed on any certificates issued representing the Shares and appropriate stop-transfer instructions may be placed with respect to the Shares.

(g) The Subscriber confirms that it has not been invited as a member of the public in the Cayman Islands to subscribe for Shares.

(h) In formulating a decision to invest in the Fund, the Subscriber has not relied or acted on the basis of any representations or other information purported to be given on behalf of the Fund or the Investment Manager, except as set forth in the Private Offering Memorandum or the Articles or the Form ADV (it being understood that no person has been authorized by the Fund or the Investment Manager to furnish any such representations or other information).

(i) The Subscriber recognizes that there is not now any secondary market for the Shares and that such a market is not expected to develop; accordingly, it may not be possible for the Subscriber readily to liquidate the Subscriber's investment in the Fund other than through a redemption of Shares as provided in the Articles and the Subscriber may be holding such Shares for an indefinite period of time.

(j) The Subscriber understands the investment objectives and policies of, and the investment strategies that may be pursued by, the Fund. The Subscriber's investment is consistent with the investment purposes and objectives and cash flow requirements of the Subscriber and will not adversely affect the Subscriber's overall need for diversification and liquidity.



(k) The Subscriber can afford a complete loss of its investment in the Fund and can afford to hold its investment in the Fund for an indefinite period of time.

(l) If the Subscriber is a natural person, the Subscriber is qualified to become a shareholder of the Fund and has the legal capacity to execute, deliver and perform this Subscription Agreement.

(m) If the Subscriber is a corporation, partnership, limited liability company, trust or other entity, it is authorized and qualified to become a shareholder of, and authorized to make its subscription payment to, the Fund and otherwise to comply with its obligations as a shareholder of the Fund; the person signing this Subscription Agreement on behalf of such entity has been duly authorized by such entity to do so; and this Subscription Agreement has been duly executed and delivered on behalf of the Subscriber and is the valid and binding agreement of the Subscriber, enforceable against the Subscriber in accordance with its terms. In addition, such Subscriber will, upon request of the Fund or the Administrator, deliver any documents, including an opinion of counsel to the Subscriber, evidencing the existence of the Subscriber, the legality of an investment in the Fund and the authority of the person executing this Subscription Agreement on behalf of the Subscriber.

(n) The purchase of the Shares hereunder and the compliance by such Subscriber with all of the provisions of this Subscription Agreement applicable to such Subscriber and the consummation by such Subscriber of the transactions herein and therein contemplated will not (a) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which such Subscriber is a party or by which such Subscriber is bound or to which any of the property or assets of such Subscriber is subject, nor (b) will such action result in any violation of (i), if such Subscriber is an entity, the provisions of the organizational documents of such Subscriber or (ii) any statute applicable to such Subscriber or any order, rule or regulation of any court or governmental agency or body having jurisdiction over such Subscriber or the property of such Subscriber.

(o) The Subscriber has carefully reviewed and understands the various risks of an investment in the Fund, as well as the fees and conflicts of interest to which the Fund is subject, as set forth in the Private Offering Memorandum. The Subscriber hereby consents and agrees to the payment of the fees so described to the parties identified as the recipients thereof, and to such conflicts of interest.

(p) The Subscriber believes that the compensation terms of the Fund represent an "arm's-length" arrangement and the Subscriber is satisfied that it has received adequate disclosure from the Fund and the Investment Manager to enable it to understand and evaluate the compensation and other terms of the Fund and the risks associated therewith.

(q) The Subscriber represents and warrants that no holder of any beneficial interest in the Shares (each a "***Beneficial Interest Holder***") and, in the case of a Subscriber which is an entity, no Related Person is:



- (1) A person or entity whose name appears on the List of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Asset Control from time to time;
- (2) A Foreign Shell Bank; or
- (3) A person or entity resident in or whose subscription funds are transferred from or through an account in a Non-Cooperative Jurisdiction.

The Subscriber agrees promptly to notify the Fund or the person appointed to administer the Fund's anti-money laundering program, if applicable, of any change in information affecting this representation and covenant.

(r) The Subscriber represents that (except as otherwise disclosed to the Fund in writing):

- (1) neither it, any Beneficial Interest Holder nor any Related Person (in the case of a Subscriber that is an entity) is a Senior Foreign Political Figure, any member of a Senior Foreign Political Figure's Immediate Family or any Close Associate of a Senior Foreign Political Figure;
- (2) neither it, any Beneficial Interest Holder nor any Related Person (in the case of a Subscriber that is an entity) is resident in, or organized or chartered under the laws of, a jurisdiction that has been designated by the Secretary of the Treasury under Section 311 or 312 of the USA PATRIOT Act as warranting special measures due to money laundering concerns,<sup>14</sup> and
- (3) its subscription funds do not originate from, nor will they be routed through, an account maintained at a Foreign Shell Bank, an "offshore bank," or a bank organized or chartered under the laws of a Non-Cooperative Jurisdiction.

(s) The Subscriber acknowledges and agrees that any amounts paid to it will be paid to the same account from which its subscription funds were originally remitted, unless the Fund agrees otherwise.

(t) If the Subscriber is purchasing the Shares as agent, representative or intermediary/nominee, or in any similar capacity for any other person, or is otherwise requested to do so by the Fund, it shall provide a copy of its anti-money laundering policies ("**AML Policies**") to the Fund. The Subscriber represents that (i) it is in compliance with its AML Policies, (ii) its AML Policies have been approved by counsel or internal compliance personnel who have been reasonably informed of the legal requirements and best practices for anti-money laundering policies and their implementation, and (iii) it has not received a deficiency letter, negative report or any similar determination regarding its AML Policies from independent

<sup>14</sup> The Treasury Department's Financial Crimes Enforcement Network ("**FinCEN**") issues advisories regarding countries of primary money laundering concern. FinCEN's advisories are posted at [http://www.fincen.gov/pub\\_main.html](http://www.fincen.gov/pub_main.html).



accountants, internal auditors or some other person responsible for reviewing compliance with its AML Policies.

(u) The Subscriber represents and warrants that as a result of its acquisition and holding of the Shares: (i) the assets of the Fund will not constitute the assets of any employee benefit plan subject to any federal, state, local or non-U.S. law, rule or regulations (“**Similar Law**”) that is similar to (A) the U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or (B) Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”); (ii) the Investment Manager will not be considered to be a fiduciary of the Subscriber under any Similar Law; and (iii) no activity of the Fund contemplated in the Private Offering Memorandum or the Articles will violate any Similar Law.

(v) The Subscriber will promptly provide any additional documentation the Fund or the Administrator may request in the future to the extent that the Fund or the Administrator determines necessary in order to comply with applicable anti-money laundering laws or policies or any other applicable law.

(w) The Subscriber acknowledges that due to anti-money laundering requirements operating within their respective jurisdictions, the Fund, the Investment Manager and/or the Administrator (as the case may be) may require additional documentation before a subscription application or redemption request can be processed. Please be aware that your failure to provide or a delay in providing any such documentation may delay your acceptance to the Fund, cause your subscription to be rejected entirely or delay the satisfaction of your redemption request, as applicable. The Fund, the Investment Manager and the Administrator shall be held harmless and indemnified against any loss arising as a result of any such delay or rejection due to the Subscriber’s failure to provide or delay in providing any such requested information.

(x) The Subscriber acknowledges and agrees that Shares of the Fund will not be issued until such time as the Fund and/or the Administrator has received and is satisfied with all the information and documentation requested to verify the Subscriber’s identity. Where at the sole discretion of the Fund, Shares are issued prior to the Fund and/or Administrator having received all the information and documentation required to verify the Subscriber’s identity, the Subscriber will be prohibited from redeeming any Shares so issued, and the Fund and the Administrator on its behalf reserves the right to refuse to make any redemption payment or distribution to the Subscriber, until such time as the Fund and/or the Administrator, as applicable, has received and is satisfied with all the information and documentation requested to verify the Subscriber’s identity.

(y) The Subscriber acknowledges and agrees that each of the Fund, the Administrator and the Investment Manager may disclose to each other, to any affiliate, to any other service provider to the Fund or to any regulatory body in any applicable jurisdiction copies of the Subscriber’s subscription documents and any information concerning the Subscriber in their respective possession, whether provided by the Subscriber to the Fund, the Administrator or the Investment Manager or otherwise, including details of the Subscriber’s Shares, historical and pending transactions in the Shares and the value thereof, and any such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed on any such person by law or otherwise.



(z) The Subscriber agrees to provide the Fund and/or the Administrator any additional tax information or documentation that the Fund or the Administrator believes will enable it, the Fund or any subsidiary of the foregoing to comply with or mitigate any of their respective tax reporting, tax withholding, and/or tax compliance obligations, including any such obligations under the U.S. Hiring Incentives to Restore Employment Act (P.L. 111-147), or which may arise as a result of a change in law or in the interpretation thereof.

(aa) The Subscriber understands that Akin Gump Strauss Hauer & Feld LLP ("*Akin Gump*") acts as U.S. counsel to the Fund, the Investment Manager and their affiliates. The Subscriber also understands that, in connection with this offering of Shares and ongoing advice to the Fund, the Investment Manager and their affiliates, Akin Gump will not be representing investors in the Fund, including the Subscriber, and no independent counsel has been retained to represent investors in the Fund. In addition, Akin Gump does not undertake to monitor the compliance of the Investment Manager and its affiliates with the investment program, valuation procedures and other guidelines set forth in the Private Offering Memorandum, nor does Akin Gump monitor compliance with applicable laws. In preparing the Private Offering Memorandum, Akin Gump relied on information furnished to it by the Fund and/or the Investment Manager, and did not investigate or verify the accuracy or completeness of the information set forth therein concerning the Fund, the Investment Manager and their affiliates and personnel.

#### 4. Representations, Warranties and Covenants – ERISA Subscribers

If the Subscriber is, or is acting on behalf of, an employee benefit plan which is subject to ERISA or Section 4975 of the Code, to induce the Fund to accept this subscription, the Subscriber hereby makes the following additional representations, warranties and covenants to the Fund:

(a) The person executing this Subscription Agreement on behalf of the Subscriber either is a "named fiduciary" (within the meaning of ERISA) of the Subscriber, or is acting on behalf of a named fiduciary of the Subscriber pursuant to a proper delegation of authority.

(b) The person executing this Subscription Agreement on behalf of the Subscriber represents and warrants on behalf of such person or the Subscriber, as applicable, as follows:

- (1) The Subscriber is (w) an employee benefit plan subject to the fiduciary provisions of ERISA, (x) a "plan" subject to Section 4975 of the Code, (y) an entity that otherwise constitutes a "benefit plan investor" within the meaning of any Department of Labor regulation promulgated under Section 3(42) of ERISA (a party described in (w), (x) or (y) a "*Plan*") or (z) any entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the Subscriber (a "*Plan Asset Entity*").
- (2) The execution and delivery of this Subscription Agreement and the consummation of the transactions contemplated hereunder, and in the Private Offering Memorandum and the Articles will not result in a breach or violation of any charter or organizational documents pursuant to which



the Subscriber was formed, or any statute, rule, regulation or order of any court or governmental agency or body having jurisdiction over the Subscriber or any of its assets, or in any material respect, any mortgage, indenture, contract, agreement or instrument to which the Subscriber is a party or otherwise subject.

- (3) The investment in the Fund is permitted by the documents of the Subscriber and such documents permit the Subscriber to invest in private investment funds that will engage in the investment program described in the Private Offering Memorandum.

(c) The Subscriber is not in any way affiliated with (*i.e.*, does not own or control, is not owned or controlled by, nor is under common ownership or control with) any person or entity which will receive compensation, directly or indirectly, from the Fund, as specifically identified and described in the Private Offering Memorandum.

(d) The Subscriber acknowledges and agrees that the decision to invest in the Fund and the review of the terms of the Fund must be made solely and independently by a fiduciary of the Subscriber who has no affiliation with the Investment Manager or any of its affiliates or employees, without relying on any recommendation of the Investment Manager or any of its affiliates or employees as a primary basis for its decision.

(e) The appropriate fiduciaries of the Subscriber have considered the investment in light of the risks relating thereto and fiduciary responsibility provisions of ERISA applicable to the Subscriber and have determined that, in view of such considerations, the investment is appropriate for the Subscriber and is consistent with such fiduciaries' responsibilities under ERISA, and the appropriate fiduciaries: (i) are responsible for the Subscriber's decision to invest in the Fund, including the determination that such investment is consistent with the requirement imposed by Section 404 of ERISA that employee benefit plan investments be diversified so as to minimize the risk of large losses; (ii) are independent of the Investment Manager and any of its affiliates and employees and of any person or entity that will receive compensation, whether directly or indirectly, from the Fund, as specifically identified and described in the Private Offering Memorandum; (iii) are qualified and authorized to make such investment decision; and (iv) in making such decision, have not relied on the recommendation of the Investment Manager or any of its affiliates or employees.

(f) The Subscriber through the appropriate fiduciaries has been given the opportunity to discuss the Subscriber's investment in the Fund, and the structure and operation of the Fund with the Investment Manager and has been given all information that the Subscriber or the appropriate fiduciaries have requested and which the Subscriber or the appropriate fiduciaries deemed relevant to the Subscriber's decision to participate in the Fund.

## **5. Representations, Warranties and Covenants – Insurance Company General Account and Plan Asset Entity Subscribers**

(a) If the Subscriber is acquiring the Shares with the assets of the general account of an insurance company (a "*General Account*"), the Subscriber represents, warrants and covenants that, on each day the Subscriber owns the Shares, either (i) the assets of such General Account



are not considered to be plan assets within the meaning of Section 3(42) of ERISA, Department of Labor Regulations Section 2510.3-101 or Department of Labor regulations issued pursuant to Section 401(c)(1)(A) of ERISA, or (ii) the execution and delivery of this Subscription Agreement, and the acquisition and redemption of the Shares, is exempt from the prohibited transaction rules of Section 406(a) of ERISA and Section 4975(c)(1)(A) - (D) of the Code by virtue of Department of Labor Prohibited Transaction Class Exemption 95-60 or some other exemption of such rules.

(b) By signing this Subscription Agreement, each Subscriber that is either a Plan Asset Entity or using the assets of a General Account hereby covenants that if, after its initial acquisition of the Shares, at any time during any calendar month the percentage of the assets of such General Account (as reasonably determined by the Subscriber) or Plan Asset Entity, as applicable, that constitute "plan assets" for purposes of Title I of ERISA or Section 4975 of the Code exceeds the maximum percentage limit specified by the Subscriber in Question 2(d) of Section III of the Subscriber Information Form, then such Subscriber shall promptly notify the Fund of such occurrence and the Fund may require the Subscriber to redeem or dispose of all or a portion of the Shares held in such General Account or by such Plan Asset Entity, as applicable, by the end of the next following calendar month or such other time as may be determined by the Investment Manager.

## 6. Indemnification

(a) The Subscriber understands the meaning and legal consequences of the representations, warranties, agreements, covenants and confirmations set out above and agrees that the subscription made hereby, if accepted by the Fund, will be accepted in reliance thereon. The Subscriber agrees to indemnify and hold harmless the Fund, the Directors, the Investment Manager and their affiliates, and the partners, members, managers, stockholders, other beneficial owners, officers, directors and employees of any of the foregoing (together, the "**Indemnified Persons**") from and against any and all loss, damage, liability or expense, including reasonable costs and attorneys' fees and disbursements, which an Indemnified Person may incur by reason of, or in connection with, any representation or warranty made herein (or in the accompanying Subscriber Information Form) not having been true, correct and complete when made, any misrepresentation made by the Subscriber or any failure by the Subscriber to fulfill any of the covenants or agreements set forth herein, in the Subscriber Information Form or in any other document provided by the Subscriber to the Fund.

(b) To the extent that any provisions of this Subscription Agreement, including, without limitation, Section 6 hereof, are not enforceable under applicable law by virtue of any person not being party to this Subscription Agreement (each such person, a "**Third Party**"), the Subscriber hereby agrees that the Fund may execute one or more deed polls and/or enter into one or more separate agreements with any such Third Party and take all further actions as may be necessary or desirable, in the sole opinion of the Fund, to give effect to such provisions.

(c) The Subscriber expressly consents to the Investment Manager or the Administrator accepting and executing any instructions transmitted in written or facsimile form (or by other electronic means) in respect of an investment in the Fund to which this application relates (including, without limitation, withdrawal requests). If instructions are given by the Subscriber in facsimile form (or by other electronic means), the Subscriber undertakes to send



the original letter of instructions to the Fund and the Administrator and hereby agrees to hold harmless and indemnify each of the Indemnified Persons, the Administrator and any of its employees and agents against any loss of any nature whatsoever arising to any of them as a result of any of them acting upon instructions submitted by facsimile or by other electronic means. Each Indemnified Person and each of the Administrator and any of its employees and agents may rely conclusively upon and shall incur no liability (i) for any loss arising from the non-receipt of any instructions relating to the Shares of the Subscriber delivered by facsimile or other electronic means or (ii) in respect of any action taken upon any notice, consent, request, instructions or other instrument believed in good faith to be genuine or to be signed by properly authorized persons on behalf of the Subscriber. Each Indemnified Person and each of the Administrator and any of its employees and agents shall be allowed such amount of time to act on and implement any instructions as may be reasonable having regard to their systems and operations and any other circumstances then prevailing and shall not be liable for any loss arising from any delay in acting on any instruction.

## **7. Miscellaneous**

(a) The Subscriber agrees that neither this Subscription Agreement, nor any of the Subscriber's rights, interest or obligations hereunder, is transferable or assignable by the Subscriber, and further agrees that the transfer or assignment of any Shares acquired pursuant hereto shall be made only in accordance with the provisions hereof and all applicable laws. Any assignment in violation of this Section 7(a) shall be null and void.

(b) The Subscriber agrees that, except as permitted by applicable law, it may not cancel, terminate or revoke this Subscription Agreement or any agreement of the Subscriber made hereunder, and that this Subscription Agreement shall survive the death or legal disability of the Subscriber and shall be binding upon the Subscriber's heirs, executors, administrators, successors and assigns.

(c) All of the representations, warranties, covenants, agreements, indemnities and confirmations set out above and in the Subscriber Information Form shall survive the acceptance of the subscription made herein and the issuance of any Shares.

(d) This Subscription Agreement together with the Subscriber Information Form constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by both parties.

(e) The Subscriber hereby agrees that any representation made hereunder will be deemed to be reaffirmed by the Subscriber at any time it makes an additional capital contribution to the Fund and the act of making such additional contribution will be evidence of such reaffirmation.

(f) Within 10 days after receipt of a written request therefor from the Fund, the Subscriber agrees to provide such information and to execute and deliver such documents as the Fund may deem reasonably necessary to comply with any and all laws, rules, regulations, orders and ordinances to which the Fund is or may be subject.



(g) The Subscriber agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its investment in the Fund) or disclose to any person, any information or matter relating to the Fund and its affairs and any information or matter related to any investment of the Fund (other than disclosure to the Subscriber's authorized representatives); provided that (i) the Subscriber may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Subscriber, (y) the information otherwise is or becomes legally known to the Subscriber other than through disclosure by the Fund, or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) the Subscriber may make such disclosure to its Beneficial Interest Holders to the extent required under the terms of its arrangements with such persons; and (iii) the Subscriber will be permitted, after written notice to the Fund, to correct any false or misleading information that becomes public concerning the Subscriber's relationship to the Fund. Prior to making any disclosure required by law, the Subscriber shall use its best efforts to notify the Fund of such disclosure. Prior to any disclosure to any authorized representative or Beneficial Interest Holder, the Subscriber shall advise such persons of the confidentiality obligations set forth herein and each such person shall agree to be bound by such obligations. Notwithstanding the foregoing, the Subscriber may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided in connection with this Subscription Agreement to the Subscriber relating to such tax treatment or tax structure. The Subscriber acknowledges and agrees that the Fund and the Investment Manager would be damaged irreparably and would not have an adequate remedy at law if this Section (g) is not performed in accordance with its specific terms or is otherwise breached. Accordingly, in addition to any other remedy to which it may be entitled at law or in equity, each party will be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Section 7(g) and to enforce specifically this Section 7(g), without bond or other security being required. The rights and remedies in this Section 7(g) are cumulative and in addition to any other rights and remedies otherwise available at law or in equity. Nothing will be considered an election of remedies or a waiver of the right to pursue any other right or remedy to which party may be entitled.

(h) The Subscriber acknowledges and understands that if any person who is resident in the Cayman Islands has a suspicion that a payment to the Fund (by way of subscription or otherwise) is the proceeds of criminal conduct, that person is required to report such suspicion to the relevant Cayman authorities pursuant to The Proceeds of Crime Law (as amended) of the Cayman Islands.

(i) Except as otherwise indicated in PART A – SECTION I.4 of the Subscriber Information Form, the Subscriber has agreed to receive and accept reports and communications indefinitely from the Fund, the Administrator and the Investment Manager exclusively via e-mail to the e-mail address set forth in the Subscriber Information Form unless the Subscriber notifies the Investment Manager or the Administrator in writing that the Subscriber wishes to receive reports to either another e-mail address or alternatively, via regular mail in lieu of electronic mail. *If instructions are given by the Subscriber via e-mail, the Subscriber agrees to indemnify each Indemnified Person and each of the Administrator and any of its employees and agents*



*against any loss of any nature whatsoever arising to any of them as a result of any of them acting upon instructions submitted by facsimile or by other electronic means. Each Indemnified Party and the Administrator may rely conclusively upon and shall incur no liability in respect of any loss arising from (i) the non-receipt of any instructions relating to the interests of the Subscriber delivered via e-mail or (ii) any action taken upon any notice, consent, request, instructions or other instrument believed in good faith to be genuine or to be signed by properly authorized persons on behalf of the Subscriber.*

## **8. Standing Proxy**

The Subscriber hereby designates and appoints the Administrator with power of substitution, as the Subscriber's true and lawful proxy for the purpose of voting any Shares issued pursuant to this Subscription Agreement (or such portion thereof from time to time owned by the Subscriber) as said proxy may determine on any and all matters arising at any annual or special general meeting of the Fund or any class meeting upon which such Shares could be voted by the Subscriber (or the person in whose name the Shares hereby subscribed are registered at the Subscriber's direction) if present in person at the meeting. This proxy may be revoked by the Subscriber (or his registered nominee) either personally or by presentation of a subsequently executed form of proxy at any annual or special general meeting or any class meeting of the Fund or by written notice to the Administrator received at the Fund's registered office prior to any such meeting.

## **9. Notices**

Any notice required or permitted to be given to the Subscriber in relation to the Fund shall be sent to the address specified in Part A, Section I of the Subscriber Information Form or to such other address as the Subscriber designates by written notice received by the Fund. The Subscriber acknowledges and agrees that any consent that need be obtained from the Subscriber by the Fund may be obtained by the form of a negative consent following written notice. For purposes of clarity, the Fund may provide the Subscriber with reasonable advance notice of an issue requiring the Subscriber's consent, and if the Subscriber does not respond to such notice within a reasonable time as set forth in the notice, the Subscriber shall be deemed to have approved and consent to such issue.

## **10. Arbitration and Mediation**

The Subscriber acknowledges and agrees that the following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with this Subscription Agreement, the Articles or otherwise involving the Fund and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### **(a) Mediation.**

(i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a



mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration.

(i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of this document will control.

(ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, provided, however, that the Fund or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will another arbitration law or regulation preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and



conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(iv) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Subscription Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.

(v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## **11. Governing Law**

Except for Section 10 of this Subscription Agreement which shall be governed by the laws of the State of Texas, this Subscription Agreement shall be governed by, and construed in accordance with, the laws of the Cayman Islands, without giving effect to any conflict of law principles that would result in the application of the laws of any other jurisdiction.

[Signature Page Follows]

SIGNATURE PAGE

By signing below, the Subscriber (1) confirms that the information contained in the Subscriber Information Form is accurate and complete, (2) agrees to the terms of the Subscription Agreement, the Private Offering Memorandum and the Articles and (3) requests that the records of the Fund reflect the Subscriber's admission as a shareholder.

Executed as a Deed:

Dated: \_\_\_\_\_, 20\_\_

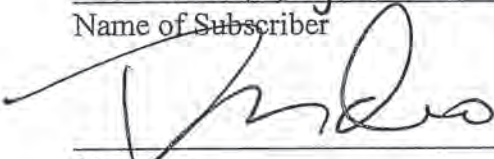
AMOUNT OF SUBSCRIPTION

\$ 180,000.00

\_\_\_\_\_  
Name of Other Subscriber  
(if a natural person and purchasing jointly)

THE DUGABOY INVESTMENT TRUST  
Name of Subscriber

\_\_\_\_\_  
Signature of Other Subscriber  
(if natural person and purchasing jointly)

  
Signature

\_\_\_\_\_  
Witness

MELISSA SCHROTH  
Witness



EXECUTIVE ACCOUNTANT  
Name and title or representative  
capacity, if applicable

If the Subscriber is an individual retirement account, Keogh Plan or other self-directed plan, the custodian or trustee of the Subscriber is also required to execute this Agreement below:

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name of custodian or trustee

\_\_\_\_\_  
Signature  
Title: \_\_\_\_\_

The Subscriber's subscription is accepted, subject to the provisions of the Subscription Agreement, the Private Offering Memorandum and the Articles.

Highland Credit Opportunities Fund, Ltd.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **EXHIBIT 8**



## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of May 11, 2020 between and among UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”), on the one hand, and Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.) (“MSCF”), Highland Credit Opportunities CDO, Ltd. (“Credit Opps”), and Highland Credit Opportunities CDO Asset Holdings, L.P. (“Asset Holdings,” and together with MSCF and Credit Opps, the “Funds”), on the other. UBS and the Funds are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

A. **WHEREAS**, MSCF and Credit Opps are parties to that certain Loan Agreement, made by and between MSCF, Credit Opps, and NexBank, SSB (“NexBank,” and together with MSCF and Credit Opps, the “Loan Parties”), dated as of May 1, 2018 (as amended, the “Loan Agreement”);

B. **WHEREAS**, Asset Holdings, a wholly owned subsidiary of MSCF, holds life settlement policies with policy numbers [REDACTED] (collectively, the “Life Settlement Policies”);

C. **WHEREAS**, on June 28, 2019, the Loan Parties entered into that certain Second Amendment to Loan Agreement pursuant to which it was agreed that the Life Settlement Policies with policy numbers [REDACTED] (the “NexBank Life Settlement Policies”) would be pledged to secure the obligations under the Loan Agreement;

D. **WHEREAS**, on June 28, 2019, Asset Holdings executed that certain Collateral Assignment of Life Insurance in favor of NexBank pursuant to which Asset Holdings believes it assigned the NexBank Life Settlement Policies to NexBank to secure the obligations under the Loan Agreement (“Assignment”);

E. **WHEREAS**, the Funds have determined that it is in their best interests to sell the Life Settlement Policies;

F. **WHEREAS**, UBS believes that it has a valid claim that the Life Settlement Policies were fraudulently conveyed to Asset Holdings in 2009 (the “Fraudulent Conveyance Claims”);

G. **WHEREAS**, the Fraudulent Conveyance Claims, among other claims, are the subject of a lawsuit brought by UBS in the Supreme Court of the State of New York, captioned *UBS Securities LLC and UBS AG, London Branch v. Highland Capital Management, L.P., Highland Special Opportunity Holding Company, Highland CDO Opportunity Master Fund, L.P., Highland Financial Partners, L.P., Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., Strand Advisors, Inc.*, No. 650097/2009, against Highland Credit Opportunities CDO, L.P., the predecessor of MSCF, amongst other parties (the “State Court Action”);

H. **WHEREAS**, UBS, in the State Court Action, has asserted, among other things, that the Life Settlement Policies or their value must be turned over to UBS;

I. **WHEREAS**, the Funds, among other defendants in the State Court Action, dispute UBS's claims to the Life Settlement Policies and the validity of the Fraudulent Conveyance Claims and UBS disputes the validity of the Assignment;

J. **WHEREAS**, because of the Fraudulent Conveyance Claims and the Assignment, the Funds' ability to sell the Life Settlement Policies has been compromised;

K. **WHEREAS**, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, and without either Party admitting liability, fault, or wrongdoing, or releasing or waiving any rights or defenses with respect to the Fraudulent Conveyance Claims, the Parties desire to enter into this Agreement to allow the Life Settlement Policies to be sold and the proceeds to be distributed.

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Sale of Life Settlement Policies; Free and Clear.**

(a) The Funds will use commercially reasonable efforts to cause the Life Settlement Policies to be sold at an auction (the "Auction") conducted by Maple Life Analytics, LLC ("Maple") for \$37,135,000.00 in addition to amounts sufficient to reimburse the Funds for any Life Settlement Policy premiums paid in or after May 2020.

(b) Subject to the terms of this Agreement, including Section 4 hereof, UBS agrees that, if all or some of the Life Settlement Policies are sold at the Auction, any such sale of the Life Settlement Policies will be free and clear of any and all claims (including the Fraudulent Conveyance Claims) against or interests in such Life Settlement Policies that have been, could have been, or could be asserted by UBS whether in the State Court Action or otherwise. For the avoidance of doubt, UBS shall retain any and all such claims against (i) any Life Settlement Policies that are not sold in the Auction and/or (ii) against the Funds for the full value of such claims as they otherwise existed at the time of the completion of the Auction, including without limitation, for the value of any Life Settlement Policies sold at auction, and for any prejudgment interest, attorneys' fees, punitive damages, or other economic claims. For the avoidance of doubt, the Parties' intent is that this Agreement shall neither diminish nor augment the recoverable value of any claims UBS has with respect to the Funds or the Life Settlement Policies.

2. **Distribution of Proceeds.**

(a) Subject to Section 2(b), the proceeds from the Auction will be distributed as soon as reasonably practicable as follows:

(i) *First*, \$371,350.00 to Maple as payment for their fees;

(ii) *Second*, \$100,000.00 to MSCF to be used to pay other expenses associated with the Auction;

(iii) *Third*, \$15,840,000.000, representing the net proceeds from the sale of the NexBank Life Settlement Policies, to NexBank in satisfaction of its claimed security interest in the NexBank Life Settlement Policies and in repayment of a portion of the obligations owed by the Loan Parties to NexBank pursuant to the Loan Agreement;

(iv) *Fourth*, \$1,750,000 to Highland Capital Management, L.P. (“HCMLP”), in satisfaction of certain amounts previously loaned to MSCF for the payment of Life Settlement Policy premiums and certain other operating expenses;

(v) *Fifth*, \$8,969,000.00 to MSCF to be used to pay operating costs of the Funds (or to repay advances made to pay such costs), including, but not limited to, amounts due under the Loan Agreement and premiums due on any remaining life settlement policies, provided that none of the amounts in this Section 2(a)(v) shall be transferred to HCMLP as direct or indirect repayment of any amounts advanced by HCMLP to MSCF prior to the commencement of HCMLP’s chapter 11 bankruptcy case; and

(vi) *Sixth*, \$10,104,650.00 to the Escrow Account (as defined below) on the terms set forth in Section 3 hereof;

(b) In addition to the distributions set forth above:

(i) HCMLP will be entitled to receive any premium repayments or refunds made by any buyer of a Life Settlement Policy prior to any distributions being made pursuant to Section 2; and

(ii) Subject to Section 5 below, MSCF will retain any payments or proceeds received on the Life Settlement Policies that are not otherwise payable to the buyer of such Life Settlement Policy in the Auction.

(c) Notwithstanding anything in this Agreement to the contrary:

(i) if some, but not all, of the NexBank Life Settlement Policies are sold at the Auction, or if the NexBank Life Settlement Policies are sold for less than \$15,840,000.00, the amount set forth in Section 2(a)(iii) will be reduced to reflect the net proceeds from the NexBank Life Settlement Policies actually sold and the amount set forth in Section 2(a)(i) will be adjusted to reflect the fee actually payable to Maple; and

(ii) if the proceeds from the Auction are less than \$37,135,000.00 for any reason, other than as set forth in Section 2(c)(i), the amount set forth in Section 2(a)(i) will be adjusted to reflect the fee actually payable to Maple and any decrease in the gross proceeds shall be apportioned equally (i.e., by 50%) to each of the amounts set forth in Section 2(a)(vi) and Section 2(a)(iv). If the proceeds from the Auction are greater than \$37,135,000.00, then the additional gross proceeds shall be apportioned equally (i.e., by 50%) to each of the amounts set forth in Section 2(a)(v) and Section 2(a)(vi).

3. **Escrow Account.** The proceeds from the Auction distributed pursuant to Section 2(a)(vi), will be deposited in an escrow account (the “Escrow Account”) maintained at Citibank the terms and conditions set forth in the escrow agreement in the form attached hereto as **Exhibit A** (the “Escrow Agreement”). All costs associated with maintaining the Escrow Account will be paid by the Funds. As set forth in the Escrow Agreement, the Escrow Account will be maintained for a period of two years from the date proceeds are initially deposited therein, unless such date is extended by mutual agreement of the Parties or pursuant to an order from a court of applicable jurisdiction, and no amounts will be released from the Escrow Account during such two year period unless subject to court order or the agreement of the Parties. For the avoidance of doubt, it is expected that UBS will seek an extension of this two year period (upon a proper showing) if UBS’s claims against HCMLP and/or the Funds have not been resolved. Any amounts remaining in the Escrow Account at the expiration of the two year period, as may be extended and subject to contrary court order or agreement of the Parties, will be distributed to MSCF.

4. **No Release; No Waiver.** Except as set forth in Section 1(a) hereof, nothing contained herein is or will be construed as a waiver or release (i) by UBS of any claim, cause of action, or right of relief against any of the Funds or their predecessors, including the Fraudulent Conveyance Claims, whether in law, equity, or contract, including with respect to any proceeds from the sale of any of the Life Settlement Policies (the “Sale”) held in the Escrow Account (the “Escrow Amount”), or (ii) by the Funds, their predecessors, or any other party of any defense whether in law, equity, or contract with respect to the Fraudulent Conveyance Claims or any other claims that UBS may assert. All such rights are expressly reserved. For the avoidance of doubt, notwithstanding the Sale of the Life Settlement Policies, (a) UBS’s claims against the Life Settlement Policies are fully preserved against the proceeds of the Sale up to the Escrow Amount, and (b) all of UBS’s claims, causes of action, and rights of relief, whether in law or equity, against the Funds and their predecessors, or any of them, and whether currently pending or not, are preserved as to (but not limited by) the total proceeds of the Sale as against any and all present and future assets held by, or interests in, the Funds (other than the Life Settlement Policies) and shall in no way be deemed altered, diminished, impaired, released, or waived in any respect by the Sale, this Agreement, or the execution of this Agreement. For the further avoidance of doubt, the payment of proceeds from the Sale to HCMLP shall not be deemed in any way to impair, release, or waive any claims, causes of action, or rights of relief held by UBS against HCMLP or the Funds and their predecessors, nor shall any such payments in any way impair, release, waive, alter, or diminish UBS’s ability to recover such amounts on account of its claims against HCMLP in HCMLP’s chapter 11 case or otherwise. For the further avoidance of doubt, any claims UBS currently has (if any) with respect to the Life Settlement Policies or otherwise against the Funds and their predecessors, including but not limited to, claims for the value of the Life Settlement Policies as of the date of the Auction, claims for prejudgment interest, claims for attorneys’ fees and/or claims for punitive damages are intended to be preserved against the Funds, and shall not be diminished (or augmented) by the fact of the Sale of the Life Settlement Policies in the Auction.

5. **No Additional Distributions.**

(a) Except for the distributions set forth in Section 2 above, none of the Funds will make any distributions or redemption payments to any of MSCF’s limited partners, general

partners, shareholders, or other equity holders (collectively, the “Equity Parties”) (regardless of whether an Equity Party has tendered its equity interest for redemption) for two years from the date of the closing of the Life Settlement Policy sales (the “Standstill Term”) unless such payments are made with the mutual agreement of HCMLP and UBS or pursuant to an order from a court of applicable jurisdiction. It is agreed that the Funds shall provide UBS with no less than five (5) business days’ advance written notice prior to seeking such an order. It is expressly recognized that, upon a proper showing (subject to proper objections by HCMLP), UBS may obtain a court-ordered extension of the Standstill Term. The Standstill Term may be extended by mutual agreement of the Parties or pursuant to an order from a court of applicable jurisdiction. Following the expiration of the Standstill Term, as may be extended, MSCF may make distributions or redemption payments to the Equity Parties, to the extent permissible and appropriate, in its sole discretion. For the avoidance of doubt, the expiration of the Standstill Term, in of itself, shall not have any impact on UBS’s rights, if any, with respect to its claims against HCMLP and/or the Funds.

(b) During the Standstill Term (and any extension of that term pursuant to agreement or court order as set forth herein), the Funds agree to provide UBS with no less than five (5) business days’ written notice of any proposed sale, transfer, or other disposition of any assets held by, or interest in, the Funds, including the proceeds from such transfer or disposition, and the proposed transferee with respect to such assets or interests.

6. **Representations and Warranties.** As of the date hereof, the Funds represent, warrant and covenant that the Funds’ current assets and their most recent valuations are set forth in **Schedule 1** hereto in the following format:

Asset	Value	Date of Valuation	Source of Valuation

For the avoidance of doubt, nothing in this Section 6 or **Schedule 1** constitutes a representation or warranty as to the actual value of the Funds’ assets or the price that can or may be obtained from a sale, if any, of such assets.

7. **Successors In Interest.** Each of the Parties agrees that this Agreement will be binding upon the Parties, and, as applicable, upon their predecessors, successors, subsidiaries,



divisions, alter egos, affiliated and related entities, and their past or present officers, directors, partners, employees, attorneys, assigns, agents, representatives, and any or all of them.

8. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the Fraudulent Conveyance Claims. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Funds or any other person. In particular, the execution of this Agreement will not constitute an admission of liability, fault, or wrongdoing on the part of the Funds or any other person

9. **Confidentiality.** The Parties agree that the information provided in **Schedule 1** shall be strictly confidential except as required by law or if necessary to disclose to enforce this Agreement (but in such case the Parties will take reasonable care to ensure confidentiality to the extent permitted by law). The Parties to this Agreement stipulate and covenant not to repeat, speak, display or disclose any of the information set forth in **Schedule 1** to anyone other than their attorneys and advisors; *provided however*, that such information may be provided to the unsecured creditor committee appointed in the bankruptcy of HCMLP.

10. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**UBS**

UBS Legal Department – Americas Litigation  
Attn: Patrick Shilling  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-3685  
E-mail: patrick.shilling@ubs.com

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

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071  
Attention: Jeffrey E. Bjork, Esq.  
Telephone No.: 213-485-1234  
Facsimile No.: 213-891-8763  
E-mail: jeff.bjork@lw.com

**MSCF, Asset Holdings, or Credit Opps**

Highland Multi Strategy Credit Fund, L.P.  
c/o Highland Capital Management, L.P.

300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: Legal Department  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

11. **Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. **Severability.** If any term or provision, or portion thereof, of this Agreement is declared to be illegal or invalid, the validity of the remaining provisions or portions thereof will

not be affected thereby, and the illegal or invalid provision or portions thereof will be deemed not a part of the Agreement.


15. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. **Governing Law; Venue.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Intentionally Blank]*

**IT IS HEREBY AGREED.**

**UBS SECURITIES LLC and UBS AG London Branch**

By:   
Name: Patrick Shilling  
Its: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
LTD.**


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**IT IS HEREBY AGREED.**

**UBS SECURITIES LLC and UBS AG London Branch**

By:   
Name: William W. Chandler  
Its: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
LTD.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_




**IT IS HEREBY AGREED.**

**UBS SECURITIES LLC and UBS AG London Branch**


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_


**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO  
LTD.**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By:  \_\_\_\_\_  
Name: James P. Berry, Jr.  
Its: Authorized Signatory

**Schedule 1**

**Fund Assets**

**Highland Multi Strategy Credit Fund**  
As of 4.30.20 [1][2]

[illegible]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

**Exhibit A**

**Form of Escrow Agreement**

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into as of May \_\_\_, 2020, by and among (i) **UBS Securities LLC** (“UBS”), (ii) **Highland Multi Strategy Credit Fund, L.P.** (“MSCF”) and **Highland Credit Opportunities CDO Asset Holdings, LP** (“Asset Holdings” and together with MSCF, sometimes referred to individually and collectively, the “Funds”) and the Funds together with UBS, sometimes referred to individually as a “Party” and collectively as the “Parties”), and (iii) **CITIBANK, N.A.**, as escrow agent (the “Escrow Agent”).

## RECITALS

WHEREAS, the Parties, along with UBS AG, London Branch and Highland Credit Opportunities CDO, Ltd., entered into a Settlement Agreement dated May 11, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the “Settlement Agreement”) pursuant to which the Parties have agreed to place in escrow a portion of the proceeds from the sale of certain assets (the “Sale Proceeds”).

WHEREAS, the Parties and the Escrow Agent desire to set forth their rights and obligations with respect to the Escrow Funds (as defined below) and the distribution and release thereof.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Appointment. The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

2. Escrow Funds.

(a) Simultaneous with the execution and delivery of this Agreement, MSCF shall deposit or cause to be deposited with the Escrow Agent Sale Proceeds in the amount of \$10,104,650.00 (or such other amount as may be agreed to by the Parties) (such amount, the “Escrow Amount”) in immediately available funds. The Escrow Agent hereby acknowledges receipt of the Escrow Amount, together with all products and proceeds thereof, including all interest, dividends, gains and other income (collectively, the “Escrow Earnings”) earned with respect thereto (collectively, the “Escrow Funds”) in separate and distinct account (the “Escrow Account”), subject to the terms and conditions of this Agreement.

(b) For greater certainty, all escrow earnings shall be retained by the Escrow Agent and reinvested in the Escrow Funds and shall become part of the Escrow Funds; and shall be disbursed as part of the Escrow Funds in accordance with the terms and conditions of this Agreement.

3. Investment of Escrow Funds.



(a) Unless otherwise instructed in writing by the Parties, the Escrow Agent shall hold the Escrow Funds in a “noninterest-bearing deposit account” insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section 4 below.

(b) The Escrow Agent shall send an account statement to each of the Parties on a monthly basis reflecting activity in the Escrow Account for the preceding month.

(c) The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions of this Agreement. The Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

4. Disposition and Termination of the Escrow Funds.

(a) Escrow Funds. The Parties shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds as provided in, this Section 4(a) as follows:

(i) Upon receipt of a Joint Release Instruction with respect to the Escrow Funds, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of a Joint Release Instruction, disburse all or part of the Escrow Funds in accordance with such Joint Release Instruction.

(ii) Upon receipt by the Escrow Agent of a copy of Final Determination from any Party, the Escrow Agent shall on the second (2nd) Business Day following receipt of such copy, disburse as directed, part or all, as the case may be, of the Escrow Funds (but only to the extent funds are available in the Escrow Account) to the applicable Party or Parties, in accordance with such Final Determination. The Escrow Agent will act on such Final Determination without further inquiry.

(iii) If the Escrow Funds have not been released in accordance with clause (i) or (ii) of this Section 4(a) on or before May [ ], 2022, or such later date as agreed, and notified to the Escrow Agent, in writing by the Parties or established pursuant to an order from a court of applicable jurisdiction (the “Escrow End Date”), then, upon receipt of written instruction from the Funds (the “Final Instruction”) executed by an authorized signer of each of the Funds, unless the Parties deliver to the Escrow Agent a Joint Release Instruction or a contrary order from a court of applicable jurisdiction prior to the disbursement expressly superseding such Final Instruction, the Escrow Agent shall on the second (2nd) Business Day following receipt of such Final Instruction, disburse all remaining Escrow Funds in accordance with such Final Instruction. The Funds agree not to send the Final Instruction prior to the Escrow End Date.

(iv) All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds or check as set forth in the Joint Release Instruction, Final Determination or Final Instruction, as applicable.

(v) Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of any funds on deposit in any Escrow Account under the terms of this Agreement must be in writing, executed by the appropriate Party or Parties as evidenced by the signatures of the person or persons set forth on Exhibit A-1 and Exhibit A-2, and delivered to the Escrow Agent either (i) by confirmed facsimile only at the fax number set forth in Section 11 below or (ii) attached to an e-mail received on a Business Day from an e-mail address set forth in Section 11 below. In the event a Joint Release Instruction, Final Instruction or Final Determination is delivered to the Escrow Agent, whether in writing, by facsimile or otherwise, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the person or persons designated in Exhibits A-1 and/or A-2 annexed hereto (the “Call Back Authorized Individuals”), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing, executed by an authorized signer of the applicable Party set forth on Exhibit A-1 or Exhibit A-2, actually received and acknowledged by the Escrow Agent.

(b) Certain Definitions.

(i) “Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are not required or authorized by law to be closed in New York, New York.

(ii) “Final Determination” means a final non-appealable order of any court of competent jurisdiction, including without limitation, any judgment, order or decree, that finally adjudicates ownership of, or entitlement to, the Sale Proceeds, together with (A) a certificate of the prevailing Party to the effect that such order is final and non-appealable and from a court of competent jurisdiction having proper authority and (B) the written payment instructions of the prevailing Party to effectuate such order.

(iii) “Joint Release Instruction” means the joint written instruction, substantially in the form of Exhibit B attached hereto, executed by an authorized signer of each of UBS and the Funds directing the Escrow Agent to disburse all or a portion of the Escrow Funds, as applicable.

(iv) “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

5. Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, which shall be deemed purely ministerial in nature, and no duties, including but not limited to any fiduciary duties, shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between

the Parties, in connection herewith, if any, including without limitation the Settlement Agreement, nor shall the Escrow Agent be required to determine if any Person has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement will control the actions of Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any Joint Release Instruction, Final Instruction or Final Determination furnished to it hereunder and believed by it to be genuine and to have been signed and presented by an authorized signer of the proper Party or Parties. Concurrent with the execution of this Agreement, the Parties shall deliver to the Escrow Agent authorized signers' forms in the form of Exhibit A-1 and Exhibit A-2 attached hereto. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Funds. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in a Joint Release Instruction, Final Instruction or Final Determination. The Escrow Agent may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. The Escrow Agent will not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that the Escrow Agent's gross negligence or willful misconduct was the cause of any direct loss to either Party. To the extent practicable, the Parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for any special, indirect, punitive, incidental or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such losses or damages and regardless of the form of action.

6. Resignation and Removal of Escrow Agent. The Escrow Agent (a) may resign and be discharged from its duties or obligations hereunder by giving thirty (30) calendar days advance notice in writing of such resignation to the Parties specifying a date when such resignation shall take effect or (b) may be removed, with or without cause, by the Parties acting jointly at any time by providing written notice to the Escrow Agent. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's line of business may be transferred, shall be the Escrow Agent under this Agreement without further act (provided that the Escrow Agent will provide the Parties with reasonable notice of any such merger, conversion, consolidation or sale.) The Escrow Agent's sole responsibility after such thirty (30) day notice period expires or after receipt of written notice of removal shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a substitute or successor escrow

agent pursuant to a joint written designation from the Parties, (ii) as set forth in a Joint Release Instruction or (iii) in accordance with the directions of a Final Determination, and, at the time of such delivery, the Escrow Agent's obligations hereunder shall cease and terminate. In the event the Escrow Agent resigns, if the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

7. Fees and Expenses. All fees and expenses of the Escrow Agent are described in Schedule 1 attached hereto and shall be paid by the Funds. The fees agreed upon for the services to be rendered hereunder are intended as full compensation for the Escrow Agent services as contemplated by this Agreement.

8. Indemnity. UBS, on the one hand, and the Funds, on the other hand, hereby agree to, severally and not jointly, indemnify, defend, and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs or expenses (including the reasonable fees and expenses of one outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively "Escrow Agent Losses") arising out of or in connection with (a) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnatee, except to the extent that such Escrow Agent Losses, as adjudicated by a court of competent jurisdiction, have been caused by the fraud, gross negligence or willful misconduct of such Indemnatee, or (b) its following any instructions or other directions from UBS or the Funds. Notwithstanding anything to the contrary herein, the Parties agree, solely as between the Parties, that any obligation for indemnification under this Section 8 (or for reasonable fees and expenses of the Escrow Agent described in Section 7) shall be borne by the Party or Parties determined by a court of competent jurisdiction to be responsible for causing the loss, damage, liability, cost or expense against which the Escrow Agent is entitled to indemnification or, if no such determination is made, then one-half by UBS and one-half by the Funds. The Parties acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

9. Tax Matters.

(a) MSCF shall be responsible for and the taxpayer on all taxes due on the interest or income earned, if any, on the Escrow Funds for the calendar year in which such interest or income is earned. The Escrow Agent shall report any interest or income earned on the Escrow Funds to the IRS or other taxing authority on IRS Form 1099. Prior to the date hereof, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 as applicable and such other forms and documents that the Escrow Agent may request.

(b) The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the Escrow Funds. The Escrow Agent shall withhold any taxes required to be withheld by applicable law, including but not limited to required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities.

(c) The Escrow Agent, its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. This Agreement and any amendments or attachments hereto are not intended or written to be used, and may not be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

10. Covenant of Escrow Agent. The Escrow Agent hereby agrees and covenants with the Parties that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone except pursuant to the express terms of this Agreement or as otherwise required by law.

11. Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) on the day of transmission if sent by electronic mail ("e-mail") with a PDF attachment executed by an authorized signer of the Party/ Parties to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of the transmission, (iv) by overnight delivery with a reputable national overnight delivery service, or (v) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five Business Days after the date such notice is deposited with the United States Postal Service. If notice is given to a Party, it shall be given at the address for such Party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes.

if to UBS, then to:

UBS Legal Department – Americas Litigation  
Attn: Patrick Shilling  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-3685  
E-mail: patrick.shilling@ubs.com



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

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071  
Attention: Jeffrey E. Bjork, Esq.  
Telephone No.: 213-485-1234  
Facsimile No.: 213-891-8763  
E-mail: jeff.bjork@lw.com

or, if to MSCF or Asset Holdings, then to:

Highland Multi Strategy Credit Fund, L.P.  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: Legal Department  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

or, if to the Escrow Agent, then to:

Citibank, N.A.  
Citi Private Bank  
One Sansome Street, 24<sup>th</sup> Floor  
San Francisco, CA 94144  
Attn: Hamyd Mazrae  
Telephone No.: 415-627-6044  
Facsimile No.: 415-592-5584  
E-mail: hamyd.mazrae@citi.com

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to the foregoing clause (i) through (iv) of this Section 11, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the

Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

12. Termination. This Agreement shall terminate on the first to occur of (a) the distribution of all of the amounts in the Escrow Funds in accordance with this Agreement or (b) delivery to the Escrow Agent of a written notice of termination executed jointly by the Parties after which this Agreement shall be of no further force and effect except that the provisions of Section 8 hereof shall survive termination.

13. Miscellaneous. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any party without the prior consent of the other parties. This Agreement shall be governed by and construed under the laws of the State of New York. Each party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and submits to the exclusive jurisdiction of the federal and state courts in the Borough of Manhattan in the City of New York. The parties hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising from or relating to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile or electronic transmission in portable document format (.pdf), and such facsimile or .pdf will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to the Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Sections 7 and 8, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

14. Compliance with Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other

Person, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

15. Further Assurances. Following the date hereof, each party shall deliver to the other parties such further information and documents and shall execute and deliver to the other parties such further instruments and agreements as any other party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

16. Assignment. No assignment of the interest of any of the Parties shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and consented to by the Escrow Agent (such consent not to be unreasonably withheld). Any transfer or assignment of the rights, interests or obligations hereunder in violation of the terms hereof shall be void and of no force or effect.

17. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility), it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

18. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with Federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Parties agree to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Parties depositing funds at Citibank pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, an identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

19. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**UBS SECURITIES LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ESCROW AGENT:

**CITIBANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



## **Schedule 1**

### **ESCROW AGENT FEE SCHEDULE Citibank, N.A., Escrow Agent**

#### **Acceptance Fee**

To cover the acceptance of the Escrow Agency appointment, the study of the Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

**Fee: WAIVED**

#### **Administration Fee**

The annual administration fee covers maintenance of the Escrow Account including safekeeping of assets in the escrow account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent's records, follow-up of the Agreement's provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing deposit account, FDIC insured to the applicable limits.

**Fee: WAIVED**

#### **Tax Preparation Fee**

To cover preparation and mailing of Forms 1099-INT, if applicable for the escrow parties for each calendar year:

**Fee: WAIVED**

#### **Transaction Fees**

To oversee all required disbursements or release of property from the escrow account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Agreement:

**Fee: WAIVED**

#### **Other Fees**

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

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**TERMS AND CONDITIONS:** The above schedule of fees does not include charges for out-of-pocket expenses or for any services of an extraordinary nature that Citibank or its legal counsel may be called upon from time to time to perform. Fees are also subject to satisfactory review of the documentation, and Citibank reserves the right to modify them should the characteristics of the transaction change. Citibank's participation in this program is subject to internal approval of the third party depositing monies into the escrow account to be established hereunder. The Acceptance Fee, if any, is payable upon execution of the Agreement. Should this schedule of fees be accepted and agreed upon and work commenced on this program but subsequently halted and the program is not brought to market, the Acceptance Fee and legal fees incurred, if any, will still be payable in full.

EXHIBIT A-1

Certificate as to UBS' Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of UBS and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of UBS. The below listed persons (must list at least two individuals, if applicable) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s).

Name / Title / Telephone

Specimen Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

NOTE: Actual signatures are required above. Electronic signatures, "Docusigned" signatures and/or signature fonts are not acceptable.

*Exhibit to Escrow Agreement*

EXHIBIT A-2

Certificate as to the Funds' Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Funds and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of the Funds. The below listed persons (must list at least two individuals, if applicable) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s)..

Name / Title / Telephone

Specimen Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

NOTE: Actual signatures are required above. Electronic signatures, "Docusigned" signatures and/or signature fonts are not acceptable.

*Exhibit to Escrow Agreement*

EXHIBIT B

Form of Joint Release Instruction

[●], 202[●]

Citibank, N.A.  
c/o Citi Private Bank  
One Sansome Street  
San Francisco, CA 94104  
Attn: Hamyd Mazrae  
E-mail: hamyd.mazrae@citi.com

**Re: Joint Release Instruction**

Dear Mr. Mazrae,

Reference is made to that certain Escrow Agreement by and among (i) **UBS Securities LLC** (“UBS”), (ii) **Highland Multi Strategy Credit Fund, L.P.** (“MSCF”) and **Highland Credit Opportunities CDO Asset Holdings, LP** (“Asset Holdings” and together with MSCF, the “Funds”) and (iii) **CITIBANK, N.A.** (the “Escrow Agent”), dated as of [●], 2020 (the “Escrow Agreement”). Unless otherwise indicated, all capitalized terms used and not otherwise defined herein have the respective meanings given to them in the Escrow Agreement.

This notice constitutes a Joint Release Instruction signed jointly by UBS and the Funds pursuant to Exhibit A-1 and Exhibit A-2 to the Escrow Agreement.

UBS and the Funds hereby jointly instruct the Escrow Agent, in accordance with Section 4(a)i of the Escrow Agreement to release \$[●] from the Escrow Account to [recipient], via wire transfer of immediately available funds to the following wire instructions:

Name of Bank: [●]  
ABA #: [●]  
Beneficiary Account #: [●]  
Beneficiary Account Name: [●]

The Parties acknowledge that prior to the remittance of funds from the Escrow Account, the Escrow Agent will need to speak to an authorized representative of each of UBS and the Funds to confirm payment details.

**[SIGNATURE PAGES FOLLOW]**

Very truly yours,

**UBS SECURITIES LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



Very truly yours,

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**LATHAM & WATKINS LLP**

Andrew Clubok (*pro hac vice*)  
Sarah Tomkowiak (*pro hac vice*)  
555 Eleventh Street, NW, Suite 1000  
Washington, District of Columbia 20004  
Telephone: (202) 637-2200  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

and

Jeffrey E. Bjork (*pro hac vice*)  
Kimberly A. Posin (*pro hac vice*)  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071  
Telephone: (213) 485-1234  
Email: jeff.bjork@lw.com  
kim.posin@lw.com

**BUTLER SNOW LLP**

Martin Sosland (TX Bar No. 18855645)  
Candice Carson (TX Bar No. 24074006)  
2911 Turtle Creek Boulevard, Suite 1400  
Dallas, Texas 75219  
Telephone: (469) 680-5502  
E-mail: martin.sosland@butlersnow.com  
candice.carson@butlersnow.com

*Counsel for UBS Securities LLC and UBS  
AG London Branch*

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

-----	X	
<i>In re</i>	:	Chapter 11
	:	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	:	Case No. 19-34054-sgj11
	:	
Debtor.	:	
-----	X	

**UBS'S REPLY IN SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER  
APPROVING SETTLEMENT WITH UBS SECURITIES LLC AND UBS AG  
LONDON BRANCH AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

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<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Bankruptcy Court, Suite 700, Dallas, TX 75201.

UBS Securities LLC and UBS AG London Branch (together “**UBS**”), by and through their undersigned counsel, hereby submit this reply (this “**Reply**”) (a) in response to (i) the *Limited Preliminary Objection to the Debtor’s Motion For Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2268] (the “**Initial Dugaboy Objection**”)<sup>2</sup>; (ii) the *Supplemental Opposition to Debtor’s Motion For Entry of an Order Approving Settlement With UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2293] (the “**Supplemental Dugaboy Objection**” and together with the Initial Dugaboy Objection, collectively, the “**Dugaboy Objections**”); and (iii) *James Dondero’s Objection to Debtor’s Motion For Entry of an Order Approving Settlement With UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2295] (the “**Dondero Objection**” and together with the Dugaboy Objections, collectively, the “**Objections**”) and (b) in support of the *Debtor’s Motion For Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] (the “**9019 Motion**”), and, in support of this Reply, state as follows:

## **REPLY**

1. In an effort to streamline the briefing with respect to the 9019 Motion, UBS joins the Debtor’s response to the Objections filed substantially contemporaneously herewith. In addition, UBS states the following in support of the 9019 Motion.

### **I. UBS’s Claims Entitle It To Significant Damages**

2. As set forth in detail in the 9019 Motion, UBS’s claims derive from a state court action initiated in 2009 against the Debtor and several of its affiliates (amongst other parties)

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<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the 9019 Motion.

(the “**State Court Action**”). The underlying facts and procedural history of the State Court Action are complex and set forth in detail in *UBS’s Motion for Relief From the Automatic Stay to Proceed with State Court Action* [Docket No. 644]. On November 14, 2019, the Supreme Court of the State of New York (the “**State Court**”) entered a Decision and Order on the first phase of the State Court Action (“**Phase I**”), ruling in favor of UBS on almost every issue presented in Phase I and awarding UBS over \$1 billion in damages (including interest) against certain of the Debtor’s affiliated funds, Highland CDO Opportunity Master Fund, L.P. (“**CDO Fund**”) and Highland Special Opportunities Holding Company (“**SOHC**” and together with CDO Fund, collectively, the “**Funds**”). The second phase of the State Court Action, which includes UBS’s direct claims against the Debtor and certain of its affiliates, including Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“**Multi-Strat**”) (a non-debtor fund managed by the Debtor), is currently stayed as to the Debtor by the automatic stay imposed by section 362 of the Bankruptcy Code.

3. On June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the “**UBS Claim**”). The UBS Claim asserts a general unsecured claim against the Debtor for \$1,039,957,799.40, on account of, among other things, damages, prejudgment interest, and attorneys’ fees arising from UBS’s fraudulent transfer and breach of the duty of good faith and fair dealing claims asserted in the State Court Action. In essence, the UBS Claim arises from the Debtor’s multi-faceted strategy to intentionally frustrate and prevent UBS from recovering amounts owed to UBS resulting from breaches of the Cash Warehouse Agreement among UBS, the Debtor and the Funds and the Synthetic Warehouse Agreement among UBS, the Debtor and the Funds (together,

the “**Warehouse Agreements**”). As set forth in the UBS Claim, the Debtor directed the Funds to withhold payment to UBS and undertook a litany of other actions to ensure that, even if UBS was successful in the State Court Action against the Funds (as it ultimately was), it would not be able to collect any judgment arising out of the litigation. These actions included a series of fraudulent transfers overseen by Mr. Dondero transferring assets out of the Funds and Highland Financial Partners, L.P. (“**HFP**”), SOHC’s parent. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate UBS’s ability to recover the amounts owed to it under the Warehouse Agreements or a wanton and reckless disregard of UBS’s rights to those amounts. It has always been UBS’s contention that such actions and omissions constitute breaches of the Debtor’s implied duty of good faith and fair dealing under the Warehouse Agreements.

4. On August 7, 2020, the Debtor filed an objection to the UBS Claim [Docket No. 928] (the “**UBS Claim Objection**”) and, on September 25, 2020, UBS filed its response [Docket No. 1105]. Then, on October 16, 2020, the Debtor and the Redeemer Committee of the Highland Crusader Fund and the Crusader Fund filed partial summary judgment motions [Docket Nos. 1180 and 1183] (together, the “**MSJs**”) seeking to disallow a significant portion of the UBS Claim. On November 6, 2020, UBS filed (i) *UBS’s Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request* [Docket No. 1355] (the “**MSJ Response**”) and (ii) *UBS’s Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1342] (the “**3018 Motion**”) and a brief in support of the 3018 Motion [Docket No. 1354] (the “**3018 Brief**”). After a hearing held on November 20, 2020, the Court granted the MSJs and allowed the UBS Claim for voting purposes only in the amount of \$94,761,076. *Order Granting*



*UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1518] (the “**3018 Order**”), ¶ 2. Of that amount, approximately \$43 million (inclusive of pre-judgment interest) related to transfers made to Multi-Strat, based on the Court estimating a 90% chance that UBS would prevail on that portion of the UBS Claim. 9019 Motion, ¶ 3.

5. The 3018 Order reflects the Court’s determination that the evidence presented by UBS established that UBS had a “colorable claim capable of temporary evaluation.” *In re Frascella Enterprises*, 360 B.R. 435, 458 n. 498 (Bankr. E.D. Pa. 2007). In entering the 3018 Order, the Court was also “bound by the legal rules which govern the ultimate value of the claim.” *In re Brints Cotton Mktg., Inc.*, 737 F.2d 1338, 1341 (5th Cir. 1984) (citation omitted). And, as detailed in the 9019 Motion, the record from the November 20 hearing reflects the fact that the Court gave consideration to each of UBS’s causes of action and theories of liability against the Debtor as set forth in the UBS Claim. 11/20/20 Hrg. Tr. at 213:25-214:1; 9019 Motion, ¶ 33.

6. However, the 3018 Order was entered by the Court prior to the discovery by the independent board of the Debtor’s general partner (the “**Independent Board**”) of the 2017 transfer of more than \$300 million in face amount of securities and cash (the “**Sentinel Transfers**”) mainly from the Funds (and HFP) to Sentinel Reinsurance, Ltd. (“**Sentinel**”), an entity indirectly owned and controlled by Mr. Dondero and Scott Ellington. 9019 Motion, ¶ 6.

## **II. The Sentinel Transfers Justify Additional Consideration to UBS**

7. As detailed in the 9019 Motion, under the terms of the Settlement Agreement, UBS will receive an allowed \$65 million claim in Class 8 (General Unsecured Claims) and an allowed

\$60 million claim in Class 9 (Subordinated General Unsecured Claims).<sup>3</sup> UBS will also receive a direct payment of \$18.5 million from Multi-Strat. The terms of the Settlement Agreement were renegotiated between the parties' initial announcement of the settlement on February 2, 2021 and the filing of the 9019 Motion on April 15, 2021, to account for the Independent Board's discovery of additional evidence of the Debtor's conspiratorial and fraudulent activities.

8. Neither of the objecting parties appears to object to the settled claims against the Debtor that were initially announced, which consisted of a \$50 million allowed Class 8 claim and a \$25 million allowed Class 9 claim. Rather Dugaboy focuses exclusively on the \$18.5 million payment to be made by Multi-Strat to UBS and Mr. Dondero, in addition to the Multi-Strat payment, focuses on the \$15 million increase in UBS's Class 8 claim and the \$35 million increase in UBS's Class 9 claim demanded by UBS as the result of newly discovered, clear and convincing evidence of the Debtor's pattern of fraudulent acts and breaches, including the orchestration of the Sentinel Transfers. Mr. Dondero argues that these incremental increases improperly inflate UBS's recovery from the estate, and that the 9019 Motion does not demonstrate the "nexus" between the Sentinel Transfers and UBS's claims against the Debtor. Dondero Objection, ¶ 29. This argument is a bold one given Mr. Dondero's apparent involvement in authorizing and orchestrating these transfers in 2017. 9019 Motion, ¶¶ 10-11.

9. In any event, the argument reflects a material misunderstanding of the UBS Claims as the Sentinel Transfers fall squarely within the scope of UBS's claims against the estate.<sup>4</sup> In the

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<sup>3</sup> The Debtor currently projects that Class 8 will not be paid in full and Class 9 claims will not receive any recovery. Mr. Dondero also concedes that the Class 9 claims "may not receive a large recovery." Dondero Objection, ¶ 34.

<sup>4</sup> Additionally, the UBS Claims included a broad reservation of rights "to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery." See UBS Claims, Addenda ¶ 28.

UBS Claim, UBS asserts that the Debtor took steps after the filing of the State Court Action to ensure that UBS could never recover on its claims against the Funds, took actions to prevent transfers of valuable assets to the Funds and to leave the Funds undercapitalized and took affirmative actions to transfer any remaining assets out of the Funds. UBS Claim Addenda, ¶¶ 15-16. This describes the Sentinel Transfers to a tee. After summary judgment was denied, and with trial looming in the State Court Action, the Debtor, at Mr. Dondero's apparent direction, denuded the Funds—defendants in the State Court Action—of their remaining assets. 9019 Motion, ¶ 10. These transfers evidence a pattern and practice of fraud and fraudulent transfers and the Debtor's continuous efforts to hide assets from UBS during Mr. Dondero's reign. And, they provide further evidence to support UBS's alter-ego claims against HFP.

10. Liability of the Debtor for conduct just like this—a deep-seated pattern of fraud—was clearly contemplated by the UBS Claim and included in the 3018 Brief and MSJ Response. In those briefs, UBS noted that the March 2009 transfers that precipitated the State Court Action are not a sufficient damage metric to take into account the full range of damages flowing from the Debtor's actions. 3018 Brief, ¶ 37, MSJ Response ¶ 49. At that time, UBS had not received sufficient discovery from the Debtor to quantify its damages related to transfers of assets from the Funds over time. *Id.* The Court considered these issues in its ruling on the 3018 Motion, estimating UBS's "other claims" at \$10 million plus \$10 million in pre-judgment interest. 11/20/20 Hrg. Tr. at 216:15-16. UBS respectfully submits that had the Court been apprised of the Sentinel Transfers prior to the November 20 hearing, that amount would have been significantly higher.<sup>5</sup> Discovery with respect to the Sentinel Transfers is ongoing, but the Debtor has

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<sup>5</sup> The Debtor previously represented to the Court that the Funds had few remaining assets or were insolvent, as the Debtor's prepetition management had repeatedly told the Independent Board that the Funds were "ghost funds" that had no material assets. *Debtor's Objection to UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action* [Docket No. 687] ¶ 1; UBS Claim Objection ¶ 2; 9019 Motion, ¶ 5.

represented that it believes that more than \$300 million in face amount of securities and cash were secretly transferred from the Funds in and after 2017. 9019 Motion, ¶ 6. In addition, it is UBS's expectation, based on the prior actions of Mr. Dondero and the entities he controls and his pattern and practice of trying to keep assets beyond the reach of UBS, that the assets that comprised the Sentinel Transfers resided at the Funds at the time the Funds breached their obligations to UBS and the State Court Action was initiated. 9019 Motion, ¶¶ 10-11, and n. 7 and 8.<sup>6</sup> Settling the Debtor's liability to UBS as to the entirety of the allegations made in the State Court Action against the Debtor is in the best interests of the estate because additional discovery may uncover still further fraudulent activities (among other reasons). Litigating this dispute would also be costly and time consuming for the Debtor, which would affect the ultimate recovery of other creditors of the Debtor's estate.

11. Finally, the assertion in the Dondero Objection that the Debtor's agreement to assist UBS with respect to the Transferred Assets and UBS's efforts to collect its judgment against the Funds should somehow decrease the value of UBS's claims against the estate is absurd on its face. Dondero Objection, ¶ 28. The Debtor's assistance with respect to the Transferred Assets is necessary to avoid a perpetuation of the Dondero-controlled Debtor's prior fraudulent acts and because the Debtor is likely the only entity that still maintains any records with respect to the Funds and the Transferred Assets, as difficult as those records may be to locate. And, it is reflective of the Debtor's continuing obligations under the parties' original agreement in which the Debtor committed to UBS's right to fully recover for all of its losses against the Funds. Moreover,

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<sup>6</sup> However, the Debtor's own shoddy recordkeeping and history of destroying documents (and active concealment of relevant information) while under Mr. Dondero's control has made it difficult for the Debtor to locate relevant documents to confirm this expectation. At a minimum, if such records no longer exist due to Mr. Dondero's or any other former Debtor employee's spoliation of them, UBS would be entitled to an adverse inference that the Funds held the Transferred Assets (and potentially additional assets) in March 2009.

UBS - not the estate - is indisputably entitled to any recovery from the Funds to satisfy its judgment.

12. Additionally, although Debtor's counsel announced at the hearing to confirm the Debtor's chapter 11 plan that the Debtor and UBS had reached an agreement in principle for a claims settlement, that settlement always remained subject to documentation, and the Court's approval (as does the Settlement Agreement). The discovery of the Sentinel Transfers provided UBS with a rational basis to reconsider its agreement in principle and to consider whether reverting to litigation against the Debtor (with the possibility of uncovering still further fraudulent acts that would increase UBS's likelihood of success and the magnitude of its damages) was a better path forward. For the reasons set forth above, UBS submits that the Sentinel Transfers evidence additional damages suffered by UBS at the Debtor's hand, which, absent the Settlement Agreement, likely would have resulted in additional protracted litigation between UBS and the Debtor and increased claims against the estate. 9019 Motion, ¶ 45. The existence of the Sentinel Transfers also bolsters UBS's ability to prove its long-standing claims regarding a pattern of breaches of the implied duty of good faith and fair dealing by the Dondero-controlled Debtor. Accordingly, the amounts of UBS's settled claims against the Debtor are appropriate and reasonable.

### **III. The Settlement of UBS's Claims Against Multi-Strat Is Appropriate**

13. UBS joins the Debtor's response to the Objections with respect to the Court's jurisdiction to approve the Settlement Agreement, the Debtor's authority to bind Multi-Strat to the Settlement Agreement, and the Debtor's fiduciary duties with respect to Multi-Strat. From UBS's own review of the applicable organizational and investment management documents, UBS has no reason to doubt that the Debtor had authority to bind Multi-Strat to the Settlement Agreement and



that the actions taken by the Debtor in its capacity as Multi-Strat's investment manager, among other capacities comply with applicable law.

14. The assertion in the Dugaboy Objections that UBS's recovery from Multi-Strat is a double recovery that should reduce UBS's claim against the Debtor is meritless, as is the argument that the Settlement somehow transfers Debtor assets to UBS, requiring a modification to the Debtor's chapter 11 plan. UBS has always had an independent fraudulent transfer claim against Multi-Strat in the amount of \$25,782,988 (plus prejudgment interest, which more than doubles that amount and continues to accrue), which the Court gave a 90% chance of success. 3018 Brief, ¶ 15, 11/20/20 Hrg. Tr. at 214:14-215:15. If that fraudulent transfer were to be unwound, the transferred amount would be returned to the Funds (against whom UBS also holds independent claims and a judgment), not the Debtor. No assets of the Debtor itself are being transferred from Multi-Strat to UBS; Multi-Strat is simply paying UBS to settle a fraudulent transfer claim that UBS holds against Multi-Strat directly. Mr. Dondero is well aware that UBS's claims against Multi-Strat are independent from its claims against the Debtor. In his own attempts to settle UBS's claims as part of his proposed "pot plan" Mr. Dondero insisted that any settlement of UBS's claims include a settlement of its claims against all Highland-affiliated entities, including Multi-Strat.

15. Finally, the assertion in the Dugaboy Objections that it is unclear whether UBS is releasing all of its claims against Multi-Strat is based on a misreading of the Settlement Agreement. As Section 3(a) of the Settlement Agreement makes clear, UBS *is* releasing its claims against the "MSCF Parties," *i.e.* Multi-Strat, its general partner, and its direct and indirect wholly-owned subsidiaries. What UBS is not releasing are claims related to the "MSCF Interests," *i.e.*, the interests in Multi-Strat that were among the Transferred Assets and other interests in Multi-Strat

that were later purportedly redeemed by Sentinel. To be clear, UBS has no intention of releasing any causes of action related to those fraudulently transferred interests and continues to evaluate its potential options to recover the Transferred Asset from Sentinel or later transferees.

**IV. The Settlement Meets the Standard for Approval Under Bankruptcy Rule 9019.**

16. The Settlement Agreement reflects extensive, arms-length, months-long, often contentious negotiations among the parties and their counsel, as well as multiple mediation sessions with Judge Allan L. Gropper (Ret.) and Sylvia A. Mayer (the “**Mediators**”). It resolves a decade-long dispute between the Debtor, several of its affiliates, and UBS. UBS respectfully submits that by resolving its claim—the largest asserted against the estate—the Settlement Agreement is fair and equitable and clearly meets the standard for approval under Bankruptcy Rule 9019. *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (under Rule 9019, a “proposed settlement must be ‘fair and equitable’ and in the best interests of the estate”); *see also In re Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997) (noting that the court’s task is to compare “the terms of the compromise with the rewards of litigation”).

17. Bankruptcy Rule 9019 does not require that a settlement be the “best possible outcome,” it simply needs to be fair, *i.e.* reasonable, in the Debtor’s business judgment. *See In re Victory Medical Center Mid-Cities, LP.*, 601 B.R. 739, 749 (Bankr. N.D. Tex. 2019) (“A proposed compromise settlement need not result in the best possible outcome for the debtor, but must not fall beneath the lowest point in the range of reasonableness.”); *see also, In re Y-Knot Const., Inc.*, 369 B.R. 405, 408 (8th Cir. B.A.P. 2007) (“The trustee, however, does not need to establish that the proposed settlement is the best possible outcome, but only that it does not fall below the lowest point in the range of reasonableness.”). The Court should give no weight when evaluating the Settlement Agreement to the fact that the Debtor previously argued that UBS’s claims against the

estate were without merit. As a fiduciary of the estate, in the absence of an agreement regarding UBS's claim, it is not at all surprising that the Debtor would contest UBS's claims vigorously. UBS respectfully submits that litigation of its claims would have been a costly, protracted process for all parties involved and that the Settlement Agreement is in the best interests of all. Indeed, it is telling that no creditors other than Mr. Dondero and the Dondero-controlled Dugaboy Investment Trust have objected to the Settlement Agreement.

18. For these reasons and those set forth in the Debtor's response, UBS submits that the Court should overrule the Objections and approve the Settlement Agreement and the relief sought in the 9019 Motion.

*[Remainder of Page Left Blank Intentionally]*

DATED this 14th day of May, 2021.

**LATHAM & WATKINS LLP**

By /s/ Martin Sosland  
Andrew Clubok (*pro hac vice*)  
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*Counsel for UBS Securities LLC and UBS  
AG London Branch*

**CERTIFICATE OF SERVICE**

I, Martin Sosland, certify that the *UBS's Reply in Support of Debtor's Motion For Entry of an Order Approving Settlement With UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: May 14, 2021.

/s/ Martin Sosland



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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054 (SGJ)
Debtor.	)	
	)	

**CERTIFICATE OF SERVICE**

I, Elliser Silla, depose and say that I am employed by Kurtzman Carson Consultants LLC ("KCC"), the claims and noticing agent for the Debtor in the above-captioned case.

On May 12, 2021, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service list attached hereto as **Exhibit B**:

- **Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief** [Docket No. 2294]
- **Notice of Change of Hearing Date** [Docket No. 2297]

Furthermore, on May 12, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit C**; and via First Class Mail upon the service list attached hereto as **Exhibit D**:

- **Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief** [Docket No. 2294]

Furthermore, on May 12, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit E**; and via First Class Mail upon the service list attached hereto as **Exhibit F**:

*(Continued on Next Page)*

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

- **Notice of Change of Hearing Date** [Docket No. 2297]

Dated: May 17, 2021

/s/ Elliser Silla

Elliser Silla

KCC

222 N Pacific Coast Highway, Suite 300

El Segundo, CA 90245

# **EXHIBIT A**

Exhibit A  
Core/2002 Service List  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
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Equity Holders	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
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Exhibit A  
Core/2002 Service List  
Served via Electronic Mail

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Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslaugh@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com



Description	CreditorName	CreditorNoticeName	Email
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees") and CPCM, LLC	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Richard Best, Regional Director	bankruptcynoticeshr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltime Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel for NexPoint Real Estate Partners, LLC F/K/A HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Brant C. Martin, Jason M. Rudd, Lauren K. Drawhorn	brant.martin@wickphillips.com; jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Jean Paul Sevilla and Hunter Covitz (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com

## **EXHIBIT B**

## Exhibit B

Core/2002 Service List  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.		301 Commerce Street, Suite 1700			Fort Worth	TX	76102
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts Equity Holders	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
TX AG Office	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
U.S. Department of the Treasury	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
Delaware Division of Revenue	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

## **EXHIBIT C**

Exhibit C  
Affected Party  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn, Brant C. Martin	jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com; brant.martin@wickphillips.com



## **EXHIBIT D**

**Exhibit D**

Affected Party  
Served via First Class Mail

Description		CreditorName	CreditorNoticeName	Address1	City	State	Zip
Counsel for NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC		Wick Phillips Gould & Martin, LLP	Jason M. Rudd. Lauren K. Drawhorn, Brant C. Martin	3131 McKinney Avenue, Suite 100	Dallas	TX	75204

## **EXHIBIT E**

Exhibit  
Affected Parties  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink, Clay M. Taylor, John T. Wilson, IV	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com; clay.taylor@bondsellis.com; john.wilson@bondsellis.com
Counsel to UBS Securities LLC and UBS AG London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Counsel to UBS Securities LLC and UBS AG London Branch	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	asif.attarwala@lw.com; Kathryn.George@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch	Latham & Watkins LLP	Zachary F. Proulx	Zachary.Proulx@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch	Latham and Watkins LLP	Andrew Clubok, Sarah Tomkowiak	andrew.clubok@lw.com; sarah.tomkowiak@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com

## **EXHIBIT F**



**Exhibit F**

Affected Parties  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink, Clay M. Taylor, John T. Wilson, IV	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102
Counsel to UBS Securities LLC and UBS AG London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	2911 Turtle Creek Blvd., Suite 1400		Dallas	TX	75219
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	650 Poydras Street, Suite 2500		New Orleans	LA	70130
Counsel to UBS Securities LLC and UBS AG London Branch	Latham & Watkins LLP	Asif Attarwala, Kathryn K. George	330 N. Wabash Avenue, Ste. 2800		Chicago	IL	60611
Counsel to UBS Securities LLC and UBS AG London Branch	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Ste. 100		Los Angeles	CA	90071
Counsel to UBS Securities LLC and UBS AG London Branch	Latham & Watkins LLP	Zachary F. Proulx	1271 Avenue of the Americas		New York	NY	10020
Counsel to UBS Securities LLC and UBS AG London Branch	Latham and Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000		Washington	DC	20004-1304
Counsel to UBS Securities LLC and UBS AG London Branch	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	One Rodney Square	920 North King Street	Wilmington	DE	19801

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 5**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

Vol. 3  
000680  
000752  
000761

Vol. 3  
000798  
000811  
000815  
Thru Vol. 4  
Vol. 4  
001144  
001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 5  
001174  
001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
Douglas S. Draper, La. Bar No. 5073  
[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
Leslie A. Collins, La. Bar No. 14891  
[lcollins@hellerdraper.com](mailto:lcollins@hellerdraper.com)  
Greta M. Brouphy, La. Bar No. 26216  
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650 Poydras Street, Suite 2500  
New Orleans, LA 70130  
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Fax: (504) 299-3399  
*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

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[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)  
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Heller, Draper & Horn, L.L.C.  
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New Orleans, LA 70130  
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Fax: (504) 299-3399  
*Attorneys for The Dugaboy Investment Trust*

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

**WITNESS AND EXHIBIT LISTS FOR THE MAY 21, 2021 HEARING**

The Dugaboy Investment Trust (“Trust”), by and through its undersigned counsel, submits the following witness and exhibit lists for the hearing set for 9:00 a.m. Central Time on May 21, 2021 in connection with the *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] filed by Highland Capital Management, L.P. (the “Debtor”).

A. WITNESSES:

1. James P. Seery, Jr.;
2. A representative of the Trust (may call); and
3. May call any witness listed by another party for impeachment or rebuttal.

B. EXHIBITS:

No.	Exhibit	Offered	Admitted
1	Certificate of Incorporation and Change of Name		
2	Third Amended and Restated Investment Management Agreement		
3	Fourth Amended and Restated Limited Partnership Agreement for Highland Multi Strategy Credit Fund LP		
4	Private Offering Memorandum for Highland Multi Strategy Credit Fund LP		
5	Documents the Debtor agreed to Produce on May 13, 2020		
6	The Transcript of the Rule 30(b)(6) Deposition of James P. Seery, Jr., representative of the Debtor, taken on May 14, 2021		
7	Any witness document listed by any other party		
8	Settlement Agreement dated May 2020 by and between UBS and others		
9	Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. #1472]		
10	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief [Dkt. #1943]		
11	Debtor's Retained Causes of Action		



The Trust reserves the right to amend or supplement this witness and exhibit list prior to the hearing.

May 14, 2021

Respectfully submitted,

/s/Douglas S. Draper.

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**CERTIFICATE OF SERVICE**

I do hereby certify that on May 14, 2021, a copy of the above and foregoing *Witness and Exhibit Lists for the May 21, 2021 Hearing* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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ATTORNEYS FOR JAMES DONDERO

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

**IN RE:**

**HIGHLAND CAPITAL MANAGEMENT,  
L.P.,**

**Debtor.**

§  
§  
§  
§  
§  
§

**Case No. 19-34054**

**Chapter 11**

**JAMES DONDERO'S WITNESS AND EXHIBIT LIST**

James Dondero ("Dondero") hereby files this Witness and Exhibit List for the hearing to consider *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] (the "Motion") filed by Highland Capital Management, L.P. (the "Debtor"), currently set for May 21, 2021 at 9:00 a.m. In support thereof, Dondero respectfully shows as follows:

**A. Documents that Dondero may use as exhibits:**

<b>Dondero Exhibit No.</b>	<b>Description</b>	<b>Offered</b>	<b>Objection</b>	<b>Admitted by Agreement</b>	<b>Admitted</b>
A.	Debtor Objection to UBS Claim [Docket No. 928]				
B.	Redeemer Committee Objection to UBS Claim [Docket No. 933]				
C.	Debtor's Motion for Partial Summary Judgment [Docket No. 1180]				
D.	Debtor's Brief in Support of Motion for Partial Summary Judgment [Docket No. 1181]				
E.	Redeemer Committee's Motion for Partial Summary Judgment [Docket No. 1183]				
F.	Redeemer Committee's Brief in Support of Motion for Partial Summary Judgment [Docket No. 1186]				
G.	Order Granting UBS Motion for Temporary Allowance of Claims for Voting Purposes [Docket No. 1518]				
H.	Order Granting Motions for Partial Summary Judgment [Docket No. 1526]				
I.	Fifth Amended Plan of Reorganization (As Modified) [Docket No. 1808]				
J.	Disclosure Statement for Fifth Amended Plan [Docket No. 1473]				
K.	Order Approving Disclosure Statement [Docket No. 1476]				
L.	Debtor's Notice of Filing of Supplement to the Third Amended				

	Plan of Reorganization [Docket No. 1389]				
M.	Debtor's Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization [Docket No. 1606] (Second Supplement)				
N.	Debtor's Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization [Docket No. 1656] (Third Supplement)				
O.	Debtor's Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization [Docket No. 1811] (Fourth Supplement)				
P.	Debtor's Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization [Docket No. 1875] (Certain Amendments)				
Q.	Order Confirming Fifth Amended Plan of Reorganization [Docket No. 1943]				
R.	Debtor's Response to Dondero's Motion to Require Notice and Hearing [Docket No. 1546]				
S.	Dondero Motion for Protective Order in Adversary No. 21-03020 ("UBS Adversary") [Adv. Dkt. 23]				
T.	Dondero Motion to Modify Order Granting Leave to File Under Seal in UBS Adversary [Adv. Dkt. 24]				
U.	Order on Dondero's Motion for Protective Order in UBS Adversary [Adv. Dkt. 45]				
V.	Stipulation between the Debtor and UBS in the UBS Adversary [Adv. Dkt. 52]				

W.	Order Approving Stipulation between Debtor and UBS in UBS Adversary [Adv. Dkt. 53]				
X.	Motion of Former Employees to Quash Subpoenas and Brief in Support [Adv. Dkt. 70]				
	Any transcript of any hearing in the above-captioned bankruptcy case				
	Any document or pleading filed in the above-captioned bankruptcy case				
	Any exhibit necessary for impeachment or rebuttal purposes				
	Any and all documents identified or offered by any other party				

Dondero reserves the right to amend and/or supplement this Exhibit List should he determine that any other document may be helpful to the trier of fact, whether in his case in chief or rebuttal.

**B. Witnesses that Dondero may call to testify:**

1. James P. Seery, Jr.;
2. Any and all other witnesses identified or called by any other party; and
3. Any witness necessary for rebuttal.

Dondero reserves the right to amend and/or supplement this Witness List should he determine that any other witness may be helpful to the trier of fact, whether in his case in chief or rebuttal.

Dated: May 18, 2021

Respectfully submitted,

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**ATTORNEYS FOR JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on May 18, 2021, true and correct copies of the foregoing document and all identified exhibits were served via the Court's CM/ECF system on all parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink



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

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Chapter 11
Debtor.	§	Case No. 19-34054-sgj11
	§	
	§	

**DEBTOR'S OBJECTION TO PROOFS OF CLAIM 190 AND 191 OF  
UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**NO HEARING WILL BE CONDUCTED ON THIS OBJECTION TO CLAIM UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS 75242-1496 BEFORE 5:00 P.M. (CENTRAL TIME) ON SEPTEMBER 9, 2020 WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM THE DATE OF SERVICE HEREOF.**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE OBJECTING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE RESPONDING PARTY.**

**IF NO HEARING ON SUCH OBJECTION TO CLAIM IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER SUSTAINING THE OBJECTION TO CLAIM.**

Highland Capital Management, L.P., the debtor and debtor-in-possession (“Debtor”) in the above-captioned chapter 11 case (“Bankruptcy Case”), hereby submits this objection to Proof of Claim No. 190 and Proof of Claim No. 191 (substantively identical claims that are referenced collectively as the “UBS Claim”) filed by UBS Securities LLC and UBS AG, London Branch (collectively “UBS”) on June 26, 2020, and in support thereof, respectfully states as follows:<sup>2</sup>

### **INTRODUCTION**

1. When global financial markets collapsed in late 2008, UBS and other participants in the securities trading industry suffered enormous losses. Among the losers were offshore funds related to the Debtor that were counterparties to warehousing agreements with UBS (the “Fund Counterparties”), which were unable to honor contractual margin calls. After eleven years of litigation in the New York state courts, UBS has obtained a determination that this was a breach of contract by the Fund Counterparties. UBS now holds a judgment against the

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<sup>2</sup> Exhibits 1-12 to this objection are attached to *Appendix A of Exhibits in Support of Debtor’s Objection to Proofs of Claim of UBS Securities LLC and UBS AG, London Branch*, filed concurrently herewith, and all citations herein to “A\_\_” refer to Appendix A. Exhibits 13-17 to this objection are attached to *Appendix B of Exhibits in Support of Debtor’s Objection to Proofs of Claim of UBS Securities LLC and UBS AG, London Branch*. Concurrently herewith, the Debtor is requesting the Court’s permission to file Appendix B under seal. All citations herein to “B\_\_” refer to Appendix B.

Fund Counterparties that, with the accrual of interest at 9% over a decade, exceeds \$1 billion (the “Phase I Judgment”).

2. UBS’s problem, of course, is that the Fund Counterparties do not have sufficient assets to satisfy UBS’s judgment. In the *Debtor’s Objection UBS’s Motion for Relief from the Automatic Stay to Proceed with State Court Action* [Docket No. 687], the Debtor said that the Fund Counterparties were insolvent. However, the Fund Counterparties are insolvent only because of UBS’s judgment, and the Debtor believes each Fund Counterparty has assets. The Debtor is continuing to assess those assets and their value.

3. However, in addition to the lack of assets at the Fund Counterparties, and potentially more important, the operative agreements expressly exclude the Debtor from any liability for losses related to the transaction. The governing agreements contain no agreement by the Debtor to pay, guarantee or otherwise backstop the Fund Counterparties’ obligations. That was a conscious decision by UBS: when the warehousing agreements were restructured earlier in 2008, UBS did not bargain for any assurance of performance by the Debtor, and thus the agreements do not obligate the Debtor to do so. UBS, one of the largest and most sophisticated banks in the world at the time, bet that between the Fund Counterparties and the warehouse collateral there would be enough cushion to absorb any risk. UBS knowingly took the risk that if the Fund Counterparties defaulted, it would have no recourse against the Debtor. Instead of accepting the consequences of its bad business deal, UBS has used the litigation process to recut the deal to place liability on the Debtor. The New York State Appellate Division, First Department so held in the prepetition state court litigation in 2010, dismissing UBS’s claim in its February 24, 2009 complaint for contractual indemnification against the Debtor. That New York State appellate court ruled that the Debtor had undertaken no obligation to ensure that the Fund Counterparties would be able to perform, and that contractual limitation was always clear to UBS.

4. That decision has not stopped UBS from attempting to pin liability on the Debtor for the past decade. After the dismissal of its claim against the Debtor for breach of contract, UBS commenced a second action in New York state court, asserting a claim that the Debtor had breached an implied covenant of good faith and fair dealing by not ensuring that the Fund Counterparties could perform. UBS also added fraudulent transfer claims against the Debtor and others arising from an alleged \$233 million in transfers made by a parent of one of the Fund Counterparties, Highland Financial Partners, L.P. (“HFP”), and its subsidiaries HFP Asset II and HFP Asset III (together, “HFP Asset II/III”) in March 2009 (the “March 2009 Transaction”). UBS was not a creditor of HFP, so, in order to manufacture standing to challenge the transfers, UBS alleged HFP was an alter ego of a Fund Counterparty. UBS did not, and still has not, pled an alter ego claim against the Debtor, nor has it prevailed on its claim that HFP is the alter ego of one of the Fund Counterparties.

5. Three decisions by the Appellate Division bar any claim to hold the Debtor responsible for any portion of the Phase I Judgment:

- The first of these decisions, as noted, was the dismissal of UBS’s original complaint against the Debtor (filed on February 24, 2009) and a judgment on the merits in favor of the Debtor on UBS’ breach of contract claim. The Appellate Division based its determination on the fact that the Debtor did not promise to undertake liability as to UBS’s losses, or to ensure the Funds’ performance under their contracts with UBS. *See UBS v. Highland Capital Mgmt., L.P.*, 2010 NY Slip Op 1436, ¶ 1 (N.Y. App. Div.) [Exhibit 1 at A002].
- The second decision, issued after UBS tried to re-assert the same claim against the Debtor by labeling it as different legal theories (as UBS is now doing), held that UBS is barred by *res judicata* from asserting claims against the Debtor that “implicate events alleged to have taken place before the filing of the original complaint” on February 24, 2009. *See UBS v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011) [Exhibit 2 at A010].
- In its third decision, the Appellate Division extended its *res judicata* ruling to the Debtor’s co-defendants in the state court litigation, holding that UBS’s claims against other defendants – including the claim that HFP is the alter ego of one of the

Fund Counterparties – are likewise limited to conduct that occurred after February 24, 2009. *See UBS v. Highland Capital Mgmt., L.P.*, 93 A.D.3d 489, 490 (N.Y. App. Div. 2012) [**Exhibit 3** at A014].

6. The only post-February 24, 2009 conduct at issue in the UBS Claim and attachments is the March 2009 Transaction, which entailed transfers by HFP and HFP Asset II/III of assets valued at \$239 million (later reduced to \$233 million).<sup>3</sup> The breach of contract on which the Phase I Judgment is based occurred earlier: the warehousing agreements were terminated on December 3, 2008 and were found to have been breached on December 5, 2008. Accordingly, the Appellate Division’s two *res judicata* decisions preclude UBS from attempting to hold the Debtor liable for UBS’s breach of contract judgment against the Fund Counterparties, which is based solely on pre-February 24, 2009 conduct, directly or indirectly.

7. The UBS Claim incorporates its operative state court complaint. The claims for relief against the Debtor are the breach of implied covenant claim and the fraudulent transfer claim. UBS describes the UBS Claim as follows:

Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor’s breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys’ fees that may be awarded by any court at the conclusion of Phase II.

UBS Claim, ¶ 26. UBS has also suggested, though it is not pled in the state court complaint or in the UBS Claim, that it is at this late date expanding its assertion of alter ego liability beyond HFP and the Fund Counterparties to also subsume the Debtor, in what would apparently be yet another attempt to render the Debtor liable for the entire Phase I Judgment notwithstanding the Appellate Division rulings. *See Demonstrative* at Slide 2 (showing currently pending claims).<sup>4</sup>

<sup>3</sup> *See* NY D.I. 411 at pg. 22 of 36 [**Exhibit 4** at A038] (State Court decision reciting that, in UBS’s complaint, UBS alleged that \$239 million of assets were transferred in the March 2009 transaction).

<sup>4</sup> The Debtor believes its *Demonstrative* sets forth only undisputed facts. The *Demonstrative* is attached hereto as Exhibit 18.



8. The Debtor has numerous meritorious defenses to UBS's fraudulent transfer claims in connection with the March 2009 Transaction. Several raise factual issues, but two do not. First, UBS has unequivocally released the Debtor with respect to all claims arising from \$172 million of the alleged \$233 million in fraudulent transfers (the "UBS Release").

9. The UBS Release was granted to the Debtor pursuant to settlement agreements UBS entered into in 2015 with co-defendants that received more than 80% of the allegedly fraudulent transfers made in the March 2009 Transaction. UBS expressly released the Debtor from any claims "for losses or other relief specifically arising from" the approximately \$172 million in transfers.<sup>5</sup>

10. Second, UBS lacks standing as a non-creditor to challenge transfers made by HFP Asset II/III, entities against which UBS has asserted no claim. As UBS has long known, HFP Asset II/III were the transferors of approximately \$187.5 million of the assets transferred in March 2009. Most of the transfers by those entities (\$152.3 million) are covered by the UBS Release, leaving \$35.2 million of transfers that, based on UBS's lack of standing, it cannot assert. This brings the total of fraudulent transfer claims that *cannot* be brought against the Debtor to \$207.2 million out of \$233 million.

11. UBS appears to concede that the Appellate Division rulings limit its claim for breach of the implied covenant of good faith and fair dealing to the March 2009 Transaction. Thus, the implied covenant claim amounts to no more than a restatement of the fraudulent transfer claim, *i.e.*, the Debtor breached the implied covenant by engaging in fraudulent transfers.<sup>6</sup> To the extent there is no liability for the transfers, the implied covenant claim

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<sup>5</sup> See Exhibit 13 at Section 5.3, pg. 6 [B007]; Exhibit 14 at Section 5.3, pg. 5 [B037]. In its motion for injunctive relief against the settling defendants, UBS (i) reduced the total amount it claimed was transferred in the March 2009 transaction, and (ii) identified the transfers to the settling defendants as totaling more than 80% of the total amount of the March 2009 transaction. See NY D.I. 315 at pg. 6 [Exhibit 15 at B061].

<sup>6</sup> See, *e.g.*, 05/01/18 State Court Hrg. Tr. at 10:13-16 [Exhibit 5 at A063] (in discussing whether the implied covenant claim is based solely on the March 2009 transaction, UBS's counsel stated "basically,

obviously fails as well. Regardless, on the merits, no promise can be implied into the warehousing agreements that the Debtor would ensure that the Fund Counterparties would have the ability to pay UBS, when those contracts were restructured to *eliminate* any direct claim against the Debtor.

12. Even if there was liability (which there is none), UBS cannot use the implied covenant claim to render the Debtor liable for the alleged fraudulent transfers for which it released the Debtor from liability. The settlement agreements clearly preclude circumvention by relabeling claims.

13. Finally, UBS cannot use the doctrine of alter ego liability to render the Debtor liable for the Phase I Judgment. *Res judicata* bars any alter ego claims against the Debtor based on conduct predating February 24, 2009. Thus any claims UBS tries to create based upon the conduct occurring prior to the filing of its complaint (*i.e.*, the period of the parties' dealings) are barred.

14. UBS likely hopes to escape this clear claims barrier by casting alter ego liability as a post-judgment remedy under New York procedure rather than as a claim, but that maneuver fails. New York law applies *res judicata* to bar the assertion of alter ego liability against a person that was a party to terminated litigation, and the Appellate Division applied it in this case to limit UBS's claims against HFP, including an alter ego claim, on the basis that HFP was in privity with the Debtor. Accordingly, any assertion of alter ego liability is limited to the March 2009 Transaction, as to which UBS has not pled an alter ego claim against the Debtor.

15. UBS's factual allegations do not in any event support any determination of alter ego liability. A federal district court judge rejected similar arguments in nearly identical circumstances as a basis for alter ego liability in an action against the Debtor commenced by Citibank in the Southern District of New York. *Highland CDO Opportunity Master Fund, L.P. v.*

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you know, the implied covenant of good-faith and fair-dealing claim that we now have is that they shouldn't have committed fraudulent conveyances ...").

*Citibank, N.A.*, 270 F. Supp. 3d 716 (S.D.N.Y. 2017) (“*Citibank*”). The Debtor believes the Court will find the district judge’s reasoning persuasive and the facts analogous, namely, that under New York law, Citibank’s allegations of asset-stripping and diversion of assets that made it impossible to fulfill a margin call were not the kind of “wrong” that supports alter ego liability.

16. This Objection identifies those defenses to the UBS Claim as to which the Debtor contends there is no relevant factual dispute. The Debtor submits the Court can and should decide those defenses at this time without discovery or further proceedings. The Debtor requests that the Court establish a schedule for discovery and further proceedings on defenses identified or determined to be based upon disputed facts. The Debtor reserves all rights to supplement or amend this Objection, as appropriate.

#### **STATEMENT OF FACTS**

##### **A. The CLO Warehouse Agreements**

17. In April 2007, UBS entered into agreements (collectively, the “CLO Warehouse Agreements”) with the Debtor and the two Fund Counterparties -- Highland Special Opportunities Holding Co. (“SOHC”) and Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) -- to establish a warehouse facility to finance the acquisition of syndicated leveraged loan vehicle liabilities and credit default swaps. (Ex. A, 4/12/07 Original Synthetic Warehouse Agreement; Ex. B, 4/20/07 Original Engagement Ltr.; Ex. C, 5/22/07 Original Cash Warehouse Agreement.) Those assets, in turn, were to serve as the basis for a securitization pursuant to which notes would be sold to investors. Due to market conditions, the securitized offering did not occur by the contractual deadline, and the CLO Warehouse Agreements terminated in August 2007. *See generally* UBS Claim, ¶¶2-3.<sup>7</sup>

18. In March 2008, UBS, the Debtor, as servicer and the Fund Counterparties entered into restructured warehouse agreements (collectively, the “Restructured CLO Warehouse

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<sup>7</sup> Paragraph references are to the *Addendum to Proof of Claim* attached to each UBS proof of claim.

Agreements”). (Motion at ¶6, Exs. C, D, E.) In addition to the collateral posted by the Fund Counterparties as initial margin, the Restructured CLO Warehouse Agreements gave UBS the right to make margin calls for additional collateral on the Fund Counterparties in the event of a decline in the market value of the loans and swaps. UBS Claim, ¶¶4-5. If the margin calls were not met, the agreements permitted UBS to protect its exposure by swiftly foreclosing on the assets. Neither the Restructured CLO Warehouse Agreements nor any other agreements allowed UBS to obtain margin or any similar recovery from the Debtor. To the contrary, the agreements made clear that the Fund Counterparties bore all risk on the facilities. Among other things, the engagement letter between UBS and the Debtor provided that the Fund Counterparties would “in aggregate bear 100% of the risk of the Warehouse Facility” in accordance with the Fund Counterparties’ respective allocation percentages. (Ex. 19, § 3(c); *see also* Demonstrative Slide 3.)

19. The UBS Claim is laced with extraneous and untrue allegations of supposed misrepresentations made by the Debtor to induce UBS to enter the Restructured CLO Warehouse Agreements, *e.g.*, that it “assured Claimant that the Fund Counterparties had sufficient assets to cover any losses,” or that it misrepresented the amount of cash held by the Fund Counterparties, or failed to disclose encumbrances on collateral. *Id.*, ¶¶4-7. The Court should recognize these as futile efforts to “poison the well.” Based on the margin structure of the facilities and the parties’ sophistication, UBS could never “establish justifiable reliance to support its claims that defendants committed fraud by misrepresenting their creditworthiness or the assets they owned prior to entering the transaction.” *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018) (affirming trial court’s finding of a question of fact on the issue). UBS also cannot square this allegation with its own contemporaneous internal documents. *See* Ex. 20 (two days before the 2008 Restructured Transaction: “CRC [credit risk committee] view as to the Highland Hedge Funds ability to pay if

they were to default today to close to zero.”); Ex. 21 (seven days before the transaction: “The counterparties have illiquid assets, little cash, and no ability to raise cash on their assets in the current market. Thus we assign a very low probability to the two counterparties ability to meet our claim of \$166 mil.”); and Ex. 96. (“At Feb 29<sup>th</sup> CRC advised they were ascribing zero value to the potential claim on the two hedge funds offered as obligors to cover this exposure.”).<sup>8</sup>

20. As noted above, the Restructured CLO Warehouse Agreements explicitly placed the risk of loss on the Fund Counterparties, and not the Debtor, as the New York court has determined. *UBS Securities LLC v. Highland Capital Mgmt., L.P.*, 893 N.Y.S.2d 869 (N.Y. App. Div. 2010) (“the agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of [Fund Counterparties]’ obligations to bear the risk of investment losses.”).

21. As the market deteriorated in the fall of 2008, UBS made three margin calls on the Fund Counterparties. SOHC managed to satisfy the first two margin calls in September and October 2008, using funds provided by SOHC’s parent corporation, HFP. UBS Claim, ¶11; *UBS Securities LLC, et al v. Highland Capital Mgmt., L.P.*, et al, No. 650097-2009, at 4 (N.Y. Sup. Ct. Nov. 19, 2019).

22. Ironically, in view of UBS’s mantra that the Debtor schemed “to intentionally frustrate and prevent Claimant from recovering any of the amounts” owed to UBS (UBS Claim, ¶13), UBS concedes that “the Debtor moved assets around for other entities it controlled to make the first two collateral calls[.]” *Id.*, ¶11. The Debtor moved assets into UBS’s counterparties and paid those assets *to UBS*. And the Debtor did so even after the start of the global financial crisis.

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<sup>8</sup> Ultimately UBS’s dealmakers overcame the objections of their internal risk team, asserting they had done business with Highland for years and were “pretty sure that we could get Highland to buy back their counterparty exposure... for more than zero.” See Ex. 23.



23. The Fund Counterparties were unable, however, to satisfy a third margin call in November 2008, and UBS issued a notice of termination of the Restructured CLO Warehouse Agreements in December. *Id.* UBS alleges that, as of December 5, 2008, its losses were over \$520 million. *Id.*, ¶12.

**B. The HFP Notes and the March 2009 Transaction**

24. The other subject matter of the UBS Claim is transfers made in connection with the March 2009 Transaction that it alleges were fraudulent transfers. It is undisputed that the transfers were made by HFP (or its non-defendant subsidiaries), which was not a party to either the CLO Warehouse Agreements or the Restructured CLO Warehouse Agreements, and so owed no debt or duty to UBS. Nonetheless, UBS claims standing to challenge the transfers because it may in the future be owed money by HFP, provided it prevails on its claim that HFP is an alter ego of the Fund Counterparties. *Id.*, ¶16. UBS alleges in the State Court complaint that on March 17, 2009, the Debtor caused HFP to transfer all of its assets to the Debtor and affiliated co-defendants in the New York action (the “Affiliated Transferee defendants”), in what UBS alleged were fraudulent conveyances of \$239 million in assets.

25. The March 2009 Transaction was the settlement of certain notes issued by HFP in the fall of 2008. In September 2008, HFP, through two newly-created, wholly-owned subsidiaries, acquired \$321 million in CLO assets and life settlement insurance contracts from the Affiliated Transferee defendants in exchange for senior secured notes in a principal amount of \$316 million with a maturity date of 2018. *See* Demonstrative Slide 4. The notes required HFP to make amortizing quarterly payments of \$15 million to the Affiliated Transferee defendants, starting in February 2009. HFP was required to transfer a security interest to the Affiliated Transferee defendants in the shares of two wholly owned subsidiaries into which HFP transferred the newly acquired assets.

26. In October 2008, HFP issued an additional \$55,488,000 of secured notes, also due in 2018, to Highland Crusader Offshore Partners, L.P. (“Crusader Fund”). The September and October notes (the “HFP Notes”) brought HFP’s debt obligation to the Affiliated Transferee defendants to approximately \$371 million. Toward the end of 2008, the assets that secured the HFP Notes were subject to significant credit downgrades, decreasing cash flows available to HFP as dividends. The decreased cash flows made it unlikely that HFP would be able to meet its debt service obligations under the HFP Notes, or its obligation to pay premiums on the life settlement contracts it had acquired, jeopardizing the underlying collateral.

27. Based on these concerns, HFP’s Board therefore approved a settlement with respect to the HFP Notes to relieve it of these obligations, which satisfied the notes and transferred the collateral back to Highland Credit Strategies Master Fund, L.P. (“Credit Strategies”), Highland Credit Opportunities CDO, L.P. and Crusader Fund, and to other noteholders/obligees (including Citibank and the Debtor). The March 2009 Transaction eliminated approximately \$370 million of debt and protected HFP from further exposure as the value of the collateral securing the HFP Notes continued to deteriorate. *See* Demonstrative Slides 5 and 6. The satisfaction of the HFP Notes and the return of the collateral was effectuated pursuant to a “Termination, Settlement and Release Agreement” dated March 20, 2009, between HFP, HFP Asset Funding II, Ltd., and HFP Asset Funding III, Ltd., as Issuers, and the noteholders/obligees.

28. The March 2009 Transaction was unrelated to debts owed by SOHC to UBS (and so, as discussed below, was patently not an “actual intent” fraudulent conveyance). The transferor was an entity, HFP (or its unrelated subsidiaries), which did not and still does not owe anything to UBS. Further, the challenged transfers satisfied secured debt to non-insiders (which, as discussed below, constitutes “fair consideration” under section 273 of the New York

Debtor and Creditor Law (“NYDCL”) meaning they could not be constructively fraudulent either).

### C. Procedural History

29. On February 24, 2009, UBS commenced a lawsuit against the Debtor and the Fund Counterparties in New York state court, alleging breach of the Restructured CLO Warehouse Agreements by the Fund Counterparties and seeking indemnification from the Debtor for certain losses (the “2009 Action”) (Ex. F, Compl., *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/09 (N.Y. Sup. Ct. Feb. 24, 2009).) The indemnification claim—the only cause of action that UBS asserted against the Debtor—was dismissed by the New York Appellate Division. “Dismissal of plaintiffs’ indemnification claim against Highland is warranted, since *the agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of defendant off-shore funds’ obligations to bear the risk of investment losses.*” *UBS Securities LLC v. Highland Capital Management, L.P.*, 70 A.D.3d 526, 893 N.Y.S.2d 869 (2010) (emphasis added).

30. After the Debtor was dismissed from the 2009 Action, UBS twice amended its complaint in the 2009 Action to add five new defendants (including HFP, Credit Strategies, and Crusader Fund) and filed a new action against the Debtor on June 28, 2010, captioned as *UBS v. Highland Capital Management, L.P.*, Index No. 65072/2010 (N.Y. Sup. Ct.) (the “2010 Action”).<sup>9</sup> The 2009 Action and the 2010 Action were later consolidated. As its claims against the Debtor, UBS asserted that the March 2009 Transaction was a fraudulent conveyance that benefitted the Debtor, and that the Debtor breached the implied covenant of good faith and fair dealing by causing it. Recognizing it was not a creditor of HFP (and thus

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<sup>9</sup> The operative complaint against the Debtor, filed in the 2010 Action, is attached as **Exhibit 16** to Appendix B [B064-B121], and the operative complaint against the remaining defendants, filed in the 2009 Action, is attached as **Exhibit 17** to Appendix B [B123-B180].

lacked standing to challenge the transfers), UBS needed a bootstrap to assert the fraudulent transfer claims against HFP and other defendants, UBS's amended complaint in the 2009 Action included a claim for declaratory relief against HFP seeking a determination that HFP was the alter ego of one of the Funds. The alter ego claim against HFP is the only alter ego cause of action that UBS has asserted in the New York state court litigation; in over a decade of litigation, UBS has never asserted that the Debtor is the alter ego of the Funds or any other entity.

31. In 2011 and 2012, the Appellate Division issued two more decisions that eliminated, or otherwise significantly limited, UBS's claims against the Debtor and new defendants. Both decisions applied *res judicata* to restrict UBS from seeking recovery for any conduct that occurred prior to February 24, 2009, the date on which UBS filed its original complaint in the 2009 Action, in which a final judgment was rendered on the merits in favor of the Debtor. *See* Exhibit 2 at A010; Exhibit 3 at A014.

32. In the 2011 decision, after UBS tried to re-assert the same claim against the Debtor under different legal theories (much like UBS is now doing), the Appellate Division held:

[T]o the extent the [UBS] claims against Highland in the new complaint implicate events alleged to have taken place before the filing of the original complaint, *res judicata* applies. That is because UBS's claims against Highland in the original action and in this action all arise out of the restructured warehousing transaction. While the claim against Highland in the original action was based on Highland's alleged obligation to indemnify UBS for actions taken by the affiliated funds, and the claims against Highland in the second action arose out of Highland's alleged manipulation of those funds, they form a single factual grouping. ***Both are related to the same business deal and to the diminution in the value of the securities placed with UBS as a result of that deal.***

*UBS v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011) (emphasis added) [Exhibit 2 at A010].

33. In the 2012 decision, the Appellate Division extended its *res judicata* ruling to the Debtor's co-defendants in the state court litigation, holding that UBS's claims

against other defendants (which included a claim that HFP is the alter ego of one of the Fund Counterparties) are likewise limited to conduct that occurred after February 24, 2009. *UBS v. Highland Capital Mgmt., L.P.*, 93 A.D.3d 489, 490 (N.Y. App. Div. 2012) [**Exhibit 3** at A014]. "This Court's reversal of an order denying dismissal of the complaint in a related action (*UBS Sec. LLC v Highland Capital Mgt., L.P.*, 86 AD3d 469 [2011]), warrants dismissal of a portion of plaintiff's claims in this action due to res judicata since defendants are in privity with the defendant in the other action." *Id.* (citation omitted).

34. In light of the Appellate Division's decisions, UBS's remaining claims against the Debtor are limited to those that arise out of the allegedly fraudulent transfers in the March 2009 Transaction. This includes its claim for breach of the implied covenant, which UBS acknowledged to the state court "involves [the Debtor's] role in the March 2009 fraudulent conveyances [and] overlaps factually with the ... fraudulent conveyance claims"<sup>10</sup> and more succinctly: "the implied covenant of good-faith and fair-dealing claim that we now have is that they shouldn't have committed fraudulent conveyances to make it certain that these two parties couldn't have paid."<sup>11</sup>

#### **D. The UBS Settlement and Release**

35. In June 2015, in exchange for payments totaling \$70.5 million, UBS released its claims against the Debtor (and other parties) pursuant to settlement agreements it entered into with three affiliates of the Debtor – Crusader Fund, Highland Crusader Holding Corporation and Credit Strategies. The UBS Release covers transfers to these affiliates representing approximately \$172 million of the \$233 million of challenged transfers. Section 5.3 of the settlement agreements provides, in relevant part:

[T]he UBS Releasing Parties do hereby release, and covenant not to sue, [the Debtor] with respect to such Claims to the limited extent the Claims are for losses or other relief specifically arising from the fraudulent

<sup>10</sup> Exhibit 6 at A106.

<sup>11</sup> 05/01/18 State Court Hrg. Tr. at 5:14-18 and 7:16-10:16 [Exhibit 5 at A058, A060-A063].



transfers to [the settling defendants] alleged in the UBS Litigation. For the avoidance of doubt, the Claims released do not include (a) any Claims for losses or other relief arising from the alleged fraudulent transfers to any defendant in the UBS Litigation other than [the settling defendants] or (b) any other Claims for losses or other relief arising from the [warehouse agreement], except to the limited extent the Claims are for losses or other relief that specifically arise from the alleged fraudulent transfers to [the settling defendants] ...

**E. The Phase I Trial**

36. The New York state court conducted a bench trial in July 2018 on the breach of contract claims against the Fund Counterparties under the Restructured CLO Warehouse Agreements. It issued its decision in November 2019, finding the Fund Counterparties liable for breaching the Restructured CLO Warehouse Agreements and awarding damages in the amount of \$519,374,149, plus prejudgment interest, for a total judgment of approximately \$1.05 billion. *UBS Securities LLC, et al v. Highland Capital Mgmt. L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct. Nov. 19, 2019) [Doc. No. 641]. The State Court made no findings with respect to the Debtor or the remaining defendants. Those claims were scheduled to be heard during a second trial.

**F. Summary of the UBS Claim**

37. The UBS Claim alleges anew the fraudulent transfer claims that UBS released in the UBS Release: “the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, [Credit Strategies], [Crusader Fund], and Highland Credit Opportunities CDO, L.P..., among others, thereby further reducing Highland’s abilities to meet their obligations to Claimant.” UBS Claim, ¶18. The premise appears to be that although UBS has already recovered the value of \$172 million of the alleged fraudulent transfers by way of its settlement with the Debtor and others, it can recover the very same amounts from the Debtor a second time as damages for causing the transfers to be made. UBS attempts this magic trick by re-casting the same claims as a breach of an implied duty “to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant.” *Id.* And although it never got a

guaranty or a keep-well promise of any type, UBS further alleges that the Debtor “deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties” and so precluded UBS from recovering anything. *Id.*, ¶¶16, 18.

38. Further confusing matters, although the filing of the UBS Claim post-dates this Court’s denial of relief from stay, UBS postulates that its claim against the Debtor will be tried before a jury in the State Court:

The next step in the State Court Action is Phase II of the trial, where Claimant’s remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non- Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final \$1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor’s various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys’ fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

*Id.*, ¶ 24.

39. UBS then summarizes its claim as follows:

Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor’s breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys’ fees that may be awarded by any court at the conclusion of Phase II.

*Id.*, ¶ 26.

## **OBJECTION TO CLAIM**

### **A. Legal Standard**

40. The Bankruptcy Code establishes a burden-shifting framework for proving the amount and validity of a claim. “A claim . . . , proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). “A proof of claim executed and filed in accordance with the [Bankruptcy Rules] shall constitute *prima facie* evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f); *see also In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006). However, the ultimate burden of proof for a claim always lies with the claimant. *Armstrong*, 347 B.R. at 583 (citing *Raleigh v. Ill. Dep’t of Rev.*, 530 U.S. 15 (2000)).

### **B. The Fraudulent Transfer Claim Should be Disallowed**

41. UBS’s fraudulent transfer claim against the Debtor is limited to conduct that occurred after February 24, 2009, and is therefore limited to the March 2009 Transaction extinguishing the HFP Notes, which UBS contends was both a constructively fraudulent conveyance and an actual fraudulent conveyance under New York law.<sup>12</sup>

42. A conveyance is constructively fraudulent under New York law if it is made while the transferor is insolvent or satisfies other similar financial criteria, and if the transferor does not receive “fair consideration” in exchange for the transfer. *Englander Capital Corp. v. Zises*, 79 N.Y.S.3d 502, 506 (N.Y. Sup. Ct. 2018); NYDCL §§ 273, 274, 275. A transfer is an actual fraudulent conveyance under New York law if it is made with actual intent to hinder, delay or defraud the transferor’s creditors. *Id.* at 507; NYDCL § 276.

43. UBS contends the March 2009 Transaction was a fraudulent conveyance because (i) UBS was a creditor of SOHC under the Restructured CLO Warehouse Agreements,

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<sup>12</sup> The recent amendments to New York’s fraudulent conveyance laws took effect on April 4, 2020 and are not retroactive. Therefore, UBS’s fraudulent conveyance claims are governed by New York Debtor and Creditor law as it existed prior to the recent amendments.

(ii) SOHC was the alter ego of HFP, (iii) as part of the settlement of the HFP Notes, HFP transferred assets to the Debtor, its affiliates and Citibank, (iv) HFP did not receive “fair consideration” for the transfers (even though the HFP Notes were cancelled), (v) HFP and SOHC were insolvent at the time, and (vi) the settlement of the HFP Notes was made with the actual intent to hinder, delay or defraud UBS, as a creditor of SOHC.

44. The fraudulent conveyance claim should be disallowed for the following reasons:

- UBS has released the Debtor with respect to the transfers covered by the UBS Release, which total approximately \$172 million of the total \$233 million transfer. The Debtor submit this defense may be decided on the existing record, without further proceedings.
- UBS lacks standing to challenge transfers that were made not by HFP but by two of its subsidiaries, HFP Asset II/III, which are not defendants in the UBS litigation and as to which UBS is not a creditor or even a purported creditor. The Debtor submits this defense may be decided on the existing record, without further proceedings.
- UBS cannot establish that the Debtor was the beneficiary of any transfers other than the \$17.8 million that it received directly. Further proceedings will be required on this issue.
- UBS cannot establish that the transfers were not supported by “fair consideration” because the asset transfers were return of collateral to extinguish secured debt. Further proceedings will be required on this issue.
- UBS cannot establish that the March 2009 Transaction was entered into in bad faith or with the intent to hinder, delay or defraud UBS or any other creditors. Further proceedings will be required on this issue.
- UBS cannot establish that HFP was insolvent at the time of the transfers. Further proceedings will be required on this issue.

**i) UBS Released All Claims Against the Debtor Arising From Transfers to Credit Strategies, Crusader Fund and Highland Crusader Holding Corporation**

45. As noted, in June 2015, in exchange for payments totaling \$70.5 million, UBS released its claims against the Debtor (and other parties) arising from transfers to Credit Strategies, Crusader Fund and Highland Crusader Holding Corporation, which represent \$172

million of the alleged fraudulent transfers. The UBS Release is at Section 5.3 of the settlement agreements, which provides:

[T]he UBS Releasing Parties do hereby release, and covenant not to sue, [the Debtor et al.] with respect to such Claims to the limited extent the Claims are for losses or other relief specifically arising from the fraudulent transfers to [the settling defendants] alleged in the UBS Litigation. For the avoidance of doubt, the Claims released do not include (a) any Claims for losses or other relief arising from the alleged fraudulent transfers to any defendant in the UBS Litigation other than [the settling defendants] or (b) any other Claims for losses or other relief arising from the [warehouse agreement], except to the limited extent the Claims are for losses or other relief that specifically arise from the alleged fraudulent transfers to [the settling defendants] ...

46. On its face, the UBS Release explicitly applies to the fraudulent transfer claims against the Debtor asserted in the UBS Claim. It is indisputable that those claims are, in the express words of the UBS Release, “Claims [ ] for losses or other relief specifically arising from the fraudulent transfers to [the settling defendants] in the UBS Litigation.” Just as clearly, neither exclusion in the UBS Release applies, namely: (a) these are not transfers “to any defendant in the UBS Litigation other than [the settling defendants]”; and (b) nor are they “any other Claims for losses or other relief arising from the [warehouse agreement]....”

47. The Debtor submits that the Court can decide this issue without further proceedings.

## **ii) UBS Lacks Standing to Challenge Transfers Made by HFP Asset II/III**

48. Conveyances can only be challenged as fraudulent by a creditor of the initial transferor. *See e.g., Aviron Auto. Grp. v. Leontiev*, 2020 NY Slip Op 30837(U), ¶ 41 (N.Y. Sup. Ct.) (plaintiff’s status as a creditor is a requirement to have standing under New York’s fraudulent conveyance laws). The creditor can seek relief against the transferors, the transferees, and any non-transferee beneficiaries of the fraudulent conveyance. *Fed. Deposit Ins. Corp. v. Porco*, 75 N.Y.2d 840, 842 (N.Y. 1990).

49. HFP Asset II/III were the transferors of approximately \$187.5 million of the assets transferred in the March 2009 Transaction. UBS is not a creditor of HFP Asset II/III



and has not named those entities as defendants in the UBS Litigation. Of that amount, \$152.3 million were transfers covered by the UBS Release. Of the remaining \$35.2 million: (a) approximately \$11.7 million was transfers to Citibank, and (b) approximately \$23.5 million was transfers to Highland Credit Opportunities Holding Corporation and Multi-Strat.

50. None of the transfers were to the Debtor, but to the extent UBS might otherwise succeed in imposing liability upon the Debtor for transfers to other transferees, UBS has no standing to challenge those transfers made by HFP Asset II/III.

51. The Debtor submits that the Court can decide this issue without further proceedings.

**iii) The Debtor is Not the Beneficiary of the Transfers**

52. The Debtor received only \$17.8 million of the transfers in the March 2009 Transaction, as a subsequent transferee from HFP. UBS will be unable to meet its burden of demonstrating that Debtor benefited sufficiently from other transfers to impose liability, such as the \$17.4 million in aggregate transfers to Citibank. The Court should establish a schedule for further proceedings on this issue.

**iv) HFP Received “Fair Consideration” for the Transfers**

53. UBS cannot meet its burden of showing that any transfers were not made for “fair consideration.” “Fair consideration” is provided when property is given “in good faith” to satisfy a preexisting debt “as a fair equivalent therefor.” NY Dr & Cr § 272. While a transfer to an insider to satisfy an antecedent debt is “presumed to lack good faith,” *Englander Capital Corp.*, 79 N.Y.S.3d at 506, that presumption does not apply when the transfer is to an insider who is legitimately a secured creditor. *Id.*

54. The March 2009 Transaction satisfied HFP’s obligations on the HFP Notes. The HFP Notes were secured at their inception, well before UBS filed its complaint on February 24, 2009. They were secured by, among other things, HFP’s interests in HFP Asset

II/III. While UBS contests whether the HFP Notes actually were secured, the Southern District of New York district court in *Citibank* held that they were. *Citibank*, 270 F. Supp. 3d at 733 (“HFP’s financial condition is irrelevant to the value of the HFP Notes because the notes were secured by independently valued collateral”). The State Court declined to decide the issue on summary judgment.

55. The fact that the security interests were not perfected is irrelevant, so long as they were effective between the parties. NY UCC § 9-201(a) (“a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors”); *Ultimore, Inc. v. Bucala*, 464 B.R. 626, 632 (Bankr. S.D.N.Y. 2012) (NY UCC § 9-201(a) gives an unperfected secured creditor rights superior to those of unsecured creditors).

56. A security interest attaches to collateral and becomes enforceable if three requirements are met: (i) value has been given; (ii) the debtor had rights in the collateral or the power to transfer rights in the collateral to the secured party; and (iii) the debtor has authenticated (*i.e.*, signed) a security agreement that describes the collateral. NY UCC § 9-203(b). These requirements were met. The noteholders gave value in exchange for the security interests by transferring assets to HFP’s subsidiaries. HFP had rights in the collateral or the power to transfer rights in the collateral.

57. With respect to the final requirement, “[a]ny document showing the required intent to grant an interest in the collateral will serve as a security agreement.... For there to be a valid and enforceable security agreement, a formal and separately signed document labeled ‘security agreement’ is not necessary.” *Ultimore, Inc.*, 464 B.R. at 631 (citations omitted). “Almost any combination of documents can be used to prove the existence of a security agreement so long as the documents embody the intention of the parties to create a security interest.” *Id.* Here, the HFP Notes and other related documents state that the HFP Notes were

secured, and evince an intent to create a security interest. As to HFP's interests in HFP Asset II/III, the parties also executed a charge over shares agreement that describes the collateral and repeatedly refers to the security interest granted in HFP's shares of HFP Asset II/III. The remaining collateral is described in detail in the underlying note purchase agreement. (Ex. 24.)

58. Undeterred by the secured nature of the HFP Notes, UBS asserts that the HFP Notes are not really secured debt because they should be recharacterized as equity interests. The Fifth Circuit permits debt to be recharacterized as equity only if that remedy is allowed under applicable state law. *Grossman v. Lothian Oil Inc. (In re Lothian Oil Inc.)*, 650 F.3d 539 (5th Cir. 2011) (rejecting use of section 105(a) as basis for recharacterization). There are no New York state court decisions allowing recharacterization, and UBS cannot rely on bankruptcy court decisions on recharacterization to argue a state law claim. *See Alliance Shippers, Inc. v. Garcia*, 2015 U.S. Dist. LEXIS 51316, at \*3-4 (S.D.N.Y. Apr. 17, 2015) ("Defendants next argue that both 'recharacterization' and 'equitable subordination' are claims under the bankruptcy law and not properly before this Court. They are correct. . . They do not constitute valid causes of action outside of the bankruptcy context.").

59. Because UBS cannot establish that the HFP Notes were not secured, its constructive fraudulent transfer claims must fail.

**v) UBS Cannot Demonstrate Fraudulent Intent or Lack of Good Faith**

60. For all the reasons described above, among others, both the issuance of the HFP Notes and their extinguishment in the March 2009 Transaction had a legitimate, good faith basis, and had nothing to do with attempting to divert assets from UBS, which was not a creditor of HFP (or its non-defendant subsidiaries) either when the notes were issued or even at the time of the March 2009 Transaction (and will never become a creditor of HFP unless it prevails on its alter ego claim). UBS cannot meet its burden of proof of establishing lack of good faith or intent to hinder or defraud creditors.

**C. UBS's Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing Should be Disallowed**

61. The Restructured CLO Warehouse Agreements are governed by New York law. As a result, the implied covenant claim, which is based on the restructured agreements, also is governed by New York law. *Official Comm. of Unsecured Creditors of Lois/USA, Inc. v. Conseco Fin. Servicing Corp.*, 264 B.R. 69, 97-98 (Bankr. S.D.N.Y. 2001). Under New York law, a covenant of good faith and fair dealing is “[i]mplicit in all contracts.” *19 Recordings Ltd. v. Sony Music Entm’t*, 165 F. Supp. 3d 156, 161 (S.D.N.Y. 2016) (citations omitted). The implied covenant is “a promise that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Id.* (internal quotation marks and citations omitted). A plaintiff must (i) identify the implied duties allegedly arising out of the parties’ contract, (ii) establish that the defendant breached those implied duties and, in doing so, acted malevolently or in bad faith, and (iii) establish that the defendant’s conduct caused the plaintiff’s alleged damages.

**i) A Duty on the Debtor’s Part to Ensure That UBS Would be Paid Cannot Be Implied When UBS Knowingly Did Not Contract For It**

62. It is axiomatic that the implied covenant also cannot be used to create new rights or impose new obligations that are inconsistent with the express terms of the parties’ contract. *Id.* at 165. A party asserting “the existence of an implied-in-fact covenant bears a heavy burden, for it is not the function of the courts to remake the contract agreed to by the parties, but rather to enforce it as it exists.” *Rowe v. Great Atl. & Pac. Tea Co.*, 46 N.Y.2d 62, 69 (N.Y. 1978). Therefore, a party asserting an implied covenant claim “must prove not merely that it would have been better or more sensible to include such a covenant, but rather that the particular unexpressed promise sought to be enforced is in fact implicit in the agreement viewed as a whole.” *Id.*

63. UBS wishes the Court to imply a duty by the Debtor to ensure that the Fund Counterparties' are able to pay UBS. Such a flies directly in the face of the contracts and the Appellate Division's very first decision in the UBS litigation dismissing the contractual indemnity claim against the Debtor. Because of the *res judicata* decisions, UBS is, at most, left with a repackaged fraudulent transfer claim: an implied duty by the Debtor to not permit the March 2009 alleged fraudulent transfers.

64. The Restructured CLO Warehouse Agreements do not impose any direct liability on the Debtor to ensure or guarantee performance by the Fund Counterparties. Such a basic obligation cannot be implied, which is precisely why the Appellate Division *already* held that the indemnification provisions did not impose on the Debtor an obligation "to ensure or guarantee the performance" of the Funds' obligations to UBS. These are highly complex contracts negotiated by highly sophisticated parties. There are numerous "protective" provisions in the Restructured CLO Warehouse Agreements, presumably heavily negotiated, relating to the posting of collateral and collateral calls, and there are numerous other protections for which UBS could have negotiated, but did not.

65. The Appellate Division ruling is dispositive. UBS had alleged that the Debtor had breached an indemnification obligation that was *implied*, not express. So is the covenant that UBS now seeks to imply into the same contracts. There is no material difference in the context that would support any decision other than that which the Appellate Division already reached. Both implied provisions amount to an imagined guaranty by the Debtor of performance of the Fund Counterparties, something that simply cannot be implied into a contract, and certainly not one between sophisticated parties such as these.

66. In *Citibank*, the district court rejected Citibank's similar attempt to imply a promise by the Debtor to ensure that cash would be available for distribution on the HFP Notes. CDO Fund (a Fund Counterparty) had pledged its HFP Notes to Citibank as collateral for its



obligations under a separate financing arrangement with Citibank. As part of the pledge agreement, the Debtor agreed “that as long as Citi held any of the HFP Notes under a pledge from CDO Fund, if HFP has cash available on a Quarterly Payment Date in an amount equal or greater to the Quarterly Payment Amount, [the Debtor] will recommend to the board of directors and management of HFP, to the extent consistent with [the Debtor’s] fiduciary duties, that HFP not exercise the [payment-in-kind] Option on the Notes for such Quarterly Payment Date.” *Citibank*, 270 F. Supp. 3d at 731. Citibank argued, in seeking to impose alter ego liability on the Debtor, that the Debtor had an implied obligation under the pledge agreement to ensure that cash was available for distribution on the HFP Notes. The court granted summary judgment in favor of the Debtor. It was “unpersuaded that HCM even owed Citi a good faith obligation to ensure that cash was available for distribution on the HFP Notes.” *Id.* at 732. “[I]t makes little sense to read into the [pledge agreement] an implied promise that [the Debtor] would ensure that cash was available for distribution on the HFP Notes. To the contrary, such an implied promise would impose a duty on [the Debtor] beyond that which Citi bargained for.” *Id.*

67. Similarly, in *Metro. Life Ins. Co. v. RJR Nabisco, Inc.*, 716 F. Supp. 1504, 1508 (S.D.N.Y. 1989), the court granted summary judgment against bondholders who contended their indentures carried an implied covenant not to incur LBO debt. The court refused to use the implied covenant to “create an indenture term that, while bargained for in other contexts, was not bargained for here and was not even within the mutual contemplation of the parties.” *Id.* In particular, the court held:

... [T]he “fruits” of these indentures do not include an implied restrictive covenant that would prevent the incurrence of new debt to facilitate the recent LBO. **To hold otherwise would permit these plaintiffs to straightjacket the company in order to guarantee their investment. These plaintiffs do not invoke an implied covenant of good faith to protect a legitimate, mutually contemplated benefit of the indentures; rather, they seek to have this Court create an additional benefit for which they did not bargain.**

*Id.* at 1519 (emphasis added).

68. Here, as in *Metro Life Ins. Co.*, UBS is attempting to create an obligation that could have been bargained for and made part of the restructured agreements – but was not. Imposing an obligation on the Debtor to ensure that UBS would be paid is in effect to create a guaranty where none was purchased. In these circumstances, it would create an obligation to prefer UBS over other creditors. That is not a reasonable extension of the parties’ express agreement.

**ii) Since Any Breach of the Implied Covenant Can Only be Based on the Alleged Fraudulent Conveyances, the UBS Release Applies**

69. As a result of the two *res judicata* decisions, UBS can only base its implied covenant claim on the alleged fraudulent conveyances made in the March 2009 Transaction. But it has released the Debtor from liability with respect to \$172 million of the \$233 million in transfers. The UBS Release applies without ambiguity.

70. Once again, Section 5.3 of the settlement agreements provides:

[T]he UBS Releasing Parties do hereby release, and covenant not to sue, [the Debtor et al.] with respect to such Claims to the limited extent the Claims are for losses or other relief specifically arising from the fraudulent transfers to [the settling defendants] alleged in the UBS Litigation. For the avoidance of doubt, the Claims released do not include (a) any Claims for losses or other relief arising from the alleged fraudulent transfers to any defendant in the UBS Litigation other than [the settling defendants] or (b) any other Claims for losses or other relief arising from the [warehouse agreement], except to the limited extent the Claims are for losses or other relief that specifically arise from the alleged fraudulent transfers to [the settling defendants] ...

71. A claim that the Debtor breached an implied obligation not to let a fraudulent transfer occur is unambiguously a claim “for losses or other relief specifically arising from the fraudulent transfers....” Again, the exclusions do not apply. First, the Debtor is not attempting to apply the UBS Release to transfers to other parties. Second, the subject of the implied covenant claim is the fraudulent transfers, and so even if the implied covenant claim is technically an “other Claim[] for losses or other relief arising from the [warehouse agreement],”

it is nonetheless a claim that quite literally comes within the exception “for losses or other relief that specifically arise from the alleged fraudulent transfers....” There is no room for interpretation. The settlement cannot be dispensed with by relabeling the claim.

**iii) UBS Cannot Prove that Any Duty to Ensure That UBS Would be Paid was Breached in Bad Faith or With Malevolence Targeting the Plaintiff**

72. If a duty could be implied, UBS would have the burden of proving that the Debtor breached it in bad faith or with malevolence targeting UBS specifically. *Wilder v. World of Boxing LLC*, 310 F. Supp. 3d 426, 451 (S.D.N.Y. 2018) (to establish a lack of good faith, the plaintiff must show that the defendant exercised a right malevolently, for its own gain as part of a purposeful scheme designed to deprive the plaintiff of the benefits under the contract).

73. There is no duty to ensure the Fund Counterparties could pay UBS, but even if there were, and even assuming that implied duty was breached by entering into the March 2009 Transaction, UBS cannot meet its burden of proving that it was done in bad faith or malevolently targeting UBS. The March 2009 Transaction was a good faith, commercially reasonable transaction that was not designed to “shield assets” from UBS, but instead was designed to try to protect the financial viability of HFP and its subsidiaries. It was approved by HFP’s board based on legitimate concerns regarding HFP’s ability to service the debt or maintain the collateral, in particular, its ability to make the premium payments due on the life settlement contracts. It eliminated approximately \$370 million of debt, and protected HFP from further exposure as the value of the collateral securing the HFP Notes continued to deteriorate.

74. Not only was the March 2009 Transaction a legitimate, commercially reasonable decision, it cannot be shown to have targeted UBS. HFP has no business relationship with UBS. HFP was not even a defendant in the complaint filed by UBS on February 24, 2009. That complaint was solely against the Fund Counterparties and the Debtor and was only for breach of contract. Only after losing its contract claim against the Debtor in the February 2010

appellate decision did UBS cast a wider net, for the first time adding HFP as a defendant and alleging alter ego in June 2010.

75. UBS will not be able to establish at trial that the Debtor breached any implied duty to UBS, let alone that the March 2009 Transaction was anything other than a “good faith” transaction.

#### **iv) Causation and Damages**

76. Causation is an “essential element” of damages for an implied covenant claim, meaning that the plaintiff must establish that the defendant’s breach “directly and proximately” caused the plaintiff’s damages. *St. Christopher’s, Inc. v. Forgione*, 2019 U.S. Dist. LEXIS 115476, \*28 (S.D.N.Y. July 11, 2019) (citations omitted); *see also Wilder*, 310 F. Supp. 3d at 448 (plaintiff must establish that defendant’s breach of implied covenant proximately caused plaintiff’s damages).

77. As a result of the *res judicata* decisions, UBS can only base its implied covenant claim on the March 2009 Transaction. That being the case, the maximum amount of damages that could be shown to be proximately caused by such a breach, assuming *arguendo* that there was a breach, would be any amount of transfers made in the March 2009 Transaction found to be fraudulent. The March 2009 Transaction involved transfers of at most approximately \$233 million of assets (roughly half of the principal amount of UBS’s breach of contract damages) and UBS has already released the Debtor from liability with respect to \$172 million of those transfers. Furthermore, the transfers to Citibank of \$17.4 million cannot constitute damages to UBS.

78. In the event this Court finds that the UBS Release does not limit damages on the implied duty claim related to the alleged fraudulent transfers, the Debtor would nonetheless be entitled to an offset against damages for the \$70.5 million of settlement payments that UBS received from the settling defendants. New York General Obligations Law (“GOL”) §

15-103 provides for the offset of settlement amounts received from a “co-obligor” to the extent of “the amount received on the obligations of all co-obligors.” GOL § 15-103. *See J.P. Endeavors v. Dushaj*, 8 A.D.3d 440, 442 (N.Y. App. Div. 2004) (under GOL § 15-103, where multiple defendants were sued for liability on a brokerage contract, plaintiff’s settlement with one defendant reduced the amount on which the remaining defendants could be held liable); *D.H. Blair & Co., Inc. v. Gottdiener*, 2010 WL 4258967, \*10 (S.D.N.Y. Oct. 27, 2010) (defendant was “entitled to a credit of the amount of the settlement” between other parties).

79. In addition, GOL § 15-108(a) provides that a settlement payment by a joint tortfeasor may offset or reduce the plaintiff’s claims against other joint tortfeasors, and some New York courts have held that GOL § 15-108 is not limited to tort. *See e.g., Koch v. Greenberg*, 14 F. Supp. 3d 247, 270 (S.D.N.Y. 2014), *aff’d* 626 Appx. 335 (2d Cir. 2015) (reducing award and concluding that GOL § 15-108 is potentially applicable to other types of claims, notwithstanding its references to “tort” and “tortfeasor”); *Carter v. State*, 139 Misc. 2d 423, 427 (N.Y. Sup. Ct. 1988), *aff’d* 154 A.D.2d 642 (N.Y. App. Div. 1989) (New York courts have applied the statute “equally to claims and actions grounded on theories of liability other than tort”); *Cty. of Westchester v. Welton Becket Assocs.*, 102 A.D.2d 34, 45-46 (N.Y. App. Div. 1984), *aff’d* 66 N.Y.2d 642 (N.Y. 1985) (applying GOL § 15-108 even though claims were “essentially contractual in nature”).

80. Offset of the \$70.5 million settlement against any breach of implied covenant damages is also proper under New York common law. Specifically, under established New York law, parties cannot recover twice for the same injury or on the same alleged debt. *Morris v. Zimmer*, 2014 U.S. Dist. LEXIS 39608, \*18 (S.D.N.Y. Feb. 11, 2014) (“It is well settled that Plaintiffs are not entitled to double recovery for the same debt.”); *Zarcone v. Perry*, 78 A.D.2d 70, 79 (N.Y. App. Div. 1980), *aff’d* 55 N.Y.2d 782 (N.Y. 1981) (“[J]udicial policy forestalls a double recovery for an injury”). The alleged damage to UBS is the amount of the



fraudulent transfer; to the extent UBS has already recovered by settlement on account of a fraudulent transfer, a recovery from the Debtor for damages arising from the same transfer would be a double recovery.

81. The offset would apply before the calculation of prejudgment interest. *Lizden Indus., Inc. v. Franco Belli Plumbing & Heating & Sons, Inc.*, 2011 N.Y. Misc. LEXIS 4247, \*22 (N.Y. Sup. Ct. Aug. 24, 2011) (denying request to calculate pre-judgment interest before offset of co-defendant's settlement payment), *aff'd* 95 A.D.3d 738 (N.Y. App. Div. 2012) (trial court "properly awarded prejudgment interest on the verdict after it was reduced by the amount of Belli's settlement, pursuant to General Obligations Law § 15-108").

**D. Any Claim for Alter Ego Liability Should be Disallowed**

82. UBS has not pled a claim against the Debtor for alter ego liability throughout the eleven year duration of the UBS litigation. The UBS Claim appears to assert for the first time that such liability exists and that it would subject the Debtor to the entire Phase I judgment against the Fund Counterparties. But any such claim is barred by *res judicata*, as the Phase I judgment only relates to conduct predating February 24, 2009. Like the rest of UBS's claims, therefore, any alter ego liability is limited to the March 2009 Transaction. Regardless, as the *Citibank* decision establishes, UBS's factual allegations do not entail the kind of "wrongs" that support alter ego liability.

**i) Any Alter Ego Liability is Limited by *Res Judicata* to Conduct After February 24, 2009**

83. The Appellate Division has already ruled that UBS is barred by *res judicata* from asserting claims against the Debtor that "implicate events alleged to have taken place before the filing of the original complaint" on February 24, 2009. *UBS v. Highland Capital Mgmt., L.P.*, 86 A.D.3d at 474 [Exhibit 2 at A010]. This would include any new claim against

the Debtor for alter ego. *See UBS v. Highland Capital Mgmt., L.P.*, 93 A.D.3d at 490 [Exhibit 3 at A014] (limiting the alter ego claim against HFP to post-February 2009).

84. UBS will contend that the Debtor's alter ego liability is not an independent "claim" but only a post-judgment remedy under New York Civil Practice Law and Rules ("CPLR") 5225(b) and therefore not subject to *res judicata*. *Morris v. State Dep't of Taxation & Fin.*, 82 N.Y.2d 135 (N.Y. 1993). Of course, courts regularly consider alter ego relief in connection with pending litigation – notably in the present action, in which UBS seeks a declaratory judgment that HFP is the alter ego of SOHC, and in the Citibank litigation. *See also Mirage Entm't, Inc. v. FEG Entretenimientos S.A.*, 326 F. Supp. 3d 26, 33-35 (S.D.N.Y. 2018) (plaintiff may pierce corporate veil and sue non-signatory for breach of contract when non-party is an alter ego of one or more signatories).

85. While a proceeding to impose alter ego liability may be initiated as post-judgment supplementary proceedings in New York under the CPLR, that is not the case when the party against whom alter ego liability is asserted was a party to the underlying action. Where, as the newly alleged claim against the Debtor, the defendant on the newly-asserted alter ego claim was a party to the terminated action, *res judicata* applies to the assertion of alter ego liability. In *Bd. of Managers of the 195 Hudson St. Condo v. Jeffrey M. Brown Assocs.*, 652 F. Supp. 2d 463, 478-82 (S.D.N.Y. 2009), the Board filed suit (the "Conversion Litigation") seeking damages for construction defects against, among others, K&J and JMB. The Board did not, however, assert a claim of alter ego liability against JMB in the Conversion Litigation itself. The Conversion Litigation against JMB was dismissed on the merits, with the court finding, among other things, that JMB was not a party to the underlying agreements. A breach of contract judgment was thereafter entered against K&J, and the Board initiated another separate action seeking to hold JMB liable, on alter ego grounds, for the breach of contract judgment against K&J. The court rejected the Board's attempt, holding that *res judicata* barred the assertion of the alter ego claims

against JMB in the subsequent proceeding because “the facts necessary to sustain both causes of action arise from the same transactions or factual grouping, form a convenient trial unit, and the facts essential to the instant claim were already present in the Conversion Litigation.”

86. The same is true in this case, in which the Appellate Division observed one of UBS’s complaints was “thoroughly suffused with allegations that [the Debtor] was essentially the alter ego of the parties it induced to breach the agreements.” 86 A.D.3d at 477. In fact, one of the UBS claims against HFP that was limited on the basis of *res judicata* based on HFP’s privity with the Debtor was an alter ego claim against HFP. For its own reasons, however, UBS has litigated for over a decade without expressly asserting alter ego liability against the Debtor, even though it asserted a claim for declaratory relief against HFP for a determination of alter ego liability.

87. Accordingly, any assertion of alter ego liability would be limited to post-February 24, 2009 conduct. Like the other claims against the Debtor, it would be subject to the UBS Release. Furthermore, no such claim has been pled and *res judicata* would bar its assertion.

**ii) UBS’s Allegations are an Insufficient Basis for Finding Alter Ego Liability**

88. New York law disfavors disregard of the corporate form and only allows the drastic remedy of veil piercing under extraordinary circumstances. *Cobalt Partners, L.P. v. GSC Capital Corp.*, 97 A.D.3d 35, 40 (N.Y. App. Div. 2012). To pierce the corporate veil under New York law, a plaintiff bears a heavy burden to establish both (i) that the owner exercised complete domination over the corporation with respect to the transaction at issue **and** (ii) that such domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil. *Citibank*, 270 F. Supp. 3d at 726. To avoid dismissal, a complaint must plead particular facts to demonstrate that the domination of the corporation caused the plaintiff’s injury. *See e.g., CSX Tramp, Inc. v. Filco Carting Corp.*, 2011 U.S. Dist. LEXIS 74625, \*10 (E.D.N.Y. July 7,

2011). Here, even if UBS could satisfy the first prong, domination, it cannot satisfy the second, because the “wrongs” it alleges do not support alter ego liability.

#### **First Alter Ego Prong – Domination**

89. The Second Circuit has identified ten factors to consider in determining whether an entity exercises complete domination over another entity for purposes of alter ego liability.<sup>13</sup> The Debtor denies that UBS can establish its “complete domination,” while acknowledging that the district court in *Citibank* found that the Debtor “exercised complete control over CDO Fund.” *Citibank*, 270 F. Supp. 3d at 726-28.

#### **Second Alter Ego Prong – Wrong or Fraud**

90. On the basis of allegations that included virtually the same as those made by UBS, the district court in *Citibank* held that Citibank failed to demonstrate the second prong – a “wrong or fraud” for veil piercing purposes – and granted summary judgment against Citibank’s alter ego claims seeking to hold the Debtor liable for CDO Fund’s obligations. *Citibank*, 270 F. Supp. 3d at 729-33. Citibank had identified three acts that it asserted constituted fraudulent or wrongful conduct: (i) the Debtor stripped cash and assets from CDO Fund prior to a margin call; (ii) the Debtor diverted cash distributions on the HFP Notes that would otherwise have been available to CDO Fund to satisfy the margin call; and (iii) the Debtor fraudulently misrepresented the value of the HFP Notes that CDO Fund pledged to Citibank as collateral. *Id.* at 729.

91. As to the “asset stripping” allegations, the district court found that the payments to the Debtor and its affiliates represented the repayment of preexisting obligations and

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<sup>13</sup> These factors are: (1) absence of formalities and paraphernalia that are part of corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records, (2) inadequate capitalization, (3) whether funds are put in and taken out of corporation for personal purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, addresses and telephone numbers, (6) amount of business discretion displayed by dominated corporation, (7) whether related corporations deal with dominated corporation at arms’ length, (8) whether corporations are treated as independent profit centers, (9) payment or guarantee of debts of dominated corporation by other corporations in the group, and (10) whether corporation in question had property used by other corporations as if it were their own.

that, even if the transfers were constructively fraudulent conveyances to insiders of CDO Fund, such transfers did not constitute a wrong for veil piercing purposes. *Id.* at 730-31. With respect to Citibank's similar argument that the Debtor diverted cash distributions on the HFP Notes to itself or related parties, the court found that there was no implied promise that would impose a duty on the Debtor to ensure that cash was available for distribution on the HFP Notes. The court determined that, "[t]o the contrary, such an implied promise would impose a duty on HCMLP beyond that which Citi bargained for," and noted that there was no authority for finding that a breach of an implied covenant of good faith would constitute a wrong for purposes of veil piercing. *Id.* at 732. In doing so, the court reiterated the well-established rule that an ordinary "breach of contract, without evidence of fraud or corporate misconduct, is not sufficient to pierce the corporate veil." *Id.* Based on its findings, the court held that "[b]ecause none of the acts identified by Citi constitutes a wrong or fraud for veil piercing purposes, [the Debtor] is not liable for CDO Fund's obligations under a traditional veil piercing theory." *Id.* at 733.

92. Courts applying New York law also have rejected alter ego claims where a sophisticated party knowingly contracts with its counterparty and then seeks to impose liability on a third party for breach of that contract – especially where the party could have negotiated for direct rights against the third party. *See TNS Holdings, Inc. v. MKI Sec. Corp.*, 92 N.Y. 2d 335, 339-40 (N.Y. 1998); *Skanska USA Bldg. Inc. v. Atl. Yards B2 Owner, LLC*, 146 A.D.3d 1, 12-13 (N.Y. App. Div. 2016). Here, UBS was well aware of the risks of the transaction and with the ownership and managerial structure of the Highland-related entities, yet it knowingly entered into the Restructured CLO Warehouse Agreements in which only the Fund Counterparties, and not the Debtor, were responsible for performance. There is no basis for piercing the corporate veil on such facts.



### CONCLUSION

The UBS Claim is subject to disallowance or material limitation on a summary basis. Even without consideration of the Debtor's other defenses to UBS's asserted or threatened claims, the Court may rule that nearly all of the fraudulent conveyance claims have been released, that the undisputed facts preclude the implication of a guarantee of performance into the Restructured CLO Agreements, and that there is no legally sufficient basis for imposing alter ego liability. The few remaining claims are subject to numerous meritorious defenses, as described herein.

WHEREFORE, the Debtor respectfully requests that the UBS Claim be disallowed in its entirety, and grant the Debtor such other and further relief as the Court deems just and proper.

Dated: August 7, 2020.

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

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

**REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE  
CRUSADER FUNDS' OBJECTION TO THE PROOF OF CLAIM OF UBS AG,  
LONDON BRANCH AND UBS SECURITIES, LLC AND JOINDER IN THE DEBTOR'S  
OBJECTION**

<sup>1</sup> For purposes of this Objection and Joinder, Frost Brown Todd LLC is counsel only to the Redeemer Committee and Jenner & Block, LLP is counsel to the Redeemer Committee, and for the limited purpose of this Objection, the Crusader Funds.

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Pursuant to sections 502(b)-(d) and 558 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) the Redeemer Committee of the Highland Crusader Funds (the “Redeemer Committee”) and (ii) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. (collectively, the “Crusader Funds”)<sup>2</sup> object to Proof of Claim Nos. 190 and 191, submitted by UBS AG, London Branch and UBS Securities, LLC (together, “UBS” and such claims, the “UBS Claim”), and join in the objection to the UBS Claim submitted by Highland Capital Management, L. P. (“Highland” or the “Debtor”)<sup>3</sup>

## I. INTRODUCTION

UBS asserts that the Debtor is liable for breaches of contract by certain of its indirect subsidiaries, and for alleged fraudulent transfers involving other subsidiaries and funds that the Debtor currently or previously managed. UBS, the Debtor, and several of the Debtor’s affiliates have been engaged in litigation that, prior to the commencement of the Debtor’s chapter 11 case, had been ongoing since 2009 in the New York State courts (collectively, the “New York Courts”). The Redeemer Committee and the Crusader Funds have a unique perspective on the merits of the UBS Claim because two of the Crusader Fund entities were defendants in that action. The Redeemer Committee is a committee of investors, elected pursuant to the Scheme and Plan of Liquidation of the Crusader Funds approved by the Bermuda Court, to oversee Highland’s management of the Crusader Funds through what was intended to be the complete liquidation of

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<sup>2</sup> Highland Crusader Holding Corporation (“Crusader Holding”), a signatory to the UBS settlement agreement described in Section IV(C), is a wholly owned subsidiary of the Crusader master fund—Highland Crusader Offshore Partners, L.P.

<sup>3</sup> See Debtor’s Obj. to Proofs of Claim 190 and 191 of UBS Sec. LLC And UBS AG, London Branch, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Aug. 7, 2020) (Doc. No. 928).

the fund. The Redeemer Committee played a central role in the negotiation of the settlement of UBS' claims against the Crusader Funds, pursuant to which UBS released the Debtor from much of the relief that UBS now seeks in its claim.

UBS asserts that the UBS Claim arises from three principal events: (1) in the fall of 2008, certain Highland affiliates failed to honor certain contractual margin calls in connection with a proposed securitization financing; (2) in the fall of 2008, certain Highland affiliates engaged in a series of asset transfers with Highland-managed funds; and (3) on March 20, 2009, Highland affiliates unwound those transactions with the Highland-managed funds. UBS claims the Debtor owes UBS at least \$1,039,957,799—the amount of a judgment that UBS obtained in February 2020 arising from the non-Debtor affiliates' breaches of contract by failing to honor the margin calls in 2008.

The majority of the UBS Claim is barred by res judicata. The New York Courts have held that res judicata bars UBS from asserting claims against Highland that are based on conduct that occurred before February 24, 2009, the date on which UBS filed its initial complaint in New York. As discussed below, that ruling was the result of UBS filing a complaint that only asserted a claim against Highland for indemnification, a claim that was later dismissed. Notwithstanding this absolute bar, UBS asserts that the Debtor should be held liable for pre-February 24, 2009 conduct, including that of certain of its affiliates, which ultimately resulted in the New York trial court entering a \$1,039,957,799 judgment against those entities. It is telling that UBS recently acknowledged that it has never even alleged in the New York action that Highland was the alter ego of the judgment debtors. *See* UBS Reply ISO its Mot. to Lift Automatic Stay at 6, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 11, 2020) (Doc. No. 733B); Hr'g Trans. at 30-31, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 15, 2020)

(Doc. No. 746A). Any such alter ego claim would be a new path to establish liability that is barred by res judicata. To the extent that the UBS Claim is based on the Debtor's pre-February 24, 2009 conduct, res judicata requires disallowance of that claim.

After giving effect to res judicata, the surviving part of the UBS Claim is based on certain asset transfers made by an affiliate of the Debtor, Highland Financial Partners LP ("HFP"), in March 2009. UBS asserts that those transfers were fraudulent conveyances, and that Highland breached the implied duty of good faith and fair dealing by participating in those transfers. UBS named several Highland-managed funds that received assets in March 2009 as defendants in the New York action, including two Crusader Fund entities—Highland Crusader Offshore Partners, L.P. ("Crusader Offshore Fund") and Highland Crusader Holding Corporation ("Crusader Holding")—as well as Highland Credit Strategies Master Fund, L.P. (the "Credit Strategies Fund"). These funds later entered into settlement agreements with UBS, and Highland was a signatory to each agreement. The settlement agreements provide, in relevant part, that UBS released Highland from any [REDACTED]

[REDACTED] each fund as alleged by UBS. The UBS releases of Highland foreclosed the possibility that Highland could later be found liable to UBS in connection with the transfers to those funds. This protection was of central importance to the funds [REDACTED]

[REDACTED]

[REDACTED]

The chapter 11 process does not provide an alleged creditor the opportunity to relitigate matters that are the subject of final, non-appealable decisions of a state court, or prevent enforcement of valid and binding settlement agreements. As demonstrated below, UBS ignores or misconstrues the New York Courts' decisions and the settlement agreements to attempt to avoid

the necessary conclusion that the UBS Claim must be disallowed as a matter of law other than to the extent it seeks damages arising from the March 2009 transfer of assets to entities other than Crusader and Credit Strategies. Based on UBS's expert valuations, in no instance would UBS's claim against the Debtor exceed [REDACTED] before prejudgment interest.

## II. JURISDICTION

The Court has jurisdiction over this matter under the Bankruptcy Code and pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B) and (L). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are 11 U.S.C. § 502(b)-(d) and Fed. R. Bankr. P. 3007.

## III. BACKGROUND

### A. Fund Counterparties Fail to Meet Margin Calls in 2008.

In April 2007, UBS entered into agreements (collectively, the "CLO Warehouse Agreements") with Highland and two affiliates of Highland—Highland CDO Opportunity Master Fund, L.P. ("CDO") and Highland Special Opportunities Holding Company ("SOHC") (together, the "Fund Counterparties")—to establish a warehouse facility to finance the acquisition of syndicated leveraged loans and credit default swaps. (Ex. 1, 4/12/07 Original Synthetic Warehouse Agreement; Ex. 2, 4/20/07 Original Engagement Ltr.; Ex. 3, 5/22/07 Original Cash Warehouse Agreement.) Those assets, in turn, were to serve as the basis for a securitization pursuant to which notes would be sold to investors.

Due to market conditions, the securitized offering did not occur by the contractual deadline, and the CLO Warehouse Agreements terminated. In March 2008, UBS, Highland, and the Fund Counterparties entered into restructured warehouse agreements (collectively, the "Restructured CLO Warehouse Agreements"). (See Ex. 4, UBS Securities LLC Proof of Claim ¶7, *In re Highland*



*Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 26, 2020) (Claim No. 190).) The Restructured CLO Warehouse Agreements gave UBS the right to make margin calls on the Fund Counterparties in the event of a decline in the market value of the loans and swaps.<sup>4</sup>

As the market deteriorated in the fall of 2008, UBS made three margin calls on the Fund Counterparties. The Fund Counterparties satisfied the first two margin calls in September and October 2008, using funds provided by SOHC's parent corporation, HFP. (Ex. 5, Decision and Order at 4, *UBS Sec. LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct. 2019). The Fund Counterparties failed to satisfy a third margin call in November 2008, and UBS issued a notice of termination of the Restructured CLO Warehouse Agreements in December. *Id.*<sup>5</sup>

**B. Highland Affiliates Engage in Fall 2008 Transfers**

Meanwhile, during the fall of 2008, certain funds then managed by Highland—including the Crusader Offshore Fund—transferred certain assets to HFP in [REDACTED] (the “Fall 2008 Transfers”). [REDACTED]

[REDACTED] HFP was not a party to the Restructured CLO Warehouse Agreements.

**C. The Fall 2008 Transfers are Unwound on March 20, 2009.**

The parties to the Fall 2008 Transfers unwound those transactions on March 20, 2009 (“March 2009 Transfers”). [REDACTED]

<sup>4</sup> Furthermore, those agreements explicitly placed the risk of loss on the Fund Counterparties, and not Highland, as the New York Appellate Division held. *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al.*, 893 N.Y.S.2d 869 (N.Y. App. Div. 2010) (“the agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of [Fund Counterparties]’ obligations to bear the risk of investment losses.”).

<sup>5</sup> UBS’s Proof of Claim employs sleight of hand by defining the term “Highland” to include the Fund Counterparties. (See Ex. 4, UBS Securities LLC Proof of Claim ¶¶2, 11, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 26, 2020) (Claim No. 190).) Accordingly, while the UBS Claim states that “Highland posted the required collateral” and refers to “Highland’s default on UBS’s third margin call,” it was the Fund Counterparties that posted collateral and failed to meet the final margin call. See *id.* at ¶¶11-12.

As a result, [REDACTED] HFP returned the assets to the transferors, including the Crusader Fund and the Credit Strategies Fund. [REDACTED]

[REDACTED] According to UBS's expert in the New York action, HFP transferred assets with a market value of [REDACTED]



[REDACTED]

**D. UBS Sues Over the Restructured Warehouse Transaction and Its Claim Against Highland Is Dismissed.**

UBS filed its first complaint on February 24, 2009, against the Fund Counterparties and Highland. (Ex. 10, Compl., *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/09 (N.Y. Sup. Ct. Feb. 24, 2009).) UBS's original complaint contained only one claim against Highland—a contractual claim for indemnification. *Id.* ¶¶50-56. Highland moved to dismiss that claim, arguing that the indemnification provision did not apply to the particular losses claimed by UBS. *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 893 N.Y.S.2d 869 (N.Y. App. Div. 2010). The indemnification claim was dismissed by the New York appellate court. *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 893 N.Y.S.2d 869 (N.Y. App. Div. 2010) (“the agreements

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<sup>6</sup> Highland Crusader Holding Corporation is a wholly-owned subsidiary of the Crusader Fund. (Ex. 8, Compl., *UBS Sec. LLC v. Highland Crusader Holding Co.*, No. 652646/2011 ¶23 (N.Y. Sup. Ct. Sept. 26, 2011); Ex. 9, 6/17/15 UBS and Crusader Fund Settlement Agreement, at 1.)

between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of [Fund Counterparties]' obligations to bear the risk of investment losses.”).

**E. New York Appellate Division Dismisses Claims Against Highland as Barred by Res Judicata.**

On February 16, 2010, UBS sought amend its original complaint to assert new claims against Highland and others<sup>7</sup> for claims arising from the Restructured Warehouse transaction, the Fall 2008 Transfers and the March 2009 Transfers, alleging that the March 2009 Transfers were fraudulent conveyances that benefitted Highland, and that, by causing the unwinding, Highland breached the implied covenant of good faith and fair dealing in the Restructured Warehouse Agreement. (Ex. 12, 2/16/10 UBS Ltr. to Court, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct.).) The New York Supreme Court denied the portion of UBS's motion that sought leave to add new claims against Highland, agreeing with Highland's position that a party cannot amend a pleading that has already been dismissed. (Ex. 11, Ruling at 5, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Jun. 17, 2010).)

Thereafter, UBS commenced a new action against Highland, in which it asserted the causes of action it had unsuccessfully sought to add to the original complaint. (Ex. 13, Compl., *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650752/2010 (N.Y. Sup. Ct. Jun. 28, 2010).)<sup>8</sup>

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<sup>7</sup> UBS sought to add Highland Financial Partners, LP, Highland Credit Strategies Fund, Highland Crusader Offshore Partners, LP, Highland Credit Opportunities CDO, LP, and Strand Advisors, Inc. (See Ex. 11, Ruling at 2, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/09 (N.Y. Sup. Ct. Jun. 17, 2010).)

<sup>8</sup> The trial court consolidated the second action against Highland with the original action that had pending claims against CDO, SOHC, HFP, Credit Strategies Fund, Crusader Offshore Fund, Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. (Ex. 14, Consolidation Order, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Nov. 4, 2010).) UBS also later filed a separate lawsuit against Crusader's wholly owned subsidiary, Crusader Holding. (Ex. 8, Compl., *UBS Sec. LLC v Highland Crusader Holding Co.*, No. 652646/2011 (N.Y. Sup. Ct. Sept. 26, 2011).)

Highland moved to dismiss the new action, and the trial court granted the motion in part and denied it in part. *UBS Sec. LLC v Highland Capital Mgmt. L.P., et al*, No. 650097/09, 2010 WL 6268233 (N.Y. Sup. Ct. Aug. 05, 2010). The parties appealed. *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 86 A.D.3d 469 (N.Y. App. Div. 2011). The appellate court dismissed the fraudulent inducement claim against Highland, and held that to the extent UBS's new claims for breach of the covenant of good faith and fair dealing and fraudulent conveyance arise from conduct alleged to have occurred before the commencement of the original action, *i.e.*, February 24, 2009, the claims must be dismissed. *Id.* The appellate court reasoned:

Here, to the extent the claims against Highland in the new complaint implicate events alleged to have taken place before the filing of the original complaint, *res judicata* applies. That is because UBS's claims against Highland in the original action and in this action all arise out of the restructured warehousing transaction.

*Id.* Because this ruling precluded UBS from pursuing claims against Highland arising from conduct occurring before February 24, 2009, the appellate court barred UBS from asserting any claims based on (1) the Fund Counterparties' failure to meet the margin calls in late 2008—the claim on which the trial court ultimately found the Fund Counterparties liable in the amount of \$1,039,957,799, and (2) the Fall 2008 Transfers. As a result of this ruling, the only surviving claims against the Debtor arise from the March 2009 Transfers.

#### **F. In 2013, Highland Moves for Summary Judgment**

In October 2013, Highland, HFP, and other defendants moved for summary judgment on UBS's remaining claims. The trial court recognized that “the Appellate Division decisions preclude any fraudulent conveyance claims arising before February 24, 2009. They therefore preclude UBS from recovering for any alleged fraudulent transfers made before that date.” (Ex. 15, Ruling at 25, *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/2009 (N.Y.

Sup. Ct. Mar. 24, 2017).) The court stated that UBS could still introduce evidence of pre-February 24, 2009 conduct to support claims that only arose after February 24, 2009:

However, proof of pre-February 24, 2009 transfer, and of other conduct involving the operation of the Highland entities, is not prohibited to the extent necessary to prove UBS's claims for post-February 24, 2009 fraudulent conveyances, which are maintainable under the Appellate Division decisions under an alter ego theory.<sup>9</sup>

*Id.* The court also dismissed UBS's claim against Highland for breach of good faith and fair dealing because the contract at issue, the Restructured CLO Warehouse Agreement, was terminated before February 24, 2009. *Id.* at 34-35.

The parties appealed. Initially, the Appellate Division reinstated the claim for breach of good faith and fair dealing and dismissed the entirety of the fraudulent conveyance claim against Highland, including for the March 2009 Transfers, but the court later vacated that opinion. (Ex. 17, Order at 3-4, *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, No. 650097/2009 (N.Y. App. Div. 2017)); *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018). In its subsequent decision, the Appellate Division held that the fraudulent conveyance and breach of good faith and fair dealing claims could survive, but only to the extent they arose from conduct occurring after February 24, 2009:

There is no dispute that plaintiffs are precluded from pursuing fraudulent conveyance and breach of implied covenant claims that arose prior to February 24, 2009. However, neither our prior decisions nor the doctrine of res judicata bars plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims. The court correctly rejected defendants' arguments in support of dismissal of the remaining claims at issue.

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<sup>9</sup> The alter ego claim referenced in the court's decision was a claim against HFP, not against Highland. (See Ex.16, 2d Am. Compl., *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/09 at ¶194 (N.Y. Sup. Ct. May 11 2011); Hr'g Trans. at 30-31, *In re Highland Capital Mgmt L.P., et al*, 19-34054-sgj11 (N.D. Tex. Jun. 15, 2020) (Doc. No. 746A.) UBS did not allege an alter ego claim against Highland.



*UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018).

**G. The New York Court Holds the Phase I Trial, and Finds the Fund Counterparties Liable.**

Although the New York courts barred UBS from pursuing claims against Highland arising before February 24, 2009, UBS's originally-pleaded breach of contract claims against the Fund Counterparties for failing to meet the margin calls in the fall of 2008 survived. (Ex. 10, Compl. ¶¶38-49, *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/2009 (N.Y. Sup. Ct. Feb. 24, 2009).) The court bifurcated the case for trial, ruling that Phase I of the trial would be a bench trial on the breach of contract claims against the Fund Counterparties, and the remaining claims, including all of the claims involving post-February 24, 2009 conduct, would be tried in Phase II. (Ex. 18, 5/1/2018 Hearing Tr. at 35:15-22, *UBS Securities LLC, et al v. Highland Capital Mgmt. L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct. May 1, 2018).)

The New York Court held the Phase I bench trial in July 2018, and on November 14, 2019 the court issued a decision finding the Fund Counterparties liable for breaching the Restructured CLO Warehouse Agreements and awarding damages of \$519,374,149, which ultimately resulted in entry of a judgment for \$1,039,957,799, with prejudgment interest. (Ex. 5, Decision and Order at 39 *UBS Sec. LLC, et al v. Highland Capital Mgmt. L.P., et al*, No. 650097/2009 (N.Y. Sup. Ct. Nov. 14, 2019.); Ex. 19, Judgment at 2, *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/2010 (N.Y. Sup. Ct. Feb. 10, 2020).) The court made no findings with respect to Highland or the remaining defendants,<sup>10</sup> and those claims were scheduled to be heard during Phase II of the

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<sup>10</sup> According to UBS, the remaining defendants and claims other than Highland are: (1) Highland CDO Master Fund, L.P., with claims for fraudulent inducement and fraudulent conveyance; (2) Highland Special Opportunities Holding Company, with claims for fraudulent inducement and fraudulent conveyance; (3) Highland Financial Partners, L.P., with claims for alter ego and fraudulent conveyance; (4) Strand Advisors, Inc., for general partner liability; and (5) Highland Credit Opportunities CDO, L.P., with a claim for fraudulent conveyance. (Ex. 20, Pl's Mot. to Bifurcate at 2-3, 15-16, *UBS Sec. LLC, et al v. Highland Capital Mgmt. L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct. Apr. 18, 2018).)

proceedings. On October 16, 2019, the Debtor filed for chapter 11 protection, staying the proceedings against it.

Only two counts remain against the Debtor: (1) fraudulent conveyance, actual and constructive, premised on the March 2009 Transfers, in which HFP transferred assets to Highland and to the Highland-managed fund co-defendants; and (2) breach of the implied covenant of good faith and fair dealing attendant to the contracts underlying the Restructured CLO Warehouse Agreements, based on the March 2009 Transfers.

**H. In 2015, UBS Released Claims Against Highland Arising From the March 2009 Transfers to the Credit Strategies Fund and the Crusader Fund.**

In 2015, Highland Crusader Offshore Partners, L.P., Highland Crusader Holding Corporation, and Highland Credit Strategies Master Fund, L.P. entered into settlements with UBS. Highland was a signatory to both the Crusader and Credit Strategies settlement agreements. Each agreement settled all of UBS's claims against the applicable fund. The settlement agreements also released *Highland* from claims by UBS arising from the March 2009 Transfers to the Crusader and Credit Strategies funds. Highland is one of the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>11</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Redeemer Committee negotiated this settlement agreement with UBS on the Crusader Fund's behalf. The Redeemer Committee negotiated for UBS's release of Highland to foreclose the risk that, in the event Highland was held liable to UBS for a transfer to the Crusader Fund,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

According to UBS's expert in the New York action, the assets that were the subject of the alleged fraudulent transfers to the two settling funds represented approximately [REDACTED] of the value of all of the assets that were transferred on March 20, 2009. [REDACTED]

[REDACTED] According to that expert, the market value of remaining assets that were not the subject of these releases was [REDACTED]

#### IV. ARGUMENT

In order to establish its claim for over \$1 billion against the Debtor, UBS must ignore the decisions issued by the New York Courts and the settlement agreements pursuant to which it released the Debtor from liability arising from most of the March 2009 Transfers. The chapter 11 process, however, does not grant a creditor a "do over" so that it can relitigate claims that are the subject of final, non-appealable decisions issued by state courts, or valid and binding settlement agreements. For the reasons discussed below, the UBS Claim should be disallowed as a matter of law except to the extent UBS is seeking damages with respect to the remaining assets that it alleges

were the subject of fraudulent transfers to entities other than Crusader or Credit Strategies in March 2009, which according to its expert were valued at [REDACTED]

**A. Standard**

The Bankruptcy Code establishes a burden-shifting framework for proving the amount and validity of a claim. “A claim . . . , proof of which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. §502(a). “A proof of claim executed and filed in accordance with the [Bankruptcy Rules] shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P.3001(f); *see also In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006). However, the ultimate burden of proof for a claim always lies with the claimant. *Armstrong*, 347 B.R. at 583 (*citing Raleigh v. Ill. Dep’t of Rev.*, 530 U.S. 15 (2000)).

**B. Several New York Court Rulings Bar UBS from Seeking Damages From the Debtor Arising From Conduct Occurring Before February 24, 2009.**

This Court should disallow the UBS Claim to the extent it seeks to hold the Debtor liable for any conduct predating February 24, 2009 because the New York Courts have repeatedly held that res judicata bars any such claims. *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011); *UBS v. Highland Capital Mgmt., L.P., et al*, 93 A.D.3d 489, 490 (N.Y. App. Div. 2012); *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/09 at 34 (N.Y. Sup. Ct. Mar., 24 2017); *UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018). In its proof of claim, UBS seeks \$1,039,957,799—the exact amount of the judgment against the Fund Counterparties for their failure to honor the margin calls in the fall of 2008—a claim entirely precluded by res judicata. (Ex. 4, UBS Securities LLC Proof of Claim ¶24, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 26, 2020) (Claim No. 190); Ex. 19, Judgment at 2, *UBS Sec. LLC v Highland*

*Capital Mgmt., L.P., et al*, No. 650752/10 (N.Y. Sup. Ct. Feb. 10, 2020).). UBS claims that it is entitled to recover the judgment against the Fund Counterparties from the Debtor because Highland was “party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount.” (Ex. 4, UBS Securities LLC Proof of Claim ¶24, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 26, 2020) (Claim No. 190).) This argument flies in the face of the multiple rulings of the New York Courts to the contrary.

Those final, non-appealable New York Court rulings are binding here. *See Matter of Brady, Texas, Mun. Gas Corp.*, 936 F.2d 212, 218 (5th Cir. 1991) (“unless the Code provides otherwise, state courts have concurrent jurisdiction, and bankruptcy courts are prohibited from relitigating these matters if the state courts have already resolved them.”); *In re Ocasio*, 10 F. App’x 531, 531-32 (9th Cir.2001); *In re Bellucci*, 119 B.R. 763, 769 (Bankr. E.D. Cal. 1990).

The Debtor and the Redeemer Committee each pointed out in their objections to UBS’s motion to lift the automatic stay that res judicata bars UBS from pursuing these claims. *See Debtor’s Obj. to UBS’s Mot. to Lift Automatic Stay* ¶25-26, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 3, 2020) (Doc. No. 687); Redeemer Comm. Obj. to UBS’s Mot. to Lift Automatic Stay at 13-14, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 8, 2020) (Doc. No. 714).) In its reply, UBS claimed that the New York courts had, in fact, held the opposite—that UBS was expressly permitted to assert claims arising from pre-February 24, 2009 conduct. (UBS Reply ISO its Mot. to Lift Automatic Stay ¶6, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 11, 2020) (Doc. No. 733B) (“This is virtually identical to the [res judicata] “defense” at hand, and both the State Court and the Appellate Division rejected the Debtor’s ultimate conclusion—that UBS’s ability to prove its claims against



the Debtor are, in fact, “limited” to reliance on post-February 2009 conduct only.”) UBS quotes selective portions of those decisions to support its conclusion:

The State Court rejected this point when it ruled on the Debtor’s motion. *See* Docket No. 688-4 at 25 (Mar. 13, 2017 State Court Summ. J. Op.) (“This court previously rejected the contention, advanced by moving defendants here, that UBS cannot rely on events or conduct occurring before February 2009 to support its alter ego and fraudulent conveyance claims.”). And the Appellate Division squarely rejected it once more on appeal. Ex. 2 at 46 (Mar. 15, 2018 Order) (“The court correctly rejected defendants’ arguments” because “neither our prior decisions nor the doctrine of res judicata bars plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims.”).

*Id.*

UBS’s citations are misleading, at best. The full text of the lower court’s ruling makes clear that UBS is barred from pursuing claims against the Debtor arising before February 24, 2009:

This court previously rejected the contention, advanced by moving defendants here, that UBS cannot rely on events or conduct occurring before February 2009 to support its alter ego and fraudulent conveyance claims. *As held in the prior decision, the Appellate Division decisions preclude any fraudulent conveyance claims arising before February 24, 2009. They therefore preclude UBS from recovering for any alleged fraudulent conveyances made before that date.* However, proof of pre-February 24, 2009 transfers, and of other conduct involving the operations of the Highland entities, is not prohibited *to the extent necessary to prove UBS’s claims for post-February 24, 2009 fraudulent conveyances, which are maintainable under the Appellate Division decisions on an alter ego theory.*

(Ex. 15, Ruling at 25, *UBS Sec. LLC v Highland Capital Mgmt., L.P., et al*, No. 650097/2009 (N.Y. Sup. Ct. Mar. 24, 2017) (emphasis added).) Similarly, UBS again selectively omits the portion of the appellate ruling that precludes UBS from pursuing damages arising before February 24, 2009:

*There is no dispute that plaintiffs are precluded from pursuing fraudulent conveyance and breach of implied covenant claims that arose prior to February 24, 2009.* However, neither our prior decisions nor the doctrine of res judicata bars plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims. The court correctly rejected defendants' arguments in support of dismissal of the remaining claims at issue.

*UBS Sec. LLC v. Highland Capital Mgmt., L.P., et al*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011) (emphasis added).

The New York Courts ruled that UBS may not pursue claims against Highland arising from conduct occurring before February 24, 2009. The language that UBS cites states only that, in pursuit of its post-February 24, 2009 claims regarding the March 2009 Transfers, UBS may introduce *evidence* of conduct predating its original complaint.

The "Phase I" judgment that UBS seeks to recover from Highland was, unequivocally, based entirely on conduct predating February 24, 2009. (Ex. 5, Decision and Order at 4-5, *UBS Sec. LLC, et al v. Highland Capital Mgmt., L.P., et al*, No. 650097-2009 (N.Y. Sup. Ct. 2019).) UBS concedes that it seeks to hold Highland liable based on that 2008 conduct, because it was "party to the same contract and exercised complete control over the two liable affiliates" *in 2008*. (See Ex. 4, UBS Securities LLC Proof of Claim at ¶24, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 26, 2020) (Claim No. 190).) This Court should disallow UBS's claim to the extent it seeks to impose any liability on the Debtor arising from pre-February 24, 2009 conduct, including liability for the Phase I judgment.

The only remaining claims UBS has against the Debtor are for fraudulent conveyance and the breach of good faith and fair dealing with respect to the March 2009 Transfers. However, as demonstrated below, UBS entered into two settlement agreements in the New York action that

substantially reduce UBS's claim to damages [REDACTED] before any prejudgment interest.

**C. The Settlement Agreements Between UBS and the Crusader and Credit Strategies Funds Released UBS's Claims for Most of the Damages from the March 2009 Transfers.**

This Court should disallow UBS's claim to the extent it seeks damages arising from the March 2009 Transfers to the Crusader Fund and the Credit Strategies Fund, because UBS released those claims in 2015 settlement agreements. Bankruptcy courts have the authority to enforce settlement agreements in the claims adjudication process. *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 958 (9th Cir. 1994) ("A bankruptcy court, as a court of equity, likewise possesses the power to summarily enforce settlements."); *In re Mortg. Analysis Portfolio Strategies, Inc.*, 221 B.R. 386, 388 (Bankr. W.D. Tex. 1998) (holding that "this Court has the inherent power to enforce settlement agreements between parties."); *In re De La Fuente*, 409 B.R. 842, 845 (Bankr. S.D. Tex. 2009).

As described above, on March 20, 2009, HFP transferred assets [REDACTED]

[REDACTED] according to UBS's expert in the New York action:

[REDACTED]

[REDACTED]

On June 11, 2015, UBS agreed to release Highland from [REDACTED]

[REDACTED]

[REDACTED] That provision released all claims UBS had against Highland, whether in the form of a fraudulent conveyance claim or a breach of good faith and fair dealing claim, with respect to the March 2009 Transfers to the Credit Strategies Fund.

A few days later, on June 17, 2015, UBS agreed to release Highland from [REDACTED]

[REDACTED]

[REDACTED] These provisions release all claims UBS had against Highland—regardless whether the claim was for breach of the implied covenant of good faith and fair dealing or for fraudulent conveyance—with respect to the March 20, 2009 Transfers to those entities.

As a result, UBS retained only claims against Highland for losses or other relief arising

[REDACTED] Credit Opportunities Fund, Credit Opportunities Holding Corporation and Highland itself:

[REDACTED]

[REDACTED]

Based on the values provided by UBS's expert, UBS released Highland from claims arising from the transfer of assets valued at approximately [REDACTED] of the value of the entire transaction. [REDACTED] In exchange for releasing its claims for relief against Crusader, Credit Strategies and Highland arising from those transfers, UBS received [REDACTED] and avoided (to date) five more years of litigation against those funds. [REDACTED]

[REDACTED]

[REDACTED]

The Crusader Fund paid for and deserves to receive the full benefit of its bargain for its settlement agreement with UBS. [REDACTED] Crusader did. And the Redeemer Committee insisted that UBS release Highland because without that release, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



In its reply in support of its motion to lift the automatic stay, [REDACTED]

[REDACTED]

[REDACTED] UBS Reply ISO its Mot. to Lift Automatic Stay at 9, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 11, 2020) (Doc. No. 733B) (emphasis in original).) This is, again, selective quotation. The full provision reads:

[REDACTED]

[REDACTED] UBS further claims that [REDACTED]

[REDACTED] UBS Reply ISO its Mot. to Lift Automatic Stay at 9, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Jun. 11, 2020) (Doc. No. 733B).

But the settlement releases are not ambiguous, and their clear language controls—UBS released Highland for [REDACTED]

[REDACTED] *Shriners Hosp. for Children v. McCarthy Bros. Co.*, 80 F. Supp. 2d 707, 710 (S.D. Tex. 2000) (“Because the settlement provision at issue in this case contains no ambiguity, it therefore must be construed in accordance with its plain meaning.”) [REDACTED] are both broad terms. “[L]osses’ is legally synonymous with ‘damages,’” and in its good faith and fair dealing claim, UBS is seeking damages arising from the transfers to the Crusader Fund. *Nogueiro v. Kaiser Found. Hosps.*, 250 Cal. Rptr. 478, 481 (Ct. App. 1988); see DAMAGES, Black’s Law Dictionary

(11th ed. 2019) (“Money claimed by, or ordered to be paid to, a person as compensation for loss or injury.”) Further, even if UBS’s claim for damages arising from the March 2009 Transfers was somehow not [REDACTED] UBS’s Claim for damages is a request for [REDACTED] [REDACTED] *Confederated Tribe of Colville Reservation v. White*, 1996 WL 33407856, at \*3 (E.D. Wash. Nov. 7, 1996) (“filing a proof of claim is an affirmative act seeking relief via a court’s adjudication of a dispute.”); *In re Barrett Ref. Corp.*, 221 B.R. 795, 811 (Bankr. W.D. Okla. 1998) (“The filing of a proof of claim is not merely a defense, but is an affirmative claim for relief.”); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 269 (1993).

UBS released all claims for any type of relief against Highland arising from the March 2009 Transfers to the two funds, including UBS’s claim for breach of good faith and fair dealing arising from that transfer. The Redeemer Committee and the Crusader Fund should be given the full benefit of their bargain from the settlement agreement, and UBS should not be permitted to recover relief from the Debtor that UBS already released. The Crusader Fund and the Redeemer Committee respectfully request that this Court disallow UBS’s claim to the extent it seeks to hold the Debtor liable under any legal theory for damages arising from the March 20, 2009 Transfers to the Crusader Fund or Credit Strategies Fund, including UBS’s claims for fraudulent conveyance and breach of good faith and fair dealing.

### CONCLUSION

For all these reasons, this Court should disallow UBS’s claim against the Debtor to the extent that it (1) seeks to hold the Debtor liable for claims arising from conduct occurring before February 24, 2009; and (2) seeks to hold the Debtor liable for claims arising from the March 2009 Transfers with respect to the asset transfers to the Credit Strategies Fund and Crusader Fund.

Dated this 7th day of August, 2020

Respectfully submitted,

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*Counsel for the Redeemer Committee of the  
Highland Crusader Fund and the Crusader Funds<sup>12</sup>*

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<sup>12</sup> Frost Brown Todd LLC is counsel only for the Redeemer Committee and Jenner & Block, LLP is counsel to the Redeemer Committee, and for the limited purpose of this Objection, the Crusader Funds.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies, that on this 7th day of August, 2020, he caused to be served a true and correct copy of the *Redeemer Committee of the Highland Crusader Funds and the Crusader Funds' Objection to the Proof Of Claim of UBS AG, London Branch and UBS Securities, LLC and Joinder in the Debtor's Objection*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Mark A. Platt  
Mark A. Platt

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

**DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON PROOF OF CLAIM NOS. 190 AND 191  
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), respectfully moves the Court (the “Motion”) for entry of an order, in substantially the form attached hereto as **Exhibit A**, granting partial summary judgment in favor of the Debtor on Proof of Claim No. 190 and Proof of Claim No. 191 (collectively, the “UBS Claim”), which are substantively identical claims filed by UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”).

**NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, RM. 1254, DALLAS, TX 75242-1496 BY 5:00 P.M. CENTRAL TIME ON NOVEMBER 6, 2020, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.<sup>2</sup>**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.**

**IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.**

By this Motion, the Debtor seeks entry of summary of judgment in its favor, and against UBS, as follows:

In UBS’s omnibus response [D.E. 1105] (“UBS Response”) to the objections to the UBS Claim, UBS states that it is not presently seeking to hold the Debtor liable for the approximately \$1.1 billion breach of contract judgment [NY D.E. 646] (the “2020 Judgment”) entered on February 10, 2020 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) against two non-debtors (the “Funds”), and is not presently asserting that the

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<sup>2</sup> The deadline to file any response to the Motion is set forth in the *Scheduling Order With Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.E. 1163]. Pursuant to that scheduling order, any hearing on the Motion will be held on November 20, 2020 at 9:30 a.m. Central Time.

Debtor is the alter ego of the Funds.<sup>3</sup> UBS Response pgs. 19-20. UBS, however, filed the UBS Claim in the exact amount of its breach of contract judgment with prejudgment interest (\$1,039,957,799), and also states that it “preserves all rights to pursue any post-trial relief, including holding the Debtor liable as an alter ego.” UBS Response p. 20 fn. 16.

Any claim UBS may have had to attempt to hold the Debtor liable for the 2020 Judgment, to otherwise hold the Debtor liable as an alter ego on account of any claim relating to the Restructured Warehouse Agreements or any claim asserted in the State Court Litigation, or to obtain other post-trial relief against the Debtor (each, a “Post-Trial Claim”) was a pre-petition claim against the Debtor that UBS was required to assert by June 26, 2020, the bar date applicable to UBS’s claims against the Debtor.<sup>4</sup> UBS failed to assert any such Post-Trial Claim against the Debtor by June 26, 2020. Thus, the Debtor requests entry of summary judgment disallowing any Post-Trial Claim against the Debtor, and providing, in accordance with the Bar Date Order, that UBS shall not be treated as a creditor with respect to any Post-Trial Claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in the Bankruptcy Case.

Any Post-Trial Claim, and the UBS Claim itself, also are barred by the doctrine of *res judicata* to the extent UBS seeks recovery from the Debtor for claims that arose prior to the date – February 24, 2009 – that UBS filed its first complaint against the Debtor in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.), which resulted in a final judgment on the merits in favor of the Debtor [NY D.E. 84] entered on February 22, 2010. The *res judicata* doctrine prohibits UBS from seeking to enforce the 2020 Judgment against the

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<sup>3</sup> As used herein, the term “State Court Litigation” means and includes *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) and *UBS v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.).

<sup>4</sup> As used herein, the term “Restructured Warehouse Agreements” means and includes (i) the Engagement Letter dated as of March 14, 2008 entered into between UBS Securities LLC and the Debtor, (ii) the Cash Warehouse Agreement dated as of March 14, 2008 entered into between UBS Securities LLC, the Debtor, and the Funds, and (iii) the Synthetic Warehouse Agreement dated as of March 14, 2008 entered into between UBS AG, London Branch, the Debtor, and the Funds.

Debtor, because the New York trial court has determined that the breach of contract by the Funds occurred on December 5, 2008. The *res judicata* doctrine also prohibits UBS from recovering from the Debtor for any other claim (including any other Post-Trial Claim) that arose prior to February 24, 2009. Therefore, the Debtor requests entry of summary judgment disallowing any portion of the UBS Claim that seeks recovery from the Debtor for any claims that arose prior to February 24, 2009, and disallowing any Post-Trial Claim by UBS that seeks recovery from the Debtor for any claims that arose prior to February 24, 2009.

The remainder of the UBS Claim seeks recovery from the Debtor based on a transaction in March 2009 in which \$233,455,147 of assets were transferred from non-debtors to various entities. UBS seeks to recover this amount from the Debtor as an alleged fraudulent conveyance and an alleged breach of a purported implied covenant of good faith and fair dealing.

Of the total amount transferred, \$172,411,785 of assets were transferred collectively to Highland Crusader Offshore Partners, L.P., Highland Crusader Holding Corporation, and Highland Credit Strategies Master Fund, L.P. (collectively, the “Settling Defendants”). In 2015, UBS entered into settlement agreements with the Settling Defendants in which UBS expressly released the Debtor and its affiliates from any claims for losses arising from the transfers to the Settling Defendants. Therefore, the Debtor requests entry of summary judgment in its favor (i) disallowing any portion of the UBS Claim that seeks recovery (whether on a fraudulent transfer claim, a claim for breach of the implied covenant of good faith and fair dealing, or otherwise) of any purported losses relating to the \$172,411,785 of assets transferred to the Settling Defendants in March 2009, and (ii) disallowing any principal recovery on the UBS Claim in excess of \$61,043,362, *i.e.*, the difference between the total amount transferred in March 2009 (\$233,455,147) and the amount released by UBS (\$172,411,785) pursuant to the settlement agreements.

The Motion is made pursuant to FED. R. CIV. P. 56, FED. R. BANKR. P. 7056, FED. R. BANKR. P. 9014, N.D. TEX. L.B.R. 7056-1 and N.D. TEX. L.B.R. 9014-1. The Motion is based on the record in the Bankruptcy Case, the *Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the "Opening Brief"), the *Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the "Appendix"), the *Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch*, and such further evidence as may be presented at or prior to the hearing on the Motion.<sup>5</sup> Each of the matters required under N.D. TEX. L.B.R. 7056-1(c)(1) is set forth in the Opening Brief.

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<sup>5</sup> Concurrently herewith, the Debtor is requesting the Court's permission to file an unredacted version of its Opening Brief and certain portions of the Appendix under seal.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion in its entirety, by entry of an order in substantially the form attached hereto as Exhibit A, and grant the Debtor such other and further relief as the Court deems just and proper.

Dated: October 16, 2020.

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	

**DEBTOR'S OPENING BRIEF IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF  
UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), submits this opening brief in support of the *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Motion”), filed concurrently herewith. For the reasons set forth herein and in the Motion, the Debtor respectfully requests that the Court enter an order, in substantially the form attached as Exhibit A to the Motion, granting partial summary judgment in favor of the Debtor on Proof of Claim No. 190 and Proof of Claim No. 191 (collectively, the “UBS Claim”), which are substantively identical claims filed by UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”).<sup>2</sup>

### INTRODUCTION

1. On March 14, 2008, UBS entered into three agreements with CDO Fund, SOHC, and the Debtor to provide the warehouse financing and structuring and placement services for a structured finance vehicle the parties hoped to bring to market. The “Warehouse Facility” was the financing vehicle which would purchase the assets that would back the structured finance vehicle. The Warehouse Facility would be capitalized and financed by equity contributed by CDO Fund and SOHC and financing provided by UBS. The ONLY parties to the agreements were UBS, CDO Fund, SOHC, and the Debtor.<sup>3</sup>

2. Critically, each of the agreements provided that any and all losses in the Warehouse Facility would be borne by only CDO Fund and SOHC. The Debtor was expressly and repeatedly excluded from any such losses. The Engagement Letter states that CDO Fund and SOHC will “bear 100% of the risk of the Warehouse Facility ... .” Engagement Letter ¶ 3(c). The Synthetic

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<sup>2</sup> All citations herein to “A\_\_” refer to the *Appendix of Exhibits in Support of Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Appendix”). Concurrently herewith, the Debtor is requesting the Court’s permission to file an unredacted version of this opening brief and certain portions of the Appendix under seal.

<sup>3</sup> The three agreements are (i) an Engagement Letter dated as of March 14, 2008 between UBS Securities LLC and the Debtor, (ii) a Cash Warehouse Agreement dated as of March 14, 2008 between UBS Securities LLC, the Debtor, CDO Fund and SOHC, and (iii) a Synthetic Warehouse Agreement dated as of March 14, 2008 between UBS AG, London Branch, the Debtor, CDO Fund and SOHC.



Warehouse Agreement also expressly states “[t]o the extent there are any CDS Losses [losses in the CDS warehouse], the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses.” Synthetic Warehouse Agreement ¶ 6(C). Likewise, the Cash Warehouse Agreement expressly provided that “any Aggregate Collateral Loss [net losses on the portfolio] shall be allocated to the CDO Fund and to SOHC on the basis of their respective Allocation Percentages [which aggregate 100%].” Cash Warehouse Agreement ¶ 5(A).

3. To make the limitation of liability to CDO Fund and SOHC even more clear, each of the Synthetic Warehouse Agreement and the Cash Warehouse Agreement provided for broad releases of the Debtor and its related entities with respect to prior warehouses that formed the basis of the new Synthetic and Cash Warehouse Agreements.

4. When confronted with these clear and unambiguous contracts of sophisticated parties expressly disclaiming liability for the Debtor, the New York Appellate Division dismissed the Debtor from UBS’s lawsuit, and directed entry of final judgment on the merits in favor of the Debtor, based on the Appellate Division’s determination that the warehouse agreements contained no promise by the Debtor “to undertake liability” with respect to UBS’s losses or “to ensure or guarantee” performance by CDO Fund and SOHC. *UBS v. Highland Capital Mgmt., L.P.*, 2010 NY Slip Op 1436, ¶ 1 (N.Y. App. Div.) [A184]. Since then, the Appellate Division has twice found that all of UBS’s claims against the Debtor are barred by *res judicata* to the extent the claims implicate events prior to February 24, 2009, the date that UBS first brought suit on the warehouse agreements after their termination in December 2008. And in a fourth decision, the Appellate Division extended its *res judicata* bar to the Debtor’s co-defendants in the case.

5. Desperate to find some way to continue its litigation against the Debtor, UBS cobbled together new claims based on a transaction in March 2009 that had **nothing** to do with UBS. In March 2009, SOHC’s parent (HFP) – an entity that was not a party to the warehouse agreements and was not named in the UBS litigation until more than a year later – agreed to satisfy

certain of its own secured notes by returning, or causing its subsidiaries (also non-defendants) to return, the collateral on those notes. UBS was not a creditor of HFP, and HFP had no obligations to UBS under the warehouse agreements. Therefore, to manufacture some type of claim based on the March 2009 transaction, UBS devised a new theory: that HFP was the alter ego of SOHC, that the parties involved in the March 2009 transaction had fraudulent transfer liability to UBS, and that the March 2009 transfers – only a small portion of which were received by the Debtor – were a breach by the Debtor of the implied covenant of good faith and fair dealing.

6. Approximately \$233 million of assets were transferred in the March 2009 transaction. In 2015, UBS entered into settlement agreements with the parties that received over 80% of those transfers, approximately \$172 million. By those settlement agreements, the Debtor was expressly released from any claims “for losses or other relief specifically arising from” the approximately \$172 million in transfers. Based on the clear and unambiguous language of the releases, any liability the Debtor could even theoretically have to UBS is limited to a principal amount of approximately \$61 million (\$233 million of transfers minus \$172 million of releases).

7. Finally, UBS’s attempt, in its response to the objections to the UBS Claim, to “preserve all rights” to later seek some type of alter ego relief against the Debtor as a post-trial remedy does nothing to increase the Debtor’s potential liability. Any claim for alter ego or other post-trial relief against the Debtor was a pre-petition claim that UBS was required to assert, if at all, by the bar date applicable to the UBS Claim (June 26, 2020). UBS’s deliberate decision not to assert any such claim by June 26, 2020 operates as a complete bar to any such claim.

#### **SUMMARY OF ARGUMENT**

8. By this Motion, the Debtor seeks entry of summary judgment in its favor as to two components of the UBS Claim: (i) UBS’s claim that notwithstanding the bar date in the Bankruptcy Case or the *res judicata* doctrine it can sometime in the future seek alter ego or other post-trial relief against the Debtor based on claims that arose at least a decade before the petition

date; and (ii) UBS's asserted right to recover more than \$172 million of purported losses that UBS expressly released in the two settlement agreements executed in 2015.

9. As to the first issue, UBS's omnibus response [D.E. 1105] (the "UBS Response") states that UBS is not presently seeking to hold the Debtor liable for the breach of contract judgment entered against two of the Debtor's co-defendants (Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC"), CDO Fund and SOHC, collectively, the "Funds"),<sup>4</sup> UBS Response pp. 19-20 [A147-148]. However, UBS is trying to do precisely what it claims not to be doing as it filed the UBS Claim in the exact amount of its breach of contract judgment with prejudgment interest (\$1,039,957,799), and also states that it "preserves all rights to pursue any post-trial relief, including holding the Debtor liable as an alter ego." UBS Response p. 20 fn. 16 [A148].

10. Any claim UBS may have had to attempt to hold the Debtor liable for the breach of contract judgment, to otherwise hold the Debtor liable as an alter ego as to any claim relating to the restructured warehouse transaction or the state court litigation, or to obtain other post-trial relief against the Debtor (collectively, a "Post-Trial Claim") was a pre-petition claim against the Debtor. By definition, a "claim" includes any right to payment against a debtor, whether or not reduced to judgment. 11 U.S.C. § 101(5)(A). And, case law is clear that where a claimant had a pre-petition relationship with the debtor, any attempt to seek alter ego relief against the debtor based on claims that arose prior to the petition date is a pre-petition claim even if the judgment the claimant seeks to enforce is entered post-petition.

11. Here, there is no doubt that UBS had a pre-petition relationship with the Debtor, dating at least as far back as the parties' first unsuccessful warehouse transaction in 2007. UBS's

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<sup>4</sup> Claim No. 190 and the unredacted UBS Response [D.E. 1133] are attached as **Exhibits 1-2** to the Appendix.

claims relating to the 2008 restructured warehouse transaction arose prior to the petition date, and have been the subject of litigation in New York state court (the “State Court”) since early 2009. UBS has had ample opportunity to seek alter ego relief against the Debtor – indeed, the Appellate Division itself noted that UBS’s complaint in the State Court litigation is “thoroughly suffused” with allegations that the Debtor is the alter ego of the Funds – yet UBS has chosen not to do so.

12. UBS’s failure to assert any Post-Trial Claim by the applicable bar date in the Bankruptcy Case – June 26, 2020 – operates as a complete bar to any such claim. *See* D.E. 488, *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* (the “Bar Date Order”) at ¶¶ 4, 11, 16 [A170, A173, A175]; D.E. 765, *Order Denying UBS’s Motion for Relief from the Automatic Stay to Proceed with State Court Action* (the “Stay Relief Order”) at ¶ 2 [A179].<sup>5</sup> Therefore, summary judgment should be entered in favor of the Debtor disallowing any Post-Trial Claim against the Debtor, and providing, in accordance with the Bar Date Order, that UBS shall not be treated as a creditor with respect to any Post-Trial Claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in the Bankruptcy Case.

13. Any Post-Trial Claim also is barred by the doctrine of *res judicata* to the extent UBS seeks recovery from the Debtor for claims that arose prior to the date – February 24, 2009 – that UBS filed its first complaint against the Debtor, which resulted in a judgment on the merits in favor of the Debtor. *See* NY D.E. 84 (“Judgment”) at p. 2 [A182].<sup>6</sup> The Appellate Division repeatedly has held that *res judicata* bars UBS from seeking recovery from the Debtor for any claims that arose prior to February 24, 2009. *UBS v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469, 477 (N.Y. App. Div. 2011) (holding that *res judicata* bars UBS from asserting claims

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<sup>5</sup> The Bar Date Order and Stay Relief Order are attached as **Exhibits 3-4** to the Appendix.

<sup>6</sup> The Judgment is attached as **Exhibit 5** to the Appendix, and the Appellate Division decision directing entry of the Judgment – *UBS v. Highland Capital Mgmt., L.P.*, 2010 NY Slip Op 1436 (N.Y. App. Div.) – is attached as **Exhibit 6** to the Appendix. All citations herein to “NY D.E. \_\_\_” refer to docket entries in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.).

against the Debtor that “implicate events alleged to have taken place before the filing of the original complaint” on February 24, 2009); *see also UBS v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018) (while UBS may introduce evidence of pre-February 24, 2009 conduct if necessary to prove elements of its claims for post-February 24, 2009 conduct, “there is no dispute that plaintiffs are precluded from pursuing fraudulent conveyance and breach of implied covenant claims that arose prior to February 24, 2009”).

14. The Appellate Division also has confirmed that *res judicata* bars UBS from seeking alter ego relief to recover against the Debtor’s co-defendants for pre-February 24, 2009 claims. *UBS v. Highland Capital Mgmt., L.P.*, 93 A.D.3d 489, 490 (N.Y. App. Div. 2012) (holding that UBS’s claims against other defendants – including the claim that Highland Financial Partners, L.P. (“HFP”) is the alter ego of one of the Funds – are likewise limited to conduct that occurred after February 24, 2009).<sup>7</sup> Moreover, UBS cannot circumvent the *res judicata* effect of the prior judgment on the merits in favor of the Debtor by styling any Post-Trial Claim as some type of separate post-judgment remedy. Where, as here, a judgment on the merits has been entered in favor of one defendant, a plaintiff cannot later seek to hold that defendant liable as an alter ego for a judgment entered against a different defendant arising out of the same dispute. *See, e.g., Bd. of Managers of the 195 Hudson St. Condo. v. Jeffrey M. Brown Assocs.*, 652 F. Supp. 2d 463, 467-68 (S.D.N.Y. 2009).

15. Application of the *res judicata* doctrine to the UBS Claim prohibits UBS from seeking to enforce the breach of contract judgment against the Debtor, because the State Court has determined that the breach of contract occurred on December 5, 2008. UBS Claim ¶ 23 [A17]; UBS Claim Ex. B [A100]. It also prohibits UBS from asserting any other Post-Trial Claim against the Debtor to recover damages for other pre-February 24, 2009 claims. Therefore, summary judgment should be entered in favor of the Debtor disallowing any Post-Trial Claim

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<sup>7</sup> The 2011, 2012, and 2018 Appellate Division decisions are attached as Exhibits 7-9 to the Appendix.



against the Debtor to the extent UBS seeks recovery from the Debtor for any claims that arose prior to February 24, 2009.

16. Application of the doctrine of *res judicata* therefore prohibits UBS from seeking recovery from the Debtor for any losses related to the Cash and Synthetic Warehouse Agreements that were terminated in December 2008 and for which UBS first brought claims on February 24, 2009. This required application of the doctrine of *res judicata* reduces UBS's claims against the estate to its fraudulent conveyance and bootstrap implied covenant claims which have been substantially diminished by UBS's own settlement agreements.

17. With respect to the second issue on which the Debtor seeks summary judgment – UBS's asserted right to recover more than \$172 million of purported losses that UBS released pursuant to two settlement agreements it executed in 2015 – summary judgment should be entered in favor of the Debtor based on the clear and unambiguous language of the settlement agreements which release the Debtor from substantially all liability, and UBS's own descriptions of its claims against the Debtor.

18. UBS has asserted two claims against the Debtor: (i) a claim to avoid and recover alleged fraudulent transfers made in March 2009 by HFP to the Debtor, Highland Crusader Offshore Partners, L.P. and Highland Crusader Holding Corporation (collectively, "Crusader"), Highland Credit Strategies Master Fund, L.P. ("Credit Strategies" and, with Crusader, the "Settling Defendants"), and other parties; and (ii) a claim for an alleged breach of a purported implied covenant of good faith and fair dealing. UBS's operative complaint against the Debtor (the "2010 Complaint") makes clear that, by its implied covenant claim, UBS seeks to recover losses or damages specifically arising out of the March 2009 transfers to the Settling Defendants.<sup>8</sup> See, e.g., 2010 Compl. ¶¶ 165-66 [A250] (alleging, in support of the implied

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<sup>8</sup> In the UBS Response, UBS identifies D.E. 933-13 as the 2010 Complaint against the Debtor. UBS Response p. 9 [A137]. A copy of the 2010 Complaint is attached as **Exhibit 10** to the Appendix.

covenant cause of action, that the Debtor caused UBS to suffer “losses and damages” by causing the March 2009 transfers to the Settling Defendants and other parties).

19. In June 2015, UBS entered into settlement agreements (collectively, the “Settlement Agreements”) in which it released the Debtor and its affiliates from any claims for losses arising from the alleged fraudulent transfers to the Settling Defendants. The UBS releases in favor of the Debtor are clear, unambiguous and broad. In fact, the “Claims” released are broadly defined to encompass both contractual and tort causes of action for “losses or other relief specifically arising” from the alleged fraudulent transfers to the Settling Defendants.<sup>9</sup> Incorporating the definitions set forth in the Settlement Agreements (including the broad definition of “Claims”), the Settlement Agreements provide:

**... [UBS does] hereby release, and covenant not to sue, [the Debtor] with respect to such [claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement [the Warehouse Agreements] and/or the UBS Litigation [the UBS litigation seeking recovery for losses under the Warehouse Agreements]] to the limited extent the [claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement and/or the UBS Litigation] are for losses or other relief specifically arising from the fraudulent transfers to [Crusader and Credit Strategies] alleged in the UBS Litigation ... .**

Crusader Settlement Agreement §§ 5.2, 5.3 [A265-266] (emphasis added); *see also* Credit Strategies Settlement Agreement §§ 5.2, 5.3 [A299-300].

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<sup>9</sup> UBS has identified D.E. 953-6 as its settlement agreement with Crusader, and has identified D.E. 953-9 as its settlement agreement with Credit Strategies. UBS Response pp. 10-11 [A138-139]. The agreement with Crusader (“Crusader Settlement Agreement”) is attached as **Exhibit 11** to the Appendix, and the agreement with Credit Strategies (“Credit Strategies Settlement Agreement”) is attached as **Exhibit 12** to the Appendix.

20. The clear and unambiguous language of the Settlement Agreements releases the Debtor from all losses or other relief specifically arising from the alleged fraudulent transfers to the Settling Defendants, whether those losses are on account of UBS's fraudulent transfer claim or its undeniably derivative implied covenant claim. UBS agrees that its releases of the Debtor are unambiguous, but nonetheless contends that the releases apply only to UBS's fraudulent transfer "claim" (not capitalized), and not UBS's implied covenant "claim" (not capitalized). UBS Response p. 23-24 [A151-152].

21. Under New York law, which governs both Settlement Agreements, the interpretation of unambiguous contract language is a matter of law for the Court. New York's rules of contract interpretation are well-established, and the application of those rules to the Settlement Agreements shows that the Debtor's interpretation of the Settlement Agreements is the only reasonable one, for at least the following two reasons:

- **First**, the Court must view each contract as a whole, and avoid any construction that requires a word to have different meanings in different provisions of the same contract. Here, UBS's proposed interpretation would require the Court to give the broadly defined term "Claim" a more limited meaning only when that term is used to describe UBS's releases of the Debtor. Applying a consistent meaning to the term "Claim" as defined in the Settlement Agreements, UBS's releases of the Debtor encompass UBS's claims and causes of action – whether contractual (implied covenant), or tort or statutory (fraudulent transfer) – for losses specifically arising out of the transfers to the Settling Defendants.
- **Second**, the Court should not read in language that does not appear within the "four corners" of a contract. UBS's position depends on the notion that UBS's release of the Debtor "relates only to a particular claim ... not to any other claim." UBS Response p. 24 [A152]. That limitation, though, appears nowhere in the Settlement Agreements. Aside from the broadly defined term "Claims" – which supports only the Debtor's interpretation – UBS's release of losses specifically arising from the alleged fraudulent transfers to the Settling Defendants makes no reference to UBS's fraudulent transfer "claim" against any party.

22. In the event the Court somehow determines the Settlement Agreements are ambiguous, and considers extrinsic evidence to interpret the release provisions, the extrinsic

evidence supports only the Debtor's interpretation. After the Settlement Agreements were executed, the Debtor advised the State Court that UBS had released the Debtor "from **any liability** relating to the alleged fraudulent transfers with the Settling Defendants, and the Court will need to likewise enforce these provisions." 06/13/17 Mot. Lim. Opp. at p. 19 of 30 (emphasis added) [A324].<sup>10</sup> That description is consistent with only the Debtor's interpretation of the Settlement Agreements, and UBS did not dispute the Debtor's statement.

23. While UBS agrees that the Settlement Agreements are unambiguous, UBS nonetheless attached to the UBS Response, as additional extrinsic evidence relating to the Settlement Agreements, two email chains reflecting UBS's negotiations with counsel for the Settling Defendants.<sup>11</sup> Those negotiations, to any extent the Court considers them, show that the parties to the Settlement Agreements considered different ways to describe UBS's releases of the Debtor, and UBS insisted that the releases be described in terms of "losses or other relief" instead of by reference to particular claims – which is completely at odds with UBS's current position that the releases only apply to one particular claim. Notably, even when discussing the scope of the releases in its email correspondence with the Settling Defendants, UBS never asserted that its releases of the Debtor did not encompass its implied covenant claim.

24. In sum, the unambiguous language of the Settlement Agreements establishes that summary judgment should be entered in favor of the Debtor disallowing the UBS Claim to the extent that UBS seeks to recover any of the more than \$172 million of purported losses expressly released pursuant to the Settlement Agreements. Summary judgment likewise should be entered

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<sup>10</sup> The relevant excerpt from the Debtor's opposition brief in the State Court litigation, which was attached as Exhibit 18 to the UBS Response, is attached as **Exhibit 13** to the Appendix. As discussed below, this excerpt also negates UBS's argument that the Debtor is judicially estopped from enforcing the releases.

<sup>11</sup> The email chain between counsel for UBS and counsel for Credit Strategies (UBS Response Ex. 35) is attached as **Exhibit 14** to the Appendix, and the email chain between counsel for UBS and counsel for Crusader (UBS Response Ex. 34) is attached as **Exhibit 15** to the Appendix.

in favor of the Debtor even if the Court determines that the Settlement Agreements are ambiguous and considers relevant extrinsic evidence.

25. For the reasons summarized above, and discussed in further detail below, the Debtor respectfully requests that the Court grant the Motion in its entirety, and enter an order in substantially the form attached as Exhibit A to the Motion.

### **JURISDICTION AND VENUE**

26. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)-(B) and (O). The Court has both statutory and Constitutional authority to enter final orders and judgments in this proceeding, by which the Debtor seeks partial disallowance of the UBS Claim. *See, e.g., Stern v. Marshall*, 564 U.S. 462, 499 (2011) (relevant question in determining Constitutional authority of bankruptcy courts is whether “the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process”).

27. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

28. The relief requested herein and in the Motion is based on 11 U.S.C. § 502, FED. R. CIV. P. 56, FED. R. BANKR. P. 7056, FED. R. BANKR. P. 9014, N.D. TEX. L.B.R. 7056-1 and N.D. TEX. L.B.R. 9014-1.

### **STATEMENT OF UNDISPUTED FACTS**

#### **I. Claims Asserted by UBS in the State Court Litigation and Relevant Decisions Issued by the NY Appellate Division**

29. UBS filed its first complaint against the Debtor and the Funds on February 24, 2009, in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the “2009 Action”). UBS Claim ¶ 17 [A014].<sup>12</sup> In that complaint, UBS asserted a breach of contract claim against the Debtor based on the warehouse agreements entered into in 2008

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<sup>12</sup> The UBS Claim incorporates the “procedural history of the State Court Action” by reference. UBS Claim ¶ 2 fn. 2 [A008].



between UBS, the Debtor and the Funds which provided that the Funds, not the Debtor, would bear the risk of any investment losses. UBS Response p. 6 (warehouse agreements placed the risk of loss on the Funds, not the Debtor) [A134]; *id.* at p. 8 (describing UBS's allegations in its first complaint) [A136].

30. UBS's breach of contract claim against the Debtor was dismissed in early 2010, resulting in the entry of final judgment on the merits in favor of the Debtor. NY D.E. 84 at p. 2 [A182]. Judgment was entered based on the Appellate Division's determination that the warehouse agreements contained no promise by the Debtor "to undertake liability" with respect to UBS's losses or "to ensure or guarantee" the Funds' performance. *UBS*, 2010 NY Slip Op 1436 at ¶ 1 [A184].

31. After the Debtor was dismissed from the 2009 Action, UBS amended its complaint in the 2009 Action to add five new defendants (all non-debtors), and filed a new, separate action against the Debtor on June 28, 2010, captioned as *UBS v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the "2010 Action"). *See* UBS Claim ¶ 19 [A016]; UBS Claim Ex. A at p. 1 [A024]; UBS Response p. 9 [A137]; 2010 Compl. [A202-259]. In the 2010 Action, UBS asserted claims against the Debtor for fraudulent transfer and breach of the implied covenant of good faith and fair dealing. UBS Response p. 9 [A137]. The only post-February 24, 2009 conduct described in the 2010 Complaint relates to the transaction in March 2009 (the "March 2009 Transaction") by which certain assets were transferred by HFP or its subsidiaries to the Settling Defendants and other noteholders in order to extinguish secured notes issued by HFP in 2008. 2010 Compl. ¶¶ 82-85 (discussing 2008 note offering and granting of security interests), ¶¶ 109-114 (identifying March 2009 Transaction as Debtor's post-February 24, 2009 conduct) [A229-231, A236-238]. A total of approximately \$233 million of assets were transferred in the March 2009 Transaction. UBS Response p. 6

[A134]. UBS's expert witness calculated the exact amount as \$233,455,147. 03/08/13 Expert Report of Louis Dudney (Excerpt Only) [A365].<sup>13</sup>

32. The 2010 Complaint makes clear that UBS's claim for breach of the implied covenant of good faith and fair dealing seeks to recover "losses or other relief" arising out of the transfers in March 2009 alleged to be avoidable under the New York fraudulent conveyance statute. The implied covenant claim is set forth as UBS's third cause of action. 2010 Compl. ¶¶ 157-166 [A248-250]. In support of that cause of action, UBS alleged that the Debtor "caused the March 2009 Fraudulent Conveyance, which transferred assets to" the Settling Defendants and other parties, and thereby (according to UBS) caused UBS to incur and suffer "losses and damages ..." *Id.* at ¶¶ 165-66 [A250]. The "March 2009 Fraudulent Conveyance" was defined as the transaction in March 2009 by which assets were transferred from HFP or its subsidiaries to the Settling Defendants and other parties, which (according to UBS) both breached the implied covenant and constituted a fraudulent conveyance. *Id.* at ¶¶ 111-12 [A237-238]. The two claims are intertwined and based on the identical facts and circumstances.

33. As to UBS's new claims against the additional defendants named in the 2009 Action, UBS's amended complaint in the 2009 Action included a claim for declaratory relief against HFP seeking a determination that HFP was the alter ego of one of the Funds. UBS Claim ¶ 19 [A016]. The alter ego claim against HFP is the only alter ego relief that UBS expressly sought in the State Court litigation. UBS Response pp. 19-20 [A147-148]. As the Appellate Division noted, however, UBS's complaint was "thoroughly suffused with allegations that [the Debtor] was essentially the alter ego of the parties it induced to breach the agreements." *UBS*, 86 A.D.3d at 477 [A193].

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<sup>13</sup> The referenced excerpt from the expert report of UBS's witness (UBS Response Ex. 6) is attached as **Exhibit 16** to the Appendix.

34. In 2011 and 2012, the Appellate Division eliminated, or otherwise significantly limited, UBS's claims against the Debtor and the new defendants. Both decisions applied *res judicata* to restrict UBS from seeking recovery for any conduct that occurred prior to the date on which UBS filed its original complaint in the 2009 Action (*i.e.*, February 24, 2009).

35. In particular, in 2011, the Appellate Division held that UBS is barred, under the doctrine of *res judicata*, from asserting claims against the Debtor that "implicate events alleged to have taken place before the filing of the original complaint" on February 24, 2009. *See UBS*, 86 A.D.3d at 474 [A191]. Based on this holding, the Appellate Division dismissed "those portions" of UBS's fraudulent conveyance and implied covenant claims against the Debtor "that rely on conduct pre-dating the commencement of the prior action." *Id.* at 469 [A189]. In 2012, the Appellate Division extended its *res judicata* ruling to the Debtor's co-defendants in the state court litigation, holding that UBS's claims against other defendants – including the claim that HFP is the alter ego of one of the Funds – are likewise limited to conduct that occurred after February 24, 2009. *See UBS*, 93 A.D.3d at 490 [A195-196].

36. As set forth below, based on these unambiguous rulings, the Court should enter summary judgment disallowing any claims by UBS to hold the Debtor liable for the Phase I breach of contract judgment of \$1.1 billion under a theory of breach of the implied covenant of good faith and fair dealing or alter ego.

## **II. UBS's Settlement Agreements with Crusader and Credit Strategies**

37. In June 2015, UBS released its claims as to the majority of its alleged losses arising out of the March 2009 Transaction, via the Settlement Agreements with Crusader and Credit Strategies. The Settlement Agreements, which are virtually identical, specifically identify the Debtor – defined as "HCMLP" at p. 1 of the Settlement Agreements – as one of the "Covered Persons" to which UBS granted releases of certain "Claims," and include UBS in the definition of "UBS Releasing Parties." *See Settlement Agreements* p. 1 (defining entities) [A261, A296], §

5.2 (defining “UBS Releasing Parties”) [A265, A299], § 5.3 (defining “Covered Persons”)

[A265, A299]. The term “Claims” is defined as:

... any and all claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement and/or the UBS Litigation ... .

Crusader Settlement Agreement § 5.2 [A265]; *see also* Credit Strategies Settlement Agreement § 5.2 [A299].

38. The relevant release language in the Crusader Settlement Agreement provides:

... the UBS Releasing Parties do hereby release, and covenant not to sue, the Covered Persons with respect to such Claims to the limited extent the Claims are for losses or other relief specifically arising from the fraudulent transfers to Crusader alleged in the UBS Litigation ... .

Crusader Settlement Agreement § 5.3 [A265-266]; *see also* Credit Strategies Settlement Agreement § 5.3 (identical language except that “Crusader” is replaced with “Credit Strategies”) [A299-300].

39. Incorporating the definitions set forth in the Settlement Agreements, §§ 5.3 of the Settlement Agreements provide:

... [UBS Securities LLC and UBS AG, London Branch] do hereby release, and covenant not to sue, [the Debtor] with respect to such [claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement and/or the UBS Litigation] to the limited extent the [claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement and/or the UBS Litigation] are for losses or other relief specifically arising from the fraudulent transfers to [Crusader and Credit Strategies] alleged in the UBS Litigation ... .

Crusader Settlement Agreement § 5.3 [A265-266]; *see also* Credit Strategies Settlement Agreement § 5.3 [A299-300].

40. This language unambiguously releases the Debtor from, among other things, all claims, causes of action and liabilities – whether contractual or tort – for losses or other relief specifically arising from the alleged fraudulent transfers to the Settling Defendants. UBS has admitted that \$172,411,785 of assets were transferred to the Settling Defendants in the March 2009 Transaction. UBS Response p. 23 [A151]; 03/08/13 Expert Report of Louis Dudney (Excerpt Only) [A365]. The expert report of UBS’s witness reflects that [REDACTED]  
[REDACTED]  
[REDACTED] for a total of \$172,411,785 transferred to the Settling Defendants [REDACTED] in the March 2009 Transaction.<sup>14</sup> 03/08/13 Expert Report of Louis Dudney (Excerpt Only) [A365].

41. UBS agrees that the Settlement Agreements are unambiguous. UBS Response p. 23 [A151] (the “Court need look no further than the plain language of the Settlements”). Nonetheless, UBS offered up, as exhibits to the UBS Response, three pieces of extrinsic evidence for the Court to consider if the Court were to determine that the contract language is ambiguous. These items not only do not support UBS’s effort to create ambiguity where none exists, they in fact bolster the Debtor’s position. First, Exhibit 18 to the UBS Response is a brief filed in the State Court in 2017 in which the Debtor described the Settlement Agreements as follows:

The settlements likewise release Defendant Highland Capital Management, L.P. from **any liability** relating to the alleged fraudulent transfers with the Settling Defendants, and the Court will need to likewise enforce these provisions.

06/13/17 Mot. Lim. Opp. at p. 19 of 30 (emphasis added) [A324]. The Debtor has never taken any position inconsistent with that statement.

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<sup>14</sup> As identified in UBS’s expert report, Crusader includes Crusader Fund and Highland Crusader Holding Corporation. 03/08/13 Expert Report of Louis Dudney (Excerpt Only) [A365].



42. In addition, UBS has identified two sets of email communications as extrinsic evidence relating to the releases: (i) a June 1, 2015 email chain between counsel for UBS and counsel for Credit Strategies [A327-329]; and (ii) a June 5-7, 2015 email chain between counsel for UBS and counsel for Crusader [A331-362]. *See* UBS Response pp. 27-28 [A155-156]. Nothing in the email correspondence or attachments limits the scope of the releases to UBS's fraudulent transfer *claim* or *cause of action* – like the Settlement Agreements, the discussion is framed in terms of “losses or other relief” – and certainly nothing states that the implied covenant *claim* or *cause of action* was meant to be excluded from the releases even though, as set forth above, it seeks “losses or other relief” on account of the alleged fraudulent transfers.

43. Indeed, in response to a comment from Crusader's counsel that certain changes were proposed “[s]o that the parties are clear that the claim for breach of good faith and fair dealing in connection with the transfer of assets to Crusader is encompassed within the scope of the release UBS is granting to Highland ...,” UBS's counsel did **not** contend that the implied covenant cause of action was not covered by the releases, but only that UBS would not change the release language because “we spent a lot of time with credit strat on this language and ubs is not going to change it for this agreement because it could create problems and we still don't understand what your concern is beyond a highly improbable hypothetical.” A331-332.

### **III. Additional Relevant Procedural History of the State Court Litigation**

44. Subsequent events in the State Court litigation confirm that the releases extended to the breach of implied covenant claim predicated on the alleged fraudulent transfers. On more than one occasion in the State Court litigation, UBS emphasized the close nexus between its fraudulent transfer claim and its implied covenant claim. As described by UBS in its pre-trial brief seeking bifurcation of its breach of contract claim, on the one hand, and its implied covenant and fraudulent transfer claims, on the other hand, UBS's implied covenant claim “involves [the Debtor's] role in the March 2009 fraudulent conveyances [and] overlaps factually with the ...

fraudulent conveyance claims.” NY D.E. 472 at p. 3 [A368].<sup>15</sup> During a related telephonic hearing with the State Court, UBS conceded that its implied covenant claim is the same as its fraudulent transfer claim:

THE COURT: And is it also the plaintiffs’ position that the implied covenant claim relates to the fraudulent conveyance claim and not to the fraudulent inducement?

MR. CLUBOK: Absolutely, yes.

...

THE COURT: Ms. Klein, isn’t the implied covenant claim as pleaded based solely on post entry into transaction alleged wrongful or fraudulent conveyances?

... [response by defendants’ counsel] ...

THE COURT: Mr. Clubok, will you respond.

...

MR. CLUBOK: ... basically, you know, the implied covenant of good-faith and fair-dealing claim that we now have is that they shouldn’t have committed fraudulent conveyances to make it certain that these two parties couldn’t have paid.

05/01/18 State Court Hrg. Tr. at 5:14-18, 7:16-10:16 [A372, 374-377].<sup>16</sup>

45. Phase I of the trial commenced on July 9, 2018. UBS Claim ¶ 23 [A017]. Phase I did not involve any claims asserted by UBS against the Debtor. Instead, the Phase I trial was limited to UBS’s breach of contract claim against the Funds, and certain contractual counterclaims asserted by the Debtor. UBS Claim ¶¶ 19, 22 [A016-017]. Phase I of the trial concluded on July 27, 2018. UBS Claim ¶ 23 [A017]. The State Court issued its decision on November 14, 2019, determining that the Funds breached the warehouse agreements on December 5, 2008, and the Phase I judgment was entered on February 10, 2020. UBS Claim ¶ 23 [A017-018]; UBS Claim Ex. B [A100]. UBS has calculated the amount of its breach of contract judgment against the Funds, including prejudgment interest, as totaling \$1,039,957,799.44. UBS Claim ¶ 23 [A018].

<sup>15</sup> The relevant excerpt from UBS’s pre-trial bifurcation brief is attached as **Exhibit 17** to the Appendix.

<sup>16</sup> The relevant excerpt from the May 1, 2018 transcript is attached as **Exhibit 18** to the Appendix.

#### IV. Proceedings in the Bankruptcy Court

46. The Debtor commenced the Bankruptcy Case in the District of Delaware on October 16, 2019 (the “Petition Date”), by filing its voluntary petition for relief [D.E. 3] under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Bankruptcy Case was transferred to this Court on December 4, 2019. D.E. 186.

47. On March 2, 2020, the Court entered the Bar Date Order establishing April 8, 2020 as the general bar date in the Bankruptcy Case. A169-176. The Bar Date Order provides that: (i) “all entities holding claims against the Debtor that arose before” the Petition Date “shall file proofs of claim” by the general bar date of April 8, 2020 [Bar Date Order ¶ 4]; (ii) the general bar date “applies to **all types of claims** against the Debtor that **arose prior to the Petition Date**” with the term “claim” having “the meaning given to it in section 101(5) of the Bankruptcy Code” [*id.* at ¶¶ 2, 4 (emphasis in original)]; and (iii) any entity required to file a proof of claim form that fails to do so by the applicable bar date “shall not be treated as a creditor with respect to such claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan” in the Bankruptcy Case [*id.* at ¶ 16]. The term “claim” is broadly defined by the Bankruptcy Code as including any “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C. § 101(5)(A).

48. On March 24, 2020, the Court entered an order [D.E. 547] approving a stipulation between the Debtor and UBS whereby the parties agreed to extend the bar date for UBS’s claims against the Debtor until the later of (i) June 22, 2020 and (ii) five business days after entry of an order on any motion filed by UBS on or before May 20, 2020 seeking relief from the automatic stay. D.E. 547 at pp. 2-3.

49. UBS filed a motion for relief from the automatic stay (“Stay Relief Motion”) on May 20, 2020. D.E. 644. The Debtor, the Redeemer Committee of the Highland Crusader Fund

(“Redeemer Committee”), the Official Committee of Unsecured Creditors, and Acis Capital Management GP, LLC all filed objections to the Stay Relief Motion. D.E. 687, 690, 694, 701.

50. Following a hearing on June 15, 2020, the Court entered the Stay Relief Order on June 19, 2020 denying the Stay Relief Motion. The Stay Relief Order also set June 26, 2020 as the deadline for UBS to file its proof of claim against the Debtor (the “UBS Bar Date”). Stay Relief Order ¶ 2 [A179].

**V. UBS’s Claim and Response to Claim Objections**

51. UBS filed the UBS Claim in the Bankruptcy Case on June 26, 2020. The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG, London Branch. UBS Claim ¶ 2 (describing Claim Nos. 190 and 191 as “substantially the same”) [A007]. The UBS Claim asserts a general unsecured claim against the Debtor for \$1,039,957,799.40, *i.e.*, the exact amount of UBS’s breach of contract judgment against the Funds as calculated with prejudgment interest by UBS. UBS Claim at Claim Form p. 2 [A003]; UBS Claim ¶ 23 [A017-018].

52. UBS states in the UBS Claim that it “will seek damages for the Debtor’s various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme.” UBS Claim ¶ 24 [A018]; *see also* UBS Claim ¶ 26 [A019] (UBS “hereby asserts a claim” for “damages arising from the Debtor’s breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP” and interest, punitive damages and attorneys’ fees). In describing its implied covenant claim against the Debtor, UBS asserts that “the Debtor undertook a litany of other actions to ensure that ... [UBS] would not be able to collect any judgment arising out of the litigation” with SOHC and CDO Fund. UBS Claim ¶ 15 [A013]. According to UBS, “such actions” included “a series of fraudulent transfers out of, and away from” HFP that “occurred in 2009.” UBS Claim ¶¶ 15-16 [A013-014]. UBS contends that “such actions” constituted “breaches of the Debtor’s duty of

good faith and fair dealing” under the Warehouse Agreements. UBS Claim ¶ 16 [A014]; *see also* UBS Claim ¶ 18 [A015-016] (specifically describing the March 2009 transfers to the Settling Defendants and other parties as an alleged breach of the implied covenant by the Debtor).<sup>17</sup> This verbiage, and the absence of any specific description of any other post-February 24, 2009 conduct, makes clear that UBS’s implied covenant claim that survived the Appellate Division, First Department’s *res judicata* rulings is predicated on the only actionable conduct post-dating February of 2009, the alleged fraudulent transfers in March 2009.

53. The Debtor, and the Redeemer Committee and the Highland Crusader Funds (“Redeemer/Crusader”), each objected to the UBS Claim on August 7, 2020. D.E. 928, 933. UBS filed the UBS Response on September 25, 2020. D.E. 1105. The UBS Response and subsequent statements made by UBS’s counsel at the status conference on the UBS Claim confirm that UBS’s claim for breach of the implied covenant of good faith and fair dealing seeks losses or other relief specifically arising from the alleged fraudulent transfers to the Settling Defendants and other parties in March 2009. *See* UBS Response pp. 6, 18 (arguing at p. 18 that “under its implied covenant claim, UBS is seeking damages from the Debtor resulting *not just* from HCM’s fraudulently transferring assets away from SOHC’s alter ego, HFP (or its subsidiaries), in March 2009 ...” but then referencing as support for that statement a list of bullet points on p. 6 which identify the March 2009 Transaction as the only post-February 24, 2009 conduct) [A134, A146]; 10/06/20 Status Conf. Tr. 20:4-19 [A382] (argument by UBS’s counsel that the post-February 2009 transfers support “not just fraudulent transfer but a separate claim of the breach of the implied duty of good faith and fair dealing”).<sup>18</sup>

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<sup>17</sup> The complaint attached as Exhibit A to the UBS Claim does not actually assert any causes of action against the Debtor, nor is the Debtor referenced in the prayer for relief. In the UBS Response, UBS identified D.E. 933-13 as its operative complaint against the Debtor.

<sup>18</sup> The October 6, 2020 transcript is attached as **Exhibit 19** to the Appendix.



## ARGUMENT

54. Rule 56 of the Federal Rules of Civil Procedure, made applicable herein by Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure, authorizes the Court to grant partial summary judgment where, as here, judgment is sought as to part of a claim. FED. R. CIV. P. 56; FED. R. BANKR. P. 7056; FED. R. BANKR. P. 9014. “Summary judgment is appropriate if the record discloses that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990) (internal quotation marks omitted). A “genuine issue of material fact” is present only if the evidence “is such that a reasonable fact finder could return a verdict for the non-movant.” *Manchester EB-5, LLC v. Forest Park Realty Partners III, L.P. (In re Forest Park Realty Partners, III, L.P.)*, 2016 Bankr. LEXIS 3980, \*29 (Bankr. N.D. Tex. November 15, 2016) (citation omitted); *see also James*, 909 F.2d at 837 (standard of review “is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court”).

### **I. The UBS Claim Must Be Disallowed to the Extent UBS Seeks to Enforce the Breach of Contract Judgment Against the Debtor, Obtain Post-Trial Relief Against the Debtor, or “Preserve” Any Supposed Rights to Do So**

#### **A. Any Attempt by UBS to Enforce the Breach of Contract Judgment or Obtain Other Post-Trial Relief Against the Debtor Is Time-Barred**

55. Pursuant to the Bar Date Order and the Stay Relief Order, UBS was required to file a proof of claim asserting **all** claims against the Debtor that arose prior to the Petition Date – whether reduced to judgment, unliquidated, unmatured, contingent, legal, equitable, or otherwise – by the UBS Bar Date of June 26, 2020. Bar Date Order ¶¶ 2, 4 (incorporating the definition of “claim” under 11 U.S.C. § 101(5)) [A170]; Stay Relief Order ¶ 2 [A179]. As to any pre-petition claim not asserted by UBS by the UBS Bar Date, UBS “shall not be treated as a creditor with respect to such claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan” in the Bankruptcy Case. Bar Date Order ¶ 16 [A175].

56. Any claim (or right to payment) UBS may have had against the Debtor to attempt to enforce the \$1.1 billion Phase I breach of contract judgment against the Debtor, to otherwise hold the Debtor liable “as an alter ego” as to any claim asserted by UBS in connection with the restructured warehouse transaction or the State Court litigation, or to obtain other “post-trial relief” against the Debtor relating to the breach of contract or other claims asserted in the State Court litigation was a claim that arose prior to the Petition Date. UBS has admitted that it has not yet asserted any such Post-Trial Claim in the Bankruptcy Case, but claims to preserve all rights to do so in the future. UBS Response pgs. 19-20 (“UBS has not asserted and is not asserting that the Debtor was an alter ego of the Fund Counterparties.”) [A147-148]; UBS Response p. 20 fn. 16 (“UBS, of course, preserves all rights to pursue any post-trial relief, including holding the Debtor liable as an alter ego.”) [A148]. UBS’s failure to assert any such alter ego claim prior to the UBS Bar Date, which appears to be deliberate, operates as a complete bar to any such claim against the Debtor. Undoubtedly such claim falls within the statutory definition of “claim” and is indisputably a pre-petition claim notwithstanding that the breach of contract judgment was entered after the Petition Date.

57. Under the Bankruptcy Code, a “claim” includes a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured[.]” *United States v. Williams*, 2005 U.S. Dist. LEXIS 15857, \*7-8 (N.D. Tex. Aug. 3, 2005) (quoting 11 U.S.C. § 101(5)(A)). Courts interpret the term “claim” expansively because “Congress intended the term ‘claim’ to be read broadly so that ‘all legal obligations of the debtor, no matter how remote or contingent [,] will be able to be dealt with in the bankruptcy case.’” *Id.* at \*8-9 (citations omitted); *see also Cantu v. Schmidt (In re Cantu)*, 784 F.3d 253, 259 (5th Cir. 2015) (noting that, in the context of claims asserted against a debtor, the term “claim” must be defined broadly enough to protect a debtor’s potential “fresh start”). “A creditor need not have a cause of action

that is ripe for suit outside of bankruptcy in order for it to have a pre-petition claim for purposes of the Code.” *Williams*, 2005 U.S. Dist. LEXIS 15857 at \*9-10 (internal quotation marks and citation omitted). “A claim is not rendered a post-petition claim simply by the fact that time for payment is triggered by an event that happens after the filing of the petition.” *Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Mgmt.)*, 4 F.3d 1329, 1335 fn.7 (5th Cir. 1993).

58. “[F]ederal law determines when a claim arises for bankruptcy purposes.” *Cadleway Props., Inc. v. Andrews (In re Andrews)*, 239 F.3d 708, 710 n.8 (5th Cir. 2001) (citation omitted). In the Fifth Circuit, the “pre-petition relationship” test is used to determine whether a claim asserted against a debtor arose prior to the commencement of the debtor’s bankruptcy case. *See, e.g., Cantu*, 784 F.3d at 259; *Veritas DGC, Inc. v. Digicon, Inc. (In re Digicon, Inc.)*, 2003 U.S. App. LEXIS 29535, \*10 (5th Cir. June 11, 2003); *Placid Oil Co. v. Williams (In re Placid Oil Co.)*, 463 B.R. 803, 813-14 (Bankr. N.D. Tex. 2012). Under that test, a claim against a debtor arises at the time of the challenged conduct, so long as the claimant had “some sort of relationship” with the debtor at the time the conduct occurred. *Veritas DGC, Inc.*, 2003 U.S. App. LEXIS 29535 at \*10. “The Fifth Circuit has previously found that a contractual relationship between the debtor and claimant is ‘[clearly] a pre-petition relationship sufficient to meet’ the [relationship] requirement.” *AMPAM Power Plumbing, L.P. v. Capstone Bldg. Corp. (In re AMPAM Power Plumbing, L.P.)*, 520 B.R. 553, 558 (Bankr. W.D. Tex. 2014) (quoting *Wheeler v. Magdovitz (In re Wheeler)*, 137 F.3d 299, 301 (5th Cir. 1998)).

59. In this case, any Post-Trial Claim by UBS against the Debtor under New York law based on an alter ego theory is a claim that arose prior to the Petition Date. As an initial matter, courts have uniformly rejected the argument that a claim based on pre-petition conduct does not “arise” until a judgment in favor of the creditor based on that conduct is entered or becomes final. *See, e.g., Lemons v. Reinicke (In re Reinicke)*, 2004 U.S. Dist. LEXIS 22917, \*5 (N.D. Tex. November 8, 2004) (claim based on pre-petition fraud by debtor was untimely,

notwithstanding that creditor's related state court judgment was still on appeal, because claim arose "as a result of debtor's alleged fraud" prior to the petition date, not as a result of the judgment); *In re Couzens Warehouse & Distribs., Inc.*, 1991 Bankr. LEXIS 1591, \*3 (Bankr. N.D. Ill. Oct. 17, 1991) (proof of claim based on pre-petition worker's compensation claim was untimely, notwithstanding that state commission's judgment as to such claim did not become final until after the bar date, because the creditor's claim arose pre-petition when he filed worker's compensation claim, not when that claim was reduced to judgment).

60. Furthermore, where, as here, a claimant had a pre-petition relationship with the debtor, courts repeatedly have held that the claimant cannot later (*i.e.*, outside of the bankruptcy) attempt to hold the debtor liable as an alter ego for claims against other parties that arose prior to the petition date. This issue was squarely addressed and discussed at length in *Yan v. Lombard Flats, LLC (In re Lombard Flats, LLC)*, 2016 U.S. Dist. LEXIS 38112, \*26-29 (N.D. Cal. March 23, 2016), which is highly informative. There, the court held that allegations of alter ego liability against a debtor, asserted post-confirmation to attempt to impose liability on the debtor for claims against the debtor's principal based on breaches of pre-petition promissory notes, constituted a pre-petition claim against the debtor. In *Yan*, the debtor (an LLC) filed its chapter 11 petition in August 2009, and its plan was confirmed in July 2010. *Id.* at \*2. In October 2014, a creditor filed a state court action against the debtor and its principal, who was the "responsible individual" in the chapter 11 case, asserting that the principal breached several promissory notes entered into in 2007 and 2008, and that the debtor was liable as the principal's alter ego. *Id.* at \*8-9. The alter ego allegations asserted that the principal transferred property to the debtor prior to the petition date, and that the principal placed various pre-petition encumbrances on the debtor's property, and one post-petition encumbrance. *Id.* at \*26. The court concluded that the alter ego allegations against the debtor were discharged pre-petition claims because (i) the creditor's claims were based on its pre-petition contractual relationship with the principal, (ii) the

creditor's contract claim was based on pre-petition conduct, (iii) the "accrual of the alter ego claims" was determined by when the underlying contract claim arose, and (iv) even if the court were to consider when the alter ego relationship was fairly contemplated by the creditor, the fact that one of the creditor's supposed alter ego indicia occurred post-petition "[did] not support appellant's argument that the alter ego theory arose" post-petition. *Id.* at \*38-39.

61. Likewise, in *In re Hurricane R.V. Park, Inc.*, 185 B.R. 610, 613-14 (Bankr. D. Utah 1995), the court held that the IRS violated a chapter 11 debtor's discharge injunction by filing post-confirmation tax liens on the debtor's property based on the theory that the debtor was the alter ego of an individual taxpayer, because the assessment dates pre-dated the debtor's petition date. In that case, the debtor filed its chapter 11 petition in December 1991. The IRS filed a "zero proof of claim" in the debtor's case, and the plan was confirmed in January 1993. *Id.* at 612. In 1994, the IRS filed tax liens on property owned by the debtor prior to its petition date, asserting that the debtor was the alter ego of its vice-president. *Id.* at 613. The assessment dates on the tax liens covered a range of years, all prior to the petition date. *Id.* Notwithstanding that the tax liens were not filed until after the petition date, the IRS's alter ego theory of liability made the IRS a contingent creditor of the debtor as of the assessment dates. *Id.* Because the IRS held a contingent pre-petition claim against the debtor that was not asserted in the bankruptcy case, the IRS's claim was discharged upon plan confirmation. *Id.* at 614; *see also In re Slater*, 573 B.R. 247, 253-55 (Bankr. D. Utah 2017) (holding that post-discharge state court judgment imposing liability on debtor as alter ego of his entities was void on grounds that it was based on a discharged pre-petition claim against debtor, where underlying contract debt arose prior to the petition date, and rejecting plaintiff's argument that debt did not arise until alter ego judgment was entered).

62. Here, any Post-Trial Claim that UBS could attempt to assert against the Debtor (either directly or as a purported alter ego) relating to the warehouse transaction or the claims



asserted in the State Court litigation would be a pre-petition claim against the Debtor. It is undisputed that UBS had a pre-petition relationship with the Debtor, based on both the long history of the warehouse transaction and the State Court litigation. It likewise is undisputed that the breach of contract judgment and the other claims asserted in the State Court litigation are based on pre-petition conduct. Furthermore, as discussed in *Yan*, the accrual of any claim against the Debtor for alter ego relief is based on when the underlying claims arose and, here, all of UBS's claims against any party relating to the warehouse transaction arose prior to the Petition Date. Even if the Court were to consider when any alleged alter ego "facts" may have arisen, any "alter ego theory" UBS might have against the Debtor certainly arose prior to the Petition Date. As noted by the Appellate Division, UBS's complaint was "thoroughly suffused with allegations that [the Debtor] was essentially the alter ego of the parties it induced to breach the agreements," *UBS*, 86 A.D.3d at 477 [A193], yet UBS chose not to seek alter ego relief against the Debtor.

63. Thus, any Post-Trial Claim against the Debtor was a pre-petition claim, and UBS's undisputed failure to assert any such Post-Trial Claim by the UBS Bar Date operates as a complete bar to such claim. As a result, summary judgment should be entered in favor of the Debtor determining that any Post-Trial Claim by UBS against the Debtor is barred by the Bar Date Order and the Stay Relief Order.

**B. Any Attempt by UBS to Enforce the Breach of Contract Judgment or Obtain Other Post-Trial Relief Against the Debtor Based On Claims that Arose Prior to February 24, 2009 Is Barred by Res Judicata**

64. UBS has admitted that it is barred, under the doctrine of *res judicata*, from seeking recovery from the Debtor for claims that arose prior to February 24, 2009. *See, e.g.*, 10/06/20 Status Conf. Tr. 19:24 ("we agree that there are no claims pre-February 2009") [A381]; *id.* at 20:23-25 (there is "no dispute" that "claims that arose before February 2009" are "out of the case") [A382]. There likewise is no dispute that UBS's breach of contract claim against the Funds

arose on December 5, 2008, the date on which the alleged breach occurred. *See, e.g.*, UBS Claim ¶ 12 [A012]. While UBS asserts that it is not, at this time, seeking to hold the Debtor liable for the breach of contract claim against the Funds, it nonetheless filed the UBS Claim in the exact amount of the breach of contract judgment and purports to “preserve all rights” to hold the Debtor “liable as an alter ego” and otherwise pursue any other “post-trial relief” against the Debtor. UBS Response pp. 19-20, p. 20 fn. 16 [A147-148]. Any such “post-trial relief” against the Debtor, to the extent it is based on claims that arose prior to February 24, 2009, is barred by the doctrine of *res judicata* and the numerous decisions issued by the Appellate Division in the State Court litigation.

65. The Appellate Division already has determined – and UBS has admitted – that UBS cannot assert any direct claim against the Debtor seeking recovery for conduct that occurred prior to February 24, 2009. *UBS*, 86 A.D.3d at 474 (holding that UBS cannot assert claims against the Debtor that “implicate events alleged to have taken place before the filing of the original complaint” on February 24, 2009, which resulted in a judgment on the merits in favor of the Debtor). The same restriction applicable to UBS’s pleaded claims also applies to any attempt by UBS to seek alter ego or any other “post-trial relief” against the Debtor. That result is dictated by the Appellate Division’s other related rulings in the State Court litigation. *See, e.g., UBS*, 93 A.D.3d at 490 (applying *res judicata* to limit UBS’s alter ego relief against HFP to post-February 24, 2009 claims, on the grounds that HFP was in privity with the Debtor and thus was entitled to the same *res judicata* protection as the Debtor).

66. Moreover, under New York law, UBS cannot assert an alter ego claim against the Debtor styled as a post-judgment remedy having named the Debtor as a defendant in the litigation.<sup>19</sup> Case law makes clear that where (as here) a party is a defendant in litigation and a judgment on the merits has been entered in its favor, the plaintiff cannot later seek to hold that

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<sup>19</sup> The *res judicata* effect of the prior decisions in the State Court litigation is governed by New York law. *See, e.g., Richardson v. Wells Fargo Bank, N.A.*, 839 F.3d 442, 449 (5th Cir. 2016).

defendant liable under an alter ego theory for a judgment entered against a different defendant in the same lawsuit. For instance, in *Bd. of Managers of the 195 Hudson St. Condo.*, 652 F. Supp. 2d at 467-68, a final judgment was entered in favor of one defendant (JMB) in breach of contract litigation relating to a condominium conversion project managed by JMB's subsidiary (K&J). In that litigation, the plaintiff condominium board (Board) had asserted, in addition to its contract claims, various "veil piercing" allegations against JMB but did not expressly seek alter ego relief against JMB. *Id.* at 467. After the contract claims against JMB were dismissed and judgment was entered in favor of JMB, the Board obtained a breach of contract judgment against K&J, and thereafter attempted to seek "post-trial relief" holding JMB liable on the grounds that K&J was the alter ego of JMB. *Id.* at 467-68. The court rejected the Board's attempt, holding that *res judicata* barred the Board's attempt to obtain post-judgment alter ego relief against JMB because any such alter ego relief could have, and should have, been sought in the prior litigation. *Id.* at 478-82.

67. Likewise, in this case, the Appellate Division already has observed that UBS's complaint was "thoroughly suffused with allegations that [the Debtor] was essentially the alter ego of the parties it induced to breach the agreements." *UBS*, 86 A.D.3d at 477 [A193]. Nonetheless, like the plaintiff in *Bd. of Managers of the 195 Hudson St. Condo.*, UBS has decided for its own reasons not to expressly seek alter ego or other "post-trial relief" against the Debtor. Any such attempt by UBS to do so in the future would, as discussed in the previous section, be a pre-petition claim that is time-barred and also would, as discussed in this section, be barred by *res judicata*. Accordingly, summary judgment should be granted in favor of the Debtor barring UBS from asserting any Post-Trial Claim against the Debtor based on UBS's \$1.1 billion breach of contract claim against the Funds or any other claim that arose prior to February 24, 2009.

**II. The UBS Claim Must Be Disallowed As to Any Recovery By UBS On Account of the Approximately \$172 Million Transferred to the Settling Defendants**

**A. Summary Judgment Should be Granted to the Debtor Based on the Plain Language of the Settlement Agreements**

**(1) The Unambiguous Language of the Releases Applies to Any Recovery by UBS On Account of Its Fraudulent Transfer Claim and Its Implied Covenant Claim Against the Debtor**

68. As stated above, UBS's fraudulent transfer and breach of implied covenant claims are premised on the March 2009 Transaction, *i.e.*, the only post-February 2009 operative facts cited in the 2010 Complaint and the only specific post-February 2009 conduct identified in the UBS Claim or the UBS Response. As set forth below, based on the unambiguous language of the release provisions of the Settlement Agreements, the maximum principal amount UBS could recover on account of such claims is approximately \$61 million, and this Court can and should grant summary judgment disallowing all asserted claims for any principal recovery in excess of that amount.

69. Under the plain language of the Settlement Agreements, UBS has released the Debtor from all of UBS's "Claims" – whether for fraudulent transfer, breach of the implied covenant, or otherwise – for "losses or other relief specifically arising from" the transfers of \$172,411,785 to the Settling Defendants in March 2009. Incorporating the broad definition of "Claims" and the other defined terms set forth in the Settlement Agreements, § 5.3 of each of the Settlement Agreements provides:

... [UBS Securities LLC and UBS AG, London Branch] do hereby release, and covenant not to sue, [the Debtor] with respect to such [claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement and/or the UBS Litigation] to the limited extent the [claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly relating to, the Knox Agreement and/or the UBS Litigation] are for losses or other relief specifically arising from the fraudulent transfers to [Crusader and Credit Strategies] alleged in the UBS Litigation ... .

Crusader Settlement Agreement § 5.3 [A265-266]; *see also* Credit Strategies Settlement Agreement § 5.3 [A299-300].<sup>20</sup>

70. The interpretation of this contractual language is a “matter of state law.” *Manchester EB-5, LLC*, 2016 Bankr. LEXIS 3980 at \*34 (citation omitted). Here, the interpretation of the Settlement Agreements is governed by New York law, because both Settlement Agreements contain New York choice of law provisions. *See id.* (applying Texas law to interpret contract with Texas choice of law provision); *see also* Crusader Settlement Agreement § 13 [A270]; Credit Strategies Settlement Agreement § 12 [A304].

71. Under New York law, a court’s “primary objective” in interpreting a contract “is to give effect to the intent of the parties as revealed by the language of their agreement.” *Chesapeake Energy Corp. v. Bank of N.Y. Mellon Trust Co., N.A.*, 773 F.3d 110, 113-14 (2d Cir. 2014) (citation omitted).<sup>21</sup> “[T]he words and phrases [in a contract] should be given their plain meaning, and the contract should be construed so as to give full meaning and effect to all of its provisions.” *Id.* at 114 (citation and internal quotation marks omitted). A court “should enforce the plain meaning of contracts when that meaning is clear and unambiguous.” *Direxion Shares ETF Trust v. Leveraged Innovations L.L.C.*, 2014 U.S. Dist. LEXIS 161469, \*12 (S.D.N.Y. November 18, 2014); *see also* *Chesapeake Energy Corp.*, 773 F.3d at 114 (when “terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract”).

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<sup>20</sup> The Debtor is entitled to enforce the releases granted to it in the Settlement Agreements, as a third-party beneficiary of the releases. *See Bekhor v. Bear, Stearns & Co.*, 2004 U.S. Dist. LEXIS 21542, \*13-14 (S.D.N.Y. Oct. 25, 2004) (affiliate that was not a party to settlement agreement, and did not sign it, was entitled to enforce the release provision of the settlement agreement as a third-party beneficiary because affiliate was expressly named in the release provision). Here, the Debtor – defined as “HCMLP” at p. 1 of the Settlement Agreements – is specifically identified as one of the “Covered Persons” for purposes of the releases. A061, A065, A296, A299.

<sup>21</sup> Unless otherwise stated, the federal decisions cited in this section applied New York law as to matters of contract interpretation.



72. Releases are interpreted under “traditional contract principles,” and courts are “compelled to bar claims precluded by the plain language” of a release. *In re WorldCom, Inc.*, 296 B.R. 115, 121 (Bankr. S.D.N.Y. 2003) (citation omitted). A valid release “constitutes a complete bar to an action on a claim which is the subject of the release.” *Avnet, Inc. v. Deloitte Consulting LLP*, 2019 N.Y. Misc. LEXIS 5462, \*6 (N.Y. Sup. Ct. October 11, 2019) (citation omitted). If “the language of a release is clear and unambiguous, the signing of a release is a ‘jural act’ binding on the parties.” *Id.* (citation omitted). “The execution of a release represents a serious contractual undertaking, and policy dictates that the terms contained therein be accorded a strong presumption of validity by the Court.” *In re WorldCom, Inc.*, 296 B.R. at 120.

73. The question of whether a release or other contractual language is ambiguous is a matter of law to be decided by the Court. *Direxion Shares ETF Trust*, 2014 U.S. Dist. LEXIS 161469 at \*16. A contract is only ambiguous if the relevant language “is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.” *Id.* at \*12 (citation omitted). “No ambiguity exists where the contract language has a definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference of opinion.” *Chesapeake Energy Corp.*, 773 F.3d at 114 (citation and internal quotation marks omitted). The fact that litigants on opposing sides of the dispute may offer different interpretations of a contract provision does not render that provision ambiguous. *See, e.g., id.* at 113 (district court held that contract unambiguously supported plaintiff’s interpretation, and Second Circuit reversed on the grounds that the contract unambiguously supported defendant’s interpretation). Moreover, a “heavy presumption exists” that a “deliberately prepared and executed written agreement ... manifests the parties’ true intentions, and evidence of a very high order is necessary to overcome this presumption.” *In re WorldCom, Inc.*, 296 B.R. at 120 (noting that, as here, opposing party did not assert that settlement was

ambiguous). And, extrinsic evidence “cannot be considered in order to create an ambiguity.” *Direxion Shares ETF Trust*, 2014 U.S. Dist. LEXIS 161469 at \*13; *see also Riverside S. Planning Corp. v. CRP/Extell Riverside, L.P.*, 13 N.Y.3d 398, 404 (N.Y. 2009) (ambiguity is determined “by looking within the four corners of the document, not to outside sources”).

74. UBS agrees that the Settlement Agreements are unambiguous. UBS Response p. 23 (“[t]he Court need look no further than the plain language of the Settlements”) [A151]. If a contract is unambiguous, the interpretation of the contract is a question of law. *Bethlehem Steel Co. v. Turner Constr. Co.*, 2 N.Y.2d 456, 460 (N.Y. 1957) (citation omitted); *see also GLCA Sec., LLC v AGC Networks, Inc.*, 2020 N.Y. Misc. LEXIS 3400, \*14 (N.Y. Sup. Ct. July 20, 2020) (“interpretation of an unambiguous contract by the court does not raise a question of fact to be resolved by the application of burdens of proof but is solely a question of law”). New York’s “rules of contract interpretation are well-established.” *Riverside S. Planning Corp.*, 13 N.Y.3d at 403. The application of those well-established rules to the Settlement Agreements supports only one conclusion – that UBS is barred from recovering any amount from the Debtor, whether on account of UBS’s fraudulent transfer claim, its implied covenant claim, or otherwise, arising out of the transfers to the Settling Defendants.

75. **First**, a contract interpretation is unreasonable if it causes a word “to carry different meanings in different iterations within the same contractual provision, indeed within the same sentence.” *Chesapeake Energy Corp.*, 773 F.3d at 116. The use of a proviso in a contract “can indeed narrow the scope of a contract term, but it does so in a manner dictated by the contractual text.” *Id.* at 115 (contract not ambiguous where separate provisions, read in tandem, “communicated a clearly defined right”).

76. Here, UBS asserts that its interpretation of the Settlement Agreements is correct because the Settlement Agreements provided for a broad release of “Claims” against the Settling Defendants, but granted a more limited release to the Debtor, notwithstanding that the defined

term “Claims” was used throughout the Settlement Agreements, including in connection with UBS’s release of the Debtor. UBS Response pgs. 26-27 [A154-155]. UBS’s interpretation is unreasonable because it would require the Court to ignore the use of the broadly defined term “Claims” in describing the scope of UBS’s release of the Debtor, and require the Court to give a different meaning to the term “Claims” only when that term was used to describe the release granted to the Debtor. Giving the defined term “Claims” the same meaning throughout the Settlement Agreements, the only reasonable interpretation of § 5.3 of the Settlement Agreements is that UBS released the Debtor from UBS’s claims or causes of action – “be they contractual” (*i.e.*, the implied covenant claim) or “tort or statutory” (*i.e.*, the fraudulent transfer claim) – “for losses or other relief specifically arising from the fraudulent transfers to [Crusader and Credit Strategies] alleged in the UBS Litigation.” As discussed below, there is no doubt that UBS’s implied covenant claim is a claim “for losses or other relief specifically arising from” the alleged fraudulent transfers to the Settling Defendants in March 2009.

77. **Second**, “[c]ourts may not ‘by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing.’” *Riverside S. Planning Corp.*, 13 N.Y.3d at 404 (citation omitted) (phrase “[t]he agreements contained herein” unambiguously encompassed all obligations in the contract because it was “accompanied by no limiting language suggesting that it refers to only some of the obligations”); *see also Avnet, Inc.*, 2019 N.Y. Misc. LEXIS 5462 at \*7-8 (enforcing release where plaintiff could have “carved out claims for gross negligence, intentional misconduct and fraud” but “[it] did not and must live with its own decision and the deal that it chose to make”); *Morefun Co. v. Mario Badescu Skin Care Inc.*, 2014 U.S. Dist. LEXIS 77710, \*9-10 (S.D.N.Y. June 6, 2014) (refusing to interpret the term “Product” as used in settlement agreement to mean only a specific batch of the product, because the plaintiff was a sophisticated

party and if it “had intended that narrow scope, it could have easily ensured that meaning was clear from the language” of the agreement).

78. Here, the parties to the Settlement Agreements – sophisticated parties, as acknowledged in the UBS Response [A152 at fn. 18] – described the scope of UBS’s release of the Debtor in terms of “Claims” for “losses or other relief,” not by reference to any specific claims (not capitalized) or causes of action. UBS’s interpretation of the Settlement Agreements would require the Court to read in language – that UBS’s release applied only to its fraudulent transfer claim, but not its related implied covenant claim for the same purported losses or other relief – that does not exist in the Settlement Agreements. Tellingly, UBS’s articulation of its position depends on the notion that UBS’s release of the Debtor “relates only to a particular claim ... not to any other claim” [A152], and yet that limitation appears nowhere in the Settlement Agreements.

79. In light of the broad definition of the “Claims” released by UBS, and the fact that UBS’s interpretation of the Settlement Agreements would require the Court to read in limiting language that UBS chose not to include in the Settlement Agreement, the only reasonable interpretation of the plain language of the releases is that UBS released the Debtor from all liability “specifically arising from” the transfers to the Settling Defendants, whether that liability related to UBS’s fraudulent transfer cause of action or its implied covenant cause of action.

**(2) There Are No Disputed Facts Regarding UBS’s Admissions As to Its Implied Covenant Claim, or the Amounts Transferred to the Settling Defendants**

80. UBS’s own admissions establish beyond question that its implied covenant claim is one of the “causes of action” against the Debtor by which UBS seeks to recover for “losses or other relief specifically arising from” the alleged fraudulent transfers to the Settling Defendants. UBS’s complaint against the Debtor alleges, in support of UBS’s implied covenant cause of action, that the Debtor “caused the March 2009 Fraudulent Conveyance, which transferred assets

to” the Settling Defendants and other parties, and thereby (according to UBS) caused UBS to incur and suffer “losses and damages ... .” 2010 Compl. at ¶¶ 165-66 [A250]; *see also id.* at ¶¶ 111-12 (asserting that the transfer of assets from HFP or its subsidiaries to the Settling Defendants and other parties both breached the implied covenant and constituted a fraudulent conveyance) [A237-238].

81. Throughout the remainder of the State Court litigation, UBS confirmed that its implied covenant claim is based on the alleged fraudulent transfers. *See, e.g.*, 05/01/18 State Court Hrg. Tr. at 10:13-16 (in response to the question of whether the implied covenant claim is based solely on the allegedly fraudulent March 2009 transaction, UBS’s counsel stated “basically, you know, the implied covenant of good-faith and fair-dealing claim that we now have is that they shouldn’t have committed fraudulent conveyances ...”) [A377]; NY D.E. 472 at p. 3 (in seeking bifurcation of its breach of contract claim, UBS argued that its implied covenant claim “involves [the Debtor’s] role in the March 2009 fraudulent conveyances [and] overlaps factually with the ... fraudulent conveyance claims”) [A368].

82. UBS has continued to do so in the Bankruptcy Case. The UBS Claim identifies the alleged “series of fraudulent transfers out of, and away from” HFP as one of the “actions and omissions” that purportedly constituted a breach of the implied covenant of good faith and fair dealing. UBS Claim ¶¶ 15-16 [A013-014]. Even more specifically, UBS asserts that “[i]n March 2009, ... in breach of their continuing duty of good faith and fair dealing ... the Debtor and HFP caused asset transfers of millions of dollars of assets to ... Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P.” and other parties. UBS Claim ¶ 18 [A015-016]; *see also* UBS Response pp. 6, 18 (arguing at p. 18 that “under its implied covenant claim, UBS is seeking damages from the Debtor resulting *not just* from HCM’s fraudulently transferring assets away from SOHC’s alter ego, HFP (or its subsidiaries), in March 2009 ...” but then referencing a list of bullet points on p. 6 which identify the March 2009 Transaction as the



only post-February 24, 2009 conduct) [A134, A146]; 10/06/20 Status Conf. Tr. 20:4-19 (argument by UBS's counsel that the post-February 2009 transfers support "not just fraudulent transfer but a separate claim of the breach of the implied duty of good faith and fair dealing") [A382].

83. Finally, the amount transferred to the Settling Defendants, *i.e.*, the amount of "losses or other relief" released by UBS in the Settlement Agreements, is likewise undisputed. In the UBS Response, UBS identifies the following as an undisputed material fact: "in March 2009 ... approximately \$233 million in assets were transferred from HFP, or its subsidiaries, to Highland Credit Strategies Master Fund, L.P. ("Credit Strategies"), Crusader Offshore, Highland Crusader Holding Corporation ("Crusader Holding"), Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P. or "Multi-Strat"), HCM, and Citibank." UBS Response p. 6 [A134]. The UBS Response further admits that approximately \$172 million of that amount was transferred to the Settling Defendants. UBS Response p. 23 [A151]. UBS's expert calculated the exact amount transferred to the Settling Defendants as \$172,411,785 out of the total \$233,455,147 of assets transferred in March 2009. *See* 03/08/13 Expert Report of Louis Dudney (Excerpt Only) [A365].<sup>22</sup>

84. As a result, summary judgment should be granted in favor of the Debtor barring UBS from obtaining any recovery against the Debtor based on the \$172,411,785 transferred to the Settling Defendants in March 2009, and disallowing any principal recovery on the UBS Claim in excess of \$61,043,362 (\$233,455,147-\$172,411,785=\$61,043,362).

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<sup>22</sup> The referenced excerpt from the expert report of UBS's witness is not hearsay, pursuant to FED. R. EVID. 801(d)(2)(B), which excludes from the definition of hearsay a statement offered against the opposing party that the party "manifested that it adopted or believed to be true." FED. R. EVID. 801(d)(2)(B); *see also Fractus, S.A. v. AT&T Mobility LLC*, 2019 U.S. Dist. LEXIS 169610, \*14-15 (E.D. Tex. September 30, 2019) (expert report of opposing party's witness is not hearsay if it is "adopted by the party's affirmative action" by, for instance, "relying upon the statements in pre-trial motion practice"). Here, UBS has adopted its expert's report by, among other things, filing it with the Court as an exhibit to the UBS Response and referencing it numerous times throughout the UBS Response.

**B. Even if the Releases Are Determined to Be Ambiguous, Summary Judgment Should be Granted to the Debtor Based on the Relevant Parol Evidence**

85. If language in a contract is determined to be “facially ambiguous,” extrinsic evidence may be used to interpret the ambiguous language. *Direxion Shares ETF Trust*, 2014 U.S. Dist. LEXIS 161469 at \*14. Summary judgment is appropriate when the relevant extrinsic evidence “creates no genuine issue of material fact and permits interpretation of the agreement as a matter of law.” *First Am. Int’l Bank v. Community’s Bank*, 2012 U.S. Dist. LEXIS 136474, \*18-19 (S.D.N.Y. September 21, 2012) (citation and internal quotation marks omitted); *Nycal Corp. v. Inoco P.L.C.*, 988 F. Supp. 296, 299 (S.D.N.Y. 1997) (same). A court “may resolve ambiguity in contract language as a matter of law if the evidence presented about the parties’ intended meaning is so one-sided that no reasonable person could decide the contrary.” *First Am. Int’l Bank*, 2012 U.S. Dist. LEXIS 136474 at \*21 (citation and internal quotation marks omitted); *see also Nycal Corp.*, 988 F. Supp. at 304 (granting summary judgment for defendants as to interpretation of ambiguous contract, where extrinsic evidence of the parties’ “objective manifestations of intent” led “inexorably to the conclusion” that interpretation advanced by defendant was the only reasonable interpretation). Only objective manifestations of the parties’ intent may be considered – a court cannot “properly consider uncommunicated subjective intent.” *Direxion Shares ETF Trust*, 2014 U.S. Dist. LEXIS 161469 at \*19-20 (citation and internal quotation marks omitted).

86. To the extent that the Court considers extrinsic evidence in interpreting the Settlement Agreements, a clear objective manifestation of the parties’ intent was set forth by the Debtor’s pre-petition counsel in the following statement, included in a brief filed by the Debtor in the State Court litigation (which was attached as Exhibit 18 to the UBS Response):

The settlements likewise release Defendant Highland Capital Management, L.P. from **any liability** relating to the alleged fraudulent transfers with the Settling Defendants, and the Court will need to likewise enforce these provisions.

06/13/17 HCMLP et al. Mot. Lim. Opp. at p. 19 of 30 (emphasis added) [A324].

87. In addition, UBS has identified two sets of email communications as extrinsic evidence relating to the releases: (i) a June 1, 2015 email chain between counsel for UBS and counsel for Credit Strategies; and (ii) a June 5-7, 2015 email chain between counsel for UBS and counsel for Crusader. UBS Response pgs. 27-28 [A155-156]. The relevant portion of the email exchange with Credit Strategies reflects the following from counsel for Credit Strategies:

We mentioned the need of Credit Strategies to obtain a release of Highland to the limited extent of UBS claims against Highland and its affiliates for losses that specifically arise from the alleged fraudulent transfers to Credit Strategies. I put in language for that limited release that is intended to be narrow and not to sweep in claims that UBS is asserting that are for losses and other relief arising from other alleged fraudulent transfers or that do not specifically arise from the alleged fraudulent transfers to Credit Strategies.

06/01/15 Email Chain p. 2 [A328]. Nothing in this discussion of the releases limits the scope of the releases to UBS's fraudulent transfer *claim* or *cause of action* – like the Settlement Agreements, the discussion is framed in terms of “losses or other relief” – and nothing in this discussion states that the implied covenant *claim* or *cause of action* was meant to be excluded. This is particularly significant given that, as set forth in UBS's 2010 complaint against the Debtor, UBS itself described its implied covenant cause of action as a claim that, by “caus[ing] the March 2009 Fraudulent Conveyance, which transferred assets to” the Settling Defendants and other parties, the Debtor caused UBS to incur and suffer “losses and damages ... .” 2010 Compl. at ¶¶ 165-66 [A250].

88. The email exchange with counsel for Crusader, including the accompanying redline (the “Redline”), even more strongly supports the interpretation advanced by the Debtor and Redeemer/Crusader. The email chain reflects that counsel for Crusader suggested – because there is more than one way to skin a cat – that the releases be phrased in terms of particular claims instead of the “losses or other relief” arising from the transfers:

We are of the view that this release should focus on the claims themselves rather than the relief that may be sought. If you have an objection to this change, we'd like to understand why you believe the “losses or other relief specifically arising from” language is needed.

06/07/15 Email Chain p. 3 [A333]. In a subsequent email, counsel for Crusader also stated, “[s]o that the parties are clear that the claim for breach of good faith and fair dealing in connection with the transfer of assets to Crusader is encompassed within the scope of the release UBS is granting to Highland, we added some language to Section 5.3.” *Id.* at pp. 1-2 [A331-332]; *see also id.* at Redline p. 6 (reflecting changes to reference “Claims” arising from the alleged fraudulent transfers and related alleged breaches of the implied covenant, and eliminating the “losses or other relief” concept) [A341]. Significantly, the response from UBS’s counsel was **not** that the implied covenant cause of action was not covered by the releases, but only that UBS would not change the release language because “we spent a lot of time with credit strat on this language and ubs is not going to change it for this agreement because it could create problems and we still don’t understand what your concern is beyond a highly improbable hypothetical.” *Id.* at p. 1 [A331]. Having insisted on contract language that released “any and all claims, actions, causes of action, demands, liabilities, debts, damages, or obligations of whatsoever kind, name, description or nature, be they contractual, tort or statutory...” for “losses or other relief” specifically arising out of the transfers to the Settling Defendants, and having rejected the suggestion that the releases “focus on the claims themselves,” UBS’s current position – that the releases are limited to only one particular claim or cause of action – is untenable.

89. This extrinsic evidence, to the extent the Court considers it, supports only one reasonable interpretation of the Settlement Agreements – UBS released its rights to any recovery against the Debtor specifically arising from the alleged fraudulent transfers of \$172,411,785 to the Settling Defendants, regardless of whether UBS attempts to recover that amount on account of its fraudulent transfer claim, its implied covenant claim, or otherwise. Thus, even if the Court determines that the releases are ambiguous, summary judgment should be granted in favor of the Debtor on this issue.

**C. The Debtor Is Not Judicially Estopped from Enforcing the Releases**

90. In the UBS Response, UBS asserts that the Debtor is judicially estopped from enforcing the releases in the Bankruptcy Case because it did not move to enforce the releases in the State Court litigation. UBS Response pp. 12-13, 20-22 [A140-141, A148-150]. UBS concedes that, in order to prevail on this argument, UBS must prove that the Debtor “has asserted a legal position that is **plainly inconsistent** with a prior position.” UBS Response p. 21 [A149] (citing *Flugence v. Axis Surplus Ins. Co. (In re Flugence)*, 738 F.3d 126, 129 (5th Cir. 2013) (emphasis added). None of the materials cited in the UBS Response come close to establishing that the Debtor took any inconsistent position in the State Court litigation, let alone a “plainly inconsistent” position.

91. As the clearest example of why UBS’s judicial estoppel argument fails, the first document cited in the UBS Response in support of UBS’s argument unequivocally states that the Debtor **will** seek to enforce the releases. Exhibit 18 to the UBS Response reflects that the defendants (including the Debtor) made the following argument to the State Court, in an opposition to a motion in limine relating to Phase I of the trial:

Accordingly, if any liability against Defendants is ultimately found, Defendants will be entitled to a substantial offset. Thus, UBS’s argument that the Court cannot hear evidence or argument regarding UBS’s prior settlements fails. **The settlements likewise release Defendant Highland Capital Management, L.P. from any liability relating to the alleged fraudulent transfers with the Settling Defendants, and the Court will need to likewise enforce these provisions.**

06/13/17 HCMLP et al. Mot. Lim. Opp. at p. 19 of 30 (emphasis added) [A324]. While UBS points to this brief as showing that the Debtor argued “only” that the settlement payments should offset any potential breach of contract damages against the Funds [A140], the opposite is true: the Debtor expressly indicated its intent to seek enforcement of the releases at the appropriate time. Notably, the Debtor’s description of the releases was not limited to UBS’s fraudulent transfer *cause of action* – to the contrary, the Debtor asserted that UBS had released it from “any liability relating to the alleged fraudulent transfers” to the Settling Defendants which, as



discussed above, encompasses any liability on account of both UBS's fraudulent transfer claim and its related implied covenant claim.

92. The fact that the Debtor did not state its position regarding the releases in every brief or other document it filed in the State Court litigation does not in any way prove that the Debtor is now taking a "plainly inconsistent" position, or prevent the Debtor from seeking to enforce the releases. *See, e.g., Bekhor*, 2004 U.S. Dist. LEXIS 21542 at \*11-12 (granting summary judgment in favor of defendants on grounds that prior settlement agreement released certain claims against them, notwithstanding that defendants did not raise that argument in connection with earlier summary judgment motion filed by other defendants based on settlement releases, or in their own previous summary judgment motion based on other grounds). This is particularly true given the context in which many of the documents UBS relies upon were filed. For instance:

- UBS asserts that the Debtor took an inconsistent position in post-trial briefing relating to UBS's breach of contract damages against the Funds (**not** the Debtor). UBS Response pp. 12-13 [A140-41]. Because only UBS's breach of contract claim against the Funds was at issue, not any of its claims against the Debtor, it is not surprising that the defendants did not discuss the releases. And, again including language omitted from the UBS Response, the relevant passage from the post-trial brief states that "**at a minimum**, the Court should offset any award of damages by the amount the Settling Defendants paid ... ." UBS Response Ex. 20 at p. 22 of 30 (emphasis added).
- UBS also points to an appellate brief filed by the Debtor in 2017, and attempts to make much of the fact that, in its discussion of UBS's implied covenant claim, the Debtor did not raise an argument related to the releases. UBS Response pp. 20-21 [A148-49]. As of the filing of that appellate brief, however, the Debtor had obtained a complete dismissal of UBS's implied covenant claim, and was arguing that the State Court's dismissal of the implied covenant claim in its entirety – *i.e.*, the portion based on the March 2009 transfers to the Settling Defendants, and the portion based on all other transfers in March 2009 – should be affirmed, for reasons completely unrelated to the releases. *See* UBS Response Ex. 22 at p. 1.

93. UBS's own submissions show that the Debtor explicitly stated to the State Court that the Settlement Agreements "likewise release Defendant Highland Capital Management, L.P. from **any liability** relating to the alleged fraudulent transfers with the Settling Defendants, and the Court will need to likewise enforce these provisions," UBS Response Ex. 18 at p. 19 of 30 (emphasis added) [A324], and that the Debtor never took any position inconsistent with that statement. As a result, UBS cannot establish that the Debtor is judicially estopped from enforcing the releases.

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**CONCLUSION**

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion in its entirety, and grant the Debtor such other and further relief as the Court deems just and proper.

Dated: October 16, 2020.

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

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

**REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND  
AND THE CRUSADER FUNDS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191  
OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC**

Pursuant to Federal Rule of Bankruptcy Procedure 7056, and Local Bankruptcy Rule 7056-1(c), (i) the Redeemer Committee of the Highland Crusader Funds (the “Redeemer Committee”) and (ii) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. (collectively, the “Crusader Funds”) respectfully move (the “Motion”) for entry of an order granting summary judgment in favor of the Redeemer Committee and the Crusader Funds and against UBS AG London Branch and UBS Securities, LLC (together, “UBS”) with respect to the relief requested in the Objection to Proof of Claim Nos. 190 and 191 (“Crusader Objection”) [ECF No. 933], with respect to Proof of Claim Nos. 190 and 191 submitted by UBS (such claims, the “UBS Claim”), and join the Motion for Partial Summary Judgment on the UBS Claim submitted by Highland Capital Management, L.P. (“Highland” or the “Debtor”).<sup>1</sup> For the reasons set forth in the accompanying Memorandum of Law, partial summary judgment in the Redeemer Committee and the Crusader Funds’ favor concerning the Crusader Objection should be granted. Among other reasons, the majority of the UBS Claim is barred by res judicata and UBS released the Debtor from much of the relief that UBS now seeks in the UBS Claim. *See* Crusader Objection, ECF No. 933 at 17-25.

Contemporaneously herewith and in support hereof, the Redeemer Committee and the Crusader Funds are filing (a) the Memorandum of Law; and (b) the Appendix.

Each of the matters required by Local Bankruptcy Rule 7056-1(c)(1) shall be set forth in the accompanying Memorandum of Law.

Notice hereof has been provided to the Debtor and UBS and all parties of interest participating in the CM/ECF system. The Redeemer Committee and the Crusader Funds submit that no other or further notice need be provided.

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<sup>1</sup> *See* Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities, LLC and UBS AG, London Branch, *In re Highland Capital Mgmt., L.P.*, 19-34054-sgj11 (N.D. Tex. Oct. 16, 2020)



WHEREFORE, the Redeemer Committee and Crusader Funds respectfully request that the Court enter summary judgment as to the Crusader Objection in the form of the proposed order attached hereto as Exhibit A and grant to the Redeemer Committee and Crusader Funds such other and further relief as the Court may deem proper.

Dated this 16th day of October, 2020

Respectfully submitted,

/s/ Mark A. Platt

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---

<sup>2</sup> Frost Brown Todd LLC is counsel only for the Redeemer Committee and Jenner & Block, LLP is counsel to the Redeemer Committee, and for the limited purpose of this Motion, the Crusader Funds.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies, that on this 16th day of October, 2020, he caused to be served a true and correct copy of the *Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion For Partial Summary Judgment And Joinder In The Debtor's Motion For Partial Summary Judgment On Proof Of Claim Nos. 190 And 191*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Mark A. Platt

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

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

**ORDER GRANTING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER  
FUND AND THE CRUSADER FUNDS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the court on the motion (the “Motion”) of (i) the Redeemer Committee of the Highland Crusader Funds (the “Redeemer Committee”) and (ii) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. (collectively, the “Crusader Funds”) for summary judgment concerning their Objection to Proof of Claim Nos. 190 and 191 [ECF No. 933] in their favor and

against UBS AG London Branch and UBS Securities, LLC (together, “UBS”) with respect to Proof of Claim Nos. 190 and 191 submitted by UBS (such claims, the “UBS Claim”).

It is hereby FOUND AND DETERMINED that:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).
- C. Notice of the Motion was sufficient under the circumstances.
- D. Based on this Court’s review of the pleadings, the documents submitted in connection with the Motion, discovery materials on file, and other documents submitted during the Debtor’s bankruptcy case, there is no genuine issue as to any material fact in respect of the relief sought in the Motion.
- E. The Redeemer Committee and the Crusader Funds are entitled to summary judgment concerning (i) the application of res judicata to the UBS Claim, and (ii) the release of UBS’s claims for losses or other relief arising from the March 2009 asset transfers to the Crusader Funds and the Credit Strategies Fund, such that judgment must be, and hereby is, entered in the Redeemer Committee and the Crusader Funds’ favor concerning the Crusader Objection as requested in the Motion.

Accordingly, the Court having determined that the Redeemer Committee and the Crusader Funds are entitled to summary judgment on the relief requested in the Motion based on the legal and factual bases set forth in the Motion, the Memorandum of Law submitted in support of the Motion, and the arguments of counsel at the hearing on the Motion:

It is hereby ORDERED that:

- 1. The Motion is **GRANTED**.

2. Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion or Memorandum of Law.

3. Summary judgment is hereby entered in the Redeemer Committee and Crusader Funds' favor on the Crusader Objection, as requested in the Motion.

4. The UBS Claim is hereby disallowed to the extent that it seeks to hold the Debtor liable for (i) damages based on breaches or other conduct that occurred before February 24, 2009; and (ii) damages arising from the March 2009 Transfers to the Credit Strategies Fund and the Crusader Funds, including in each case as relief for the Debtor's alleged breach of the covenant of good faith and fair dealing.

5. This Order shall be effective immediately upon entry by the Court.

###END OF ORDER###

Submitted by:

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

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

**REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND  
AND THE CRUSADER FUNDS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191  
OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC**

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## SUMMARY

Pursuant to Federal Rule of Bankruptcy Procedure 7056 and Local Bankruptcy Rule 7056-1(c) and (e), (i) the Redeemer Committee of the Highland Crusader Funds (the “Redeemer Committee”) and (ii) Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. (collectively, the “Crusader Funds”)<sup>1</sup> submit this brief in support of the Redeemer Committee and the Crusader Funds’ motion for partial summary judgment to disallow Proof of Claim Nos. 190 and 191 (the “UBS Claim”) filed by UBS AG, London Branch and UBS Securities, LLC (together, “UBS”) to the extent that the UBS Claim (1) seeks to hold Highland Capital Management, L.P. (“Highland” or the “Debtor”) liable for claims arising from conduct occurring before February 24, 2009; and (2) seeks to hold Highland liable for claims arising from the March 2009 asset transfers to the Crusader Funds and the Credit Strategies Fund (as defined below). The Redeemer Committee and the Crusader Funds also join in the motion for partial summary judgment submitted by Highland that requests disallowance of the UBS Claim. Filed contemporaneously herewith are (i) the Redeemer Committee and the Crusader Funds’ Motion for Partial Summary Judgment and Joinder in Debtor’s Motion for Partial Summary Judgment on the UBS Claim (the “Motion”) and (ii) the Appendix in Support of the Motion (the “Appendix”).<sup>2</sup>

## INTRODUCTION

UBS, the Debtor, and several of the Debtor’s affiliates have been engaged in litigation regarding a failed securitization financing that, prior to the commencement of the Debtor’s chapter 11 case, had been ongoing since 2009 in the New York State courts (collectively, the “New York

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<sup>1</sup> Highland Crusader Holding Corporation (“Crusader Holding”), a signatory to the UBS settlement agreement described in Section VIII of the Statement of Undisputed Facts, is a wholly owned subsidiary of the Crusader master fund—Highland Crusader Offshore Partners, L.P.

<sup>2</sup> All citations herein to “RC App.” Refer to the exhibits attached to the Appendix.

Courts”). The Redeemer Committee and the Crusader Funds have a unique perspective on the merits of the UBS Claim because two of the Crusader Fund entities were defendants in that action. The Redeemer Committee is a committee of investors, elected pursuant to the Scheme and Plan of Liquidation of the Crusader Funds approved by the Bermuda Court (“Crusader Liquidation Plan”), to oversee Highland’s management of the Crusader Funds through what was intended to be the complete liquidation of the fund. The Redeemer Committee played a central role in the negotiation of the settlement of UBS’ claims against the Crusader Funds, pursuant to which UBS released the Debtor from much of the relief that UBS now seeks in its claim. Two of the Crusader Fund entities are parties to that settlement agreement.

UBS asserts that the UBS Claim arises from three principal events: (1) in the fall of 2008, certain Highland affiliates failed to honor certain contractual margin calls in connection with a proposed securitization financing; (2) in the fall of 2008, certain Highland affiliates engaged in a series of asset transfers with Highland-managed funds; and (3) on March 20, 2009, Highland affiliates unwound those transactions with the Highland-managed funds. UBS claims the Debtor owes UBS at least \$1,039,957,799—the amount of a judgment that UBS obtained in February 2020 arising from the non-Debtor affiliates’ breaches of contract by failing to honor the margin calls in 2008.

The majority of the UBS Claim is barred by res judicata. The New York Courts have held that res judicata bars UBS from asserting claims against Highland that are based on conduct that occurred before February 24, 2009, the date on which UBS filed its initial complaint in New York. As discussed below, that ruling was the result of UBS filing a complaint that only asserted a claim against Highland for indemnification, a claim that was later dismissed. Notwithstanding this absolute bar, in its filings and arguments in this Court, UBS has not been clear regarding whether

UBS asserts that the Debtor should be held liable for pre-February 24, 2009 conduct, including that of certain of its affiliates, which ultimately resulted in the New York trial court entering a \$1,039,957,799 judgment against those entities. Particularly in light of UBS's shifting position as to the exact nature of its claim, it is appropriate for this Court to enter an order that implements the rulings of the New York Courts, and disallows the UBS Claim to the extent that claim seeks damages arising from any conduct that took place before February 24, 2009.

After giving effect to res judicata, the surviving part of the UBS Claim appears to be based only on certain asset transfers made by an affiliate of the Debtor, Highland Financial Partners LP ("HFP"), in March 2009. UBS asserts that those transfers were fraudulent conveyances, and that Highland breached the implied duty of good faith and fair dealing by participating in those transfers, as well as certain other alleged conduct by Highland. UBS named several Highland-managed funds that received assets in March 2009 as defendants in the New York action, including two Crusader Fund entities—Highland Crusader Offshore Partners, L.P. ("Crusader Offshore Fund") and Crusader Holding—as well as Highland Credit Strategies Master Fund, L.P. (the "Credit Strategies Fund"). These three funds later entered into settlement agreements with UBS, and Highland was a signatory to each agreement. The settlement agreements provide, in relevant part, that UBS released Highland from any [REDACTED]

[REDACTED] each fund as alleged by UBS. The UBS releases of Highland foreclosed the possibility that Highland could later be found liable to UBS for any losses or other relief in connection with the transfers to those funds. This protection was of central importance to the funds [REDACTED]

[REDACTED]

[REDACTED]

The chapter 11 process does not provide an alleged creditor the opportunity to relitigate matters that are the subject of final, non-appealable decisions of a state court, or prevent enforcement of valid and binding settlement agreements. As demonstrated below, the UBS Claim must be disallowed as a matter of law to the extent it seeks damages arising from pre-February 24, 2009 conduct, and to the extent it seeks to recover losses or other relief arising from the March 2009 transfer of assets the Crusader Funds and the Credit Strategies Fund.

### **JURISDICTION AND VENUE**

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory bases for the relief requested in the Motion are 11 U.S.C. § 502, Federal Rule of Civil Procedure 56, Federal Rules of Bankruptcy Procedure 7056, and the Northern District of Texas Bankruptcy Rule 7056-1.

### **STATEMENT OF UNDISPUTED FACTS**

#### **I. The Fund Counterparties Fail to Meet Margin Calls in 2008.**

In 2007, UBS entered into agreements with Highland and two Highland affiliates—Highland CDO Opportunity Master Fund, L.P. (“CDO”) and Highland Special Opportunities Holding Company (“SOHC”) (together, the “Fund Counterparties”)—to establish a warehouse facility to finance the acquisition of syndicated leveraged loans and credit default swaps and then house those assets until securitization was completed. [REDACTED]

[REDACTED]

[REDACTED]

Those agreements expired in August 2007 without the contemplated securitization having occurred. Decision and Order at 3, *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, No.



650097/2009 (N.Y. Sup. Ct. Nov. 14, 2019) [RC App. 3]. In March 2008, UBS, Highland, and the Fund Counterparties entered into restructured warehouse agreements (the 2007 agreements and the 2008 restructured warehouse agreements are collectively referred to herein as the “Knox Agreement”).<sup>3</sup> [REDACTED]

[REDACTED] The Knox Agreement gave UBS the right to make margin calls on the Fund Counterparties in the event of a decline in the market value of the loans and swaps. UBS Securities LLC Proof of Claim at ¶ 10 [RC App. 50]; UBS AG, London Branch Proof of Claim ¶ 10 [RC App. 171]. The Knox Agreement explicitly [REDACTED]

[REDACTED]  
*see also UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 70 A.D.3d 526 (N.Y. App. Div. 2010) (“[T]he agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of [Fund Counterparties]’ obligations to bear the risk of investment losses.”).

As the market deteriorated in the fall of 2008, UBS made three margin calls on the Fund Counterparties, which the Fund Counterparties satisfied using funds provided by SOHC’s parent corporation, HFP. Decision and Order at 4, *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Nov. 14, 2019) [RC App. 4]. The Fund Counterparties failed to

<sup>3</sup> In the UBS Claim, UBS defines the 2007 warehouse agreements as the “Knox Transaction” and the 2008 restructured warehouse agreements as the “Warehouse Agreement.” UBS Securities LLC Proof of Claim at ¶¶ 3, 7 [RC App. 47, 49]; UBS AG, London Branch Proof of Claim at ¶¶ 3, 7 [RC App. 168, 170]. The Crusader Funds’ and Credit Strategies Fund’s respective settlement agreements with UBS refer [REDACTED]

[REDACTED] For the purposes of the Redeemer Committee and Crusader Funds’ Motion for Partial Summary Judgment and this Brief, the Redeemer Committee and the Crusader Funds also define the 2007 and 2008 agreements collectively as the “Knox Agreement.”

satisfy a third margin call in November 2008, and UBS terminated the Knox Agreement in December. *Id.* at 17 [RC App. 17].

**II. Highland Affiliates Engage in Fall 2008 Transfers.**

Meanwhile, during the fall of 2008, certain funds then managed by Highland—including the Crusader Offshore Fund—transferred certain assets to HFP in [REDACTED] (the “Fall 2008 Transfers”). [REDACTED]

[REDACTED] HFP was not a party to the Knox Agreement. UBS Securities LLC Proof of Claim at ¶ 7 [RC App. 49]; UBS AG, London Branch Proof of Claim at ¶ 7 [RC App. 170].

**III. The Fall 2008 Transfers are Unwound on March 20, 2009.**

The parties to the Fall 2008 Transfers unwound those transactions on March 20, 2009 (the “March 2009 Transfers”). [REDACTED]

[REDACTED] Consequently, [REDACTED] HFP returned the assets to the transferors, including the Crusader Fund and the Credit Strategies Fund. [REDACTED]

[REDACTED] According to UBS’s expert in the New York action, HFP transferred assets with a market value of [REDACTED]

**IV. UBS Sues Over the Restructured Warehouse Transaction and Its Claim Against Highland Is Dismissed.**

UBS filed its first complaint on February 24, 2009, against the Fund Counterparties and Highland. Compl. at p. 1, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/09 (N.Y. Sup. Ct. Feb. 24, 2009) [RC App. 283]. UBS’s original complaint contained only one claim against Highland—a contractual claim for indemnification for its affiliates’ breach of the Knox Agreement. *Id.* ¶¶ 50-56 [RC App. 293-94]. Highland moved to dismiss that claim, arguing that the indemnification provision in the Knox Agreement did not apply to the particular losses claimed

by UBS. *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 70 A.D.3d 526 (N.Y. App. Div. 2010). The indemnification claim was dismissed by the New York appellate court, which found: “[T]he agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of [Fund Counterparties]’ obligations to bear the risk of investment losses.” *Id.*

**V. New York Appellate Division Dismisses Claims Against Highland as Barred by Res Judicata.**

On February 16, 2010, UBS sought amend its original complaint to assert new claims against Highland and others<sup>4</sup> for claims arising from the Knox Agreement transaction, the Fall 2008 Transfers and the March 2009 Transfers, alleging that the March 2009 Transfers were fraudulent conveyances that benefitted Highland, and that, by causing the unwinding, Highland breached the implied covenant of good faith and fair dealing in the Knox Agreement (the “Implied Duty Claim”). UBS Ltr. to Court, at 1-2, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Feb. 16, 2010) [RC App. 296-97]. The New York Supreme Court denied the portion of UBS’s motion that sought leave to add new claims against Highland, agreeing with Highland’s position that a party cannot amend a pleading that has already been dismissed. Ruling at 5, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Jun. 17, 2010) [RC App. 303].

Thereafter, UBS commenced a new action against Highland, in which it asserted the causes of action it had unsuccessfully sought to add to the original complaint, including the Implied Duty Claim. Compl. at p. 1, ¶¶ 157-66, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No.

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<sup>4</sup> UBS sought to add HFP, the Credit Strategies Fund, the Crusader Offshore Fund, Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. Ruling at 2, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/09 (N.Y. Sup. Ct. Jun. 17, 2010) [RC App. 300].

650752/2010 (N.Y. Sup. Ct. Jun. 28, 2010) [RC App. 312, 356-58].<sup>5</sup> The trial court consolidated the second action against Highland with the original action that had pending claims against CDO, SOHC, HFP, Credit Strategies Fund, Crusader Offshore Fund, Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. Consolidation Order at 1-2, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Nov. 4, 2010) [RC App. 411-12].

Highland moved to dismiss the new action, and the trial court granted the motion in part and denied it in part. *UBS Sec. LLC v Highland Capital Mgmt. L.P.*, No. 650097/09, 2010 WL 6268233 (N.Y. Sup. Ct. Aug. 05, 2010). The parties appealed. *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469 (N.Y. App. Div. 2011). The appellate court dismissed the fraudulent inducement claim against Highland, and held that to the extent UBS's new Implied Duty Claim and fraudulent conveyance claims arise from conduct alleged to have occurred before the commencement of the original action, *i.e.*, February 24, 2009, the claims must be dismissed. *Id.* at 474-75. The appellate court reasoned:

Here, to the extent the claims against Highland in the new complaint implicate events alleged to have taken place before the filing of the original complaint, *res judicata* applies. That is because UBS's claims against Highland in the original action and in this action all arise out of the restructured warehousing transaction.

*Id.* Because this ruling precluded UBS from pursuing claims against Highland arising from conduct occurring before February 24, 2009, the appellate court barred UBS from asserting any claims based on (1) the Fund Counterparties' failure to meet the margin calls in late 2008—the claim on which the trial court ultimately found the Fund Counterparties liable in the amount of \$1,039,957,799, and (2) the Fall 2008 Transfers. *Id.* at 474-76; Judgment at 2, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2010 (N.Y. Sup. Ct. Feb. 10, 2020) [RC App. 414].

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<sup>5</sup> UBS also later filed a separate lawsuit against Crusader's wholly owned subsidiary, Crusader Holding. Compl., *UBS Sec. LLC v Highland Crusader Holding Co.*, No. 652646/2011 (N.Y. Sup. Ct. Sept. 26, 2011) [RC App. 368].

**VI. In 2013, Highland Moves for Summary Judgment.**

In October 2013, Highland, HFP, and other defendants moved for summary judgment on UBS's remaining claims. Ruling at 25, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Mar. 24, 2017) [RC App. 441]. The trial court recognized that "the Appellate Division decisions preclude any fraudulent conveyance claims arising before February 24, 2009. They therefore preclude UBS from recovering for any alleged fraudulent transfers made before that date." *Id.* at 26 [RC App. 442]. The court stated that UBS could still introduce evidence of pre-February 24, 2009 conduct to support claims that only arose after February 24, 2009:

However, proof of pre-February 24, 2009 transfers, and of other conduct involving the operation of the Highland entities, is not prohibited to the extent necessary to prove UBS's claims for post-February 24, 2009 fraudulent conveyances, which are maintainable under the Appellate Division decisions under an alter ego theory.<sup>6</sup>

*Id.* [RC App. 442]. The court also dismissed UBS's Implied Duty Claim because the contract at issue, the Knox Agreement, was terminated before February 24, 2009. *Id.* at 34-35 [RC App. 450-51]. The parties appealed. Order at 3-4, *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. App. Div. Nov. 24, 2017) [RC App. 582-83]. Initially, the Appellate Division reinstated the Implied Duty Claim and dismissed the entirety of the fraudulent conveyance claim against Highland, including for the March 2009 Transfers, but the court later vacated that opinion. *Id.* [582-83]; *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018). In its subsequent decision, the Appellate Division held that the fraudulent conveyance claims and Implied Duty Claim could survive, but only to the extent they arose from conduct occurring after February 24, 2009:

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<sup>6</sup> The alter ego claim referenced in the court's decision was a claim against HFP, not against Highland. 2d Am. Compl. at ¶¶ 193-97, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/09 (N.Y. Sup. Ct. May 11, 2011) [RC App. 1235-36]; Hr'g Tr. at 30:7-31:14, *In re Highland Capital Mgmt., L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex. Jun. 15, 2020) [RC App. 482-83]. UBS did not allege an alter ego claim against Highland.



There is no dispute that plaintiffs are precluded from pursuing fraudulent conveyance and breach of implied covenant claims that arose prior to February 24, 2009. However, neither our prior decisions nor the doctrine of res judicata bars plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims. The court correctly rejected defendants' arguments in support of dismissal of the remaining claims at issue.

*UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018).

**VII. The New York Court Holds the Phase I Trial, and Finds the Fund Counterparties Liable.**

Although the New York Courts barred UBS from pursuing claims against Highland arising before February 24, 2009, UBS's originally-pleaded breach of contract claims against the Fund Counterparties for failing to meet the margin calls in the fall of 2008 survived. Compl. at ¶¶ 38-49, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Feb. 24, 2009) [RC App. 291-93]. The court bifurcated the case for trial, ruling that Phase I of the trial would be a bench trial on the breach of contract claims against the Fund Counterparties, and that the remaining claims, including all of the claims involving post-February 24, 2009 conduct, would be tried in Phase II. 5/1/2018 Hr'g Tr. at 35:15-22, *UBS Securities LLC v. Highland Capital Mgmt. L.P.*, No. 650097/2009 (N.Y. Sup. Ct. May 1, 2018) [RC App. 618].

The New York Court held the Phase I bench trial in July 2018, and on November 14, 2019 the court issued a decision finding the Fund Counterparties liable for breaching the Knox Agreement and awarding damages of \$519,374,149, which ultimately resulted in entry of a judgment for \$1,039,957,799, with prejudgment interest. Decision and Order at 39, *UBS Sec. LLC v. Highland Capital Mgmt. L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Nov. 14, 2019) [RC App. 39]; Judgment at 2, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2010 (N.Y. Sup. Ct. Feb. 10, 2020) [RC App. 414]. The court made no findings with respect to Highland or the

remaining defendants, and those claims were scheduled to be heard during Phase II of the proceedings. Decision and Order at 39, *UBS Sec. LLC v. Highland Capital Mgmt. L.P.*, No. 650097/2009 (N.Y. Sup. Ct. Nov. 14, 2019) [RC App. 39]. On October 16, 2019, the Debtor filed for chapter 11 protection, staying the proceedings against it. Debtor's Petition, *In re Highland Capital Mgmt., L.P.*, No. 19-34054-sgj11 (Bankr. N.D. Tex. Oct. 16, 2019) [RC App. 631].

Only two counts remain against the Debtor: (1) fraudulent conveyance, actual and constructive; and (2) the Implied Duty Claim. UBS Securities LLC Proof of Claim ¶ 24 [RC App. 57]; UBS AG, London Branch Proof of Claim ¶ 24 [RC App. 178].

**VIII. In 2015, UBS Released Claims Against Highland Arising From the March 2009 Transfers to the Credit Strategies Fund and the Crusader Fund.**

In 2015, Highland Crusader Offshore Partners, L.P., Highland Crusader Holding Corporation, and Credit Strategies Fund entered into settlements with UBS [REDACTED]

[REDACTED] Highland was a signatory to both the Crusader Funds and Credit Strategies Fund settlement agreements. [REDACTED]

[REDACTED] Each agreement settled all of UBS's claims against the applicable fund. [REDACTED]

[REDACTED] The settlement agreements also released *Highland* from claims by UBS arising from the March 2009 Transfers to the Crusader Funds and Credit Strategies Fund. [REDACTED]

[REDACTED] Highland is one of the [REDACTED]

[REDACTED]

[REDACTED]

The Redeemer Committee negotiated this settlement agreement with UBS on the Crusader Fund's behalf. [REDACTED]

[REDACTED] The Redeemer Committee negotiated for UBS's release of Highland to foreclose the risk that, in the event Highland was held liable to UBS for damages arising from a transfer to the Crusader Fund, [REDACTED]

[REDACTED]

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<sup>7</sup> [REDACTED]

UBS has not articulated —either in its claim or in its Omnibus Response to Objections to the UBS Claim (“UBS Response”) [ECF No. 1105]—any quantifiable damages arising after February 24, 2009 other than the March 2009 Transfers. UBS Response [RC App. 1239]. According to UBS’s expert in the New York action, the assets that were the subject of the alleged fraudulent transfers to the two settling funds represented approximately [REDACTED] of the value of all of the assets that were transferred on March 20, 2009. [REDACTED]

[REDACTED] According to that expert, the market value of remaining assets that were not the subject of these releases was [REDACTED]

### STANDARD OF LAW

“Summary judgment is proper . . . ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *In re Treaty Energy Corp.*, 619 F. App’x 443, 444 (5th Cir. 2015) (quoting Fed. R. Civ. P. 56(a)). The same standard applies to summary judgment in bankruptcy court. *Id.* (citing Fed. R. Bankr. P. 7056 (expressly incorporating Fed. R. Civ. P. 56)). “A fact is material only if its resolution would affect the outcome of the action, and an issue is genuine only ‘if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party.’” *Wiley v. State Farm Fire & Cas. Co.*, 585 F.3d 206, 210 (5th Cir. 2009) (citations omitted).

### ARGUMENT

#### **I. Several New York Court Rulings Bar UBS from Seeking Damages From the Debtor Arising From Conduct Occurring Before February 24, 2009.**

This Court should disallow the UBS Claim to the extent it seeks to hold the Debtor liable for damages arising from any breaches or other conduct predating February 24, 2009 because the New York Courts have repeatedly held that res judicata bars any such claims. *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011); *UBS v. Highland*

*Capital Mgmt., L.P.*, 93 A.D.3d 489, 490 (N.Y. App. Div. 2012); *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/09 at 34 (N.Y. Sup. Ct. Mar., 24 2017); *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018). Those final, non-appealable New York Court rulings are binding here. *See Matter of Brady, Texas, Mun. Gas Corp.*, 936 F.2d 212, 218 (5th Cir. 1991) (“[U]nless the [Bankruptcy] Code provides otherwise, state courts have concurrent jurisdiction, and bankruptcy courts are prohibited from relitigating these matters if the state courts have already resolved them.”); *In re Ocasio*, 10 F. App’x 531, 531-32 (9th Cir. 2001); *In re Bellucci*, 119 B.R. 763, 769 (Bankr. E.D. Cal. 1990).

The New York Courts have ruled several times that UBS is barred from pursuing claims against the Debtor arising before February 24, 2009. For example, in 2011, the Appellate Division held that UBS is barred under the doctrine of res judicata from asserting claims against Highland that “implicate events alleged to have taken place before the filing of the original complaint.” *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011). The Appellate Division went on to explain that:

The proper inquiry for res judicata purposes is when UBS could have raised a cause of action, not when it had enough evidence to prove the claim at trial . . . . UBS could have asserted the instant claims in the original complaint or moved to amend well before that complaint was dismissed by this Court . . . . ***Nevertheless, to the extent that the third and fourth causes of action, alleging breach of the covenant of good faith and fair dealing and fraudulent conveyance, respectively, rely on conduct alleged to have occurred after the commencement of the prior action, such claims should be allowed.***

*Id.* at 476 (emphasis added). In 2017, the Appellate Division reaffirmed that UBS is barred from pursuing claims arising prior to February 24, 2009:

This court previously rejected the contention, advanced by moving defendants here, that UBS cannot rely on events or conduct occurring before February 2009 to support its alter ego and



fraudulent conveyance claims. *As held in the prior decision, the Appellate Division decisions preclude any fraudulent conveyance claims arising before February 24, 2009. They therefore preclude UBS from recovering for any alleged fraudulent conveyances made before that date.* However, proof of pre-February 24, 2009 transfers, and of other conduct involving the operations of the Highland entities, is not prohibited *to the extent necessary to prove UBS's claims for post-February 24, 2009 fraudulent conveyances, which are maintainable under the Appellate Division decisions on an alter ego theory.*<sup>8</sup>

Ruling at 25, *UBS Sec. LLC v Highland Capital Mgmt., L.P.*, No. 650097/2009 (N.Y. Sup. Ct.

Mar. 24, 2017) (emphasis added) [RC App. 442]. And, in 2018, the Appellate Division held:

*There is no dispute that plaintiffs are precluded from pursuing fraudulent conveyance and breach of implied covenant claims that arose prior to February 24, 2009.* However, neither our prior decisions nor the doctrine of res judicata bars plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims. The court correctly rejected defendants' arguments in support of dismissal of the remaining claims at issue.

*UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512, 514 (N.Y. App. Div. 2018) (emphasis added).

These ruling are consonant with the rule that “res judicata will preclude the party's subsequent suit for any claim of breach that had occurred prior to the first suit.” *Prime Mgmt. Co. v. Steinegger*, 904 F.2d 811, 816 (2d Cir. 1990). Relatedly, a party is precluded from pursuing damages in a subsequent suit when those damages are attendant to claims that have become barred by operation of res judicata. *See Evangelical All. Mission/Nihon Domei Kirisuto Kyodan v. Lockman Found.*, No. 95 CIV. 7214 (SHS), 1995 WL 688958, at \*4 (S.D.N.Y. Nov. 21, 1995). UBS may, in pursuit of its post-February 24, 2009 claims, introduce *evidence* of conduct predating

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<sup>8</sup> As noted above, UBS's only alter ego claim pending from the New York State litigation is against HFP, not Debtor. *See infra* note 6.

its original complaint. But, critically, UBS cannot assert any claims where the alleged breach or conduct giving rise to damages occurred prior to February 24, 2009. Rather, UBS can only pursue damages for losses caused by breaches or other conduct that occurred after February 24, 2009.

In this proceeding, the only actionable losses that UBS has identified that arise from breaches or other conduct taking place after February 24, 2009 are its claimed losses from the alleged fraudulent March 2009 Transfers. UBS contends otherwise, claiming that the Debtor should also be held liable for breach of the implied covenant of good faith and fair dealing for “prohibiting the Fund Counterparties and HFP from turning over any assets in their possession,” “siphoning” assets “belonging to the Fund Counterparties and HFP,” “ensuring no additional infusions of value . . . into the Fund Counterparties or HFP,” and “keeping the Fund Counterparties and HFP undercapitalized and judgment proof.” UBS Response at 8 [RC App. 1251]. Stripped of rhetoric, each of those claims is based on the same alleged fraudulent transfers from HFP to Highland and the affiliate funds that took place in March 2009.

Tellingly, UBS’s Proofs of Claim include only one paragraph addressing post-February 24, 2009 facts:

By this time, the Fund Counterparties and SOHC’s alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant’s ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit

Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the “**Affiliated Transferee Defendants**”), among others, thereby further reducing Highland’s abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, i.e., solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

UBS Securities LLC Proof of Claim ¶ 18 [RC App. 54-55]; UBS AG, London Branch Proof of Claim ¶ 18 [RC App. 175-76]; [REDACTED]

[REDACTED]. Likewise, the expert report that UBS submitted to the New York Courts, and which was attached as an exhibit to the UBS Response, [REDACTED]

[REDACTED]

The import of the New York Court’s res judicata rulings for this proceeding is that UBS is limited to claims against the Debtor for losses based on breaches or other conduct that occurred after February 24, 2009. And the only such losses identified in UBS’s Proof of Claim are the losses for the value of the assets transferred out of HFP and its subsidiaries to Highland and several funds managed by Highland in March 2009 – the assets involved in the alleged fraudulent transfers.

**II. The Settlement Agreements Between UBS and the Crusader Funds and Credit Strategies Fund Released UBS’s Claims for Most of the Damages Arising from the March 2009 Transfers.**

This Court should disallow UBS’s claim to the extent it seeks damages arising from the March 2009 Transfers to the Crusader Funds and the Credit Strategies Fund because UBS released

those claims in the 2015 settlement agreements.<sup>9</sup> UBS contends that the releases do not apply to UBS's claim against the Debtor for alleged breach of good faith and fair dealing under the Knox Agreement. To the contrary, the releases are unambiguous, and they apply with equal force to claims based on the law of fraudulent transfer and to UBS's Implied Duty Claim against the Debtor.

"Where the intention of the parties is clearly and unambiguously set forth, effect must be given to the intent as indicated by the language used." *Toscano v. Toscano*, 153 A.D.3d 1440, 1442 (N.Y. App. Div. 2017); *W.W.W. Assocs., Inc. v. Giancontieri*, 566 N.E. 2d 639, 642 (N.Y. 1990) (reading contract as a whole to determine its purpose and intent and to determine the "logical reason" of contractual provision at issue). In determining whether a contract is ambiguous, "the court also should examine the entire contract and consider the relation of the parties and the circumstances under which the contract was executed." *Ayers v. Ayers*, 92 A.D.3d 623, 624 (N.Y. App. Div. 2012).

The overall purpose of the settlement agreements was [REDACTED]

[REDACTED]. In order to accomplish that purpose, the settlement agreements—which are substantively identical with respect to the release language—have two separate releases. First, each agreement sets forth the global release that UBS provided to each fund. This release provides, in relevant part, that UBS [REDACTED]

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<sup>9</sup> Bankruptcy courts have the authority to enforce settlement agreements in the claims adjudication process. *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 958 (9th Cir. 1994) ("A bankruptcy court, as a court of equity, likewise possesses the power to summarily enforce settlements."); *In re Mortg. Analysis Portfolio Strategies, Inc.*, 221 B.R. 386, 388 (Bankr. W.D. Tex. 1998) (holding that "this Court has the inherent power to enforce settlement agreements between parties."); *In re De La Fuente*, 409 B.R. 842, 845 (Bankr. S.D. Tex. 2009).

[REDACTED]

[REDACTED]

[REDACTED] This direct global release of each fund, however, was not sufficient to adequately protect each fund from liability with respect to the ongoing litigation that UBS was prosecuting against Highland. As UBS emphasizes in its Response, “UBS had long alleged that the March 2009 transfers were relevant to UBS’s implied duty claim.” UBS Response at 26 [RC App. 1269]. Given that UBS was continuing to prosecute that claim against Highland, and that the March 2009 Transfers would otherwise serve as the basis for that claim, it was critical that the settlement agreements provided that UBS’s continuing litigation against Highland would have no economic impact on either fund. This was not a theoretical risk to Crusader, for example, because Crusader had indemnification obligations to Highland as the former investment manager of the Crusader Fund. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Moreover, given that UBS was asserting that Highland used its control of various entities to “orchestrate the March 2009 transfers,” (UBS Response at 7 [RC App. 1250]), the risk that Highland could be found liable to UBS for losses arising from the transfers of assets to the Crusader Funds and the Credit Strategies Fund was well known. If Highland were found to be liable to UBS due to losses arising from the March 2009 Transfers, Highland could then seek indemnification from the applicable fund for Highland’s separate



liability with respect to those transfers—despite the fact that the funds [REDACTED]

To foreclose the risk of indemnification claims, the funds negotiated for UBS to grant the following partial release to Highland:

[REDACTED]

[REDACTED]

A straightforward review of this release’s language demonstrates that UBS released Highland from any losses or other relief arising from the March 2009 Transfers to the Crusader Funds and the Credit Strategies Fund, respectively, without regard to whether UBS was asserting an implied duty or fraudulent conveyance claim. The operative release language begins with the word [REDACTED] which the settlement agreements define broadly as including any and all [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, [REDACTED] is not limited to a particular legal theory or cause of action, and it specifically includes all actions related to the Knox Agreement.

Then, because UBS was not granting Highland a global release, the remainder of the sentence qualifies the term [REDACTED] in two distinct ways. First, the release applies [REDACTED] [REDACTED] This language does not limit the [REDACTED] to any particular cause of action. Instead, the parties based the release's scope on [REDACTED] and [REDACTED]—terms with particularly broad meaning. “[L]osses’ is legally synonymous with ‘damages[.]’” *Nogueiro v. Kaiser Found. Hosps.*, 250 Cal. Rptr. 478, 481 n. 5 (Cal. Ct. App. 1988); *see Damages*, Black’s Law Dictionary (11th ed. 2019) (“Money claimed by, or ordered to be paid to, a person as compensation for loss or injury.”) [REDACTED] is even broader. *See, e.g., Confederated Tribe of Colville Reservation v. White*, No. 96-cv-247, 1996 WL 33407856, at \*3 (E.D. Wash. Nov. 7, 1996) (“[F]iling a proof of claim is an affirmative act seeking relief via a court’s adjudication of a dispute.”); *In re Barrett Ref. Corp.*, 221 B.R. 795, 811 (Bankr. W.D. Okla. 1998) (“The filing of a proof of claim is not merely a defense, but is an affirmative claim for relief.”); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 269 (1993); *Mut. Serv. Corp. v. Spaulding*, 972 F. Supp. 1126, 1127 (N.D. Ill. 1997) (concluding that “other relief” is a broad term).

Second, the release then states that the [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Again, the scope of the release is not measured by any particular cause of action, but by reference to the underlying factual allegations—namely, the March 2009 Transfers to each fund. As noted above, the funds needed this protection to eliminate the risk that if Highland were found liable to UBS with respect to the March 2009 Transfers—regardless of the legal theory—Highland could assert an indemnification claim against each fund.

The [REDACTED] sentence that immediately follows the release further supports the conclusion that UBS released its Implied Duty Claim against Highland, as well as its fraudulent conveyance claim, insofar as those claims arose from the March 2009 Transfers to the Crusader Funds and the Credit Strategies Fund. That sentence states:

[REDACTED]

[REDACTED]

[REDACTED] Had the parties not intended UBS's Implied Duty Claim against Highland under the Knox Agreement to be released (to the extent it related to the transfer of assets to the Crusader Funds and the Credit Strategies Fund), [REDACTED] of that sentence would not have been necessary. Put another way, [REDACTED] shows that UBS was seeking to recover for losses arising from the transfers to the Crusader Funds and the Credit Strategies Fund as part of the relief it sought from Highland on its claim for breach of the implied duty of good faith and fair dealing. UBS released that portion of its Implied Duty Claim.

To be clear, the Redeemer Committee is not arguing that UBS released the entirety of its Implied Duty Claim against Highland. Instead, and as demonstrated above, the release resulted in UBS releasing Highland from any and all claims for damages to the extent such damages specifically arose from the March 2009 Transfers to the Crusader Funds or the Credit Strategies Fund. As UBS points out in its Response, the release does not impair UBS's ability to use evidence of those transfers to demonstrate that Highland breached its implied duty of good faith and fair

dealing. UBS Response at 26 [RC App. 1269]; [REDACTED]

[REDACTED] However, UBS cannot recover damages or other relief from Highland for the transfers to the Crusader Funds or the Credit Strategies Fund.

UBS argues that the release only released fraudulent conveyance claims against Highland and did not release any portions of its Implied Duty Claim. That interpretation directly contradicts the language of the release and, as discussed above, would render [REDACTED] meaningless. [REDACTED]

[REDACTED] *Two Guys from Harrison-N.Y., Inc. v. S.F.R. Realty Assocs.*, 472 N.E.2d 315, 318 (N.Y. 1984) (finding that courts should “avoid an interpretation that would leave contractual clauses meaningless”); *Armato v. Bullon*, 147 A.D.3d 685 (N.Y. App. Div. 2017) (noting that “a court should avoid an interpretation that would leave contractual clauses meaningless”); *Suffolk Cty. Water Auth. v. Vill. of Greenport*, 21 A.D.3d 947, 948 (N.Y. App. Div. 2005) (finding that a basic principles of contract construction is that “an interpretation which renders language in the contract superfluous is unsupportable”). And, if the parties had agreed that UBS was only releasing Highland with respect to claims for fraudulent transfers, it would have been a simple matter to limit the release to [REDACTED] Instead, the parties agreed that UBS was releasing Highland for all [REDACTED]

Moreover, UBS’s interpretation would produce “a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties.” *See Major Energy Servs. LLC v. Orange & Rockland Utils., Inc.*, No. 654710/2018, 2020 WL 3060876, at \*6 (N.Y. Sup.

Ct. June 08, 2020) (discussing standard for interpreting a contractual release). As UBS has acknowledged, “UBS has long alleged that the March 2009 Transfers were relevant to UBS’s implied duty claim.” UBS Response at 26 [RC App. 1269]. Accordingly, the parties understood that absent a settlement, UBS would seek to recover the value of those transfers as part of its Implied Duty Claim against Highland. Limiting the scope of the release so as to leave the funds exposed to an indemnification claim if UBS were to recover damages from Highland for the value of those transfers to the Crusader Funds and the Credit Strategies Fund under UBS’s Implied Duty Claim would be manifestly unreasonable. *See, e.g., Metro. Life Ins. Co. v. Noble Lowndes Int’l, Inc.*, 643 N.E.2d 504, 508 (N.Y. 1994) (“It is highly unlikely that two sophisticated business entities, each represented by counsel, would have agreed to . . . a harshly uneven allocation of economic power under the [contract].”).

UBS contends, alternatively, that parol evidence would support its proffered interpretation of the release. Parol evidence should not be considered in the context of determining whether a contractual provision is ambiguous. *See W.W.W. Assocs., Inc.*, 566 N.E.2d at 642 (“It is well settled that ‘extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face.’”) (quoting *Intercontinental Planning, Ltd. v. Daystrom, Inc.*, 248 N.E.2d 576 (N.Y. 1969)); *see also Chimart Assocs. v. Paul*, 489 N.E.2d 231, 233 (N.Y. 1986) (“[I]nterpretation of an unambiguous contract provision is a function for the court, and matters extrinsic to the agreement may not be considered when the intent of the parties can be gleaned from the face of the instrument.”)

Nonetheless, the parol evidence that UBS cites in its Response would not change the interpretation of the release. As UBS has noted, during the course of negotiations, counsel to the Redeemer Committee suggested [REDACTED] In one email,



counsel suggested [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The  
proposed change, as set forth [REDACTED]  
[REDACTED]  
[REDACTED] This would have been a fundamentally  
different approach to the release language. UBS declined to entertain the proposed new language,  
explaining that [REDACTED]  
[REDACTED] UBS's  
counsel stated [REDACTED]  
[REDACTED] Counsel did not elaborate on what that [REDACTED]  
[REDACTED]

This exchange of emails demonstrates only that there was a discussion regarding how to structure the release, and the parties ultimately agreed that they would use a transaction-based release pursuant to which UBS released Highland for all damages arising from the March 2009 Transfers to the Crusader Funds and the Credit Strategies Fund. As shown above, that release is broad, and it specifically includes Claims relating to the Knox Agreement, the basis for UBS's Implied Duty Claim against Highland. Thus, even if the Court were to consider the parol evidence, it does not change the meaning of the release.

The legal import of the Crusader Funds' and Credit Strategies Fund's settlement agreements is that UBS released all claims against Highland for losses arising from the transfers of assets to those two funds in March 2009, including as relief for UBS's Implied Duty Claim.

Thus, any losses arising from the transfers to those funds must be excluded from UBS's claim against the Debtor.

### CONCLUSION

For all of these reasons, this Court should disallow UBS's claim against the Debtor to the extent that it (1) seeks to hold the Debtor liable for claims arising from conduct occurring before February 24, 2009; and (2) seeks to hold the Debtor liable for claims for losses or other relief arising from the March 2009 Transfers to the Crusader Funds and the Credit Strategies Fund.

Dated this 16th day of October, 2020

Respectfully submitted,

/s/ Mark A. Platt

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*Counsel for the Redeemer Committee of the  
Highland Crusader Fund and the Crusader Funds<sup>10</sup>*

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<sup>10</sup> Frost Brown Todd LLC is counsel only for the Redeemer Committee and Jenner & Block, LLP is counsel to the Redeemer Committee, and for the limited purpose of this Motion, the Crusader Funds.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies, that on this 16th day of October, 2020, he caused to be served a true and correct copy of the *Brief in Support of the Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion For Partial Summary Judgment And Joinder In The Debtor's Motion For Partial Summary Judgment On Proof Of Claim Nos. 190 And 191*, by electronically filing it with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Mark A. Platt

Mark A. Platt



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed December 7, 2020

*Harry G. C. Gammie*  
United States Bankruptcy Judge

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

_____X	
<i>In re</i>	: Chapter 11
	:
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	: Case No. 19-34054-sgj11
	:
Debtor.	:
_____X	

**ORDER GRANTING UBS'S MOTION  
FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES  
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018**

Upon consideration of *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "**3018 Motion**"), regarding Proofs of Claim Nos. 190 and 191, filed by UBS Securities LLC and UBS AG, London Branch (together "**UBS**"), respectively (the "**UBS Claims**"); and this Court finding that this is a core proceeding, that the Court has jurisdiction over this matter, that venue is proper,

<sup>1</sup> The last four digits of Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



and that sufficient notice of the 3018 Motion has been given to all parties requiring notice; and this Court having reviewed the 3018 Motion and documents filed in support of the 3018 Motion; and this Court having reviewed the objections to the 3018 Motion filed by (i) the Debtor [Docket No. 1404] and (ii) the Redeemer Committee of the Highland Crusader Fund and the Crusader Funds [Docket No. 1409] (together, the “**Objections**”) and documents filed in support of the Objections; and this Court having held an evidentiary hearing on November 20, 2020, where the Court determined that the legal and factual bases set forth in the 3018 Motion, the Objections, and at the hearing establish good cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The 3018 Motion is **GRANTED** to the extent set forth herein.
2. The UBS Claims are collectively **ALLOWED**, on a temporary basis and for voting purposes only, in the amount of \$94,761,076.
3. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

**### END OF ORDER ###**

**Agreed as to form:**

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AG, London Branch*



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed December 9, 2020

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§

**ORDER GRANTING PARTIAL SUMMARY JUDGMENT  
AGAINST UBS SECURITIES LLC AND UBS AG, LONDON BRANCH  
ON PROOF OF CLAIM NOS. 190 AND 191**

This matter having come before the Court on the *Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [Dkt. No. 1214] (the "Debtor Motion") and the *Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS*

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



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*AG, London Branch and UBS Securities LLC* [Dkt. No. 1215] (the “Redeemer/Crusader Motion” and, collectively with the Debtor Motion, the “Motions”),<sup>2</sup> and the Court having considered the Motions, the opening briefs and evidence submitted in support of the Motions, *UBS’s Response in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and In Support of Rule 56(d) Request* [Dkt. No. 1337] (the “Opposition”) and the opposition brief and evidence submitted by UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”) in support of the Opposition, all replies and other materials filed in connection with the Motions, and the arguments and evidence presented by counsel at the hearing on the Motions; and after due deliberation and good cause appearing therefor,

It is hereby FOUND AND DETERMINED that:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Court may issue a final order consistent with Article III of the United States Constitution.

B. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, made applicable herein by Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure, summary judgment “is appropriate if the record discloses that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *James v. Sadler*, 909 F.2d 834, 836 (5th Cir. 1990) (internal quotation marks omitted); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (“Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment ‘shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

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<sup>2</sup> Because the Redeemer/Crusader Motion also contained a joinder to the Debtor Motion, the joinder portion of the Redeemer/Crusader Motion appears as a separate docket entry in above-captioned case. *See Redeemer Committee of the Highland Crusader Fund and the Crusader Funds’ Motion for Partial Summary Judgment and Joinder in the Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [Dkt. No. 1216].



genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”).

C. There are no genuine issues of material fact as to the matters on which the Court grants partial summary judgment herein, and Highland Capital Management, L.P. (the “Debtor”), the Redeemer Committee of the Highland Crusader Fund, and Highland Crusader Offshore Partners, L.P., Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd. and Highland Crusader Fund II, Ltd. (collectively, the “Movants”) are entitled to partial judgment as a matter of law on Proof of Claim No. 190 filed by UBS Securities LLC and Proof of Claim No. 191 filed by UBS AG, London Branch (collectively, the “UBS Claim”) to the extent set forth herein.

D. UBS is barred by the doctrine of *res judicata* and the decisions issued by the Appellate Division of the Supreme Court of New York (the “Appellate Division”) in the UBS Litigation<sup>3</sup> from asserting any claim against the Debtor that arose prior to February 24, 2009, including (without limitation) any claim to impose alter ego liability on the Debtor relating to causes of action that arose prior to February 24, 2009 and any claim to enforce the State Court Judgment (as defined below) against the Debtor, for the following reasons:

i. UBS filed its first complaint against the Debtor in the UBS Litigation on February 24, 2009. In 2010, the Appellate Division dismissed UBS’s complaint against the Debtor and directed entry of final judgment on the merits in favor of the Debtor. *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 70 A.D.3d 526, 526 (N.Y. App. Div. 2010).

ii. After UBS filed a new complaint against the Debtor in the UBS Litigation, the Appellate Division determined that *res judicata* bars UBS from asserting claims against the

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<sup>3</sup> As used herein, the term “UBS Litigation” means the actions captioned as *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) and *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.).

Debtor that arose prior to February 24, 2009. *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469, 474 (N.Y. App. Div. 2011) (holding that *res judicata* bars UBS from asserting claims against the Debtor that “implicate events alleged to have taken place before the filing of the original complaint” on February 24, 2009). Based on the judgment on the merits entered in favor of the Debtor, the Appellate Division also determined that *res judicata* bars UBS from seeking to impose alter ego liability on Highland Financial Partners L.P. (“HFP”) for claims that arose prior to February 24, 2009. *UBS Sec. LLC v. Highland Capital Mgmt., L.P.*, 93 A.D.3d 489, 490 (N.Y. App. Div. 2012) (dismissing UBS’s “causes of action for declaratory judgment [*i.e.*, UBS’s alter ego theory against HFP] and fraudulent conveyance ... with respect to claims arising before February 2009” because HFP was in privity with the Debtor). There is no ambiguity in the Appellate Division’s rulings on *res judicata*, and the Appellate Division’s rulings are binding on this Court.

iii. The doctrine of *res judicata* likewise applies to any claim by UBS to impose alter ego liability on the Debtor relating to causes of action that arose prior to February 24, 2009. This includes (without limitation) any attempt by UBS to hold the Debtor liable as an alter ego for the breach of contract judgment (the “State Court Judgment”) that UBS obtained in February 2020 against Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC”), because the Supreme Court of New York determined in the UBS Litigation that the underlying breach of contract by CDO Fund and SOHC occurred in December 2008. *See, e.g., Bd. of Managers of the 195 Hudson St. Condo. v. Jeffrey M. Brown Assocs.*, 652 F. Supp. 2d 463, 479-81 (S.D.N.Y. 2009) (holding that *res judicata* applied to bar plaintiff from enforcing judgment against defendant as alleged alter ego of judgment debtor, because defendant previously had obtained a judgment in its favor and was

dismissed from the prior litigation, and any alter ego relief against defendant could have, and should have, been sought in the prior litigation).

iv. Therefore, the doctrine of *res judicata* and the decisions of the Appellate Division in the UBS Litigation bar UBS from asserting any claim against the Debtor that arose prior to February 24, 2009, including (without limitation) any claim to impose alter ego liability on the Debtor relating to causes of action that arose prior to February 24, 2009 and any claim to enforce the State Court Judgment against the Debtor.

E. UBS is barred by the Settlement Agreements (as defined below) and the releases given therein by UBS to the Debtor from asserting against the Debtor any claim that seeks recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to the Settling Defendants<sup>4</sup> in March 2009, for the following reasons:

i. In or around June 2015, UBS entered into (i) a settlement agreement with Highland Crusader Offshore Partners, L.P. and Highland Crusader Holding Corporation relating to the UBS Litigation, and (ii) a settlement agreement with Highland Credit Strategies Master Fund, L.P. relating to the UBS Litigation (collectively, the “Settlement Agreements”). The Settlement Agreements are governed by New York law.

ii. In Section 5.3 of both of the Settlement Agreements, UBS released its “Claims” against the Debtor “to the limited extent the Claims are for losses or other relief specifically arising from the fraudulent transfers to [the Settling Defendants] alleged in the UBS Litigation.” Section 5.3 of the Settlement Agreements goes on to state: “For the avoidance of doubt, the Claims released do not include (a) any Claims for losses or other relief arising from the alleged fraudulent transfers to any defendant in the UBS Litigation other than [the Settling

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<sup>4</sup> As used herein, the term “Settling Defendants” means Highland Crusader Offshore Partners, L.P., Highland Crusader Holding Corporation, and Highland Credit Strategies Master Fund, L.P.

Defendants] or (b) any other Claims for losses or other relief arising from the Knox Agreement, except to the limited extent the Claims are for losses or other relief that specifically arise from the alleged fraudulent transfers to [the Settling Defendants].” The transfers to the Settling Defendants alleged in the UBS Litigation totaled \$172,411,785.

iii. Both Settlement Agreements define “Claims” as follows: “any and all claims, actions, causes of action, demands, liabilities, debts, damages, or obligations or whatsoever kind, name, description or nature, be they contractual, tort or statutory, known or unknown, and charges of whatever nature, known and unknown, arising out of, or directly or indirectly related to, the Knox Agreement and/or the UBS Litigation.”

iv. A court “should enforce the plain meaning of contracts when that meaning is clear and unambiguous.” *Direxion Shares ETF Trust v. Leveraged Innovations L.L.C.*, 2014 U.S. Dist. LEXIS 161469, \*12 (S.D.N.Y. Nov. 18, 2014); *see also Chesapeake Energy Corp. v. Bank of N.Y. Mellon Trust Co., N.A.*, 773 F.3d 110, 114 (2d Cir. 2014) (when “terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract”); *Toscano v. Toscano*, 153 A.D.3d 1440, 1442 (N.Y. App. Div. 2017) (“Where the intention of the parties is clearly and unambiguously set forth, effect must be given to the intent as indicated by the language used.”).

v. The Court finds that the releases given by UBS to the Debtor in Section 5.3 of the Settlement Agreements are clear and unambiguous, and therefore are interpreted by the Court as a matter of law. *See, e.g., LaSalle Bank Nat. Ass’n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 205 (2d Cir. 2005) (“In New York, [] if a contract is straightforward and unambiguous, its interpretation presents a question of law for the court to be made without resort to extrinsic evidence.”) (quoting *Postlewaite v. McGraw-Hill, Inc.*, 411 F.3d 63, 67 (2d Cir. 2005)); *GLCA*

*Sec., LLC v AGC Networks, Inc.*, 2020 N.Y. Misc. LEXIS 3400, \*14 (N.Y. Sup. Ct. July 20, 2020) (“interpretation of an unambiguous contract by the court does not raise a question of fact to be resolved by the application of burdens of proof but is solely a question of law”).

vi. The plain language of the releases in the Settlement Agreements clearly and unambiguously applies to any claim asserted by UBS against the Debtor to recover the amounts transferred to the Settling Defendants in March 2009, whether styled as a fraudulent transfer claim, a claim for breach of the implied covenant of good faith and fair dealing, or otherwise. Moreover, considering the context of the Settlement Agreements as New York law requires, *Ayers v. Ayers*, 92 A.D.3d 623, 624-25 (N.Y. App. Div. 2012), the Court finds that it would be absurd to interpret the releases as releasing fraudulent conveyance claims as to the \$172,411,785 of transfers to the Settling Defendants but not claims relating to such transfers based on other legal theories, including the implied covenant of good faith and fair dealing. Likewise, it would be absurd to conclude that the Settling Defendants paid a total of \$70.5 million under the Settlement Agreements, but left themselves exposed to potential liability to indemnify the Debtor if it were held liable to UBS for the alleged fraudulent transfers to the Settling Defendants on a theory that the Debtor breached the implied covenant of good faith and fair dealing with respect to those transfers.

vii. Therefore, UBS is barred as a matter of law from asserting any claim against the Debtor that seeks recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to the Settling Defendants in March 2009.

F. UBS is barred from asserting any claim to impose alter ego liability on the Debtor, including (without limitation) any claim to impose liability on the Debtor as an alleged alter ego of HFP, CDO Fund, or SOHC, for the following reasons:



i. The Court established June 26, 2020 as the bar date (the “UBS Bar Date”) for any proofs of claim by UBS against the Debtor. UBS filed the UBS Claim on the UBS Bar Date. The UBS Claim did not assert an alter ego claim or alter ego theory of liability against the Debtor.

ii. Any assertion by UBS of an alter ego claim or alter ego theory of liability against the Debtor falls squarely within the broad definition of a “claim” set forth in 11 U.S.C. § 101(5). UBS’s failure to assert any claim to impose alter ego liability on the Debtor by the UBS Bar Date operates as a complete bar to any such claim.

iii. Furthermore, the broad reservation of rights by UBS in the UBS Claim was not sufficient to preserve to UBS any right to assert, after the UBS Bar Date, an alter ego claim or alter ego theory of liability against the Debtor whether via an amendment to the UBS Claim or otherwise.

iv. Therefore, UBS is barred from asserting any claim to impose alter ego liability on the Debtor, and its request for leave to amend the UBS Claim to assert such a claim is denied.

Based on the foregoing, it is hereby **ORDERED, ADJUDGED, AND DECREED** that:

1. The Motions are **GRANTED** as set forth herein.
2. Partial summary judgment is hereby entered in favor of the Movants, and against UBS, barring UBS from asserting any claim against the Debtor that arose prior to February 24, 2009, including (without limitation) any claim to impose alter ego liability on the Debtor relating to causes of action that arose prior to February 24, 2009 and any claim to enforce the State Court Judgment against the Debtor. The UBS Claim is disallowed as to any claim against the Debtor that arose prior to February 24, 2009, including (without limitation) any claim to impose alter

ego liability on the Debtor relating to causes of action that arose prior to February 24, 2009 and any claim to enforce the State Court Judgment against the Debtor.

3. Partial summary judgment is hereby entered in favor of the Movants, and against UBS, barring UBS from asserting any claim against the Debtor that seeks recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to the Settling Defendants in March 2009. The UBS Claim is disallowed as to any claim against the Debtor that seeks recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to the Settling Defendants in March 2009, including (without limitation) claims for fraudulent conveyance and for breach of the implied covenant of good faith and fair dealing.

4. Partial summary judgment is hereby entered in favor of the Movants, and against UBS, barring UBS from asserting any claim to impose alter ego liability on the Debtor, including (without limitation) any claim to impose liability on the Debtor as an alleged alter ego of HFP, CDO Fund, or SOHC. The UBS Claim is disallowed as to any claim to impose alter ego liability on the Debtor, including (without limitation) any claim to impose liability on the Debtor as an alleged alter ego of HFP, CDO Fund, or SOHC.

5. UBS's request for denial or deferral of the Motions pursuant to Federal Rule of Civil Procedure 56(d), made applicable herein by Rules 7056 and 9014 of the Federal Rules of Bankruptcy Procedure, is **DENIED**.

6. UBS's request for leave to amend the UBS Claim to assert a claim to impose alter ego liability on the Debtor is **DENIED**.

**### END OF ORDER ###**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)

FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)

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Counsel for the Debtor and Debtor-in-Possession

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

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## DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### ARTICLE I. RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

#### A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the



Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold

Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.



42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or



Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,



and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.



101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any

damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized

Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or order entered by the Bankruptcy Court.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized



Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

#### **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee



Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, (b) payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.  
CLASSIFICATION AND TREATMENT OF  
CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the

Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

#### **H. Classification and Treatment of Claims and Equity Interests**

##### **1. Class 1 – Jefferies Secured Claim**

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

##### **2. Class 2 – Frontier Secured Claim**

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.

- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be

cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.



Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and



monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust

Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are



investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

C. **The Reorganized Debtor**

1. *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.



2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in

the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of

doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.



The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a



contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

#### **B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed

and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity

Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

#### **B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the

Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall



revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.



**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.**  
**PROCEDURES FOR RESOLVING CONTINGENT,**  
**UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

1. Allowance of Claims

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

2. Estimation

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH**

**LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding



upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's



Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

#### **ARTICLE IX.**

#### **EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

##### **A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

##### **B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

##### **C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross

negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation

Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final

Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XI.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or



arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state,



Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

## **ARTICLE XI.**

### **RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or

expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such

orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

#### **B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

#### **C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement

executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this



Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:



**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego

the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: January 22, 2021

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.

Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

DISCLOSURE STATEMENT FOR THE FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.

**PACHULSKI STANG ZIEHL & JONES LLP**

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



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Dondero Ex. J

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 6**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith* [Dkt. # 2389]:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

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		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned cases (the “Debtor”), is sending you this document and the accompanying materials (the “Disclosure Statement”) because you are a creditor or interest holder in connection with the *Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.*, dated November 24, 2020, as the same may be amended from time to time (the “Plan”).<sup>2</sup> The Debtor has filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

This Disclosure Statement has not yet been approved by the Bankruptcy Court as containing adequate information within the meaning of section 1125(a) of the Bankruptcy Code. The Debtor intends to seek an order or orders of the Bankruptcy Court (a) approving this Disclosure Statement as containing adequate information and (b) confirming the Plan.

A copy of the Plan is attached hereto as Exhibit A.

The Debtor believes that the Plan is fair and equitable, will maximize the value of the Debtor’s Estate, and is in the best interests of the Debtor and its constituents. Notably, the Plan provides for the transfer of the majority of the Debtor’s Assets to a Claimant Trust. The balance of the Debtor’s Assets, including the management of the Managed Funds, will remain with the Reorganized Debtor. The Reorganized Debtor will be managed by New GP LLC – a wholly-owned subsidiary of the Claimant Trust. This structure will allow for continuity in the Managed Funds and an orderly and efficient monetization of the Debtor’s Assets.

The Claimant Trust, the Litigation Trust, or the Reorganized Debtor, as applicable, will institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action without any further order of the Bankruptcy Court, and the Claimant Trust and Reorganized Debtor, as applicable, will sell, liquidate, or otherwise monetize all Claimant Trust Assets and Reorganized Debtor Assets and resolve all Claims, except as otherwise provided in the Plan, the Claimant Trust Agreement, or the Reorganized Limited Partnership Agreement.

**IMPORTANT INFORMATION ABOUT THIS  
DISCLOSURE STATEMENT FOR YOU TO READ**

**The Debtor is providing the information in this Disclosure Statement to Holders of Claims and Equity Interests in connection with the Debtor’s Plan. Nothing in this Disclosure Statement may be relied upon or used by any Entity for any purpose other than with respect to confirmation of the Plan. The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose.**

**This Disclosure Statement has not been filed for approval with the Securities and Exchange Commission (“SEC”) or any state authority and neither the SEC nor any state authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon**

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern.

the merits of the Plan. Any representation to the contrary is a criminal offense. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction.

This Disclosure Statement contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The Debtor considers all statements regarding anticipated or future matters to be forward-looking statements. Forward-looking statements may include statements about:

- the effects of insolvency proceedings on the Debtor’s business and relationships with its creditors;
- business strategy;
- financial condition, revenues, cash flows, and expenses;
- financial strategy, budget, projections, and operating results;
- variation from projected operating and financial data;
- substantial capital requirements;
- availability and terms of capital;
- plans, objectives, and expectations;
- the adequacy of the Debtor’s capital resources and liquidity; and
- the Claimant Trust’s or the Reorganized Debtor’s ability to satisfy future cash obligations.

Statements concerning these and other matters are not guarantees of the Claimant Trust’s or Reorganized Debtor’s future performance. There are risks, uncertainties, and other important factors that could cause the Claimant Trust’s or Reorganized Debtor’s actual performance or achievements to be different from those that may be projected. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. Therefore, any analyses, estimates, or recovery projections may or may not turn out to be accurate.

This Disclosure Statement has been prepared pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and is not necessarily in accordance with federal or state securities laws or other similar laws.

No legal or tax advice is provided to you by this Disclosure Statement. The Debtor urges each Holder of a Claim or an Equity Interest to consult with its own advisers with respect to any legal, financial, securities, tax or business advice in reviewing this Disclosure Statement, the Plan and each of the proposed transactions contemplated thereby. Further, the Bankruptcy Court's approval of the adequacy of disclosures contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan or a guarantee by the Bankruptcy Court of the accuracy or completeness of the information contained herein.

Pachulski Stang Ziehl & Jones LLP ("PSZ&J") is general insolvency counsel to the Debtor. Development Specialists, Inc. ("DSI") is the Debtor's financial advisor. PSZ&J, DSI, and the Independent Board (as defined below) have relied upon information provided by the Debtor in connection with preparation of this Disclosure Statement. PSZ&J has not independently verified the information contained herein.

This Disclosure Statement contains, among other things, summaries of the Plan, the management of the Reorganized Debtor, the Claimant Trust, certain statutory provisions, certain events in the Debtor's Chapter 11 Case, and certain documents related to the Plan that are attached hereto and incorporated herein by reference or that may be filed later with the Plan Supplement. Although the Debtor believes that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that the summaries do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any conflict, inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern and control for all purposes. Except where otherwise specifically noted, factual information contained in this Disclosure Statement has been provided by the Debtor's management. The Debtor does not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission.

In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and on various assumptions regarding the Debtor's business. The Debtor's management has reviewed the financial information provided in this Disclosure Statement. Although the Debtor has used its reasonable business judgment to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited (unless otherwise expressly provided herein) and no representations or warranties are made as to the accuracy of the financial information contained herein or assumptions regarding the Debtor's business and its, the Reorganized Debtor's, and the Claimant Trust's future results. The Debtor expressly cautions readers not to place undue reliance on any forward-looking statements contained herein.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation or waiver. Rather, this Disclosure Statement shall constitute a statement made in settlement negotiations related to potential contested matters, potential adversary proceedings and other pending or threatened litigation or actions.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in the Disclosure Statement. Except as provided under the Plan, the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, may seek to investigate, file and prosecute Claims and Causes of Action and may object to Claims or Equity Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies any such Claims or Equity Interests or objections to Claims or Equity Interests on the terms specified in the Plan.

The Debtor is generally making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof where feasible, unless otherwise specifically noted. Although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so. Holders of Claims and Equity Interests reviewing this Disclosure Statement should not infer that, at the time of their review, the facts set forth herein have not changed since the Disclosure Statement was sent. Information contained herein is subject to completion, modification, or amendment. The Debtor reserves the right to file an amended or modified Plan and related Disclosure Statement from time to time.

The Debtor has not authorized any Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtor has not authorized any representations concerning the Debtor or the value of its property other than as set forth in this Disclosure Statement.

Holders of Claims or Equity Interests must rely on their own evaluation of the Debtor and their own analyses of the terms of the Plan in considering the Plan. Importantly, each Holder of a Claim should review the Plan in its entirety and consider carefully all of the information in this Disclosure Statement and any exhibits hereto, including the risk factors described in greater detail in ARTICLE IV herein, "Risk Factors."

If the Plan is confirmed by the Bankruptcy Court and the Effective Date occurs, all Holders of Claims against, and Holders of Equity Interests in, the Debtor will be bound by the terms of the Plan and the transactions contemplated thereby.

The effectiveness of the Plan is subject to certain material conditions precedent described herein and set forth in Article IX of the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Plan to become effective will be satisfied (or waived).

**EXHIBITS**

**EXHIBIT A** – Plan of Reorganization

**EXHIBIT B** – Organizational Chart of the Debtor

**EXHIBIT C** – Liquidation Analysis/Financial Projections

THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT  
ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH  
FULLY SET FORTH HEREIN.



**ARTICLE I.**  
**EXECUTIVE SUMMARY**

**This Disclosure Statement is provided for informational purposes only.**

**In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distributions to the Debtor's creditors and interest holders. The Debtor believes that any delay in confirmation of the Plan would result in significant administrative expenses resulting in less value available to the Debtor's constituents. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.**

This Executive Summary is being provided to Holders of Allowed Claims and Equity Interests as an overview of the material items addressed in the Disclosure Statement and the Plan, which is qualified by reference to the entire Disclosure Statement and by the actual terms of the Plan (including all exhibits attached hereto and to the Plan and the Plan Supplement), and should not be relied upon for a comprehensive discussion of the Disclosure Statement and/or the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan of reorganization or liquidation. As such, this Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code. This Disclosure Statement includes, without limitation, information about:

- the Debtor's operating and financial history;
- the significant events that have occurred to date;
- the Confirmation process; and
- the terms and provisions of the Plan, including key aspects of the Claimant Trust and the Reorganized Debtor, certain effects of Confirmation of the Plan, certain risk factors relating to the Plan, and the manner in which distributions will be made under the Plan.

The Debtor believes that any alternative to Confirmation of the Plan would result in significant delays, litigation, and additional costs, and ultimately would diminish the Debtor's value. **Accordingly, the Debtor strongly supports confirmation of the Plan.**

**A. Summary of the Plan**

The Plan represents a significant achievement for the Debtor. As discussed herein, the Plan provides that the Claimant Trust will receive the majority of the Debtor's assets, including Causes of Action. The assets being transferred to the Claimant Trust are referred to, collectively, as the Claimant Trust Assets. The Claimant Trust will – for the benefit of the Claimant Trust

Beneficiaries – monetize the Claimant Trust Assets, pursue the Causes of Action, and work to conclude the various lawsuits and litigation claims pending against the Estate.

The Plan also provides for the reorganization of the Debtor. This will be accomplished by the cancellation of the Debtor's current Equity Interests, which consist of partnership interests held by: The Dugaboy Investment Trust;<sup>3</sup> the Hunter Mountain Investment Trust ("Hunter Mountain"); Mark Okada, personally and through family trusts; and Strand, the Debtor's general partner. On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. The Reorganized Debtor will be managed by the Claimant Trust, as the managing member of New GP LLC.

The Reorganized Debtor will oversee the monetization of the Reorganized Debtor Assets, which consist of, among other Assets, the management of the Managed Funds. The net proceeds from the Reorganized Debtor Assets will ultimately be distributed to the Claimant Trust and available for distribution to the Claimant Trust Beneficiaries.

The following is an overview of certain other material terms of the Plan:

- Allowed Priority Non-Tax Claims will be paid in full;
- Allowed Retained Employee Claims will be Reinstated;
- Allowed Convenience Claims will receive the lesser of (i) 85% of their Allowed Claim or (ii) such Holder's Pro Rata share of the Convenience Claims Cash Pool (*i.e.*, \$13,150,000). Holders of Convenience Claims can elect the treatment provided to General Unsecured Claims by making the GUC Election on their Ballots;
- Allowed General Unsecured Claims and Allowed Subordinated Claims will receive their Pro Rata share of Claimant Trust Interests. The Claimant Trust Interests distributed to Allowed General Unsecured Claims will be senior to those distributed to Allowed Subordinated Claims as set forth in the Claimant Trust Agreement. Holders of General Unsecured Claims that are liquidated as of the Confirmation Date can elect the treatment provided to Convenience Class Election by reducing their Claims to \$1,000,000 and making the Convenience Class Election on their Ballots; and
- Allowed Class B/C Limited Partnership Interests and Allowed Class A Limited Partnership Interests will receive their Pro Rata share of the Contingent Claimant Trust Interests.

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<sup>3</sup> The Dugaboy Investment Trust is a Delaware trust created to manage the assets of James Dondero and his family.

## **B. An Overview of the Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11 of the Bankruptcy Code, a debtor may remain in possession of its assets and business and attempt to reorganize its business for the benefit of such debtor, its creditors, and other parties in interest. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The commencement of a Chapter 11 case creates an estate comprised of all of the legal and equitable interests of a debtor in property as of the date that the bankruptcy petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession,” unless the bankruptcy court orders the appointment of a trustee. The filing of a bankruptcy petition also triggers the automatic stay provisions of section 362 of the Bankruptcy Code which provide, among other things, for an automatic stay of all attempts to collect prepetition claims from a debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay generally remains in full force and effect until the consummation of a plan of reorganization or liquidation, following confirmation of such plan of reorganization.

The Bankruptcy Code provides that upon commencement of a chapter 11 bankruptcy case, the Office of the United States Trustee may appoint a committee of unsecured creditors and may, in its discretion, appoint additional committees of creditors or of equity interest holders if necessary to assure adequate representation. Please see ARTICLE II for a discussion of the U.S. Trustee and the statutory committees.

Upon the commencement of a chapter 11 bankruptcy case, all creditors and equity interest holders generally have standing to be heard on any issue in the chapter 11 proceedings pursuant to section 1109(b) of the Bankruptcy Code.

The formulation and confirmation of a plan is the principal objective of a chapter 11 case. The plan sets forth the means of satisfying the claims against and equity interests in the debtor.

## **C. Purpose and Effect of the Plan**

### **1. The Plan of Reorganization**

The Debtor is reorganizing pursuant to chapter 11 of the Bankruptcy Code. As a result, the Confirmation of the Plan means that the Debtor’s business will continue to operate following confirmation of the Plan through the Claimant Trust and the Reorganized Debtor to monetize assets for distribution to Holders of Allowed Claims. The Claimant Trust will hold the Claimant Trust Assets and manage the efficient monetization of, the Claimant Trust Assets. The Claimant Trust will also manage the Reorganized Debtor through the Claimant Trust’s ownership of the Reorganized Debtor’s general partner, New GP LLC. The Claimant Trust will also be the sole limited partner in the Reorganized Debtor. The Reorganized Debtor will manage the wind down

of the Managed Funds as well as the monetization of the balance of the Reorganized Debtor Assets. The Claimant Trust will also establish a Litigation Sub-Trust in accordance with the Plan, which will also be for the benefit of the Claimant Trust Beneficiaries. The Litigation Sub-Trust will receive the Estate Claims. The Litigation Trustee shall be the exclusive trustee of the Estate Claims included in the Claimant Trust Assets subject to oversight by the Claimant Trust Oversight Committee

A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or an equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code to the terms and conditions of the confirmed plan, whether or not such Entity voted on the plan or affirmatively voted to reject the plan.

## 2. Plan Overview

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtor. For classification and treatment of Claims and Equity Interests, the Plan designates Classes of Claims and Classes of Equity Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The following chart briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan.<sup>4</sup> Amounts listed below are estimated.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for eight Classes of Claims against and/or Equity Interests in the Debtor.

**The projected recoveries set forth in the table below are estimates only and therefore are subject to change. For a complete description of the Debtor's classification and treatment of Claims or Equity Interests, reference should be made to the entire Plan and the risk factors described in ARTICLE IV below. For certain classes of Claims, the actual amount of Allowed Claims could be materially different than the estimated amounts shown in the table below.**

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<sup>4</sup> This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description.

Class	Type of Claim or Interest	Estimated Prepetition Claim Amount [1]	Impaired	Entitled to Vote	Estimated Recovery
1	Jefferies Secured Claim	\$0.00	No	No	100%
2	Frontier Secured Claim[2]	\$5,209,964	Yes	Yes	100%
3	Other Secured Claims	\$551,116	No	No	100%
4	Priority Non-Tax Claim	\$16,489	No	No	100%
5	Retained Employee Claim	\$0	No	No	100%
6	PTO Claims [3]	\$1,181,886	No	No	100%
7	Convenience Claims[4]	\$12,064,333	Yes	Yes	85.00%
8	General Unsecured Claims[5]	\$180,442,199	Yes	Yes	85.31%
9	Subordinated Claims	Undetermined	Yes	Yes	Undetermined
10	Class B/C Limited Partnership Interests	N/A	Yes	Yes	Undetermined
11	Class A Limited Partnership Interests	N/A	Yes	Yes	Undetermined

[1] Excludes Priority Tax Claims and certain other unclassified amounts totaling approximately \$1.1 million owed to Joshua and Jennifer Terry and Acis under a settlement agreement.

[2] Excludes interest accrued postpetition estimated at \$318,000, which will be paid on the Effective Date. The Liquidation Analysis/Financial Projections provide for the payment of postpetition interest.

[3] Represents outstanding PTO Claims as of September 30, 2020. PTO Claims are subject to adjustment depending on the amount of actual prepetition PTO Claims outstanding as of the Effective Date. PTO claims are accounted for in the Liquidation Analysis/Financial Projections as an administrative claim and will be paid out in ordinary courses pursuant to applicable state law.

[4] Represents the estimated gross prepetition amount of Convenience Claims with a total payout amount estimated at 85% of \$12.06 million, or \$10.25 million. This number includes approximately \$1.113 million of potential Rejection Claims and assumes that Holders of Allowed General Unsecured Claims that are each less than \$2.50 million opt into the Convenience Class.

[5] Assumes no recovery for UBS, the HarbourVest Entities, IFA, Hunter Mountain, and an Allowed Claim of only \$3,722,019 for Mr. Daugherty (each as discussed further below). Assumes \$1.440 million of potential rejection damage claims. The Liquidation Analysis/Financial Projections assume Highland RCP, LP and Highland RCP Offshore, LP offset their Claim of \$4.4 million against amounts owed to the Debtor.

### 3. Voting on the Plan

Under the Bankruptcy Code, acceptance of a plan by a Class of Claims or Equity Interests is determined by calculating the number and the amount of Claims voting to accept, based on the actual total Allowed Claims or Equity Interests voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan. Acceptance by a Class of Equity Interests requires at least two-thirds in amount of the total Allowed Equity Interests in the Class to vote in favor of the Plan.



Under the Bankruptcy Code, only Classes of Claims or Equity Interests that are “Impaired” and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is “Unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is “Impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Plan. Whether a Holder of a Claim or Equity Interest in Class 2 and Class 7 through Class 11 may vote to accept or reject the Plan will also depend on whether the Holder held such Claim or Equity Interest as of November 23, 2020 (the “Voting Record Date”). The Voting Record Date and all of the Debtor’s solicitation and voting procedures shall apply to all of the Debtor’s Creditors and other parties in interest.

Pursuant to the Plan, Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, there are no Classes that will not receive or retain any property and no Classes are deemed to reject the Plan.

#### 4. Confirmation of the Plan

##### (a) Confirmation Generally

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed below.

The confirmation of a plan by the Bankruptcy Court binds the debtor, any issuer of securities under a plan, any person acquiring property under a plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan discharges a debtor from any debt that arose before the confirmation of such plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

##### (b) The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Debtor will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned from time to time without further notice except for an

announcement of the adjourned date made at the Confirmation Hearing of any adjournment thereof.

5. Confirming and Effectuating the Plan

It is a condition to the Effective Date of the Plan that the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Official Committee of Unsecured Creditors (the “Committee”). Certain other conditions contained in the Plan must be satisfied or waived pursuant to the provisions of the Plan.

6. Rules of Interpretation

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meaning ascribed to such terms in the Plan; (2) unless otherwise specified, any reference in this Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document shall be a reference to such document in the particular form or substantially on such terms and conditions described; (3) unless otherwise specified, any reference in this Disclosure Statement to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a Holder of a Claim or Equity Interest includes that Entity’s successors and assigns; (5) unless otherwise specified, all references in this Disclosure Statement to Sections are references to Sections of this Disclosure Statement; (6) unless otherwise specified, all references in this Disclosure Statement to exhibits are references to exhibits in this Disclosure Statement; (7) unless otherwise set forth in this Disclosure Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in this Disclosure Statement that is not otherwise defined in this Disclosure Statement or the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

7. Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests

As set forth above, Holders of Claims in Class 1 and Class 3 through Class 6 are not entitled to vote on the Plan. As a result, such parties will not receive solicitation packages or ballots but, instead, will receive this a notice of non-voting status, a notice of the Confirmation Hearing, and instructions on how to receive a copy of the Plan and Disclosure Statement.

The Debtor, with the approval of the Bankruptcy Court, has engaged Kurtzman Carson Consultants LLC (the “Voting Agent”) to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the “Solicitation Package”):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

- The Bankruptcy Court order approving this Disclosure Statement (the “Disclosure Statement Order”) (excluding exhibits);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- A single Ballot, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the “Voting Instructions”);
- A pre-addressed, postage pre-paid return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

On November 13, 2020, the Debtor filed the Plan Supplement [D.I. 1389] that included, among other things, the form of Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Reorganized Limited Partnership Agreement, New GP LLC Documents, the New Frontier Note, the Senior Employee Stipulation, and the identity of the initial members of the Claimant Trust Oversight Committee. The Plan Supplement also includes a schedule of the Causes of Action that will be retained after the Effective Date. The Plan Supplement may be supplemented or amended through and including December 18, 2020. If the Plan Supplement is supplemented, such supplemented documents will be made available on the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

If you are the Holder of a Claim or Equity Interest and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, via email at [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com) and reference “Highland Capital Management, L.P.” in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. If your Claim or Equity Interest is subject to a pending claim objection and you wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim or Equity Interest for voting purposes or you will not be entitled to vote to accept or reject the Plan. Any such motion must be filed so that it is heard in sufficient time prior to the Voting Deadline to allow for your vote to be tabulated.

**THE DEBTOR, THE REORGANIZED DEBTOR, AND THE CLAIMANT TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.**

8. Instructions and Procedures for Voting

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtor or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 23, 2020, as the Voting Record Date for the determination of the Holders of Claims and Equity Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

**The deadline to vote on the Plan is January 5, 2021 at 5:00 p.m. (prevailing Central Time) (the "Voting Deadline").** In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address, as applicable:

**If by first class mail, personal delivery, or overnight mail to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

**If by electronic voting:**

**You may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot. IMPORTANT NOTE: You will need the Unique Electronic Ballot ID Number and the Unique Electronic Ballot PIN Number set forth on your customized ballot in order to vote via the Balloting Agent's online portal. Each Electronic Ballot ID Number is to be used solely for voting on those Claims or Interests on your electronic ballot. You must complete and submit an electronic ballot for each Electronic Ballot ID Number you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

Only the Holders of Claims and Equity Interests in Class 2 and Class 7 through Class 11 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim and Equity Interest must vote its entire Claim or Equity Interest, as applicable, within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to



reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM OR EQUITY INTEREST IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the Solicitation Package that you have received, or (c) the amount of your Claim or Equity Interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents filed in these Chapter 11 Case may be obtained free of charge on the Voting Agent's website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp) or by calling toll free at: (877) 573-3984, or international at: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at [pacer.uscourts.gov](http://pacer.uscourts.gov). Subject to any rules or procedures that have or may be implemented by the Court as a result of the COVID 19 Pandemic, documents filed in this case may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Central Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, Texas 75242-1496.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") by January 11, 2021. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

**THE DEBTOR URGES HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

9. The Confirmation Hearing

The Bankruptcy Court has scheduled Confirmation Hearing Dates on January 13, 2021, and January 14, 2021, at 9:30 a.m. prevailing Central time. The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties-in-interest.



10. The Deadline for Objecting to Confirmation of the Plan

**The Bankruptcy Court has set a deadline of January 5, 2021, at 5:00 p.m. prevailing Central time, for the filing of objections to confirmation of the Plan (the “Confirmation Objection Deadline”).** Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name of the objecting party and the amount and nature of the Claim of such Entity or the amount of Equity Interests held by such Entity; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the parties set forth below (the “Notice Parties”).

**CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE. INSTRUCTIONS WITH RESPECT TO THE CONFIRMATION HEARING AND DEADLINES WITH RESPECT TO CONFIRMATION WILL BE INCLUDED IN THE NOTICE OF CONFIRMATION HEARING APPROVED BY THE BANKRUPTCY COURT.**

11. Notice Parties

- Debtor: Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (Attn: James P. Seery, Jr.);
- Counsel to the Debtor: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4003 (Attn: Jeffrey Pomerantz, Esq.; Ira Kharasch, Esq., and Gregory Demo, Esq.);
- Counsel to the Committee: Sidley Austin, LLP, One South Dearborn, Chicago, Illinois 60603 (Attn: Matthew Clemente, Esq., and Alyssa Russell, Esq.); and
- Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Lisa Lambert, Esq.).

12. Effect of Confirmation of the Plan

The Plan contains certain provisions relating to (a) the compromise and settlement of Claims and Equity Interests; (b) exculpation of certain parties; and (c) the release of claims against certain parties by the Debtor.

**The Plan shall bind all Holders of Claims against and Equity Interests in the Debtor to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder (i) will receive or retain any property or interest in property under the Plan, (ii) has filed a proof of claim in the Chapter 11 Case, or (iii) did not vote to accept or reject the Plan.**

**D. Effectiveness of the Plan**

It will be a condition to the Effective Date of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following confirmation, the Plan will go into effect on the Effective Date.

**E. RISK FACTORS**

Each Holder of a Claim or an Equity Interest is urged to consider carefully all of the information in this Disclosure Statement, including the risk factors described in ARTICLE IV herein titled, "Risk Factors."

**ARTICLE II.**  
**BACKGROUND TO THE CHAPTER 11 CASE AND SUMMARY OF**  
**BANKRUPTCY PROCEEDINGS TO DATE**

**A. Description and History of the Debtor's Business**

Prior to the Petition Date, the Debtor was a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm evolved over twenty-five years, building on its credit expertise and value-based approach to expand into other asset classes.

As of the Petition Date, the Debtor operated a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, the Debtor provided shared services to its affiliated registered investment advisers.

**B. The Debtor's Corporate Structure**

The Debtor is headquartered in Dallas, Texas. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Debtor's business. As of the Petition Date, the Debtor employed approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Pursuant to various contractual arrangements, the Debtor, as of the Petition Date, provided money management and advisory services for approximately \$2.5 billion of assets under management shared services for approximately \$7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. None of these affiliates filed for Chapter 11 protection. As of September 30, 2020, the Debtor provided money management and advisory services for approximately \$1.641 billion of assets under management and shared services for approximately \$7.136 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisors. Further, on the Petition Date, the value of the Debtor's Assets was approximately

\$566.5 million. As of September 30, 2020, the total value of Debtor's Assets totaled approximately \$328.3 million.

The drop in the value of the Debtor's Assets and assets under management was caused, in part, by the COVID-19 global pandemic. Specifically, the decline was the result of, among other things, the drop in value of the Debtor's assets generally, the loss of value in the Prime Accounts discussed below, the professional and other costs associated with the Chapter 11 Case, and the reserve of approximately \$59 million against a loan receivable listed as an asset.

<u>Asset</u>	<u>10/16/2019</u>	<u>9/30/2020</u>
Investments (FV)[1]	\$232,620,000	\$109,479,000
Investments (Equity)	\$161,819,000	\$101,213,000
Cash/Cash Equivalents	\$2,529,000	\$5,888,000
Management/Incentive Fees Receivable	\$2,579,000	\$3,350,000
Fixed Assets, net	\$3,754,000	\$2,823,000
Loan Receivables	\$151,901,000	\$93,445,000[2]
Other Assets	\$11,311,000	\$12,105,000
<b>Totals</b>	<b>\$566,513,000</b>	<b>\$328,302,000</b>

[1] Includes decrease in value of assets, costs of Chapter 11 Cases, and assets sold to satisfy liabilities.

[2] Net of reserve of \$59 million.

The Debtor's organizational chart is attached hereto as Exhibit B. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity.

### C. Business Overview

The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC ("Jefferies"), as described in additional detail below. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor's stand-alone annual revenue totaled approximately \$50 million. During calendar year 2019, the Debtor's stand-alone revenue totaled approximately \$36.1 million.

### D. Prepetition Capital Structure

#### 1. Jefferies Margin Borrowings (Secured)

The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the "Brokerage Agreement"). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with

Jefferies (the “Prime Account”). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

As of the Petition Date, the Debtor held approximately \$57 million of equity in liquid and illiquid securities (the “Securities”) in the Prime Account. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof.

However, because of the economic distress caused by the COVID-19 global pandemic, the value of the Securities held in the Prime Account dropped since the Petition Date, and Jefferies has exerted significant pressure on the Debtor to liquidate the Securities to satisfy margin calls. As of September 30, 2020, the equity value of the Securities in the Prime Account was approximately \$23.3 million, and the Debtor owed no amounts to Jefferies. The Debtor has been actively selling Securities to cover operating expenses and professional fees.

## 2. The Frontier Bank Loan (Secured)

The Debtor and Frontier State Bank (“Frontier Bank”) are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the “Original Frontier Loan Agreement”), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain First Amended and Restated Loan Agreement (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

Pursuant to that certain Security and Pledge Agreement dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor’s obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the “Frontier Collateral”).

The aggregate principal balance of the Frontier Loan was approximately \$5.2 million. As of September 30, 2020, the value of the Frontier Collateral was approximately \$13.1 million, and approximately \$318,000 in postpetition interest had accrued.

## 3. Other Unsecured Obligations

As discussed below, the Plan provides for four Classes of unsecured claims: (i) PTO Claims, (ii) the Convenience Claims, (iii) the General Unsecured Claims, and (iv) the Subordinated Claims.

The Debtor has various substantial litigation claims asserted against it, which have been classified as General Unsecured Claims. In addition, as of the Petition Date, the Debtor had ordinary course trade debt, unaccrued employee bonus obligations and loan repayment, and



contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that were potentially in the tens of millions of dollars. The Debtor is still assessing these claims and its liability for such amounts. These Claims have been classified as Convenience Claims and Subordinated Claims.

#### 4. Equity Interests

The Debtor is a Delaware limited partnership. As of the Petition Date, the Debtor had three classes of limited partnership interest (Class A, Class B, and Class C). The Class A interests were held by The Dugaboy Investment Trust, Mark Okada, personally and through family trusts, and Strand, the Debtor's general partner. The Class B and C interests were held by Hunter Mountain.

In the aggregate, the Debtor's limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by The Dugaboy Investment Trust, (c) 0.0627% by Mark Okada, personally and through family trusts, and (d) 0.25% by Strand.

#### E. SEC Filings

The Debtor is an investment adviser registered with the SEC as required by the Investment Advisers Act of 1940. As a registered investment adviser, the Debtor is required to file (at least annually) a Form ADV. The Debtor's current Form ADV is available at <https://adviserinfo.sec.gov/>.

Following the Effective Date, it is anticipated that the Reorganized Debtor will maintain its registration with the SEC as a registered investment adviser.

#### F. Events Leading Up to the Debtor's Bankruptcy Filings

The Chapter 11 Case was precipitated by the rendering of an Arbitration Award (as that term is defined below) against the Debtor on May 9, 2019, by a panel of the American Arbitration Association (the "Panel"), in favor of the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Funds (the "Crusader Funds") that were formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Funds' investors, as the Crusader Funds' assets lost significant value.

On October 15, 2008, the Debtor placed the Crusader Funds in wind-down, thereby compulsorily redeeming the Crusader Funds' limited partnership interests. The Debtor also declared that it would liquidate the Crusader Funds' remaining assets and distribute the proceeds to investors.

However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a Joint Plan of Distribution of the Crusader Funds



(the “Crusader Plan”), and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors (the “Crusader Scheme”), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Funds’ investors to oversee the Debtor’s management of the Crusader Funds.

Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of \$1.2 billion to the Crusader Funds’ investors. The Debtor distributed a further \$315.3 million through June 2016.

However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the “Arbitration”), and (c) commenced litigation in Delaware Chancery Court, to, among other things, obtain a status quo order in aid of the arbitration, which order was subsequently entered.

Following an evidentiary hearing, the Panel issued (a) a *Partial Final Award*, dated March 6, 2019 (the “March Award”), (b) a *Disposition of Application for Modification of Award*, dated March 14, 2019 (the “Modification Award”), and (c) a *Final Award*, dated May 9, 2019 (the “Final Award” and together with the March Award and the Modification Award, the “Arbitration Award”). Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages against the Debtor in the aggregate amount of \$136,808,302; as of the Petition Date, the total value of the Arbitration Award was \$190,824,557, inclusive of interest

Prior to the Petition Date, the Redeemer Committee moved in the Chancery Court to confirm the Arbitration Award. For its part, the Debtor moved to vacate parts of the Final Award contending that certain aspects were procedurally improper. The Redeemer Committee’s motion to confirm the Arbitration Award and the Debtor’s motion to vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day the Debtor filed for bankruptcy

On the Petition Date, the Debtor believed that the aggregate value of its assets exceeded the amount of its liabilities; however, the Debtor filed the Chapter 11 Case because it did not have sufficient liquidity to immediately satisfy the Award or post a supersedeas bond necessary to pursue an appeal.

#### **G. Additional Prepetition Litigation**

In addition to the litigation with the Redeemer Committee described above, the Debtor, both directly and through certain subsidiaries, affiliates, and related entities, was party to substantial prepetition litigation. Although the Debtor disputes the allegations raised in this litigation and believes it has substantial defenses, this litigation has resulted in substantial Claims against the Debtor’s Estate, each of which has been classified as a General Unsecured Claim. To the extent that these litigation Claims cannot be resolved consensually, they will be litigated by the Claimant Trustee or Reorganized Debtor, as applicable. The Debtor’s major prepetition litigation is as follows:

- Redeemer Committee: The dispute with the Redeemer Committee is described in ARTICLE II.F above. As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves the Redeemer Committee's claims against the Estate; however, that order is currently subject to appeal.
- Acis Capital Management, L.P., & Acis Capital Management GP, LLC: On January 30, 2018, Joshua Terry filed involuntary bankruptcy petitions against both Acis Capital Management, L.P. ("Acis LP") and its general partner, Acis Capital Management GP, LLC ("Acis GP," and collectively with Acis LP, "Acis") in the Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Judge Jernigan presiding (the same judge presiding over the Chapter 11 Case), Case No. 18-30264-SGJ (the "Acis Case"). Mr. Terry had been an employee of the Debtor and a limited partner of Acis LP. Mr. Terry was terminated in June 2016, and obtained a multi-million dollar arbitration award against Acis. Overruling various objections, the Bankruptcy Court entered the orders for relief for the Acis debtors in April 2018, and a chapter 11 trustee was appointed. The Debtor filed a proof of claim against Acis and an administrative claim. Acis disputes the Debtor's claim, and the Debtor has not received any distributions on its claim to date. On January 31, 2019, Acis's chapter 11 plan was confirmed, and Mr. Terry become the sole owner of reorganized Acis. Several appeals remain pending, including an appeal of the entry of the Acis orders for relief and the Acis confirmation order.

The Acis trustee commenced a lawsuit against the Debtor, among others, alleging fraudulent conveyance and other causes of action in relation to the Debtor's alleged prepetition effort to control and transfer away Acis's assets to avoid paying Mr. Terry's claim. After the confirmation of the Acis plan, reorganized Acis allegedly supplanted the Acis Trustee as plaintiff and filed an amended complaint against the Debtor and other defendants, which claims comprise Acis's pending proof of claim against the Debtor.

As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves Acis's claims against the Estate; however, that order is currently subject to appeal.

- UBS Securities LLC and UBS AG London Branch: UBS Securities LLC ("UBS Securities") filed a proof of claim in the amount of \$1,039,957,799.40 [Claim No. 190] (the "UBS Securities Claim"), and UBS AG, London Branch ("UBS London," and together with UBS Securities, "UBS") filed a substantively identical proof of claim in the amount of \$1,039,957,799.40 [Claim No. 191] (the "UBS London Claim" and together with the UBS Securities Claim, the "UBS Claim"). The UBS Claim was based on the amount of a judgment UBS received on a breach of contract claim against funds related to the Debtor that were unable to honor margin calls in 2008. Although the Debtor had no obligation under UBS's contracts with the funds, UBS alleges the Debtor is liable for the judgment because it (i) breached an alleged duty to ensure that the funds could pay UBS, (ii) caused or permitted \$233 million in alleged fraudulent transfers to be made by

Highland Financial Partners, L.P. (“HFP”) in March 2009, and (iii) is an alter ego of the funds. The Debtor believes there are meritorious defenses to most, if not all, of the UBS Claim for numerous reasons, including: (i) decisions by the New York Appellate Division that limited UBS’s claims to the March 2009 transfers that it alleges were fraudulent; (ii) those decisions should also apply to any alter ego claim (which at this time has not been formally asserted against the Debtor); (iii) UBS settled claims relating to \$172 million of the \$233 million in alleged fraudulent transfers and the Debtor is covered by the release; and (iv) the March 2009 transfers were in any event part of a wholly legitimate transaction that did not target UBS and for which HFP received fair consideration. Those and several additional defenses are described in the *Debtor’s Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 928].

On October 19, 2020, both the Debtor and the Redeemer Committee filed motions seeking partial summary judgment of the UBS Claim, which, if granted, will significantly decrease the UBS Claim.<sup>5</sup> UBS responded to these motions on November 6, 2020 [D.I. 1341]. On November 20, 2020, the Bankruptcy Court granted partial summary judgment in favor of the Debtor and the Redeemer Committee. It is anticipated that the Bankruptcy Court will enter a formal order within the next couple of weeks.

- Patrick Daugherty: Patrick Daugherty has Filed a Proof of Claim for “at least \$37,483,876.62” [Claim Nos. 67; 77] (the “Daugherty Claim”).<sup>6</sup> Mr. Daugherty is a former limited partner and employee of the Debtor. The Daugherty Claim has three components, and Mr. Daugherty asserts claims: (1) for indemnification for any taxes Mr. Daugherty is required to pay as a result of the IRS audit of the Debtor’s 2008-2009 tax return; (2) for defamation arising from a 2017 press release posted by the Debtor; and (3) arising from a pending Delaware lawsuit against the Debtor, which seeks to recover a judgment of \$2.6 million in respect of Highland Employee Retention Assets (“HERA”), plus interest, from assets Mr. Daugherty claims were fraudulently transferred to the Debtor. The Daugherty Claim also seeks (a) the value of Mr. Daugherty’s asserted interest in HERA, which he values at approximately \$26 million; and (b) indemnification for fees incurred in the Delaware action and in previous litigation in Texas State Court. The Debtor believes that the Daugherty Claim should be allowed in the amount of

<sup>5</sup> See *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1180]; *Debtor’s Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1181]; *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1183]; and *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor’s Motion for Partial Summary Judgment on Proof of Claim No. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1186].

<sup>6</sup> On October 23, 2020, Mr. Daugherty filed *Patrick Hagaman Daugherty’s Motion for Leave to Amend Proof of Claim No. 77* [D.I. 1280] pursuant to which Mr. Daugherty has asked leave to amend the Daugherty Claim to assert damages of \$40,710,819.42. On November 17, 2020, the Bankruptcy Court approved Mr. Daugherty’s request to amend the Daugherty Claim from the bench.

\$3,722,019; however, the Debtor believes, for various reasons, that the balance of the Daugherty Claim lacks merit. The Debtor's defenses to the Daugherty Claim are described in the Debtor's (i) *Objection to Claim No. 77 of Patrick Hagaman Daugherty* and (ii) *Complaint to Subordinate Claim of Patrick Hagaman Daugherty* [D.I. 1008].

#### **H. The Debtor's Bankruptcy Proceeding**

On October 16, 2019, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Case to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").<sup>7</sup> The Debtor continues to operate its business and manage its properties as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the later of the Effective Date and the date indicated in any order providing for the implementation of such stay or injunction.

#### **I. First Day Relief**

On or about the Petition Date, the Debtor filed certain "first day" motions and applications (the "First Day Motions") with the Delaware Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case and to facilitate the Debtor's transition to debtor-in-possession status. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Frank Waterhouse in Support of First Day Motions* [D.I. 11] (the "First Day Declaration"). At a hearing on October 19, 2019, the Delaware Bankruptcy Court granted virtually all of the relief initially requested in the First Day Motions [D.I. 39, 40, 42-44].

The Delaware Bankruptcy Court subsequently entered an order authorizing the Debtor to pay critical vendor claims on a final basis [D.I. 168]. Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Bankruptcy Court entered an order authorizing the Debtor to continue its cash management system on a final basis [D.I. 379].

The First Day Motions, the First Day Declaration, and all orders for relief granted in this case can be viewed free of charge at <https://www.kccllc.net/hcmlp>.

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<sup>7</sup> All docket reference numbers refer to the docket maintained by the Bankruptcy Court.



## J. Other Procedural and Administrative Motions

On and after the Petition Date, the Debtor also filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case, including:

- Interim Compensation Motion. On October 29, 2019, the Debtor filed the *Debtor's Motion Pursuant to Sections 105(a), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 72] (the "Interim Compensation Motion"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to section 330 and 331 of the Bankruptcy Code. On November 14, 2019, the Delaware Bankruptcy Court entered an order granting the Interim Compensation Motion [D.I. 141].
- Ordinary Course Professionals. On October 29, 2019, the Debtor filed the Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [D.I. 75] (the "OCP Motion"). The OCP Motion sought authority for the Debtor to retain and compensate certain professionals in the ordinary course of its business. On November 26, 2019, the Delaware Bankruptcy Court entered an order granting the OCP Motion [D.I. 176].
- Retention Applications. During the course of the chapter 11 case, the Delaware Bankruptcy Court or Bankruptcy Court, as applicable, have approved a number of applications by the Debtor seeking to retain certain professionals pursuant to sections 327, 328 and/or 363 of the Bankruptcy Code, including Pachulski Stang Ziehl & Jones LLP as legal counsel [D.I. 183], Development Specialists, Inc. as chief restructuring officer and financial advisor [D.I. 342], Kurtzman Carson Consultants LLC as administrative advisor [D.I. 74], Mercer (US) Inc. as compensation consultant [D.I. 381], Hayward & Associates PLLC as local counsel [D.I. 435], Foley Gardere, Foley & Lardner LLP as special Texas counsel [D.I. 513], Deloitte Tax LLP as tax services provider [D.I. 551], Wilmer Cutler Pickering Hale and Dorr LLP as regulatory and compliance counsel [D.I. 669], and Hunton Andrews Kurth LLP as special tax counsel [D.I. 763].

## K. United States Trustee

While the Chapter 11 Case was pending in the Delaware Bankruptcy Court, the U.S. Trustee for Region 3 appointed Jane Leamy as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Delaware U.S. Trustee"). Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Delaware U.S. Trustee no longer represented the U.S. Trustee, and the U.S. Trustee for Region 6 appointed Lisa Lambert as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Texas U.S. Trustee," and together with the



Delaware U.S. Trustee, the “U.S. Trustee”). The Debtor has worked cooperatively to address concerns and comments from the U.S. Trustee’s office during this Chapter 11 Case.

**L. Appointment of Committee**

On October 29, 2019, the Delaware U.S. Trustee appointed the Committee in this Chapter 11 Case [D.I. 65]. The members of the Committee are (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP, LLP. Meta-E Discovery is a vendor to the Debtor. The other members of the Committee are litigants in prepetition litigation with the Debtor as described in ARTICLE II.G. The Bankruptcy Court approved the retention of Sidley Austin LLP as counsel to the Committee [D.I. 334], Young Conaway Stargatt & Taylor, LLP as Delaware co-counsel to the Committee [D.I. 337], and FTI Consulting, Inc. as financial advisor to the Committee [D.I. 336].

**M. Meeting of Creditors**

The meeting of creditors under section 341(a) of the Bankruptcy Code was initially scheduled for November 20, 2019, at 9:30 a.m. (prevailing Eastern Time) at the J. Caleb Boggs Federal Building, 844 N. King Street, Room 3209, Wilmington, Delaware 19801, and was rescheduled to December 3, 2019, at 10:30 a.m. (prevailing Eastern Time). At the meeting of creditors, the Delaware U.S. Trustee and creditors asked questions of a representative of the Debtor.

Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Texas U.S. Trustee scheduled an additional meeting of creditors under section 341(a) for January 9, 2020, at 11:00 a.m. (prevailing Central Time) at the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242, at the conclusion of that meeting, the Texas U.S. Trustee continued the meeting to January 22, 2020. The Texas U.S. Trustee and creditors asked questions of a representative of the Debtor at the January 9 and January 22, 2020 meetings.

**N. Schedules, Statements of Financial Affairs, and Claims Bar Date**

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”) on December 19, 2019 [D.I. 247-248]. A creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated or disputed may have elected to file a proof of claim against the Debtor.

The Bankruptcy Court established (i) April 8, 2020 as the deadline for Creditors (other than governmental units) to file proofs of claim against the Debtor; (ii) April 13, 2020, as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code), (iii) April 23, 2020, and as the deadline for any investors in any fund managed by the Debtor to file proofs of claim against the Debtor; and (iv) May 26, 2020 as the deadline for the Debtor’s employees to file proofs of claim against the Debtor pursuant to and accordance with Court’s order entered on April 3, 2020 [D.I. 560].<sup>8</sup> Consequently, the bar date for filing proofs

<sup>8</sup> During the course of its Chapter 11 Case, the Debtor entered into stipulations to extend the Bar Date for certain other claimants or potential claimants.

of claims has passed and any claims filed after the applicable bar date will be considered late filed.

**O. Governance Settlement with the Committee**

On January 9, 2020, the Bankruptcy Court entered the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [D.I. 339] (the “Settlement Order”).

Among other things, the Settlement Order approved a term sheet (the “Term Sheet”) agreed to by the Debtor and the Committee pursuant to which the Debtor agreed to abide by certain protocols governing the production of documents and certain protocols governing the operation of the Debtor’s business (the “Operating Protocols”). Under the Operating Protocols, the Debtor agreed to seek consent from the Committee prior to entering into certain “Transactions” (as defined in the Operating Protocols). The Operating Protocols were amended on February 21, 2020, with the consent of the Committee [D.I. 466].

Pursuant to the Term Sheet, the Debtor also granted the Committee standing to pursue certain estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and the Related Entities (as defined in the Operating Protocols) (collectively, the “Estate Claims”). To the extent permitted, the Estate Claims and the ability to pursue the Estate Claims are being transferred to either the Claimant Trust or Litigation Sub-Trust pursuant to the Plan.

In connection with the Settlement Order, an independent board of directors was also appointed at Strand, the Debtor’s general partner (the “Independent Board”). The members of the Independent Board are John S. Dubel, James P. Seery, Jr., and Russell Nelms. The Independent Board was tasked with managing the Debtor’s operations during the Chapter 11 Case and facilitating a reorganization or orderly liquidation of the Debtor’s Estate.

**P. Appointment of James P. Seery, Jr., as Chief Executive Officer and Chief Restructuring Officer**

Following their appointment in January 2020, the Independent Board determined that it would be more efficient for the Debtor to have a traditional corporate management structure, i.e. a fully engaged chief executive officer supervised by the Independent Board. The Independent Board ultimately determined that Mr. Seery – a member of the Independent Board – had the requisite experience and expertise to lead the Debtor. On June 23, 2020, the Debtor filed *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [D.I. 774] (the “Seery Retention Motion”) to retain Mr. Seery as chief executive officer, chief restructuring officer, and foreign representative.

The Bankruptcy Court entered an order approving the Seery Retention Motion on July 16, 2020 [D.I. 854]. Mr. Seery was retained as the Debtor’s chief executive officer and the duties of Bradley Sharp of DSI as the Debtor’s chief restructuring officer and foreign representative were transferred to Mr. Seery.

**Q. Mediation**

On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [D.I. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation and appointed Sylvia Mayer and Allan Gropper as the mediators (the “Mediators”). The mediation began on August 27, 2020, and is still open as of the date of this Disclosure Statement

**R. Postpetition Settlements**

1. Settlement with Acis and the Terry Parties

With the assistance of the Mediators, on September 9, 2020, (i) the Debtor, (ii) Acis LP, (iii) Acis GP, and (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (together, the “Terry Parties”) executed that certain Settlement Agreement and General Release. On September 23, 2020, the Debtor filed the *Debtor’s Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [D.I. 1087] (the “Acis Settlement Motion”).

The Settlement Agreement and General Release contain the following material terms, among others:

- The proof of claim filed by Acis [Claim No. 23] will be Allowed in the amount of \$23,000,000 as a General Unsecured Claim.
- On the Effective Date of the Plan (or any other plan of reorganization confirmed by the Bankruptcy Court), the Debtor will pay in cash to:
  - Mr. and Mrs. Terry in the amount of \$425,000 plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed by the Terry Parties [Claim No. 156];
  - Acis LP in the amount of \$97,000, which amount represents the legal fees incurred by Acis LP with respect to the *NWCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195/2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP [Claim No. 159]; and
  - Mr. Terry in the amount of \$355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

The Settlement Agreement also provides that within five days of the Bankruptcy Court's approval of the Settlement Agreement and the General Release, the Debtor will move to withdraw, with prejudice, the proofs of claim that the Debtor filed in the Acis bankruptcy cases and the motion filed by the Debtor in the Acis bankruptcy cases seeking an administrative claim for postpetition services provided to Acis.

On October 5, 2020, James Dondero filed an objection to the Acis Settlement Motion [D.I. 1121] (the "Dondero Objection"). On October 28, 2020, the Bankruptcy Court entered an order approving the Acis Settlement Motion and overruling the Dondero Objection in its entirety [D.I. 1347]. On November 9, 2020, Mr. Dondero filed a notice of his intent to appeal the order approving the Acis Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Acis Settlement Motion and related documents for additional information on the Settlement Agreement and General Release.

## 2. Settlement with the Redeemer Committee

The Debtor, Eames, Ltd., the Redeemer Committee, and the Crusader Funds (collectively, the "Settling Parties") executed a settlement (the "Redeemer Stipulation"). The Redeemer Stipulation was also executed, solely with respect to paragraphs 10 through 15 thereof, by Hockney, Ltd., Strand, Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO, L.P., House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC (collectively, the "Additional Release Parties"). On September 23, 2020, the Debtor filed *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [D.I. 1089] seeking approval of the Redeemer Stipulation (the "Redeemer Settlement Motion").

The Redeemer Stipulation contains the following material terms, among others:

- The proof of claim filed by the Redeemer Committee [Claim No. 72] will be Allowed in the amount of \$137,696,610 as a General Unsecured Claim;
- The proof of claim filed by the Crusader Funds [Claim No. 81] will be Allowed in the amount of \$50,000 as a General Unsecured Claim;
- The Debtor and Eames, Ltd., each (a) consented to the cancellation of certain interests in the Crusader Funds held by them, and (b) agreed that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable Donor Advised Fund;4
- The Debtor and Eames each acknowledged that they will not receive any portion of certain reserved distributions, and the Debtor further acknowledged that it will not receive any payments from the Crusader Funds in respect of any deferred fees, distribution fees, or management fees;



- The Debtor and the Redeemer Committee agreed to a form of amendment to the shareholders' agreement for Cornerstone Healthcare Group and to a process to monetize Cornerstone Healthcare Group;
- Upon the effective date of the Redeemer Stipulation, the Settling Parties and the Additional Release Parties shall exchange releases as set forth in the Redeemer Stipulation; and
- All litigation between the Debtor, Eames, Ltd., and the Additional Highland Release Parties (as defined in the Redeemer Stipulation) on the one hand, and the Redeemer Committee and the Crusader Funds, on the other hand, will cease.

On October 16, 2020, UBS filed an objection to the Redeemer Settlement Motion [D.I. 1190] (the "UBS Objection"). On October 22, 2020, the Bankruptcy Court entered an order approving the Redeemer Settlement Motion and overruling the UBS Objection in its entirety [D.I. 1273]. On November 6, 2020, UBS filed a notice of its intent to appeal the order approving the Redeemer Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Redeemer Settlement Motion and related documents for additional information on the Redeemer Stipulation.

#### **S. Certain Outstanding Material Claims**

As discussed above, April 8, 2020, was the general bar date for filing proofs of claim. The Debtor has begun the process of resolving those Claims. Although each Claim represents a potential liability of the Estate, the Debtor believes that, in addition to UBS's Claim, the Claims filed by Integrated Financial Associates, Inc. ("IFA"), the HarbourVest Entities,<sup>9</sup> and Hunter Mountain represent the largest unresolved Claims against the Estate.

- IFA Proof of Claim. IFA filed a proof of claim [Claim No. 93] (the "IFA Claim") seeking damages in the amount of \$241,002,696.73 arising from the purported joint control of the Debtor and NexBank, SSB, and the Debtor's management of various lenders to IFA. The Debtor believes that IFA's claim should be disallowed in its entirety. IFA's claim and the Debtor's defenses thereto are described in greater detail in the *Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 868]. On October 4, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 1126], which capped the IFA Claim, for all purposes, at \$8,000,000.
- HarbourVest Entities Proofs of Claim. The HarbourVest Entities are investors in Highland CLO Funding, Ltd. ("HCLOF") and filed proofs of claim against the

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<sup>9</sup> "HarbourVest Entities" means HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.



Debtor's Estate [Claim No. 143, 147, 149, 150, 153, 154] (the "HarbourVest Claims"). The Debtor included an assertion of "no liability" in respect of the HarbourVest Claims in its Debtor's *First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No-Liability Claims; and (f) Insufficient Documentation Claims* [D.I. 906]. HarbourVest provided a response in its *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documents Claims* [D.I. 1057]. The HarbourVest Entities' response argued that the Debtor's objection should be overruled, and set forth allegations in support of claims under federal and state law and Guernsey law, including claims for fraud, violations of securities laws, breaches of fiduciary duties, and RICO violations. The Debtor intends to vigorously defend the HarbourVest Claims on various grounds, including, among others, the failure to state a claim upon which relief can be granted, the lack of reasonable reliance, the lack of misrepresentations, the lack of reasonable reliance, the failure to mitigate damages, the parties' agreements bar or otherwise limit the Debtor's liability, and waiver and estoppel. The HarbourVest Entities invested approximately \$80 million in HCLOF but seek an allowed claim in excess of \$300 million dollars (after giving effect to treble damages for the alleged RICO violations).

- Hunter Mountain Proof of Claim. Hunter Mountain is one of the Debtor's limited partners. Hunter Mountain filed a proof of claim [Claim No. 152] seeking a \$60,298,739 indemnification claim against the Debtor because of the Debtor's alleged failures to make priority distributions to Hunter Mountain under the Debtor's Partnership Agreement. The Debtor believes that it has meritorious defenses to Hunter Mountain's claim. Hunter Mountain's claim and the Debtor's defenses to such claim are described in greater detail in the *Debtor's (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* [D.I. 995]. The Debtor believes that Hunter Mountain's proof of claim should either be disallowed in its entirety or subordinated in its entirety.

In addition to the foregoing, the UBS Claim (in the amount of \$1,039,957,799.40) and the Daugherty Claim (in the amount of \$40,710,819.42) remain outstanding. As set forth above, partial summary judgment on the UBS Claim was granted in favor of the Debtor and the Redeemer Committee on November 20, 2020, and a formal order is expected to be entered within the next couple of weeks.

The Daugherty Claim has been allowed for voting purposes only in the amount of \$9,134,019 [D.I. 1422]. In a bench ruling on November 20, 2020, the Bankruptcy Court allowed UBS Claims for voting purposes only in the amount of \$94,761,076 [D.I. 1646].

#### **T. Treatment of Shared Service and Sub-Advisory Agreements**

As discussed in the Plan, the Reorganized Debtor will manage the wind down of the Managed Funds. However, it is not anticipated that either the Reorganized Debtor or the

Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities<sup>10</sup> pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities.

Currently, the Debtor receives approximately \$2.2 million per month in revenue from such contracts. However, in order to service those contracts, the Debtor must maintain a full staff and the cost of providing services under such contracts, among other factors, has historically resulted in a net loss to the Debtor. As such, the Debtor does not believe that assuming these contracts would benefit the Estate.

Further, the contracts generally contain anti-assignment provisions which the Debtor believes may be enforceable under 11 U.S.C. § 365(c). These provisions, therefore, would arguably prevent the assignment of such contracts without the consent of the Debtor's contract counterparty. However, even if 11 U.S.C. § 365(c) would not prevent assignment, the contracts are generally terminable at will by either party. As such, assuming and assigning such contracts without the consent of the contract counterparty would be of nominal or no benefit to the Estate. It is doubtful that any assignee would provide consideration to the Debtor for the assignment of such contract as the contract counterparty could simply terminate the contract immediately following assignment. As such, the Debtor does not believe that there is any benefit to the Estate in attempting to assign these contracts.

Notwithstanding the foregoing disclosure, the Debtor is currently assessing whether it is both possible and in the best interests of the Estate to assume and assign such shared services and sub-advisory agreements to a Related Entity.

During the course of this Chapter 11 Case, Mr. Daugherty stated that he would be willing to assume the Debtor's obligations under the shared service and sub-advisory contracts. The Independent Directors reviewed Mr. Daugherty's proposal and for the foregoing reasons, among others, determined that it was not workable and would provide no benefit to the Estate.

#### **U. Portfolio Managements with Issuer Entities**

The Debtor is party to certain portfolio management agreements (including any ancillary agreements relating thereto collectively being the "Portfolio Management Agreements" and each a "Portfolio Management Agreement") with ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd. (each an "Issuer" and collectively the "Issuers") wherein the Debtor agreed to generally provide certain services to each Issuer in the Debtor's capacity as a portfolio manager in exchange for certain fees as described in the applicable Portfolio Management Agreement.

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<sup>10</sup> For the avoidance of doubt, the Debtor does not consider any of the Issuers (as defined herein) to be a Related Entity.

The Issuers filed proofs of claim [Claim No. 165, 168, and 169] asserting claims against the Debtor for damages arising from, relating to or otherwise concerning (i) such Issuer's Portfolio Management Agreement(s) with the Debtor, including, without limitation, failure to perform or other breach of the Portfolio Management Agreement(s), rejection of the Portfolio Management Agreement(s), any cure amount as a result of assumption of the Portfolio Management Agreement(s), any adequate assurance of future performance as a result of assumption of the Portfolio Management Agreement(s), and any failure to provide and pay for indemnification or other obligations under the Portfolio Management Agreement(s); and (ii) the action or inaction of the Debtor to the detriment of such Issuer (collectively, the "Issuer Claims"). The Debtor believes that it has satisfied its obligations to the Issuers; that the Issuer Claims lack merit; and that the Debtor will have no liability with respect to the Issuer Claims. However, such proofs of claim remain outstanding.

The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

#### **V. Resignation of James Dondero**

On October 9, 2020, Mr. Dondero resigned as an employee and portfolio manager of the Debtor.

#### **W. Exclusive Periods for Filing a Plan and Soliciting Votes**

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization; however, a court may extend these periods upon request of a party in interest and "for cause."

The Debtor filed motions to extend the exclusive period, and the Bankruptcy Court entered the following orders granting such applications:

- Order Granting Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 460];
- Agreed Order Extending Exclusive Periods by Thirty Days [D.I. 668];

- Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 820]; and
- Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptance of a Chapter 11 Plan [D.I. 1092].

Pursuant to the foregoing orders, the Bankruptcy Court extended the exclusivity period through June 12, 2020, for the filing of a plan, which was subsequently extended through July 13, 2020, and again through August 12, 2020. The Bankruptcy Court also extended the exclusivity period for the solicitation of votes to accept such plan through August 11, 2020, which was subsequently extended through September 10, 2020, and again through October 13, 2020, and December 4, 2020.

#### **X. Negotiations with Constituents**

The Debtor, Mr. Dondero, and certain of the creditors have been negotiating a consensual reorganization plan for the Debtor that contemplates the Debtor continuing its business largely in its current form. Those negotiations have yet to reach conclusion but are continuing, and the negotiations were part of the previously discussed mediation. There is no certainty that those negotiations will reach a consensual resolution of the Debtor's bankruptcy case.

#### **Y. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461.

The Debtor is the contributing sponsor of the Pension Plan. As such, the PBGC asserts that Debtor is liable to contribute to the Pension Plan the amounts necessary to satisfy the minimum funding standards in ERISA and the Internal Revenue Code of 1986, as amended ("IRC"). See 29 U.S.C. §§ 1082, 1083; 26 U.S.C. §§ 412, 430. As the sponsor of the Pension Plan, the PBGC asserts Debtor is also liable for insurance premiums owed to PBGC. See 29 U.S.C. §§ 1306, 1307. The PBGC asserts that any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) are also jointly and severally liable with the Debtor for such obligations relating to the Pension Plan.

The Pension Benefit Guaranty Corporation ("PBGC"), the federal agency that administers the pension insurance program under Title IV of ERISA, filed contingent proofs of claims against the Debtors for (1) the Pension Plan's potential underfunded benefit liabilities; (2) the potential unliquidated unpaid minimum funding contributions owed to the Pension Plan; and (3) the potential unliquidated insurance premiums owed to PBGC. The PBGC acknowledges that, as of the date of this Disclosure Statement, there is nothing currently owed by the Debtor to the PBGC.

The Debtor reserves the right to contest any claims filed by the PBGC for any reason.



Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

No provision contained in the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof), shall be construed as discharging, releasing, exculpating, or relieving any person or entity, including the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, government policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions for satisfaction, release, injunction, exculpation, and discharge of claims in the Plan, Confirmation Order, or the Bankruptcy Code.

### **ARTICLE III. SUMMARY OF THE PLAN**

**THIS ARTICLE III IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ARTICLE III AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL CONTROL AND GOVERN.**

#### **A. Administrative and Priority Tax Claims**

##### **1. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions



relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## 2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

3. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**B. Classification and Treatment of Classified Claims and Equity Interests**

1. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

2. **Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

3. **Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

Please refer to “Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests” and “Instructions and Procedures for Voting” in ARTICLE I.C.7 and ARTICLE I.C.8 for a discussion of how the how votes on the Plan will be solicited and tabulated.

4. **Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

5. **Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

6. Cramdown

If any Class of Claims or Equity Interests is deemed to reject the Plan or does not vote to accept the Plan, the Debtor may (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with the terms of the Plan and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**C. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

The New Frontier Note will include the following terms: (i) an extension of the maturity date to December 31, 2022; (ii) quarterly interest only payments; (iii) a payment on the New Frontier Note equal to fifty percent of the outstanding principal on December 31, 2021, if the New Frontier Note is not paid in full on or prior to such date; (iv) mandatory prepayments from the proceeds of the sale of any collateral securing the New Frontier Note; and (v) the payment of fees and expenses incurred in negotiating the terms of the New Frontier Note.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.



- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

5. *Class 5 – Retained Employee Claims*

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

6. *Class 6 – PTO Claims*

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

“PTO Claims” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

7. *Class 7 – Convenience Claims*

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is

Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

*"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

*"Convenience Claim Pool"* means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

By making the GUC Election on their Ballots, each Holder of a Convenience Claim can elect the treatment provided to General Unsecured Claims.

8. *Class 8 – General Unsecured Claims*

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes the Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and

will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.

“*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

“*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

9. *Class 9 – Subordinated Claims*

- *Classification:* Class 9 consists of the Subordinated Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.

“*Subordinated Claim*” means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a

Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **E. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

#### **F. Means for Implementation of the Plan**

##### **1. Summary**

The Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.



Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in the Plan and the Claimant Trust Agreement.

2. The Claimant Trust<sup>11</sup>

(a) *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant

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<sup>11</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

(a) *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

(b) *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in the Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in Article IV.C of the Plan.

(c) *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

(d) *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

- the payment of the Claimant Trust Expenses;
- the payment of other reasonable expenses of the Claimant Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- the orderly monetization of the Claimant Trust Assets;
- litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

- the administration of the Disputed Claims Reserve and distributions to be made therefrom; and

- the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- the payment of other reasonable expenses of the Litigation Sub-Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.



(e) *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(f) *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

(g) *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(h) *Tax Reporting.*

The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.



The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

(i) *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in the Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

(j) *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

(k) *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

(l) *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

(m) *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

3. The Reorganized Debtor

(a) *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

(b) *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

(c) *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

(d) *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

(e) *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

(f) *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in the Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court

(g) *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in Article IV.B.1 of the Plan, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

4. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement



of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with the Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

5. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

6. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the



cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

7. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

8. Control Provisions

To the extent that there is any inconsistency between the Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, the Plan shall control.

9. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under Article III.C of the Plan shall receive no Plan Distributions.

10. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I of the Plan) and fully enforceable as if stated in full herein.

11. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal

Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**A. Treatment of Executory Contracts and Unexpired Leases**

1. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts

and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [D.I. 1122].

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

3. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with the Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to Article V.C of the Plan shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to Article V.C of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**B. Provisions Governing Distributions**

**1. Dates of Distributions**

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in the Plan. Except as otherwise provided in the Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to the Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under the Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.



At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

2. Distribution Agent

Except as provided herein, all distributions under the Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

3. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

4. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

As used above, "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant



Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

*“Disputed Claims Reserve Amount”* means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

HarbourVest and Mr. Daugherty have objected to the mechanisms for calculating the amount of the Disputed Claims Reserve with respect to the HarbourVest Claim and the Daugherty Claim, respectively, and intend to press their objections at the hearing for confirmation of the Plan.

5. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

6. Rounding of Payments

Whenever the Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under the Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under the Plan.

7. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under the Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in Article VI.I of the Plan within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

8. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in the Plan, all distributions shall be made pursuant to the terms of the Plan and the Confirmation Order. Except as otherwise provided in the Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

9. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under the Plan, unless the Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under the Plan shall not be subject to any claim by any Person.

10. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under the Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

11. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under the Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

12. Withholding Taxes

In connection with the Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under the Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

13. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

14. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to Article IV of the Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

15. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by the Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with Article VI.O of the Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under the Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**C. Procedures for Resolving Contingent, Unliquidated and Disputed Claims**

**1. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**2. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of the Plan.

**3. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**4. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*Allowance of Claims*

After the Effective Date and subject to the other provisions of the Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and



defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

#### *Estimation*

Subject to the other provisions of the Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with the Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

#### *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**



**D. Effectiveness of the Plan**

**1. Conditions Precedent to the Effective Date**

The Effective Date of the Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of Article VIII.B of the Plan of the following:

- the Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to the Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate the Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in the Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under the Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (iii) the implementation of the Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.
- All documents and agreements necessary to implement the Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement the Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to the Plan in an amount determined by the Debtor in good faith.

2. Waiver of Conditions

The conditions to effectiveness of the Plan set forth in Article VIII of the Plan (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate the Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

3. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in Article VIII.B of the Plan, if the Effective Date of the Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

4. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**E. Exculpation, Injunction, and Related Provisions**

**1. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

For purposes of the following provisions:

- “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”
- “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.
- “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO

Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term "Protected Party."

## 2. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

## 3. Exculpation

Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.



4. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to Article IX.D of the Plan (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with



respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to Article IX.D of the Plan will vest and the Employee will be indefeasibly released pursuant to Article IX.D of the Plan if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

In addition to the obligations set forth in Article IX.D of the Plan, as additional consideration for the foregoing releases, the Senior Employees will waive their rights to certain deferred compensation owed to them by the Debtor. As of the date hereof, the total deferred compensation owed to the Senior Employees was approximately \$3.9 million, which will be reduced by approximately \$2.2 million to approximately \$1.7 million. That reduction is composed of a reduction of (i) approximately \$560,000 in the aggregate in order to qualify as Convenience Claims, (ii) approximately \$510,000 in the aggregate to reflect the Convenience Claims treatment of 85% (and may be lower depending on the number of Convenience Claims), and (iii) of approximately \$1.15 million in the aggregate to reflect an additional reduction of 40%.

As of the date of this Disclosure Statement, the Debtor has not identified any Causes of Action against any Released Parties. However, as set forth above, during the Chapter 11 Case, the Committee was granted sole standing to investigate and pursue the Estate Claims, which may include Causes of Action against certain of the Released Parties. As of the date of this Disclosure Statement, the Committee has not identified any Estate Claims against any Released Parties. The Debtor currently believes that there are no material Estate Claims or other Causes of Action against any Released Party.

##### 5. Preservation of Rights of Action

###### *Maintenance of Causes of Action*

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as

appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

6. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any

judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to Article XII. D of the Plan, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in Article XI of the Plan, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

7. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

8. Continuance of January 9 Order

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on

January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**F. Article XII.D of the Plan**

Article XII.D of the Plan provides that, notwithstanding anything in the Plan to the contrary, nothing in the Plan will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**G. Binding Nature of Plan**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in Article IX of the Plan, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a)

**H. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- The Debtor has complied and will comply with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Debtor's bankruptcy case, or in connection with the Plan and incident to the case, has been or will be disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the



approval of the Bankruptcy Court as reasonable if it is to be fixed after confirmation of the Plan;

- Each Class of Claims or Equity Interests that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code;
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full in Cash on the Effective Date, or as soon thereafter as is reasonably practicable;
- Confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor thereto under the Plan;
- The Debtor has paid or will pay all fees payable under section 1930 of title 28, and the Plan provides for the payment of all such fees on the Effective Date; and
- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits, if applicable.

1. Best Interests of Creditors Test

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that each holder of a claim or equity interest in each impaired class: (i) has accepted the plan; or (ii) among other things, will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the net Cash proceeds (the “Liquidation Proceeds”) that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor’s Estate were liquidated; (b) determine the distribution (the “Liquidation Distribution”) that each non-accepting Holder of a Claim or Equity Interest would receive from the Liquidation Proceeds under the priority scheme dictated in chapter 7; and (c) compare each Holder’s Liquidation Distribution to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated.

2. Liquidation Analysis

Any liquidation analysis, including the estimation of Liquidation Proceeds and Liquidation Distributions, with respect to the Debtor (the “Liquidation Analysis”) is subject to numerous assumptions and there can be no guarantee that the Liquidation Analysis will be accurate. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims and Equity Interests at the projected amounts of Allowed Claims



and Equity Interests set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims and Equity Interests that represents its best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims and Equity Interests. The estimate of the amount of Allowed Claims and Equity Interests set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any Plan Distribution to be made on account of Allowed Claims and Equity Interests under the Plan and Disclosure Statement.

The full Liquidation Analysis is attached hereto as Exhibit C.

Furthermore, any chapter 7 trustee appointed in a chapter 7 liquidation would have to confront all of the issues described in this Disclosure Statement, including the prepetition litigation claims. This process would be significantly time-consuming and costly, and reduce any recoveries available to the Debtor's Estate. The Debtor believes that liquidation under chapter 7 would result in (i) smaller distributions being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee, (ii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's operations, and (iii) the failure to realize greater value from all of the Debtor's assets.

Therefore, the Debtor believes that confirmation of the Plan will provide each Holder of a Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

### 3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor, unless the plan contemplates such liquidation or reorganization. For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtor has analyzed the ability of the Claimant Trust and the Reorganized Debtor to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their business. A copy of the financial projections prepared by the Debtor is attached hereto as Exhibit C.

The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. The Debtor believes that its available Cash and any additional proceeds from the Debtor's Assets will be sufficient to allow the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, to make all payments required to be made under the Plan. Accordingly, the Debtor believes that the Plan is feasible.

4. Valuation

In order to provide information and full disclosure to parties in interest regarding the Debtor's assets, the Debtor estimates that its value and the total value of its Assets, as of September 30, 2020, was approximately \$328.3 million.

5. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accepts the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default— (a) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan and are not insiders. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by holders of at least two-thirds in amount of the allowed interests of such class. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. Section 1126(d) of the Bankruptcy Code, except as otherwise provided in section 1126(e) of the Bankruptcy Code, defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of equity interests in that class actually voting to accept or to reject the plan.

Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims or Equity Interests in any voting class must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Class, and without considering whether the Plan "discriminates unfairly" with respect to such Class, as both standards are described herein.

6. Confirmation Without Acceptance by Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if less than all impaired classes entitled to vote on the plan have accepted it, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired Class's rejection or deemed rejection of the Plan, the Plan will be confirmed, at the Debtor's request, in a procedure commonly known as "cram down," so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Plan.

7. No Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

8. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class:

The condition that a plan be "fair and equitable" to a non-accepting Class of Secured Claims includes the requirements that: (a) the Holders of such Secured Claims retain the liens securing such Claims to the extent of the Allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the Plan; and (b) each Holder of a Secured Claim in the Class receives deferred Cash payments totaling at least the Allowed amount of such Claim with a present value, as of the Effective Date of the Plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting Class of unsecured Claims includes the requirement that either: (a) the plan provides that each Holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the allowed amount of such Claim; or (b) the Holder of any Claim or Equity Interest that is junior to the Claims of such Class will not receive or retain under the plan on account of such junior Claim or Equity Interest any property.

The condition that a plan be "fair and equitable" to a non accepting Class of Equity Interests includes the requirements that either: (a) the plan provides that each Holder of an Equity Interest in that Class receives or retains under the plan, on account of that Equity Interest, property of a value, as of the Effective Date of the plan, equal to the greater of (i) the allowed

amount of any fixed liquidation preference to which such Holder is entitled, (ii) any fixed redemption price to which such Holder is entitled, or (iii) the value of such interest; or (b) if the Class does not receive such an amount as required under (a), no Class of Equity Interests junior to the non-accepting Class may receive a distribution under the plan.

To the extent that any class of Claims or Class of Equity Interests rejects the Plan, the Debtor reserves the right to seek (a) confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (b) modify the Plan in accordance with Article XIII.C of the Plan.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan.

#### ARTICLE IV. RISK FACTORS

**ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.**

##### A. Certain Bankruptcy Law and Other Considerations

###### 1. Parties in Interest May Object to the Debtor's Classification of Claims and Equity Interests, or Designation as Unimpaired.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Holders of Claims or Equity Interests or the Bankruptcy Court will reach the same conclusion.

There is also a risk that the Holders of Claims or Equity Interests could object to the Debtor's designation of Claims or Equity Interests as Unimpaired, and the Bankruptcy Court could reach the same conclusion.

###### 2. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, findings by the bankruptcy court that: (i) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a



need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to Holders of Claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. Continued Risk Following Effectiveness.

Even if the Effective Date of the Plan occurs, the Debtor, the Reorganized Debtor, and Claimant Trust will continue to face a number of risks, including certain risks that are beyond its control, such as changes in assets, asset values, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of liquidation reflecting the Plan will achieve the Debtor's stated goals.

In addition, at the outset of the Chapter 11 Case, the Bankruptcy Code provides the Debtor with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtor will have retained the exclusive right to propose the Plan upon filing its petition. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtor's ability to achieve confirmation of the Plan in order to achieve the Debtor's stated goals.

5. The Effective Date May Not Occur.

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.



6. The Chapter 11 Case May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than selling the assets in an orderly and controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. Claims Estimation

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated herein.

8. The Financial Information Contained Herein is Based on the Debtor's Books and Records and, Unless Otherwise Stated, No Audit was Performed.

**The financial information contained in this Disclosure Statement has not been audited.** In preparing this Disclosure Statement, the Debtor relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement and, while the Debtor believes that such financial information fairly reflects its financial condition, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

**B. Risks Related to Recoveries under the Plan**

1. The Reorganized Debtor and/or Claimant Trust May Not Be Able to Achieve the Debtor's Projected Financial Results

The Reorganized Debtor or Claimant Trust, as applicable, may not be able to achieve their projected financial results. The Financial Projections represent the best estimate of the Debtor's future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtor or Claimant Trust, as well as the United States and world economies in general, and the investment industry in which the Debtor operates. The Debtor's Financial Projections include key assumptions on (i) target asset monetization values, (ii) timing of asset monetization, and (iii) costs to effectuate the Plan. In terms of achieving target asset monetization values, the Debtor faces issues including investment assets with cross-ownership across related entities and challenges associated with

collecting notes due from affiliates. The Debtor's Financial Projections anticipate that all investment assets will be sold by 2022, which may be at risk due to the semi-liquid or illiquid nature of the Debtor's assets, as well as general market conditions, including the sustained impact of COVID-19. Costs are based on estimates and may increase with delays or any other unforeseen factor. If the Reorganized Debtor or Claimant Trust do not achieve their projected financial results, the recovery for Claimant Trust Beneficiaries may be negatively affected and the Claimant Trust may lack sufficient liquidity after the Effective Date.

2. Claim Contingencies Could Affect Creditor Recoveries

The estimated Claims and projected creditor recoveries set forth in this Disclosure Statement are based on various assumptions the actual amount of Allowed Claims may differ from the estimates. Should one or more of the underlying assumptions ultimately prove incorrect, the actual Allowed amounts of Claims may vary materially from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

3. If Approved, the Debtor Release Could Release Claims Against Potential Defendants of Estate Causes of Action With Respect to Which the Claimant Trust Would Otherwise Have Recourse

The Claimant Trust Assets will include, among other things, Causes of Action, including Estate Claims that will be assigned to the Litigation Sub-Trust. The Committee's investigation of potential Estate Claims is still ongoing. Because the Committee has not concluded its investigation as of the date hereof, and such investigation will be transferred to the Litigation Trustee, there is no certainty of whether there are viable Estate Claims against any of the Released Parties. In the event there are viable Estate Claims against any of the Released Parties, such claims cannot be pursued for the ultimate benefit of Claimant Trust Beneficiaries if the Debtor Release is approved.

**C. Investment Risk Disclaimer**

1. Investment Risks in General.

The Reorganized Debtor is and will remain a registered investment adviser under the Investment Advisers Act of 1940, and the Reorganized Debtor will continue advising the Managed Funds. No guarantee or representation is made that the Reorganized Debtor's or the Managed Funds' investment strategy will be successful, and investment results may vary substantially over time.

2. General Economic and Market Conditions and Issuer Risk.

Any investment in securities carries certain market risks. Investments by the Reorganized Debtor, the Managed Funds, or the Claimant Trust may decline in value for any number of reasons over which none of the Managed Funds, the Reorganized Debtor, the Claimant Trust, or the Claimant Trustee may have control, including changes in the overall

market and other general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, currency exchange rates and controls and national, international political circumstances (including wars and security operations), and acts of God (including pandemics like COVID-19). The value of the Managed Funds or the assets held by the Reorganized Debtor or Claimant Trust may also decline as a result of factors pertaining to particular securities held by the Managed Funds, Reorganized Debtor, or Claimant Trust, as applicable, such as perception or changes in the issuer's management; the market for the issuer's products or services, sources of supply, technological changes within the issuer's industry, the availability of additional capital and labor, general economic conditions, political conditions, acts of God, and other similar conditions. All of these factors may affect the level and volatility of security prices and the liquidity and the value of the securities held by the Managed Fund, Reorganized Debtor, or Claimant Trust. Unexpected volatility or illiquidity could impair the Managed Funds', Reorganized Debtor's, or Claimant Trust's profitability or result in it suffering losses.

**D. Disclosure Statement Disclaimer**

1. The Information Contained Herein is for Disclosure Purposes Only.

The information contained in this Disclosure Statement is for purposes of disclosure in connection with the Plan and may not be relied upon for any other purposes.

2. This Disclosure Statement was Not Approved by the SEC.

Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

3. This Disclosure Statement Contains Forward-Looking Statements.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements.

4. No Legal or Tax Advice is Provided to You by This Disclosure Statement.

**This Disclosure Statement is not legal or tax advice to you.** The contents of this Disclosure Statement should not be construed as legal, business or tax advice, and are not personal to any person or entity. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than as a disclosure of certain information to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Admissions Are Made by This Disclosure Statement.

The information and statements contained in this Disclosure Statement will neither (i) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Reorganized Debtor, the Claimant Trust, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

6. No Reliance Should Be Placed on Any Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Reorganized Debtor or Claimant Trustee, as applicable, may seek to investigate, file and prosecute litigation rights and claims against any third parties and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such litigation claims or objections to Claims or Equity Interests.

7. Nothing Herein Constitutes a Waiver of Any Right to Object to Claims or Equity Interests or Recover Transfers and Assets.

The Debtor, the Reorganized Debtor, the Claimant Trustee, or any party in interest, as the case may be, reserve any and all rights to object to that Holder's Allowed Claim regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

8. The Information Used Herein was Provided by the Debtor and was Relied Upon by the Debtor's Advisors.

Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

9. The Disclosure Statement May Contain Inaccuracies.

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, the information contained in this Disclosure Statement is as of the date of the Disclosure Statement and does not address events that may occur after such date. The Debtor may update this Disclosure Statement but is not required to do so.



10. No Representations Made Outside the Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

**ARTICLE V.**

**ALTERNATIVES TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which case, a trustee would be elected or appointed to liquidate the Debtor's assets. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

**ARTICLE VI.**

**U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Implementation of the Plan will have federal, state, local or foreign tax consequences to the Debtor and Holders of Equity Interests as well as Holders of Claims. No tax opinion or ruling has been sought or will be obtained with respect to any tax consequences of the Plan, and the following discussion does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims. This discussion assumes that each Holder of Claims is for United States federal income tax purposes:

- An individual who is a citizen or resident of the United States for federal income tax purposes;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any other person that is subject to U.S. federal income taxation on a net income basis.
- an estate the income of which is subject to United States federal income tax without regard to its source; or
- a trust (1) that is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) that has a valid election in effect under applicable treasury regulations to be treated as a United States person.



This discussion also assumes that each Holder holds the Claims as capital assets under Section 1221 of the Internal Revenue Code.

The summary provides general information only and does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder of Claims in light of such Holder's own individual circumstances. In particular, the summary does not address the federal income tax consequences of the Plan to Holders of Claims that may be subject to special rules, such as non-U.S. persons, insurance companies, financial institutions, regulated investment companies, broker-dealers, persons who acquired Claims as part of a straddle, hedge, conversion transaction or other integrated transaction, or persons who acquired Claims in connection with the performance of services; persons who hold Claims through a partnership or other pass-through entity and tax-exempt organizations. The summary does not address foreign, state, local, estate or gift tax consequences of the Plan, nor does it address the federal income tax consequences to Holders of Equity Interests.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the final, temporary and proposed Treasury regulations promulgated thereunder, judicial decisions and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, judicial decision or administrative action. Moreover, due to a lack of definitive authority, substantial uncertainties exist with respect to various tax consequences of the Plan.

**THE TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS OR EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.**

**A. Consequences to the Debtor**

It is anticipated that the consummation of the Plan will not result in any federal income tax liability to the Debtor. The Debtor is a partnership for federal income tax purposes. Therefore, the income and loss of the Debtor is passed-through to the Holders of its Equity Interests, and the Debtor does not pay federal income tax.

**1. Cancellation of Debt**

Generally, the discharge of a debt obligation of a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income that must be included in the debtor's income. Due to the nature of the Impaired Claims, it is anticipated that

the Debtor will not recognize any material amount of COD income. If any such COD income is recognized, it will be passed-through to the Holders of its Equity Interests, and the Holders of such Equity Interest generally will be required to include such amounts in income, unless a Holder is entitled to exclude such amounts from income under Section 108 of the Internal Revenue Code, based on the Holder's individual circumstances.

## 2. Transfer of Assets

Pursuant to the Plan, the Debtor's assets (including the Claimant Trust Assets and Reorganized Debtor Assets) will be transferred directly or indirectly to the Claimant Trust. For federal income tax purposes, any such assets transferred to the Claimant Trust will be deemed to have been transferred to the Claimant Trust Beneficiaries followed by the transfer by such Holders to the Claimant Trust of such assets in exchange for the respective Holders' beneficial interests in the Claimant Trust. The Claimant Trust thereafter will be treated as a grantor trust for federal income tax purposes. See U.S. Federal Income Tax Treatment of the Claimant Trust, below.

The Debtor's transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets. As discussed above, the Debtor is a partnership for federal income tax purposes. Any gain or loss recognized as a result of the taxable disposition of such assets will be passed through to the Holders of Equity Interests in the Debtor. The Debtor will not be required to pay any tax as a result of such disposition.

## **B. U.S. Federal Income Tax Treatment of the Claimant Trust**

It is intended that the Claimant Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Claimant Trust Agreement requires all relevant parties to treat, for U.S. federal income tax purposes, the transfer of the Debtor's assets to the Claimant Trust as (i) a transfer of such assets to the Claimant Trust Beneficiaries (to the extent of the value of their respective interests in the applicable Claimant Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Claimant Trust (to the extent of the value of their respective interests in the applicable Claimant Trust Assets), with the beneficiaries being treated as the grantors and owners of the Claimant Trust.

The Plan and the Claimant Trust Agreement generally provide that the Claimant Trust Beneficiaries must value the assets of the Claimant Trust consistently with the values determined by the Claimant Trustee for all U.S. federal income tax purposes. As soon as possible after the Effective Date, the Claimant Trustee, based upon his good faith determination after consultation with his counsel and other advisors, shall inform the beneficiaries in writing as to his estimate of the value of the assets transferred to the Claimant Trust and the value of such assets allocable to each Class of beneficiaries.

Consistent with the treatment of the Claimant Trust as a grantor trust, the Claimant Trust Agreement will require each beneficiary to report on its U.S. federal income tax return its allocable share of the Claimant Trust's income, gain, loss or deduction that reflects the

beneficiary's interest in the interim and final distributions to be made by the Claimant Trust. Furthermore, certain of the assets of the Claimant Trust will be interests in the Reorganized Debtor, which will be a partnership for U.S. federal income tax purposes. The income, gain, loss or deduction of the Reorganized Debtor will also flow through the Claimant Trust to the beneficiaries of the Claimant Trust. Therefore, a beneficiary may incur a federal income tax liability with respect to its allocable share of the income of the Claimant Trust (including the income of the Reorganized Debtor) whether or not the Claimant Trust has made any distributions to such beneficiary. The character of items of income, gain, deduction, and credit to any beneficiary and the ability of such beneficiary to benefit from any deduction or losses will depend on the particular situation of such beneficiary. The interests of the beneficiaries may shift from time to time as the result of the allowance or disallowance of claims that have not been allowed at the Effective Date, which could give rise to tax consequences both to the Holders of claims that have, and have not been, allowed at the Effective Date. The Claimant Trustee will file with the IRS tax returns for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each beneficiary a separate statement setting forth such beneficiary's share of items of Trust income, gain, loss, deduction, or credit. Each beneficiary will be required to report such items on its U.S. federal income tax return. Holders are urged to consult their tax advisors regarding the appropriate federal income tax treatment of distributions from the Claimant Trust.

The discussion above assumes that the Claimant Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Claimant Trust and the beneficiaries could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Claimant Trust).

### **C. Consequences to Holders of Allowed Claims**

#### **1. Recognized Gain or Loss**

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such Holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). In general, the "amount realized" by a Holder will equal the sum of any cash and the aggregate fair market value of any property received by such Holder pursuant to the Plan (for example, such Holder's undivided beneficial interest in the assets of the Claimant Trust). A Holder that receives or is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its receipt or deemed receipt. See U.S. Federal Income Tax Treatment of the Claimant Trust, above for more information regarding the tax treatment of the Claimant Trust Interests.

Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long it has been held, whether the claim was acquired at

a market discount, and whether and to what extent the Holder had previously claimed a bad debt deduction.

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled to a deduction for U.S. federal income tax purposes. The rules governing the character, timing and amount of such a deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

2. Distribution in Discharge of Accrued Unpaid Interest

Pursuant to the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received (whether cash or other property) by a Holder of a claim is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as interest income if not previously included in the Holder's gross income. Conversely, a Holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult their tax advisors regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

3. Information Reporting and Withholding

All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding" (currently at a rate of up to 24%). Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

**D. Treatment of the Disputed Claims Reserve**

Pursuant to the Plan, the Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity. Such taxes will be paid out of the Disputed Claims Reserve and therefore may reduce amounts paid to Holders of Allowed Claims from the Claimant Trust. If the Claimant Trustee does not make such an election to treat the Disputed Claims Reserve as a separate taxable entity, the net income, if any, earned in the Disputed Claims Reserve will be taxable to the Holders of Allowed Claims in accordance with



the principles discussed above under the heading “U.S. Federal Income Tax Treatment of the Claimant Trust”, possibly in advance of any distributions to the Holders.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PLAN.**

#### **ARTICLE VII. RECOMMENDATION**

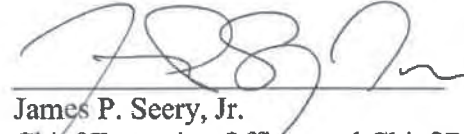
In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distribution to the Debtor’s creditors and interest holders. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.



Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.



James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

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001524

**EXHIBIT A**

**PLAN OF REORGANIZATION**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)  
)

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

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

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**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” means an “affiliate” as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not



unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all



distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.



51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

59. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

62. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

69. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

71. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

77. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

87. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. “*Petition Date*” means October 16, 2019.

91. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of



Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.



104. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

105. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

107. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. “*Related Entity*” means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. “UBS” means, collectively, UBS Securities LLC and UBS AG London Branch.

132. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.



**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.



**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

**1. Class 1 – Jefferies Secured Claim**

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

### B. The Claimant Trust<sup>2</sup>

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

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rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be



overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.



5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the



Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

*1. Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

*2. Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

*3. Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

*4. Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant



Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.



ARTICLE V.

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).



Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

## **ARTICLE VI.**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor’s books and records.



If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to



such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*1. Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

*2. Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized



Debtor, or the Claimant Trust, as applicable.

**C. Effect of Non-Occurrence of Conditions to Effectiveness**

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

**D. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.  
EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose



before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

*1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

#### **G. Term of Injunctions or Stays**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.



**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to pay taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.  
RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;



- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.



**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: November 24, 2020

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief  
Restructuring Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)

Ira D. Kharasch (CA Bar No. 109084)

Gregory V. Demo (NY Bar No. 5371992)

10100 Santa Monica Boulevard, 13th Floor

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Email: [jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)

[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)

[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

and

**HAYWARD & ASSOCIATES PLLC**

Melissa S. Hayward (TX Bar No. 24044908)

Zachery Z. Annable (TX Bar No. 24053075)

10501 N. Central Expy, Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Facsimile: (972) 755-7110

Email: [MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com)

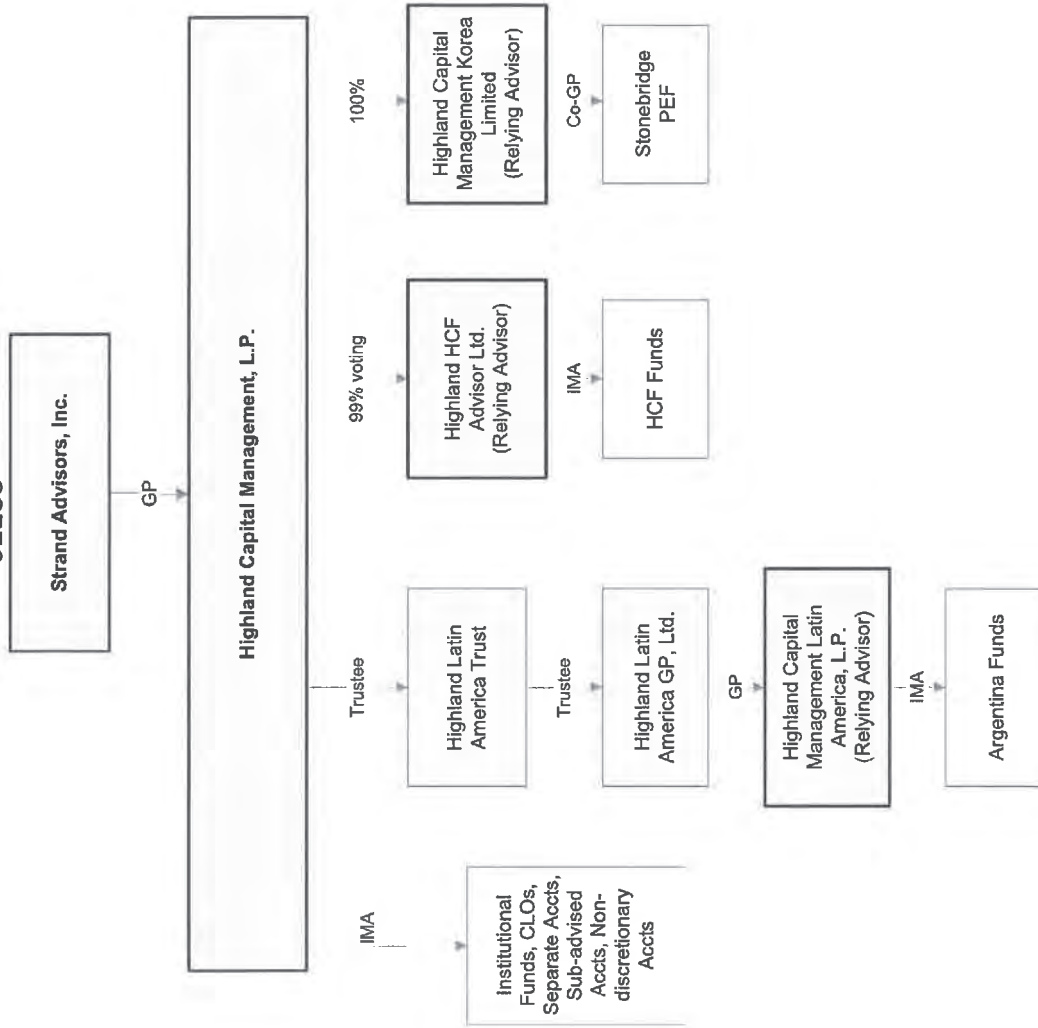
[ZAnnable@HaywardFirm.com](mailto:ZAnnable@HaywardFirm.com)

*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT B**

**ORGANIZATIONAL CHART OF THE DEBTOR**

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**EXHIBIT C**

**LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS**

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**Highland Capital Management, L.P.  
Disclaimer For Financial Projections**

This document includes financial projections for July 2020 through December 2022 (the “Projections”) for Highland Capital Management, L.P. (“Company”). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company’s anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

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11/13/2020

*Highland Capital Management, L.P.*  
*Statement of Assumptions*

- A. Plan effective date is January 31, 2021.
- B. All investment assets are sold by December 31, 2022.
- C. All demand notes are collected in the year 2021.
- D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
- E. Fixed assets used in daily business operations are sold in February 2021.
- F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
- G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter.
- H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
- I. Litigation Trustee budget is \$6,500,000.
- J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
- K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
- L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
- M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume \$0 for UBS, IFA, HM and HV.
  - Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
- N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
- O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate \$13.15 million. Plan currently projects Class 7 payout of \$9.96 million.
- P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
  - o By September 30, 2021 - \$50,000,000
  - o By March 31, 2022 – additional \$50,000,000
  - o By June 30, 2022 – additional \$25,000,000
  - o All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

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Highland Capital Management, L.P.  
Plan Analysis Vs. Liquidation Analysis  
(US \$000's)

	Plan Analysis
Estimated cash on hand at 1/31/2020	\$ 25,076
Estimated proceeds from monetization of assets [1][2]	190,445
Estimated expenses through final distribution[1][3]	(33,642)
Total estimated \$ available for distribution	181,879
Less: Claims paid in full	
Unclassified [4]	(1,078)
Administrative claims [5]	(10,574)
Class 1 - Jefferies Secured Claim	-
Class 2 - Frontier Secured Claim [6]	(5,463)
Class 3 - Other Secured Claims	(551)
Class 4 - Priority Non-Tax Claims	(16)
Class 5 - Retained Employee Claims	-
Class 6 - PTO Claims	-
Class 7 - Convenience Claims [7][8][9]	(10,255)
Subtotal	(27,937)
Estimated amount remaining for distribution to general unsecured claims	
Class 8 - General Unsecured Claims [8][10]	153,942
Subtotal	176,049
% Distribution to general unsecured claims	176,049
Estimated amount remaining for distribution	87.44%
Class 9 - Subordinated Claims	-
Class 10 - Class B/C Limited Partnership Interests	no distribution
Class 11 - Class A Limited Partnership Interest	no distribution

Footnotes:

- [1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee  
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets
- [2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable
- [3] Estimated expenses through final distribution exclude non-cash expenses:  
Depreciation of \$462 thousand in 2021

**Highland Capital Management, L.P.**  
**Balance Sheet**  
**(US \$000's)**

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21
<b>Assets</b>							
Cash and Cash Equivalents	\$ 14,994	\$ 5,888	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-
<b>TOTAL ASSETS</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>
<b>Liabilities</b>							
Post-petition Liabilities	\$ 26,226	\$ 19,138	\$ 19,280	\$ 2,891	\$ -	\$ -	\$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-
Claims							
Unclassified	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,210	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049
Class 9 – Subordinated Claims	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049
<b>TOTAL LIABILITIES</b>	<b>\$ 152,591</b>	<b>\$ 145,481</b>	<b>\$ 141,230</b>	<b>\$ 184,150</b>	<b>\$ 176,049</b>	<b>\$ 126,049</b>	<b>\$ 126,049</b>
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309



**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Actual	Actual	Forecast --->	3 month
	Jan 2020 to June 2020	Actual	Forecast	Mar
	2020 Total	Sept 2020	Dec 2020	Total 2020
Revenue				
Management Fees	\$ 6,572	\$ 1,949	\$ 2,651	\$ 11,173
Shared Service Fees	7,672	3,765	3,788	15,225
Other Income	3,126	538	340	4,004
Total revenue	\$ 17,370	\$ 6,252	\$ 6,779	\$ 30,401
Operating Expenses [1]	13,328	9,171	9,079	31,579
Income/(loss) From Operations	\$ 4,042	\$ (2,918)	\$ (2,301)	\$ (1,177)
Professional Fees	17,522	7,707	7,741	32,971
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878
Operating Gain/(Loss)	\$ (11,178)	\$ (9,107)	\$ (8,985)	\$ (29,270)
Realized and Unrealized Gain/(Loss)				
Other Realized Gains/(Loss)	-	-	-	-
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)
Net Realized Gain/(Loss) from Equity Method Investees	-	-	(94)	(94)
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)
Total Realized and Unrealized Gain/(Loss)	\$ (139,129)	\$ (7,601)	\$ (12,262)	\$ (158,992)
Net Income	\$ (150,307)	\$ (16,708)	\$ (21,247)	\$ (188,262)

Footnotes:

**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Forecast --->			
	3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022
Revenue				
Management Fees	\$ -	\$ -	\$ -	\$ -
Shared Service Fees	-	-	-	-
Other Income	-	-	-	-
Total revenue	\$ -	\$ -	\$ -	\$ -
Operating Expenses	1,443	643	758	1,088
Income/(loss) From Operations	\$ (1,443)	\$ (643)	\$ (758)	\$ (1,088)
Professional Fees	2,788	2,788	1,288	1,288
Other Income/(Expenses)	408	419	434	184
Operating Gain/(Loss)	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (2,193)
Realized and Unrealized Gain/(Loss)				
Other Realized Gains/(Loss)	-	-	-	(51,775)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-
Net Realized Gain/(Loss) from Equity Method Investees	-	-	-	-
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	\$ -	\$ -	\$ -	\$ (51,775)
Net Income	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (53,967)

**Highland Capital Management, L.P.**  
**Cash Flow Indirect**  
**(US \$000's)**

	Forecast ---->				
	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21
	\$	\$	\$	\$	\$
Net (Loss) Income	(16,708)	(21,247)	(71,794)	(28,167)	(8,134)
Cash Flow from Operating Activity					
(Increase) / Decrease in Cash	231	231	231	231	-
Depreciation and amortization	-	-	763	(522)	-
Other realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702
Investment realized (gain)/ loss	(9,150)	-	-	-	-
Unrealized (gain) / loss	(470)	3,092	930	1,884	417
(Increase) Decrease in Current Assets	(7,110)	(4,251)	(54,172)	(2,891)	-
Increase (Decrease) in Current Liabilities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)
Net Cash Increase / (Decrease) - Operating Activities	25,650	32,366	3,002	102,457	46,531
Cash Flow From Investing Activities					
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-
Proceeds from Investment Assets	25,650	32,366	3,252	104,096	46,531
Net Cash Increase / (Decrease) - Investing Activities	-	-	(73,997)	(5,210)	(50,000)
Cash Flow from Financing Activities					
Claims payable	-	-	181,259	-	-
Claim reclasses/(paid)	-	-	(4,975)	-	-
Maple Avenue Holdings	-	-	(5,195)	-	-
Frontier Note	-	-	97,092	(5,210)	(50,000)
Net Cash Increase / (Decrease) - Financing Activities	(9,107)	22,454	(23,408)	91,979	(6,484)
Net Change in Cash	14,994	5,888	28,342	4,934	96,913
Beginning Cash	5,887	28,342	4,934	96,913	90,428
Ending Cash					



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed November 24, 2020

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE  
STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIFTH  
AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR  
FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING  
FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION  
PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the "Debtor") seeking entry of an order: (a) approving the adequacy of the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020 (as amended or modified, the "Disclosure Statement"); (b)

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

<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed thereto in the Motion.

scheduling a hearing to confirm the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as amended or modified, the “Plan”); (c) fixing an objection deadline to the Plan; (d) approving the forms of ballots, the voting deadline and solicitation procedures; and (e) approving the form and manner of notices related thereto; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief and that such relief is in the best interests of the Debtor’s estate and creditors; it is hereby **ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. The Disclosure Statement is hereby **APPROVED** for solicitation as provided for herein.
3. A hearing to confirm the Plan (the “Confirmation Hearing”) will commence on **January 13, 2021, at 9:30 a.m. (prevailing Central Time)**.
4. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, all without further notice to parties-in-interest.
5. The deadline to file and serve objections to the confirmation of the Plan (the “Plan Objection Deadline”) shall be on **January 5, 2021, at 5:00 p.m. (prevailing Central Time)**.
6. All objections to the confirmation of the Plan, if any, must: (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Local Bankruptcy Rules for the Northern District of Texas (the “Local Rules”); (iii) be filed with the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”); and (iv) be served upon by the following parties: (a) counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13<sup>th</sup> Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Ira D. Kharasch, and Gregory V. Demo, Emails: jpomerantz@pszjlaw.com, ikharasch@pszjlaw.com, and gdemo@pszjlaw.com; (b) counsel for



the Debtor, Hayward & Associates PLLC, 10501 N. Central Expy, Ste. 106, Dallas, Texas 75231, Attn: Melissa S. Hayward and Zachery Z. Annable, Emails: MHayward@HaywardFirm.com and ZAnnable@HaywardFirm.com; (c) counsel to the official committee of unsecured creditors, Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, Attn: Matthew A. Clemente and Alyssa Russell, Emails: mclemente@sidley.com and Alyssa.russell@sidley.com; and (d) counsel for the Office of the United States Trustee, U.S. Department of Justice, Region 6: Northern District of Texas, Office of The United States Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Lisa L. Lambert, Email: Lisa.L.Lambert@usdoj.gov (collectively, the “Notice Parties”).

7. The Debtor shall be allowed to file a brief in support of confirmation of the Plan on or before January 11, 2021, at 5:00 p.m. (prevailing Central Time) and a reply to any objections to the Plan on or before January 11, 2021, at 5:00 p.m. (prevailing Central Time).

8. The Court shall consider only written objections to the Plan that are timely filed by the Plan Objection Deadline and served upon the Notice Parties.

9. All objections to the Plan must (a) conform to the Bankruptcy Rules, the Local Rules and any orders of the Court in this chapter 11 case, (b) state with particularity the legal and factual grounds for such objection, (c) provide, where applicable, the specific text that the objecting party believes to be appropriate to insert into the Plan, and (d) describe the nature and amount of the objector’s claim or interest.

10. Objections to the Plan not timely filed and served in accordance with the provisions of this Order shall not be heard and shall be overruled.

11. The Voting Record Date is November 23, 2020.

12. The deadline for casting a Ballot to accept or reject the Plan (the “Voting Deadline”) shall be January 5, 2021, at 5:00 p.m. (prevailing Central Time).

13. All Ballots accepting or rejecting the Plan must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by no later than 5:00 p.m. (prevailing Central Time) on the Voting Deadline at the following address, as specified on each Ballot, whether sent by

first class mail, personal delivery, or overnight courier:

HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

14. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions solely through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.

15. The Debtor or the Court may extend the period during which votes will be accepted by the Debtor, in which case the Voting Deadline for such solicitation shall mean the last time and date to which such solicitation is extended.

16. The forms of Ballots and voting instructions thereto, substantially in the form attached hereto as Exhibit A, are hereby approved.

17. All votes to accept or reject the Plan must be cast by using the appropriate Ballot.

18. The Solicitation Procedures are hereby approved; *provided, however*, the Debtor reserves the right to modify, amend or supplement the Solicitation Procedures subject to Court approval.

19. No later than four (4) business days after entry of this Order, (or as soon as reasonably practicable thereafter), the Debtor shall cause the following solicitation materials (the "Solicitation Package") to be distributed to (i) all known holders of claims and interests in Classes 2, 7, 8, 9, 10 and 11 as of the Voting Record Date who are entitled to vote on the Plan, (ii) the U.S. Trustee, and (iii) the Securities and Exchange Commission:

- a. A CD Rom or a flash drive containing the Plan, the Disclosure Statement and a copy of this Disclosure Statement Order (without exhibits);
- b. the appropriate Ballot and voting instructions;
- c. the Confirmation Hearing Notice;
- d. any supplemental solicitation materials filed with the Court; and

- e. a pre-addressed return envelope.

20. The Debtor shall cause to be served on members of Classes 1, 3, 4, 5 and 6 only with (i) the Confirmation Hearing Notice, and (ii) the Notice of Non-Voting Status. Service of such documents under the procedures set forth in the Motion and this Order shall constitute adequate transmission of materials required under Bankruptcy Rule 3017(d).

21. Creditors who have more than one claim within the same Class shall receive only one Solicitation Package and one Ballot for each claim.

22. Each holder of a claim shall be entitled to vote to accept or reject the Plan in the amount of such claim as is held on the Voting Record Date.

23. With respect to claims, and solely for purposes of voting on the Plan:

- a. If an objection has not been filed to a claim, the amount of such claim for voting purposes shall be the non-contingent, liquidated and undisputed claim amount contained on a timely filed proof of claim or, if no timely filed proof of claim was filed, the non-contingent, liquidated and undisputed amount of such claim listed in the Debtor's schedules filed with the Court;
- b. If a claim for which a proof of claim has been timely filed is wholly contingent, unliquidated or disputed, undetermined or unknown in amount, such claim shall be temporarily allowed in the amount of \$1.00 for voting purposes only, and not for purposes of allowance or distribution;
- c. If a claim is partially liquidated and partially unliquidated, such claim shall be allowed for voting purposes only in the liquidated amount;
- d. If an objection to a timely filed claim is filed, such claim shall be disallowed for voting purposes only and not for purposes of allowance or distribution, except to the extent and in the manner as may be set forth in such objection;
- e. Proofs of claim filed for \$0.00 are not entitled to vote;
- f. Notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased one or more duplicate claims within the same Class shall be provided with only one Solicitation Package and one Ballot for voting a single claim in such Class, regardless of whether the Debtor has objected to such duplicate claims;
- g. If a claim is the subject of an amended proof of claim, the originally filed proof of claim shall be deemed superseded by the later filed amended proof of claim, regardless of whether or not the Debtor has objected to such claim, and only the amended proof of claim shall be used for the

purpose of determining voting eligibility in accordance with the provisions herein;

- h. For purposes of the numerosity requirement of section 1126(c), separate claims held by a single creditor in a particular Class shall be aggregated as if such creditor held one claim against the Debtor in such Class, and the votes related to such claims shall be treated as a single vote to accept or reject the Plan;
- i. If a claim has been disallowed by agreement of the applicable creditor or order of the Court at any time before the Voting Deadline, such claim shall also be disallowed for voting purposes; and
- j. If a claim has been estimated or otherwise allowed for voting purposes by order of the Court, such claim shall be temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution.

24. Creditors seeking temporary allowance of their claims for voting purposes must serve the Notice Parties and file with the Court a motion seeking temporary allowance for voting purposes. Any such motion, with evidence in support thereof, must be filed no later than such date that will enable a hearing thereon to be held on or prior to the Voting Deadline. It shall be the responsibility of each creditor filing such a motion to schedule a hearing thereon to occur at or prior to the Voting Deadline.

25. The following general voting procedures and standard assumptions are to be used in tabulating Ballots:

- a. Except to the extent the Debtor otherwise determines, or as permitted by the Court, Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
- b. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
- c. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
- d. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
- e. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
- f. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;

- g. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
- h. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; (b) overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
- i. Ballots submitted by facsimile, email or other means of electronic transmission, other than the online balloting portal, will not be counted;
- j. No Ballot sent to the Debtor or the Debtor's financial or legal advisors shall be accepted or counted;
- k. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with section 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms of the Plan, the Debtor will disseminate additional solicitation materials and will extend the solicitation in each case to the extent directed by the Court;
- l. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
- m. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
- n. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;



- o. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor in its sole discretion, which determination shall be final and binding;
- p. If a designation is requested under section 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
- q. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
- r. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
- s. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
- t. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
- u. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and
- v. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

26. The Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit B, is hereby approved.

27. The Debtor shall serve the Confirmation Hearing Notice by no later than four (4) business days following the entry of this Order (or as soon as reasonably practicable thereafter), on (i) the U.S. Trustee, (ii) counsel to the official committee of unsecured creditors (iii) the Securities and Exchange Commission, (iv) all creditors on the list of creditors and equity security holders maintained by the Balloting Agent in this chapter 11 case, and (v) those parties who requested notice pursuant to Bankruptcy Rule 2002.

28. The Notice of Non-Voting Status, substantially in the form attached hereto as Exhibit C, is hereby approved.

29. The Assumption Notice, substantially in the form attached hereto as Exhibit D, is hereby approved.

30. Consistent with section 1126 and Bankruptcy Rule 3017(d), Solicitation Packages shall not be distributed to holders of claims in the Non-Voting Classes (*i.e.*, Classes 1, 3, 4, 5 and 6); *provided, however*, that members of Classes 1, 3, 4, 5 and 6 shall receive the Confirmation Hearing Notice and Notice of Non-Voting Status, which includes instructions on how to obtain copies of the Solicitation Package, if so desired.

31. To the extent that the Debtor, in its sole discretion, elects to publish the Confirmation Hearing Notice, such publication, substantially in the form of Confirmation Hearing Notice attached hereto as Exhibit B, is approved, and the Debtor, to the extent that it elects to publish the Confirmation Hearing Notice, shall publish the Confirmation Hearing Notice in the national edition of the *Wall Street Journal* or similar paper of national circulation on or before **December 6, 2020**, and may pay the costs of such publication.

32. The Debtor is excused from re-mailing Solicitation Packages, the Confirmation Hearing Notice, or Notice of Non-Voting Status, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtor's records as of the Voting Record Date.

33. The Debtor is authorized and empowered to take all actions and execute such other documents as may be necessary to implement the relief granted herein.

34. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**### END OF ORDER ###**

**EXHIBIT A**

**Forms of Ballot for Classes 2, 7, 8, 9, 10 and 11**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11

)  
) Case No. 19-34054-sgj11

**NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE  
OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN  
THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS  
AUTHORIZED BY THE BANKRUPTCY COURT**

**BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.***

**CLASS 2 BALLOT – Frontier Secured Claim**

**PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS  
CAREFULLY BEFORE COMPLETING THE BALLOT.**

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the “Plan”). All capitalized terms used in this ballot (the “Ballot”), including in the voting instructions attached to this Ballot (the “Voting Instructions”), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order [Docket No. \_\_\_\_] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the “Disclosure Statement”) as containing adequate information and authorized the above-captioned debtor (the “Debtor”) to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

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

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

**BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.**

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**This Ballot must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the “Voting Deadline”), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term “Voting Deadline” shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.**

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**Item 1. Acceptance or Rejection of the Plan**

The undersigned certifies that as of November 23, 2020 (the “Record Date”), the undersigned was the holder of a Class 2 Frontier Secured Claim in the aggregate outstanding amount of \$ \_\_\_\_\_.<sup>2</sup>

**CHECK ONE BOX**

- ☐ I hereby vote the above Claim to ACCEPT the Plan
- ☐ I hereby vote the above Claim to REJECT the Plan

**NOTE: You must vote all of your Class 2 Claim either to accept or reject the Plan, and may not split such vote.**

**Item 2. Certification**

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 2 Claim set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

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<sup>2</sup> For voting purposes only. Subject to tabulation rules.



(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of the Class 2 Claim;

(iv) no other Ballots with respect to the Class 2 Claim identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 2 Claim, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(If appropriate)

TITLE: \_\_\_\_\_  
(If appropriate)

ADDRESS: \_\_\_\_\_

TEL. NO. ( ) \_\_\_\_\_ - \_\_\_\_\_ DATE: \_\_\_\_\_

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT [HIGHLANDINFO@KCCLLC.COM](mailto:HIGHLANDINFO@KCCLLC.COM) AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

**IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.**

**If by first class mail, personal delivery or overnight mail, to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

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Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

**IMPORTANT NOTE:** You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #: \_\_\_\_\_  
Unique Electronic Ballot PIN #: \_\_\_\_\_

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

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### VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;
7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.
10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;
11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;
16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.



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

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE  
OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN  
THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS  
AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 7 BALLOT – Convenience Claims

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS  
CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the “Plan”). All capitalized terms used in this ballot (the “Ballot”), including in the voting instructions attached to this Ballot (the “Voting Instructions”), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order [Docket No. \_\_\_\_] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the “Disclosure Statement”) as containing adequate information and authorized the above-captioned debtor (the “Debtor”) to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

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

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

**BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.**

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**This Ballot must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the “Voting Deadline”), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term “Voting Deadline” shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.**

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**Item 1. Acceptance or Rejection of the Plan**

The undersigned certifies that as of November 23, 2020 (the “Record Date”), the undersigned was the holder of a Class 7 Convenience Claim in the aggregate outstanding amount of \$ \_\_\_\_\_.<sup>2</sup>

**CHECK ONE BOX**

- ☐ I hereby vote the above Claim to ACCEPT the Plan
- ☐ I hereby vote the above Claim to REJECT the Plan

**NOTE: You must vote all of your Class 7 Convenience Claim either to accept or reject the Plan, and may not split such vote.**

**Item 2. GUC Election – Optional and Voluntary Election to Receive the Treatment Provided to Class 8 General Unsecured Claims.**

If you check the box below, your Claim will receive the treatment provided to Class 8 General Unsecured Claims and you will receive (i) your Pro Rata share of the Claimant Trust Interests or (ii) such other less favorable treatment as to which you and the Claimant Trustee shall have agreed upon in writing.

If you check the box below and elect to have your Class 7 Convenience Claim treated as a Class 8 General Unsecured Claim; (i) your vote on this Ballot to accept or reject the Plan will still be tabulated as a vote in Class 7 with respect to the Plan, but your Claim will receive the treatment afforded to Class 8 General Unsecured Claims; and (ii) you will be giving up all distributions to Class 7 Convenience Class Claims in exchange for the treatment provided to Class 8 General Unsecured Claims.

- ☐ I hereby elect to have my Class 7 Convenience Claim identified in Item 1 treated

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<sup>2</sup> For voting purposes only. Subject to tabulation rules.

as a Class 8 General Unsecured Claim for all purposes.

**Item 3. Certification**

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 7 Convenience Claim(s) set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 7 Convenience Claims;

(iv) no other Ballots with respect to the Class 7 Convenience Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 7 Convenience Claims, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(If appropriate)

TITLE: \_\_\_\_\_  
(If appropriate)

ADDRESS: \_\_\_\_\_

TEL. NO. ( ) \_\_\_\_\_ - \_\_\_\_\_ DATE: \_\_\_\_\_

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a

claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT [HIGHLANDINFO@KCCLLC.COM](mailto:HIGHLANDINFO@KCCLLC.COM) AND REFERENCE “HIGHLAND CAPITAL MANAGEMENT, L.P.” IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

**IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.**

**If by first class mail, personal delivery or overnight mail, to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

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Alternatively, you may submit your Ballot via the Balloting Agent’s online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the “Submit Electronic Ballot” section of the website and follow the instructions to submit your Ballot.

**IMPORTANT NOTE:** You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #: \_\_\_\_\_  
Unique Electronic Ballot PIN #: \_\_\_\_\_

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent’s online portal should NOT also submit a paper Ballot.

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### VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;
7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.
10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;
11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms



of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;
16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE  
OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN  
THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS  
AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 8 BALLOT – General Unsecured Claims

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS  
CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the “Plan”). All capitalized terms used in this ballot (the “Ballot”), including in the voting instructions attached to this Ballot (the “Voting Instructions”), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order [Docket No. \_\_\_\_] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the “Disclosure Statement”) as containing adequate information and authorized the above-captioned debtor (the “Debtor”) to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

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

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

**BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.**

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**This Ballot must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the “Voting Deadline”), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term “Voting Deadline” shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.**

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**Item 1. Acceptance or Rejection of the Plan**

The undersigned certifies that as of November 23, 2020 (the “Record Date”), the undersigned was the holder of a Class 8 General Unsecured Claim in the aggregate outstanding amount of \$ \_\_\_\_\_.<sup>2</sup>

**CHECK ONE BOX**

- ☐ I hereby vote the above Claim to ACCEPT the Plan
- ☐ I hereby vote the above Claim to REJECT the Plan

**NOTE: You must vote all of your Class 8 General Unsecured Claim either to accept or reject the Plan, and may not split such vote.**

**Convenience Class Election – Optional and Voluntary Election to Receive the Treatment Provided Class 7 Convenience Claims.**

If your Claim is liquidated on or before the Confirmation Date, you are eligible to make the Convenience Class Election. If you are eligible and you check the box below, your Claim will be reduced to \$1,000,000 (to the extent your claim is in excess of that amount), and you will receive the treatment provided to Class 7 Convenience Claim, which is the lesser of (a) 85% of the Allowed amount of your Claim (as reduced) or (b) your pro rata share of the Convenience Claims Cash Pool (\$13,150,000).

If you check the box below and elect to have your Class 8 General Unsecured Claim treated as a Class 7 Convenience Claim; (i) your vote on this Ballot to accept or reject the Plan will still be tabulated as a vote in Class 8 with respect to the Plan, but your Claim (as reduced) will receive the treatment afforded to Class 7 Convenience Claims; and (ii) you will be giving up all distributions to Class 8 General Unsecured Claims in exchange for the treatment provided to Class 7 Convenience Claims

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<sup>2</sup> For voting purposes only. Subject to tabulation rules.

- ☐ I hereby elect to reduce my Claim and to receive the treatment provide to a Class 7 Convenience Claim.

**Item 2. Certification**

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 8 General Unsecured Claim(s) set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 8 General Unsecured Claims;

(iv) no other Ballots with respect to the Class 8 General Unsecured Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 8 General Unsecured Claims, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(If appropriate)

TITLE: \_\_\_\_\_  
(If appropriate)



ADDRESS: \_\_\_\_\_

TEL. NO. (     ) \_\_\_\_\_ - \_\_\_\_\_ DATE: \_\_\_\_\_

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT [HIGHLANDINFO@KCCLLC.COM](mailto:HIGHLANDINFO@KCCLLC.COM) AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

**IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.**

**If by first class mail, personal delivery or overnight mail, to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.

**IMPORTANT NOTE:** You will need the following information to retrieve and submit your customized electronic Ballot:

Unique Electronic Ballot ID #: \_\_\_\_\_  
Unique Electronic Ballot PIN #: \_\_\_\_\_

Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.

### VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;
7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.
10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;
11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;
16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE  
OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN  
THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS  
AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 9 BALLOT – Subordinated Claims

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS  
CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the “Plan”). All capitalized terms used in this ballot (the “Ballot”), including in the voting instructions attached to this Ballot (the “Voting Instructions”), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order [Docket No. \_\_\_\_] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended) (the “Disclosure Statement”) as containing adequate information and authorized the above-captioned debtor (the “Debtor”) to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

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



Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

**BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.**

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**This Ballot must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the “Voting Deadline”), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term “Voting Deadline” shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.**

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**Item 1. Acceptance or Rejection of the Plan**

The undersigned certifies that as of November 23, 2020 (the “Record Date”), the undersigned was the holder of a Class 9 Subordinated Claim in the aggregate outstanding amount of \$ \_\_\_\_\_.<sup>2</sup>

**CHECK ONE BOX**

- ☐ I hereby vote the above Claim to ACCEPT the Plan
- ☐ I hereby vote the above Claim to REJECT the Plan

**NOTE: You must vote all of your Class 9 Subordinated Claim either to accept or reject the Plan, and may not split such vote.**

**Item 2. Certification**

By signing this Ballot, the undersigned certifies with respect to the claim(s) identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 9 Subordinated Claim(s) set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

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<sup>2</sup> For voting purposes only. Subject to tabulation rules.

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 9 Subordinated Claims;

(iv) no other Ballots with respect to the Class 9 Subordinated Claims identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 9 Subordinated Claims, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(If appropriate)

TITLE: \_\_\_\_\_  
(If appropriate)

ADDRESS: \_\_\_\_\_

TEL. NO. ( ) \_\_\_\_\_ - \_\_\_\_\_ DATE: \_\_\_\_\_

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT [HIGHLANDINFO@KCCLLC.COM](mailto:HIGHLANDINFO@KCCLLC.COM) AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

**IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.**

**If by first class mail, personal delivery or overnight mail, to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

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**Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.**

**IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:**

**Unique Electronic Ballot ID #: \_\_\_\_\_  
Unique Electronic Ballot PIN #: \_\_\_\_\_**

**Each Electronic Ballot ID# is to be used solely for voting on those Claims in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

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### VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;
7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.
10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;
11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;
16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and



22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE  
OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN  
THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS  
AUTHORIZED BY THE BANKRUPTCY COURT

BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.*

CLASS 10 BALLOT – Class B/C Limited Partnership Interests

PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS  
CAREFULLY BEFORE COMPLETING THE BALLOT.

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the “Plan”). All capitalized terms used in this ballot (the “Ballot”), including in the voting instructions attached to this Ballot (the “Voting Instructions”), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order [Docket No. \_\_] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended)(the “Disclosure Statement”) as containing adequate information and authorized the above-captioned debtor (the “Debtor”) to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

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

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

**BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.**

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**This Ballot must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the “Voting Deadline”), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term “Voting Deadline” shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.**

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**Item 1. Acceptance or Rejection of the Plan**

The undersigned certifies that as of November 23, 2020 (the “Record Date”), the undersigned was the holder of a Class 10 Class B/C Limited Partnership Interests in the aggregate outstanding amount of \$ \_\_\_\_\_.<sup>2</sup>

**CHECK ONE BOX**

- ☐ I hereby vote the above Interest to ACCEPT the Plan
- ☐ I hereby vote the above Interest to REJECT the Plan

**NOTE: You must vote all of your Class 10 Class B/C Limited Partnership Interests either to accept or reject the Plan, and may not split such vote.**

**Item 2. Certification**

By signing this Ballot, the undersigned certifies with respect to the Class 10 Class B/C Limited Partnership Interests identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 10 Class B/C Limited Partnership Interests set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

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<sup>2</sup> For voting purposes only. Subject to tabulation rules.

(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 10 Class B/C Limited Partnership Interests;

(iv) no other Ballots with respect to the Class 10 Class B/C Limited Partnership Interests identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 10 Class B/C Limited Partnership Interests, such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(If appropriate)

TITLE: \_\_\_\_\_  
(If appropriate)

ADDRESS: \_\_\_\_\_

TEL. NO. (    ) \_\_\_\_\_ - \_\_\_\_\_      DATE: \_\_\_\_\_

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT [HIGHLANDINFO@KCCLLC.COM](mailto:HIGHLANDINFO@KCCLLC.COM) AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

**IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING**

**AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED  
BELOW.**

**If by first class mail, personal delivery or overnight mail, to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

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**Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.**

**IMPORTANT NOTE: You will need the following information to retrieve  
and submit your customized electronic Ballot:**

**Unique Electronic Ballot ID #: \_\_\_\_\_  
Unique Electronic Ballot PIN #: \_\_\_\_\_**

**Each Electronic Ballot ID# is to be used solely for voting on those Interests in  
Item 1 Below of your electronic ballot. Please complete and submit an  
electronic ballot for each Electronic Ballot ID# you receive, as applicable.  
Parties who cast a Ballot using the Balloting Agent's online portal should  
NOT also submit a paper Ballot.**

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### VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;
7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.
10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;
11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;
16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
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**NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE  
OR TO MAKE ANY REPRESENTATION OTHER THAN WHAT IS CONTAINED IN  
THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS  
AUTHORIZED BY THE BANKRUPTCY COURT**

**BALLOT FOR ACCEPTING OR REJECTING THE *FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.***

**CLASS 11 BALLOT – Class A Limited Partnership Interests**

**PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS  
CAREFULLY BEFORE COMPLETING THE BALLOT.**

This Ballot may not be used for any purpose other than for submitting a vote to accept or reject the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended or modified, the “Plan”). All capitalized terms used in this ballot (the “Ballot”), including in the voting instructions attached to this Ballot (the “Voting Instructions”), but not otherwise defined therein shall have the meaning ascribed to them in the Plan.

On \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an Order [Docket No. \_\_\_\_] approving the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be modified or amended)(the “Disclosure Statement”) as containing adequate information and authorized the above-captioned debtor (the “Debtor”) to transmit the Disclosure Statement, Plan and this Ballot to holders of claims and equity security interests entitled to vote on the Plan.

The Plan can be confirmed by the Bankruptcy Court and thereby made binding on an impaired class if it is accepted by the holders of at least two-thirds in dollar amount and more than one-half in number of claims that actually vote in the class of claims voting on the Plan and more than half of the equity security interests that actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan if the

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

Bankruptcy Court finds that the Plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Bankruptcy Code.

**BALLOTS CAST BY FACSIMILE OR E-MAIL WILL NOT BE COUNTED.**

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**This Ballot must be received by Kurtzman Carson Consultants LLC (the “Balloting Agent”) by 5:00 p.m. prevailing Central Time, on or before January 5, 2021 (the “Voting Deadline”), unless the Debtor or the Bankruptcy Court extends the period during which votes will be accepted by the Debtor, in which case the term “Voting Deadline” shall mean the last time and date to which such date is extended. Please review the enclosed voting instructions in connection with casting your ballot or accept or reject the Plan.**

---

**Item 1. Acceptance or Rejection of the Plan**

The undersigned certifies that as of November 23, 2020 (the “Record Date”), the undersigned was the holder of a Class 11 A Limited Partnership Interests in the aggregate outstanding amount of \$ \_\_\_\_\_.<sup>2</sup>

**CHECK ONE BOX**

- ☐ I hereby vote the above Interest to ACCEPT the Plan
- ☐ I hereby vote the above Interest to REJECT the Plan

**NOTE: You must vote all of your Class 11 Class A Limited Partnership Interests either to accept or reject the Plan, and may not split such vote.**

**Item 2. Certification**

By signing this Ballot, the undersigned certifies with respect to the Class 11 Class A Limited Partnership Interests identified in Item 1, above, that:

(i) such person or entity is the holder of the aggregate amount of the Class 11 Class A Limited Partnership Interests set forth in Item 1 herein or is an authorized signatory, and has full power and authority to vote to accept or reject the Plan;

(ii) such person or entity has received and reviewed a copy of the Disclosure Statement and the Plan, the Ballot and other solicitation materials and documents related thereto, and acknowledges that the solicitation of votes to accept or reject the Plan is being made solely pursuant to the statements and conditions set forth therein;

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<sup>2</sup> For voting purposes only. Subject to tabulation rules.



(iii) such person or entity has cast the same vote on every Ballot completed by such person or Entity with respect to holdings of Class 11 Class A Limited Partnership Interests;

(iv) no other Ballots with respect to the Class 11 Class A Limited Partnership Interests identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Class 11 Class A Limited Partnership Interests such earlier Ballots are hereby revoked;

(v) all authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

If the holder entitled to vote is a corporation, please sign in corporate name by authorized officer, or if a partnership, please sign in partnership name by authorized person.

NAME OF VOTER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

BY: \_\_\_\_\_  
(If appropriate)

TITLE: \_\_\_\_\_  
(If appropriate)

ADDRESS: \_\_\_\_\_

TEL. NO. ( ) \_\_\_\_\_ - \_\_\_\_\_ DATE: \_\_\_\_\_

This Ballot shall not constitute or be deemed a proof of claim or equity interest, an assertion of a claim or equity interest, or the allowance of a claim or equity interest.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, OR IF YOU NEED A BALLOT OR ADDITIONAL COPIES OF THE PLAN, DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE BALLOTING AGENT, KCC, VIA EMAIL AT [HIGHLANDINFO@KCCLLC.COM](mailto:HIGHLANDINFO@KCCLLC.COM) AND REFERENCE "HIGHLAND CAPITAL MANAGEMENT, L.P." IN THE SUBJECT LINE OR BY TELEPHONE AT TOLL FREE: (877) 573-3984, OR INTERNATIONAL: (310) 751-1829.

**IN ORDER FOR YOUR VOTE TO COUNT, PLEASE COMPLETE, SIGN AND DATE THE BALLOT AND RETURN IT SO THAT IT IS RECEIVED BY THE BALLOTING AGENT ON OR BEFORE THE VOTING DEADLINE TO THE ADDRESS PROVIDED BELOW.**

**If by first class mail, personal delivery or overnight mail, to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

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**Alternatively, you may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot.**

**IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:**

**Unique Electronic Ballot ID #: \_\_\_\_\_  
Unique Electronic Ballot PIN #: \_\_\_\_\_**

**Each Electronic Ballot ID# is to be used solely for voting on those Interests in Item 1 Below of your electronic ballot. Please complete and submit an electronic ballot for each Electronic Ballot ID# you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

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### VOTING INSTRUCTIONS

The following general voting procedures and standard assumptions be used in tabulating Ballots:

1. Except to the extent the Debtor otherwise determines, or as permitted by the Court and Ballots received after the Voting Deadline will not be accepted or counted by the Debtor in connection with the confirmation of the Plan;
2. Claims or interests shall not be split for purposes of voting; thus, each creditor and equity security interest holder shall be deemed to have voted the full amount of its claim and interest either to accept or reject the Plan;
3. Any executed Ballot which does not indicate an acceptance or rejection shall not be counted;
4. Any executed Ballot which indicates both an acceptance and rejection of the Plan shall not be counted;
5. Votes cast pursuant to a Ballot that is not signed or does not contain an original signature shall not be counted, unless the Court orders otherwise;
6. Parties holding claims or equity security interests in more than one Class under the Plan may receive more than one Ballot coded for each different Class;
7. The method of delivery of Ballots to be sent to the Balloting Agent is at the election and risk of each holder of a claim or equity security interest, but, except as otherwise provided in the Disclosure Statement, such delivery will be deemed made only when the original, executed Ballot is actually received by the Balloting Agent or, if submitted online in accordance with the electronic voting instructions, received by the Balloting Agent through the online portal;
8. Delivery of the original, executed Ballot to the Balloting Agent on or before the Voting Deadline is required, except where the Ballot is submitted through a customized online balloting portal. The Balloting Agent is authorized to accept Ballots either by (a) regular mail facilitated by a return envelope that the Debtor will provide with each Ballot; overnight courier to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; or (c) personal delivery. Additionally, the Balloting Agent is authorized to accept Ballots via electronic, online transmissions through a customized online balloting portal on the Debtor's case website maintained by the Balloting Agent. Ballots submitted via online transmission through the customized online balloting portal shall be deemed to contain an original signature;
9. Ballots submitted by facsimile, email or other means of electronic transmission other than the online balloting portal, will not be counted.
10. No Ballot sent to the Debtor, or the Debtor's financial or legal advisors, shall be accepted or counted;
11. The Debtor expressly reserves the right to amend at any time and from time to time the terms of the Plan (subject to compliance with § 1127 and the terms of the Plan regarding modification). If the Debtor makes material changes in the terms

of the Plan the Debtor will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Court;

12. If multiple Ballots are received from or on behalf of an individual holder of a claim or equity security interest with respect to the same claims or interests prior to the Voting Deadline, the last properly completed Ballot timely received will be deemed to reflect the voter's intent and to supersede and revoke any prior Ballot;
13. If a Ballot is signed by a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or other person acting in a fiduciary or representative capacity, such person should indicate such capacity when signing and, if requested by the Debtor, must submit proper evidence satisfactory to the Debtor to so act in such capacity;
14. The Debtor, in its sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein or otherwise ordered by the Court, the Debtor may, in its sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan;
15. Unless otherwise ordered by the Court, all questions as to the validity, eligibility (including time of receipt) and revocation or withdrawal of Ballots will be determined by the Debtor, in its sole discretion, which determination shall be final and binding;
16. If a designation is requested under § 1126(e), any vote to accept or reject the Plan cast with respect to such claim or equity security interest will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Court orders otherwise;
17. Any holder of a claim or equity security interest who has delivered a valid Ballot voting on the Plan may withdraw such vote solely in accordance with Bankruptcy Rule 3018(a);
18. Unless waived or as otherwise ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured by the Voting Deadline, and unless otherwise ordered by the Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not been cured or waived by the Voting Deadline) will not be counted;
19. Neither the Debtor, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to the delivery of Ballots, nor will any of them incur any liability for failure to provide such notification;
20. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots to accept the Plan;
21. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan; and

22. The Ballot does not constitute, and shall not be deemed to be, a proof of claim or proof of interest or an assertion or admission of a claim or equity security interest.



**EXHIBIT B**

**Confirmation Hearing Notice**

Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)

Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)

Los Angeles, CA 90067

Facsimile: (310) 201-0760

Melissa S. Hayward

MHayward@HaywardFirm.com

Texas Bar No. 24053075

10501 N. Central Expy, Ste. 106

Tel: (972) 755-7100

### *Counsel for the Debtor and Debtor-in-Possession*

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

## Chapter 11

Case No. 19-34054-sgj11

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**NOTICE OF: (I) ENTRY OF ORDER APPROVING DISCLOSURE STATEMENT; (II) HEARING TO CONFIRM PLAN; AND (III) RELATED IMPORTANT DATES<sup>2</sup>**

On [•], 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered its *Order (a) Approving the Adequacy of the Disclosure Statement; (b) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization; (c) Establishing Deadline for Filing Objections to Confirmation of Plan; (d) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (e) Approving Form and Manner of Notice* (the “Disclosure Statement Order”). The Disclosure Statement Order approved the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Disclosure Statement”), as containing adequate information required

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

<sup>2</sup> Capitalized terms have the meanings given to them in the Plan.

under section 1125(a) of the Bankruptcy Code, and authorized the Debtor to solicit acceptances of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "Plan").

**HEARING TO CONFIRM PLAN.** A hearing to confirm the Plan (the "Confirmation Hearing") will commence on **January 13, 2021, at 9:30 a.m., prevailing Central Time**, before the Bankruptcy Court. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or otherwise, without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing.

**PLAN OBJECTION DEADLINE.** The Bankruptcy Court has established **January 5, 2021, at 5:00 p.m., prevailing Central Time**, as the last date and time for filing and serving objections to the confirmation of the Plan (the "Plan Objection Deadline"). All objections must state with particularity the legal and factual grounds for such objection.

In order to be considered by the Bankruptcy Court, objections, if any, must: (i) be in writing; (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Northern District of Texas; (iii) be filed with the United States Bankruptcy Court for the Northern District of Texas; and (iv) be served upon by the following parties: (a) counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13<sup>th</sup> Floor, Los Angeles, CA 90067, Attn: Jeffrey N. Pomerantz, Ira D. Kharasch, and Gregory V. Demo, Emails: jpomerantz@pszjlaw.com, ikharasch@pszjlaw.com, gdemo@pszjlaw.com; (b) counsel for the Debtor, Hayward & Associates PLLC, 10501 N. Central Expy, Ste. 106, Dallas, Texas 75231, Attn: Melissa S. Hayward and Zachery Z. Annable, Emails: ZAnnable@HaywardFirm.com, MHayward@HaywardFirm.com; (c) counsel to the official committee of unsecured creditors, Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, Attn: Matthew A. Clemente and Alyssa Russell, Emails: mclemente@sidley.com, Alyssa.russell@sidley.com; and (d) counsel for the Office of the United States Trustee, U.S. Department of Justice, Region 6: Northern District of Texas, Office of The United States Trustee, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242, Attn: Lisa L. Lambert, Emails: Email: Lisa.L.Lambert@usdoj.gov (collectively, the "Notice Parties").

**VOTING RECORD DATE.** **November 23, 2020**, is the record date for purposes of determining which parties are entitled to vote on the Plan.

**VOTING DEADLINE.** **January 5, 2021** (the "Voting Deadline"), is the deadline for casting a ballot ("Ballot") to accept or reject the Plan. All Ballots accepting or rejecting the Plan must be received by the Notice and Balloting Agent by 5:00 p.m., prevailing Central Time, on the Voting Deadline at the following address, whether by First Class Mail, hand delivery, or overnight courier: HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. If you require a Ballot, or if your Ballot is lost, damaged or destroyed, contact the Notice and Balloting Agent to obtain a replacement Ballot.

**RULE 3018 MOTION DEADLINE AND HEARING.** It shall be the responsibility of each party who files a motion for an order pursuant to Bankruptcy Rule 3018(a) seeking temporary allowance of a claim for voting purposes to (a) file such motion with evidence in support thereof by no later than **January 5, 2021**, (b) schedule a hearing on such motion, and (c) schedule the hearing on or prior to the Confirmation Hearing.

Dated: \_\_\_\_\_, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
Gregory V. Demo (NY Bar No. 5371992)  
10100 Santa Monica Boulevard, 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
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-and-

**HAYWARD & ASSOCIATES PLLC**

*/s/ Zachery Z. Annable*

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Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

If you require additional information, you may contact the Debtor's Solicitation Agent, KCC, by calling 877-573-3984 (U.S. and Canada) or 310-751-1829 (International), by email at [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com), or through the case website: <http://www.kccllc.net/HCMLP>.

**EXHIBIT C**

**Notice of Non-Voting Status**



PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	

**NOTICE OF NON-VOTING STATUS WITH RESPECT TO  
UNIMPAIRED CLASSES DEEMED TO ACCEPT THE PLAN<sup>2</sup>**

TO: ALL HOLDERS OF CLAIMS IN CLASS 1 (JEFFERIES SECURED CLAIM), CLASS 3 (OTHER SECURED CLAIMS); CLASS 4 (PRIORITY NON-TAX CLAIMS); CLASS 5 (RETAINED EMPLOYEE CLAIMS); AND CLASS 6 (PTO CLAIMS)

On [•], 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered its *Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of*

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

<sup>2</sup> Capitalized terms not defined herein shall have the same meaning as ascribed in the Plan.

*Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice* (the “Disclosure Statement Order”). The Disclosure Statement Order approved the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Disclosure Statement”), as containing adequate information required under section 1125(a) of the Bankruptcy Code, and authorized the Debtor to solicit acceptances of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Plan”).

In accordance with the terms of the Plan and the Bankruptcy Code, holders of claims in Classes 1, 3, 4, 5 and 6 are unimpaired under § 1124 of the Bankruptcy Code and, therefore, pursuant to § 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted the Plan and are not entitled to vote on the Plan. You have been sent this notice because you have been identified as a holder of a claim in Class 1, 3, 4, 5 or 6. This notice and the Confirmation Hearing Notice are provided to you for informational purposes only.

If you have any questions regarding the status of your claim or wish to obtain additional information, including a copy of the Plan and Disclosure Statement free of charge, you may contact KCC, via email at [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com) and reference “Highland Capital Management, L.P.” in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor’s case for a fee via PACER at [pacer.uscourts.gov](http://pacer.uscourts.gov).

Alternatively, you can obtain a copy of these documents by contacting counsel for the Debtor (a) by e-mail, at [gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com), (b) by telephone, by contacting Gregory Demo at (212) 561-7700, or (c) by mail, at Pachulski Stang Ziehl & Jones LLP, Attn: Gregory Demo, 780 Third Avenue, 34<sup>th</sup> Floor, New York, NY 10017. Please specify whether you would like to receive copies of these documents by (i) **email transmission** (in which case, please include your e-mail address), (ii) on a **CD-ROM or flash drive** delivered by return mail, or (iii) in **paper copies** delivered by return mail.

Dated: \_\_\_\_\_, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
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*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT D**

**Form of Notice of Assumption of Executory Contracts and Unexpired Leases**

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Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	

**NOTICE OF (I) EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES TO BE ASSUMED AND ASSIGNED BY THE  
DEBTOR PURSUANT TO THE FIFTH AMENDED PLAN, (II) CURE AMOUNTS,  
IF ANY, AND (III) RELATED PROCEDURES IN CONNECTION THEREWITH**

**PLEASE TAKE NOTICE THAT** on \_\_\_\_\_, 2020, the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”) entered an order [Docket No. \_\_\_\_] (the “Disclosure Statement Order”) that, among other things: (a) approved the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125(a)

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



of the title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”); and (b) authorized the above-captioned debtor and debtor-in-possession (the “Debtor”) to solicit acceptances of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the “Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the hearing at which the Court will consider Confirmation of the Plan and related voting and objection procedures (the “Confirmation Hearing”) will commence on January 13, 2021 at 9:30 a.m. prevailing Central Time, before the Honorable Stacey G. C. Jernigan, in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), located at Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 1, Dallas, TX 75242-1496.

**PLEASE TAKE FURTHER NOTICE THAT** you are receiving this notice because the Debtor’s records reflect that you are a party to a contract that will be assumed by the Debtor or, alternatively, assumed by the Debtor and assigned to and assignee. Therefore, you are advised to review carefully the information contained in this notice and the related provisions of the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** the Debtor is proposing to assume, or alternatively assume and assign, your Executory Contract(s) and Unexpired Lease(s), listed in Schedule A attached hereto to which you are a party.<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE THAT** section 365(b)(1) of the Bankruptcy Code requires a chapter 11 debtor to cure, or provide adequate assurance that it will promptly cure, any defaults under executory contracts and unexpired leases at the time of assumption/assignment. Accordingly, the Debtor has conducted a thorough review of its books and records and has determined the amounts required to cure defaults, if any, under the Executory Contract(s) and Unexpired Lease(s), which amounts are listed in the table on Schedule A attached hereto. Please note that if no amount is stated for a particular Executory Contract or Unexpired Lease, the Debtor believes that there is no cure amount outstanding for such contract or lease.

**PLEASE TAKE FURTHER NOTICE THAT** absent any pending dispute, the monetary amounts required to cure any existing defaults arising under the Executory Contract(s) and Unexpired Lease(s) identified on Schedule A attached hereto will be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtor in Cash on the Effective Date or as soon as reasonably practicable thereafter. In the event of a dispute, however, payment of the cure amount would be made following the entry of a final order(s) resolving the dispute and approving the assumption. If an objection to the proposed assumption or related cure amount is

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<sup>2</sup> Capitalized terms not defined herein shall have the same meaning as ascribed in the Plan.

<sup>3</sup> Nothing contained in the Plan or the Debtor’s schedule of assets and liabilities shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease capable of assumption, or assumption and assignment, that the Debtor or the Reorganized Debtor(s) has any liability thereunder, or that such Executory Contract or Unexpired Lease is necessarily a binding and enforceable agreement. Further, the Debtor expressly reserves the right to remove any Executory Contract or Unexpired Lease from assumption or assumption and assignment by the Debtor and reject such Executory Contract or Unexpired Lease pursuant to the terms of the Plan.

sustained by the Court, however, the Debtor may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it.

**PLEASE TAKE FURTHER NOTICE THAT** the deadline for filing objections to the Plan (including any assumption and/or assignment of an Executory Contract or Unexpired Lease as contemplated in the Plan Supplement) is January 5, 2021, at 5:00 p.m., prevailing Central Time (the “Confirmation Objection Deadline”). Any objection to the Plan must: (a) be in writing; (b) comply with the Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules for the Northern District of Texas; (c) state, with particularity, the name and address of the objecting party, the basis and nature of any objection to the Plan, and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court on or before the Confirmation Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT** any objections to the Plan in connection with the assumption and/or assignment of the Executory Contract(s) and Unexpired Lease(s) proposed in connection with the Plan that remain unresolved as of the Confirmation Hearing will be heard at the first omnibus hearing following the Confirmation Hearing (or such other date as fixed by the Court).

**PLEASE TAKE FURTHER NOTICE THAT ANY COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE THAT FAILS TO OBJECT TIMELY TO EITHER THE PROPOSED ASSUMPTION AND/OR ASSIGNMENT OF SUCH CONTRACT OR LEASE OR THE CURE AMOUNT WILL BE DEEMED TO HAVE ASSENTED TO SUCH ASSUMPTION AND/OR ASSIGNMENT AND CURE AMOUNT.**

**PLEASE TAKE FURTHER NOTICE THAT ASSUMPTION AND/OR ASSIGNMENT OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE PURSUANT TO THE PLAN OR OTHERWISE SHALL RESULT IN THE FULL RELEASE AND SATISFACTION OF ANY CLAIMS OR DEFAULTS, WHETHER MONETARY OR NONMONETARY, INCLUDING DEFAULTS OF PROVISIONS RESTRICTING THE CHANGE IN CONTROL OR OWNERSHIP INTEREST COMPOSITION OR OTHER BANKRUPTCY-RELATED DEFAULTS, ARISING UNDER ANY ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE AT ANY TIME BEFORE THE DATE OF THE DEBTOR OR REORGANIZED DEBTOR ASSUMES OR ASSIGNS SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE. ANY PROOFS OF CLAIM FILED WITH RESPECT TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE THAT HAS BEEN ASSUMED SHALL BE DEEMED DISALLOWED AND EXPUNGED, WITHOUT FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT.**

**PLEASE TAKE FURTHER NOTICE THAT** if you would like to obtain a copy of the Disclosure Statement Order, Disclosure Statement, the Plan, the Plan Supplement, or related documents, you may: (a) access the Debtor’s restructuring website at <http://www.kccllc.net/hcmlp>; (b) write to HCMLP Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; (c) call toll free: (877) 573-3984 or international: (310) 751-1829 and request to speak with a member of the Solicitation Group; or (d) email [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com) and reference “Highland” in the subject line. You may also

obtain copies of any pleadings filed in this case for a fee via PACER at: [pacer.uscourts.gov](http://pacer.uscourts.gov).

Alternatively, you can obtain a copy of these documents by contacting counsel for the Debtor (a) by e-mail, at [gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com), (b) by telephone, by contacting Gregory Demo at (212) 561-7700, or (c) by mail, at Pachulski Stang Ziehl & Jones LLP, Attn: Gregory Demo, 780 Third Avenue, 34<sup>th</sup> Floor, New York, NY 10017. Please specify whether you would like to receive copies of these documents by (i) **email transmission** (in which case, please include your e-mail address), (ii) on a **CD-ROM or flash drive** delivered by return mail, or (iii) in **paper copies** delivered by return mail.

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE SOLICITATION AGENT.**

Dated: \_\_\_\_\_, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
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-and-

**HAYWARD & ASSOCIATES PLLC**

/s/ Zachery Z. Annable

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*Counsel for the Debtor and Debtor-in-Possession*

**Schedule A**

**Schedule of Assumed Contracts and Leases and Proposed Cure Cost**

Debtor	Counterparty	Description of Assumed Contracts or Leases	Cure Cost	Proposed Assignee of Contract or Lease



PACHULSKI STANG ZIEHL & JONES LLP  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	

**DEBTOR'S NOTICE OF FILING OF SUPPLEMENT TO THE THIRD AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor"), hereby files the documents included herewith as **Exhibits A-H** (collectively, the "Plan Supplement") supplementing the *Third*

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

*Amended Plan of Reorganization of Highland Capital Management, L.P.* dated November 13, 2020 [Docket No. 1383] (including all exhibits thereto and as amended, modified or supplemented from time to time, the “Plan”).

**PLEASE TAKE FURTHER NOTICE** that the Plan Supplement consists of the following documents as set forth in the Plan:

- Exhibit A: Form of Claimant Trust Agreement
- Exhibit B: Form of New GP LLC Documents
- Exhibit C: Form of Reorganized Limited Partnership Agreement
- Exhibit D: Form of Litigation Sub-Trust Agreement
- Exhibit E: Schedule of Retained Causes of Action
- Exhibit F: Form of New Frontier Note
- Exhibit G: Schedule of Employees
- Exhibit H: Form of Senior Employee Stipulation

**PLEASE TAKE FURTHER NOTICE** that this *Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Notice of Plan Supplement”) is being served on parties-in-interest **without** the Plan Supplement attached. Any party-in-interest wishing to obtain copies of the Plan or the Plan Supplement may do so by (i) contacting the Debtor’s Solicitation Agent, KCC at (i) 1-877-573-3984 (toll free) or 1-310-751-1829 (if international) or by email at HighlandInfo@kccllc.com or (ii) viewing such documents by accessing them online at <https://kccllc.net/HCMPLP>. The documents are also available on the Court’s website: [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov). Please note that a PACER password and login are needed to access documents on the Court’s website.

*[Remainder of Page Intentionally Left Blank]*

Dated: November 13, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
(*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084)  
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[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

-and-

**HAYWARD & ASSOCIATES PLLC**

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*Counsel for the Debtor and  
Debtor-in-Possession*

## EXHIBIT “A”

DRAFT

### CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of \_\_\_\_\_, 2020 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and [ ] as Delaware trustee (the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 13, 2020, the Debtor filed the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. •](as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> [which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2020 pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor (the “Confirmation Order”)];

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.



(vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

### **DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

- (d) “Claimant Trust Agreement” means this Agreement.
- (e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.
- (f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.
- (g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.
- (h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.
- (i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.
- (j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with Article [3.13(b)] of this Agreement.
- (k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.
- (l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.
- (m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) [“Employees” means the employees of the Debtor set forth in the Plan Supplement.]

(u) [“Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations executed by employees of the Debtor prior to the Effective Date.]

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, HarbourVest, Patrick Hagaman Daugherty, and Integrated Financial Associates, Inc. [TBD: Employee Claims]

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.



(ll) “Plan” has the meaning set forth in the Recitals hereof.

(mm) “Privileges” means all of the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Causes of Action, including, but not limited to, attorney-client privilege as defined in Rule 502(g) of the Federal Rules of Evidence[; provided, however, that “Privileges” shall not include the work-product privilege and the work-product privilege shall remain with the attorney or attorneys who created such work product].

(nn) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(oo) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(pp) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(qq) “Securities Act” means the Securities Act of 1933, as amended.

(rr) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(ss) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(tt) “TIA” means the Trust Indenture Act of 1939, as amended.

(uu) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(vv) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

(ww) “Trustees” means collectively the Claimant Trustee and Delaware Trustee.

(xx) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of



this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.** **ESTABLISHMENT OF THE CLAIMANT TRUST**

### **2.1 Creation of Name of Trust.**

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

### **2.2 Objectives.**

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

### 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor [(except for the Employee Claims, which shall be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee)] and to compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims[, the Employee Claims,] and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed in Claims in

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 7**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

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*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith* [Dkt. # 2389]:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

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		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
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and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073



each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

#### 2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession that relate to the Claimant Trust Assets and Estate Claims, (ii) that all



Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents) until such time as the Claimant Trustee, [with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee,] directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:[\_\_\_\_\_].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

### 3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the [Employee Claims and] Estate Claims transferred to the Litigation Sub-Trust, if any, as the Claimant Trustee determines is in the best interests of the Claimant Trust. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor’s Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$[3,000,000] (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns

and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xvii) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").



(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$[3,000,000] (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities, (including Disputed Claims), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;



(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals. [TBD]

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee’s resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier

effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

### 3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

### 3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the “Interim Trustee”) until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person’s appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee’s capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as “Estate Representative”. The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims[ and the Employee Claims]. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article [VII] herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide [quarterly] reporting to the Oversight Board [and Claimant Trust Beneficiaries] of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the [unanimous consent] of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. [As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation, including any severance, as agreed to by the Claimant Trustee and Oversight Board.]



(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware



Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice

requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of

interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than [90 days] prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as



representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. [Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member.]<sup>3</sup> Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no

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<sup>3</sup> NTD: Compensation for Disinterested Member(s) to be discussed.



Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

## **ARTICLE V.** **TRUST INTERESTS**

### **5.1 Claimant Trust Interests.**

(a) **General Unsecured Claim Trust Interests.** On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the “**GUC Beneficiaries**”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) **Subordinated Claim Trust Interests.** On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the “**Subordinated Beneficiaries**”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary’s Allowed General Unsecured Claim, in accordance with the terms of the Plan and this Agreement.

(c) **Contingent Trust Interests.** On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the “**Equity Holders**”). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan (the “**GUC Payment Certification**”). Equity Holders will only be deemed “Beneficiaries” under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed “**Equity Trust Interests**.” The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary’s Allowed Subordinated Claim,

in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 [Reserved]

## **ARTICLE VI.** **DISTRIBUTIONS**

### **6.1 Distributions.**

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within [six] months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

**6.2 Manner of Payment or Distribution.** All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record [as of the twentieth (20th) day prior] to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

**6.3 Delivery of Distributions.** All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

**6.4 Disputed Claims Reserves.** There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will



maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.

## **ARTICLE VII.** **TAX MATTERS**

### **7.1 Tax Treatment and Tax Returns.**

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated for federal income tax purposes (and foreign, state, local tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), and (iii) the Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Claimant Trustee also will annually send to each Beneficiary, in accordance with the tax laws, a separate statement setting forth such holder's Beneficiary's interest in the Claimant Trust and share of items of income, gain, loss, deduction or credit as relevant for U.S. federal income tax purposes for such Beneficiaries to use in preparing their U.S. federal income tax returns.

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in



which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## ARTICLE VIII. STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, or Oversight Board shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, the "Indemnified Parties") shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or

threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall advance or otherwise reimburse on demand the Indemnified Party's reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith as a Claimant Trust Expense, but the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member. The indemnification provided hereby shall be a Claimant Trust Expense.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## ARTICLE IX. TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit

of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets[; provided, however, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years [without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.]

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

## **ARTICLE X.** **AMENDMENTS AND WAIVER**

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with [the unanimous approval] of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:



(a) If to the Claimant Trustee:

Claimant Trustee  
c/o [insert contact info for Claimant Trustee]

With a copy to:

[insert contact for counsel to the Claimant Trustee].

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or



Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: \_\_\_\_\_

James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By: \_\_\_\_\_

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee

## **EXHIBIT “B”**

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
[NEW GP] LLC**

This Limited Liability Company Agreement (this “*Agreement*”) of [NEW GP] LLC (the “*Company*”), a Delaware limited liability company, is effective as of [\_\_\_\_], 2020 (the “*Effective Date*”) and entered into by [CLAIMANT TRUST], the sole member of the Company as of the date hereof (the “*Member*”).

**RECITALS**

WHEREAS, the Company was formed on [\_\_\_\_], 2020 pursuant to the filing of the certificate of formation of the Company (the “*Certificate*”) with the Office of the Secretary of State of the State of Delaware.

WHEREAS, the Member desires to enter into this Agreement to reflect the terms and provisions relating to its ownership and management of the Company.

NOW THEREFORE, in consideration for the promises contained herein, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, capitalized terms used but not otherwise defined in this Agreement shall have the meanings provided to them in Exhibit A.

**ARTICLE II  
GENERAL PROVISIONS**

**2.1 Formation of Limited Liability Company**

The Company was formed as a Delaware limited liability company on [\_\_\_\_], 2020 by the filing of the Certificate with the Office of the Secretary of State of the State of Delaware under and pursuant to the Act. The Member shall file or cause to be filed all such other certificates, notices, statements, amendments or other instruments required by law for the continued operation of the Company as a limited liability company.

**2.2 Name of Company**

The name of the Company shall be “[NEW GP]LLC”. The business of the Company may be conducted under any name chosen by the Member, and the Member may, in its sole discretion consistent with the requirements of the Act, change the name of the Company from time to time.

**2.3 Principal Place of Business; Registered Agent for Process**

(a) The principal office of the Company shall be at such place as the Member may designate, in its sole discretion, from time to time.

(b) The registered office of the Company in the State of Delaware shall be at such place as the Member may designate, in its sole discretion, from time to time. The registered agent of the Company in the State of Delaware to accept service of process shall be such Person as the Member may designate, in its sole discretion, from time to time. The Member may establish places of business of the Company within and without the State of Delaware, as and when required by the Company's business, and may appoint agents for the service of process in all jurisdictions in which the Company shall conduct business.

## **2.4 Term of Company**

The term of the Company commenced on the date the Certificate was filed in the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue until terminated pursuant to Section 9.1.

## **2.5 Purposes**

The Company is organized for the purpose of carrying on any lawful business, as determined appropriate by the Member. Notwithstanding the preceding sentence, the Company may execute and deliver and perform all contracts and other undertakings and engage in all the activities and transactions that may, in the opinion of the Member, be necessary or advisable to carry out the foregoing purposes, subject to the limitations contained in this Agreement and the Act.

## **2.6 Title to Company Property**

All property owned by the Company shall be deemed to be owned by the Company as an entity, and the Member shall not have any direct ownership interest in any such property.

## **2.7 Failure to Observe Formalities**

A failure to observe any formalities or requirements of this Agreement, the Certificate or the Act shall not be grounds for imposing personal liability on the Member or the managers for liabilities of the Company.

## **2.8 No Partnership Intended for Nontax Purposes**

The Member has formed the Company under the Act, and expressly denies any intent hereby to form a partnership or a corporation under applicable law.

## **2.9 Liability of the Member to Third Parties; No Reliance by Third-Party Creditors**

(a) Except as otherwise provided in the Act, the Member shall not be personally liable for any debt, obligation or liability of the Company, whether arising in contract or otherwise, by reason of being a member of the Company.

(b) This Agreement is entered into by the Member for the exclusive benefit of the Member and its successors and assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by



applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and the Member with respect to any contributions or otherwise.

### **2.10 Election to be Taxed as Corporation**

The Company intends to elect to be treated as a corporation for federal income tax purposes.

## **ARTICLE III MEMBER**

### **3.1 Member**

The Company shall be owned exclusively by the Member pursuant to the terms of this Agreement. In the event the Company has more than one Member, this Agreement shall have no further force and effect.

### **3.2 Capital**

The Member may (but shall not be required to) contribute capital to the Company in such amounts and at such times as it may determine in its discretion.

## **ARTICLE IV ALLOCATION OF NET INCOME AND NET LOSS**

All items of Net Income or Net Loss shall be allocated exclusively to the Member.

## **ARTICLE V DISTRIBUTIONS**

Net Cash Flow and Company assets in kind shall be distributed in such amounts, and at such times as the Member may in its absolute discretion determine. Any such distribution shall be made exclusively to the Member.

## **ARTICLE VI MANAGEMENT**

### **6.1 Management Vested in the Member**

As provided and subject to the terms herein, the Member shall have the authority to manage the business and affairs of the Company. Any action required to be taken by the Member on behalf of the Company shall be duly taken if approved, in writing or otherwise, by the Member as required by the terms of this Agreement.

### **6.2 Authority of the Member**

Except as otherwise provided herein, the Member shall be vested with complete

management and control of the affairs of the Company, except to the extent that the Member delegates authority to one or more Officers or other Persons designated by the Member. Except as otherwise provided herein, the Member shall have the power and authority to do all things necessary or proper to carry out the purposes of the Company. All actions taken by the Member shall be subject to the terms of this Agreement. Any officer or authorized person of the Member, acting in their capacity on behalf of the Member, shall be specifically authorized to execute authorized instruments, documents, agreements, contracts and other undertakings on behalf and in the name of the Company, and parties dealing with the Company shall be entitled to rely on the authority of each parties to execute such documents on behalf of the Company. In addition, the Member may delegate to one or more persons the authority to execute authorized instruments, documents, agreements, contracts and other undertakings on behalf and in the name of the Company.

### **6.3 Payment and Reimbursement of Expenses**

The Company shall reimburse the Member for all reasonable expenses incurred by them on behalf of the Company.

## **ARTICLE VII OFFICERS**

### **7.1 Authority to Delegate to Officers**

The Member shall have the power and authority to appoint officers of the Company (the “*Officers*”). Officers shall have such authority, perform such duties and hold office for such period as may be prescribed by the Member. The Member may delegate to any Officer the power to appoint any subordinate Officers and to prescribe their respective terms of office, authority and duties. Any two or more offices may be held by the same Person. Unless an Officer dies, resigns or is removed from office, he or she shall hold office until his or her successor is appointed.

### **7.2 Resignation or Removal**

Any Officer of the Company may resign from such position by delivering written notice of the resignation to the Member. Any Officer may be removed by the Member, with or without cause, upon receiving written notice from the Member. Election or appointment of an Officer shall not of itself create any contractual right to continued employment, compensation or other benefit from the Company. Vacancies in any office caused by any reason may be filled by the Member by selecting an individual to act during the unexpired term.

### **7.3 Salaries**

The compensation of any Officers, agents or other employees of the Company shall be fixed by the Member, and may be changed from time to time by the Member.

### **7.4 Signing Authority**

The Member may authorize any Officer or Officers, or agent or agents, to enter into any

contract or execute and deliver any instrument in the name of and on behalf of the Company. Such authority may be general or confined to specific instances. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Company may be signed by such Officer or Officers, or agent or agents, of the Company as is from time to time determined by the Member and in such manner as is from time to time determined by the Member.

## **ARTICLE VIII INDEMNIFICATION**

### **8.1 Limitation on Liability**

No Member, manager or Officer, or employee, shareholder, member, partner, delegate or agent thereof, shall be liable, responsible or accountable in damages or otherwise to the Company or the Member for any act or omission by any such Person if such Person acted in good faith, unless such conduct constitutes fraud, gross negligence or willful misconduct.

### **8.2 Indemnification**

To the fullest extent not prohibited by law, the Company shall indemnify and hold harmless the Member, each manager and each Officer, and each employee, shareholder, member, partner, delegate or agent thereof, from and against any and all losses, claims, demands, costs, damages, liabilities (joint and several), expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, regardless of whether such Person continues in such capacity at the time any such liability or expense is paid or incurred, except for fraud, gross negligence, or willful misconduct on the part of such Person. The indemnification provided by this Section 8.2 shall be in addition to any other rights to which those indemnified may be entitled under any agreement, as a matter of law or equity, or otherwise, and shall continue as to a Person who has ceased to serve in their capacity, and shall inure to the benefit of the heirs, successors, assigns and administrators of the Person so indemnified. With respect to the satisfaction of any indemnification of the above-mentioned Persons, only assets of the Company shall be available therefore and the Member shall not have any personal liability therefore. Any indemnification required hereunder to be made by the Company shall be made promptly after the liability, loss, damage, cost or expense is incurred or suffered. The Member may establish reasonable procedures for the submission of claims for indemnification pursuant to this Section 8.2, determination of the entitlement of any Person thereto and review of any such determination.

### **8.3 Advancement of Expenses**

The right to indemnification conferred in this Article VIII shall include the right to be paid by the Company the expenses incurred in defending any proceeding in advance of its final disposition. An advancement of expenses shall be made upon delivery to the Company of an

undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final and binding decision by a court or arbitrator that such indemnitee is not entitled to be indemnified for such expenses under this Section 8.3.

## **ARTICLE IX DISSOLUTION AND TERMINATION**

### **9.2 Events of Dissolution**

(a) The Company shall be dissolved on a date designated by the Member.

(b) Subject to the foregoing, the death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member or the occurrence of any other event that terminates the continued membership of the Member shall not cause the Company to be dissolved or its affairs to be wound up, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

### **9.3 Effectiveness of Dissolution**

Dissolution of the Company shall be effective on the date on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company shall have been distributed as provided herein. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business of the Company and the affairs of the Member, as such, shall continue to be governed by this Agreement. Upon dissolution, the Member shall cause the assets of the Company to be liquidated and shall cause the proceeds thereof to be applied and distributed as contemplated by this Agreement.

### **9.4 Distributions Upon Liquidation**

Distributions upon liquidation of the Company, after payment to all creditors, shall be made to the Member.

## **ARTICLE X BOOKS, RECORDS AND BANK ACCOUNTS**

### **10.1 Books and Records**

(a) The books and records of the Company shall be maintained at the principal office of the Company.

(b) The Company shall maintain with its books and records the following: (i) a current list of the full name and last known address of the Member; (ii) a copy of the Certificate, and all certificates of amendment thereto; (iii) copies of the Company's federal, state and local tax returns and reports, if any, for the three most recent fiscal years; (iv) copies of this Agreement and any amendments thereto; and (v) copies of all financial statements for the Company for the three most recent fiscal years.

## **10.2 Bank Accounts**

The Member shall be responsible for causing one or more accounts to be maintained in a bank (or banks), as necessary, which accounts shall be used for the payment of expenditures incurred in connection with the business of the Company, and in which shall be deposited any and all cash receipts. All such amounts shall be received, held and disbursed by the Company for the purposes specified in this Agreement. There shall not be deposited in any of such accounts any funds other than funds belonging to the Company, and no other funds shall in any way be commingled with such funds.

# **ARTICLE XI MISCELLANEOUS**

## **11.1 Successors and Assigns**

This Agreement, and each and every provision hereof, shall be binding on and shall inure to the benefit of the Member, its respective successors, heirs, successors-in-title and assignees, and each and every successor in interest to any Member, whether such successor acquires such Interest by way of gift, purchase, foreclosure or by any other method, shall hold such Interest subject to all the terms and provisions of this Agreement.

## **11.2 Amendment of Agreement**

Except as otherwise provided herein, this Agreement shall be amended only upon the written agreement of the Member.

## **11.3 Captions**

Titles or captions of articles or sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

## **11.4 Applicable Law**

This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Delaware (regardless of the choice of law principles of the State of Delaware or of any other jurisdiction).

## **11.5 Severability of Provisions**

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

## **11.6 Entire Agreement**

This Agreement constitutes the entire agreement of the Member with respect to the



subject matter hereof.

*[signature page follows]*

**IN WITNESS WHEREOF**, the Member has executed this Agreement as of the Effective Date.

**[CLAIMANT TRUST]**

By: \_\_\_\_\_

Name: [ ]

Its: [ ]

*[Signature Page to [NEW GP] LLC Operating Agreement]*

## EXHIBIT A

### DEFINITIONS

The capitalized terms used in this Agreement shall have the following meanings:

***“Act”*** means the Delaware Limited Liability Company Act, as amended from time to time.

***“Certificate”*** means the Certificate of Formation of the Company filed in the Office of the Secretary of State of the State of Delaware, as amended from time to time.

***“Company”*** means the limited liability company formed pursuant to the Certificate and this Agreement. ***“Effective Date”*** means the date first referenced in the preamble to this Agreement.

***“Interest”*** means the entire ownership interest of the Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all the terms and provisions of this Agreement.

***“Member”*** has the meaning provided in the first paragraph of this Agreement.

***“Net Cash Flow”*** means, for each fiscal year or other period, the gross cash proceeds received by the Company for such year or period, less cash expenditures of the Company for such year or period, less reserves for future Company expenditures as determined by the Member.

***“Net Income”*** and ***“Net Loss”*** mean, for each fiscal year or other period, an amount equal to the Company’s realized and unrealized net income or net loss for the applicable fiscal year or period.

***“Officer”*** means a Person designated or appointed as an officer of the Company pursuant to Article VII.

***“Person”*** means any individual, corporation, partnership, trust, limited liability company or other entity.

## EXHIBIT “C”

001720

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**FIFTH AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
(A Delaware Limited Partnership)**

[ ], 2020

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This FIFTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this “*Agreement*”) of Highland Capital Management, L.P., (the “*Partnership*”), dated as of [\_\_\_\_], 2020 and entered into by and among the [New GP Entity] as general partner of the Partnership (the “*General Partner*”) and the limited partner of the Partnership as set forth on Schedule A hereto (the “*Limited Partner*”), amends and restates in its entirety the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership dated as of December 24, 2015 (as amended to date, the “*Prior Agreement*”), by and among Strand Advisors, Inc. (the “*Prior General Partner*”) and the former limited partners of the Partnership who were limited partners of the Partnership (the “*Prior Limited Partners*”). The General Partner and Limited Partners are collectively referred to as the “*Partners*.”

WHEREAS, the Prior Agreement, as amended pursuant to that certain amendment dated [\_\_\_\_], 2020, provides for the reconstitution and continuation of the Partnership if new limited partners are admitted to the partnership within 90 days after dissolution thereof and such new limited partners consent to the continuation of the Partnership.

WHEREAS, the Partnership was reorganized pursuant to the Plan of Reorganization of Highland Capital Management, L.P., that was approved by the United States Bankruptcy Court for Northern District of Texas, Dallas Division, on [\_\_\_\_] (the “*Plan*”).

WHEREAS, pursuant to the Plan the limited partnership interests of the Prior Limited Partners and the Prior General Partner were canceled on [\_\_\_\_] and new limited partnership interests were issued to the Limited Partner and the General Partner under the Prior Agreement.

WHEREAS, the General Partner and the Limited Partner wish to ratify the admission to the Partnership of the General Partner and the Limited Partner and to amend and restate the terms of the Partnership as set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the undersigned hereby agree as follows:

1. Continuation.

(a) Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 *Del.C.* §17-101, *et seq.*), as amended from time to time (the “*Act*”). This Agreement amends, restates, and supersedes the Prior Agreement and all other prior agreements or understandings with respect to the matters covered herein.

(b) The Limited Partner, being the sole limited partner of the Partnership, hereby (i) consents to the continuation of the Partnership and (ii) ratifies and approves the appointment of the General Partner as general partner of the Partnership.

2. Organizational Matters.

(a) *Name; Certificate.* The name of the Partnership is Highland Capital Management, L.P. The Partnership was organized as a limited partnership pursuant to the Act and

filed a Certificate of Limited Partnership (the “*Certificate*”) with the Secretary of State of the State of Delaware. Any person authorized to act on behalf of the General Partner or the Partnership may, subject to Section 19 below, cause the Partnership to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited partnership in accordance with the laws of the State of Delaware and any other jurisdictions in which the Partnership shall conduct business, and to maintain such filings for so long as the Partnership conducts business therein.

(b) *Offices.* The name of the resident agent for service of process for the Partnership and the address of the registered office of the Partnership in the State of Delaware is Corporation Services Company, 2023 Centre Road, Wilmington Delaware 19805-1297. The General Partner may establish places of business of the Partnership within and without the State of Delaware, as and when required by the Partnership’s business and in furtherance of its purposes set forth herein, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Partnership shall conduct business. The General Partner may from time to time in its sole discretion change the Partnership’s places of business, resident agent for service of process, and/or the location of its registered office in Delaware.

3. Purpose; Powers. The Partnership is formed for the purpose of engaging in any lawful act or activity for which limited partnerships may be formed under the Act. Without limiting the foregoing, the general character and purposes of the business of the Partnership are to (a) engage in the business, directly and/or through one or more subsidiaries, of liquidating assets of, and performing investment management and advisory services for, pooled investment vehicles, funds, investment holdings, accounts, and interests therein; and (b) engage in any lawful activities (including, subject to the other provisions of this Agreement, the borrowing of money and the issuance of guarantees of indebtedness of others) directly or indirectly related or incidental thereto and in which a Delaware limited partnership may lawfully engage. The Partnership shall have and exercise all of the powers and rights conferred upon limited partnerships formed pursuant to the Act.

4. Management.

(a) *Authority of the General Partner.* The business and affairs of the Partnership shall be managed exclusively by and under the direction of the General Partner, which shall have the right, power and authority to exercise all of the powers of the Partnership except as otherwise provided by law or this Agreement. Decisions or actions made or approved by the General Partner in accordance with this Agreement shall constitute decisions or actions by the Partnership and shall be binding upon the Partnership and each Limited Partner of the Partnership. The General Partner may not be removed or replaced by the Limited Partners. In the event of the withdrawal, resignation or dissolution of the General Partner, a new General Partner shall be designated in writing by a majority in interest of the Limited Partners, who shall provide written notice to the remaining Limited Partners of such designation.

(b) *Delegation of Powers; Officers.* Notwithstanding anything to the contrary herein, the General Partner may delegate any or all or any portion of its rights, powers, authority, duties and responsibilities with respect to the management of the Partnership to such officers of the Partnership with such titles as the General Partner may determine (“*Officers*”). The General Partner

may authorize any such Officers to sign agreements, contracts, instruments, or other documents in the name of and on behalf of the Partnership, and such authority may be general or limited to specific instances. The power and authority of any Officer appointed by the General Partner under this Section 4(b) shall not exceed the power and authority possessed by the General Partner under this Agreement. The Officers shall hold office until their successors are duly appointed or their earlier death, resignation, or removal. Any Officer so appointed may be removed at any time, with or without cause, by the written consent of the General Partner. Any Officer may resign from his or her office upon prior written notice to the Partnership. If any office shall become vacant, a replacement Officer may be appointed by the written consent of the General Partner. Two or more offices may be held by the same person. The initial Officers of the Partnership are set forth on Schedule B.

(c) *Limited Partners.* No Limited Partner shall have any right to participate in the management of the Partnership as a Limited Partner. Moreover, no Limited Partner shall have any voting rights except with respect to consent to amendments as set forth in Section 19 below, or as otherwise required by the Act.

(d) *Transactions with Affiliates.* The General Partner or any person controlling, controlled by, or under common control with the General Partner (an “*Affiliate*”) may engage in transactions with the Partnership from time to time, including without limitation for lending to or borrowing from the Partnership, engaging in the provision of services to the Partnership, or otherwise engaging in business transactions with the Partnership, provided that such transactions are entered into in good faith. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Act or any other applicable law, rule, or regulation.

## 5. Partners.

(a) *General.* The name, address, and percentage interest ownership interest of the General Partner and each Limited Partner in the Partnership (the “*Percentage Interest*”) are set forth on Schedule A hereto. Additional Limited Partners may be admitted to the Partnership, and Schedule A may be amended, only with the written consent of the General Partner (provided, that failure to update Schedule A shall not itself be conclusive of whether consent of the General Partner has been obtained). No Limited Partner shall have the right or power to resign, withdraw or retire from the Partnership, except upon (i) the occurrence of any event described in Section 17-801 of the Act (in which case the Limited Partner(s) with respect to which such event has occurred shall, automatically and with no further action necessary by any person, cease to be a Limited Partner, and shall be deemed to have solely the interest of an assignee (within the meaning of Section 17 of the Act) with respect to such Limited Partner’s Limited Partnership Interest), or (ii) with the consent of the General Partner. For the avoidance of doubt, no action may be taken to reduce, directly or indirectly, the Percentage Interest of any Partner without the written consent of such Partner.

(b) *Capital Contributions.* The Partners may, in their sole discretion, make additional capital contribution to the Partnership if requested by the General Partner. All capital, whenever contributed, shall be subject in all respects to the risks of the business and subordinate in right of payment to the claims of present or future creditors of the Partnership in accordance with this Agreement.

(c) *Capital Accounts.* The Partnership shall maintain a capital account for each Partner in accordance with Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”), and the principles of the Treasury Regulations promulgated thereunder.

(d) *Tax Representative.* The General Partner shall serve as the “tax representative” to be the Partnership’s designated representative within the meaning of Section 6223 of the Code with sole authority to act on behalf of the Partnership for purposes of subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws (the “*Tax Representative*”). The Tax Representative is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service, properly designating a particular individual to act on its behalf of the Tax Representative and taking such other action as may from time to time be required under Treasury Regulations. The Tax Representative is hereby authorized to and shall perform all duties of a “tax representative” and shall serve as Tax Representative until its resignation or until the designation of its successor, whichever occurs sooner.

6. Allocation of Income and Losses.

(a) *Definitions.* For purposes of this Agreement, “*Income*” and “*Loss*” of the Partnership shall mean the taxable income and loss, respectively, of the Partnership computed with the adjustments set forth in Treasury Regulation under Code Section 704(b) including (A) adjustments pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g), (B) the inclusion of the amount of any tax-exempt income as an item of income, (C) the inclusion of the amount of any nondeductible, noncapitalizable expense as an item of deduction and (D) the inclusion of the amount of unrealized gain or unrealized loss with respect to an asset of the Partnership as an item of income or gain (as applicable) upon distribution of such asset in kind or as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

(b) *Allocations Generally.* The Income and Loss of the Partnership for each fiscal year or other applicable period shall be allocated to and among the Partners in proportion to their respective Percentage Interests.

(c) *Adjustments.* Notwithstanding Section 6(b) (but subject to Section 6(c)),

- (i) Items of income or gain for any taxable period shall be allocated to the Partner in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and
- (ii) In no event shall any Loss or item of deduction be allocated to a Partner if such allocation would cause or increase a negative balance



in such Partner's capital account determined by increasing the Partner's capital account balance by any amount the Partner may be obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and by decreasing such capital account balance by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(d) *Nonrecourse Debt.* If at any time the Partnership incurs any "nonrecourse debt" (i.e., debt that is treated as nonrecourse for purposes of Treasury Regulation Section 1.1001-2), the following provisions will apply notwithstanding anything to the contrary expressed elsewhere in this Agreement:

- (i) "Nonrecourse deductions" (as defined in Treasury Regulation Sections 1.704-2(b) and (c)) shall be allocated to the Partners in proportion to their respective Percentage Interests.
- (ii) All other allocations relating to such nonrecourse debt shall be allocated in accordance with Treasury Regulation Section 1.704-2; and
- (iii) For purposes of Sections 6(b) and 6(c), each Partner's capital account balance shall be increased by the Partner's share of minimum gain and of partner nonrecourse debt minimum gain (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

(e) *Deductions, Credits.* Except as otherwise provided herein or as required by Code Section 704, for federal income tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss.

(f) *Regulatory Allocations.* Notwithstanding the provisions of Sections 6(a)-(e) above, allocations of Income and Loss shall be made in the order of priority set forth in Exhibit I to this Agreement.

(g) *Withholding.* To the extent that the Partnership is required to withhold and pay over any amounts to any Governmental Authority with respect to Distributions or allocations to any Limited Partner, the amount withheld shall be treated as a Distribution to that Limited Partner pursuant to Sections 4.02, 4.03 or 4.05, as applicable. In the event of any claimed over-withholding, Limited Partners shall be limited to an action against the applicable jurisdiction and not against the Partnership (unless the Partnership has not yet paid such amounts over to such jurisdiction). If any amount required to be withheld was not, in fact, actually withheld from one or more Distributions and the Partnership shall have been required to pay such amount to such Governmental Entity, the Partnership may, at its option, (i) require the affected Limited Partner to reimburse the Partnership for such withholding or (ii) reduce any subsequent Distributions to such Limited Partner by the amount of such withholding, in each case plus interest. Each Limited Partner agrees to furnish the Partnership with such documentation as shall reasonably be requested



by the Partnership to assist it in determining the extent of, and in fulfilling, its withholding obligations. Each Limited Partner will indemnify the General Partner and the Partnership against any losses and liabilities (including interest and penalties) related to any withholding obligations with respect to allocations or Distributions made to such Limited Partner by the Partnership.

(h) *Consistent Tax Reporting.* Except as otherwise unanimously agreed to in writing by the Limited Partners, for U.S. federal, state and local income tax purposes, the Limited Partners agree, as a condition to their admission to the Partnership, to report all taxable income, loss and items thereof (including the character and timing of such items) in a manner consistent with the manner in which such taxable income, loss or item thereof is reported by the Partnership on its tax returns and the Schedules K-1 (or any successor form) furnished by the Partnership to the Limited Partners.

7. Distributions. Distributions shall be made from the undistributed profit and loss account to the Partners at the times and in the aggregate amounts determined by the General Partner in its sole discretion; provided, that distributions shall be made to the Partners in accordance with their Percentage Interests. Distributions may be in cash or in kind as determined by the General Partner in its sole discretion. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Limited Partners on account of its interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

8. Other Business. The Partners and their affiliates may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

9. Limited Liability. The debts, obligations, and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and the General Partner. No Limited Partner shall have any liability (personal or otherwise) for any such debt, obligation, or liability of the Partnership solely by reason of acting in such capacity. For the avoidance of doubt, to the extent a Limited Partner is an Officer of the Partnership (regardless of title) and/or has authority to act on behalf of the General Partner of the Partnership, such Limited Partner shall remain a Limited Partner of the Partnership and shall not be subject to any liability (personal or otherwise) for any debt, obligation or liability of the Partnership.

10. Indemnification.

(a) *General.* To the fullest extent permitted by law, subject to Section 10(c) below, the Partnership shall indemnify each Covered Person (as defined below) for any and all losses, claims, demands, costs, damages, liabilities (joint and several), expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Covered Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. For the avoidance of

doubt, the indemnification under this Section 10(a) shall apply even though at the time of such claim, demand, action, suit or proceeding such person is no longer a Covered Person. Any indemnity under this Section 10(a) shall be provided out of and only to the extent of the Partnership's assets, and no Limited Partner shall have personal liability on account thereof.

(b) *Covered Persons.* "***Covered Person***" means each of the following:

- (i) the General Partner, and each member, partner, director, officer, and agent thereof,
- (ii) each person who is or becomes an Officer of the Partnership on or after the date hereof, and
- (iii) any other current or former officer, director, employee or agent for the Partnership or the General Partner, in each case to the extent determined by the General Partner in its sole discretion.

(c) *Limitations on Indemnification.* Notwithstanding anything to the contrary herein, no indemnification shall be provided for any Covered Person (i) with respect to any action brought by such Covered Person as a plaintiff against the Partnership or another Covered Person, or (ii) for any loss, damage or claim arising from such Covered Person's fraud, gross negligence or willful misconduct (in each case as determined by a final and binding judgment of a court or arbitrator).

(d) *Advancement of Expenses.* Expenses reasonably incurred in defending any claim, action, suit or proceeding of the character described in Section 10(a), to the extent available, shall be advanced by the Partnership prior to the final disposition of such claim, action, suit or proceeding upon receipt of a written undertaking by or on behalf of the recipient to repay all such advances if it is ultimately determined by the General Partner that such Covered Person is not entitled to indemnification pursuant to Section 10(c).

(e) *Third Party Beneficiaries.* Covered Persons shall be deemed to be third-party beneficiaries solely for purposes of this Section 10. All rights of any Covered Person under this Section shall inure to the benefit of such Covered Person's heirs and assigns.

11. Fiscal Year. The fiscal year of the Partnership shall end on December 31<sup>st</sup> of each year.

12. Transfers of Limited Partner Interests. No Limited Partner may transfer, in whole or in part, whether by sale, exchange, lease, license, assignment, distribution, gift, transfer or other disposition or alienation in any way, its interest in the Partnership, without the prior consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner and may include such terms and conditions as the General Partner shall deem appropriate in its sole discretion. In addition, it shall be a condition precedent to every transfer of all or any portion of a Limited Partner's interest permitted hereunder, the transferring Limited Partner shall demonstrate to the satisfaction of the General Partner that (i) the proposed transfer will not cause or result in a breach of any violation of law, including U.S. federal or state securities laws, and (ii) that the transfer would not adversely affect the classification of the Partnership as a partnership for U.S.

federal tax purposes (including by causing the Partnership to be treated as a “publicly traded partnership” under Section 7704 of the Code), terminate it as a partnership under Code Section 708, or have a substantial adverse effect with respect to U.S. federal income taxes payable by the Partnership.

13. Dissolution. The Partnership shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the General Partner; (ii) at any time there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in a manner permitted by the Act; or (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act. Following the foregoing event, the General Partner shall proceed diligently to liquidate the assets of the Partnership in a manner consistent with commercially reasonable business practices. In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Partnership in an orderly manner), and the assets of the Partnership shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act. Liquidating distributions to the Partners shall be made in accordance with their Percentage Interests.

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

15. Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.

16. Facsimile Signature Page. This Agreement may be executed and delivered by the parties hereto by an executed signature page transmitted by facsimile, and any failure to deliver the originally executed signature page shall not affect the validity, legality or enforceability of this Agreement.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to the conflicts of law principles), all rights and remedies being governed by said laws.

19. Amendments. No amendment of this Agreement shall be valid or binding unless such amendment is made with the written consent of the General Partner. Further, any amendment of this Agreement that reduces the Percentage Interest or economic rights of any Limited Partner in a manner that is disproportionate to other Limited Partners shall require the written consent of the affected Limited Partner. For the avoidance of doubt, amendment includes any merger, combination or other reorganization or any amendment of the Certificate that has the effect of changing or superseding the terms of this Agreement.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first set forth above.

**GENERAL PARTNER:**

*[NEW GP ENTITY]*

---

By:

Its:

**LIMITED PARTNER:**

*[CLAIMANT TRUST]*

---

By:

Its: Trustee

*[Signature Page to Fifth Amended and Restated  
Agreement of Limited Partnership of Highland Capital Management, L.P.]*



Schedule A

SCHEDULE OF PARTNERS

[Date], 2020

General Partner

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
[New GP Entity]	[Insert Address]	[1.00]%

Limited Partners

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
[Claimant Trust]	[Insert Address]	[99.00]%

*Schedule A*

**Schedule B**

**SCHEDULE OF OFFICERS**

**[Date], 2020**

<b><u>Name</u></b>	<b><u>Officer Title</u></b>
[James Seery]	[Chief Executive Officer]
<i>[Name]</i>	<i>[Title]</i>
<i>[Name]</i>	<i>[Title]</i>

*Schedule B*

**Exhibit I**

**REGULATORY ALLOCATIONS**

(i) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the minimum extent required by the “minimum gain chargeback” provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

(ii) All “nonrecourse deductions” (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Partnership for any year shall be allocated to the Partners in accordance with their respective Percentage Interests; provided, however, that nonrecourse deductions attributable to “partner nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Partners in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

(iii) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(iv) In no event shall Loss of the Partnership be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner’s Adjusted Capital Account (determined for purposes of this Exhibit I only, by increasing the Partner’s Adjusted Capital Account balance by the amount the Partner is obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and decreasing it by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(v) For tax purposes, except as otherwise provided herein or as required by Code Section 704, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss; provided, however, that if the Book Value of any property of the Partnership differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Partners so as to take account of the variation between the adjusted basis of the property for tax purposes and its Book Value in the manner provided for under Code Section 704(c).

(vi) For purposes hereof, the following terms have the meanings set forth below:

**“Adjusted Capital Account”** means, for each Partner, such Partner’s capital account balance increased by such Partner’s share of “minimum gain” and of “partner nonrecourse debt minimum gain” (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

**“Book Value”** means, with respect to any asset, the asset’s adjusted basis for U.S. federal income tax purposes; provided, however, that (i) the initial Book Value of any asset contributed to the Partnership shall be adjusted to equal its fair market value as determined by the General Partner at the time of its contribution, and (ii) the Book Values of all assets held by the Partnership shall be

*Schedule B*

adjusted to equal their respective fair market values as determined by the General Partner (taking Code Section 7701(g) into account) upon an election by the Partnership to revalue its property in accordance with Regulation Section 1.704-1(b)(2)(iv)(f) and upon liquidation of the Partnership. The Book Value of any asset whose Book Value was adjusted pursuant to the preceding sentence shall thereafter be adjusted in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(g).

## **EXHIBIT “D”**



Draft

## LITIGATION SUB-TRUST AGREEMENT

This Litigation Sub-Trust Agreement, effective as of \_\_\_\_\_, 2020 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the “Claimant Trustee”), [\_\_\_\_\_] as Delaware Trustee, and Marc S. Kirschner as trustee (the “Litigation Trustee,” and together with the Claimant Trustee [and Delaware Trustee], the “Parties”) of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

## RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the “Debtor”) filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 13, 2020, the Debtor filed the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. •](as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> [which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2020, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”)];

WHEREAS, this Agreement, including all exhibits hereto, is the “Litigation Sub-Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement[; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the Debtor Employee Claims;] and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

## DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

## **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.
- (b) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.
- (c) “Claimant Trust Agreement” means the Claimant Trust Agreement dated [ ], 2020, by and between the Debtor, Claimant Trustee, and Delaware Trustee.
- (d) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.
- (e) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.
- (f) [“Debtor Employee Claims”] means any General Unsecured Claims filed by any Employee or former director, officer, or employee of the Debtor, other than the Claims of

the Senior Employees subject to stipulations executed by employees of the Debtor prior to the Effective Date.]

(g) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(h) “Delaware Trustee” has the meaning set forth in the Claimant Trust Agreement.

(i) “Disability” means as a result of the Litigation Trustee’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(j) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(k) [“Employee” means the employees of the Debtor set forth in the Plan Supplement.]

(l) “Litigation Sub-Trust” means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) “Litigation Sub-Trust Agreement” means this Agreement.

(n) “Litigation Sub-Trust Assets” means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) “Litigation Sub-Trust Beneficiary” means the Claimant Trust.

(p) “Litigation Sub-Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) “Litigation Sub-Trust Expense Cash Reserve” means \$[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the Litigation Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) “Litigation Trustee” means Marc S. Kirschner as the initial “Litigation Trustee” hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

(s) “Oversight Board” has the meaning set forth in the Claimant Trust Agreement.

(t) “Plan” has the meaning set forth in the Recitals hereof.

(u) “Privileges” means the rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Debtor Employee Claims, including, without limitation, attorney-client privilege as defined in Rule 502(g) of the Federal Rules of Evidence or any other privilege available under applicable law[; provided, however, that “Privileges” shall not include the work-product privilege and the work-product privilege shall remain with the attorney or attorneys who created such work product.]

(v) “Securities Act” means the Securities Act of 1933, as amended.

(w) “TIA” means the Trust Indenture Act of 1939, as amended.

(x) “Trust Interests” means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.** **ESTABLISHMENT OF THE LITIGATION SUB-TRUST**

### **2.1 Establishment of Sub-Trust.**



(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole Litigation Sub-Trust Beneficiary, which shall be known as the “Highland Litigation Sub-Trust,” on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Nature and Purposes of the Litigation Sub-Trust. The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims], and the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, Debtor Employee Claims]. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and Debtor Employee Claims, other than those Claims constituting Reorganized Debtor Assets; provided, however, that the Litigation Trustee may, as part of his investigation mandate, investigate Estate Claims that would constitute Reorganized Debtor Assets and make a recommendation to the Oversight Board and the Reorganized Debtor on how to proceed with respect to any such Causes of Action.

2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically and irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, Debtor Employee Claims, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and Debtor Employee Claims and shall be treated as such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of



the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE LITIGATION TRUSTEE**

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all Estate Claims or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor’s property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;

(viii) make all payments relating to the Litigation Sub-Trust Assets;

(ix) [assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;]

(x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;

(xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;

(xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;

(xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and

(xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the "Authorized Acts").

(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a [simple majority] of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

- (i) terminate or extend the term of the Litigation Sub-Trust;
  - (ii) commence litigation with respect to any Estate Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;
  - (iii) settle, dispose of, or abandon any Estate Claims [(including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim)];
  - (iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;
  - (v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;
  - (vi) change the compensation of the Litigation Trustee; and
  - (vii) retain counsel, experts, advisors, or any other professionals.
- (c) [Reserved]



3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file



with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the “Interim Trustee”) until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person’s appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee’s capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

3.10 Litigation Trustee as “Estate Representative”. The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan

or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

### 3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.

### 3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and

any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive compensation in a manner and amount to be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.

(b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not

taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

#### ARTICLE IV. THE OVERSIGHT BOARD

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

#### ARTICLE V. TRUST INTERESTS

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.

5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to



registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

## **ARTICLE VI.** **DISTRIBUTIONS**

6.1 **Distributions.** The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within [30 days] of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 **Manner of Payment or Distribution.** All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 **Delivery of Distributions.** All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

## **ARTICLE VII.** **TAX MATTERS**

### **7.1 [Tax Treatment and Tax Returns.**

(a) It is intended for the initial transfer of the Litigation Sub-Trust Assets to the Litigation Sub-Trust to be treated for federal income tax purposes (and foreign, state, local tax purposes where applicable) as if the Debtor transferred the Litigation Sub-Trust Assets to the Litigation Sub-Trust Beneficiary and then, immediately thereafter, the Litigation Sub-Trust Beneficiary transferred the Litigation Sub-Trust Assets to the Litigation Sub-Trust. Consistent with such treatment, (i) it is intended that the Litigation Sub-Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Litigation Sub-Trust Beneficiary will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), and (iii) the Litigation Trustee shall file all federal income tax returns (and foreign, state, and local



income tax returns where applicable) for the Litigation Sub-Trust Beneficiary as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Litigation Trustee also will annually send to the Litigation Sub-Trust Beneficiary, in accordance with the tax laws, a separate statement setting forth such holder's interest in the Litigation Sub-Trust and share of items of income, gain, loss, deduction or credit as relevant for U.S. federal income tax purposes for such Litigation Sub-Trust Beneficiary to use in preparing their U.S. federal income tax returns.

(b) The Litigation Trustee shall determine the fair market value of the Litigation Sub-Trust Assets as of the Effective Date and notify the Litigation Sub-Trust Beneficiary of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.<sup>2</sup>

#### **ARTICLE VIII.**

#### **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Litigation Trustee, Oversight Board, or Member acted with gross

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<sup>2</sup> NTD: Subject to review by tax counsel.

negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.

8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the “Indemnified Parties”) shall be indemnified by the Litigation Sub-Trust against and held harmless by the Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party’s reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

## ARTICLE IX. TERMINATION

9.1 [Duration] The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee

to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension ([not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Litigation Sub-Trust as a liquidating trust for federal income tax purposes]) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets; provided, however, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Litigation Sub-Trust Assets, by the Bankruptcy Court within six months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years [without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Litigation Sub-Trust as a liquidating trust for federal income tax purposes].

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

## ARTICLE X. AMENDMENTS AND WAIVER

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect

except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner  
c/o Goldin Associates LLC, a Teneo Company  
350 Fifth Avenue  
New York, New York 10118

With a copy to:

**[insert contact for counsel to the Litigation Trustee].**

(b) If to the Claimant Trustee:

Claimant Trustee  
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

**[insert contact for counsel to the Claimant Trustee].**



Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

[Remainder of Page Intentionally Blank]



IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By: \_\_\_\_\_

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant  
Trustee

Litigation Trustee

By: \_\_\_\_\_

Marc S. Kirschner, not individually but  
solely in his capacity as the Litigation Trustee

## **EXHIBIT “E”**

### Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

## Annex 1

11 Estates Lane, LLC	Acis CLO Value Fund II Charitable DAF Ltd.
1110 Waters, LLC	Acis CMOA Trust
140 Albany, LLC	Advisors Equity Group LLC
1525 Dragon, LLC	Alamo Manhattan Hotel I, LLC
17720 Dickerson, LLC	(Third Party)
1905 Wylie LLC	Allenby, LLC
2006 Milam East Partners GP, LLC	Allisonville RE Holdings, LLC
2006 Milam East Partners, L.P.	AM Uptown Hotel, LLC
201 Tarrant Partners, LLC	Apex Care, L.P
2014 Corpus Weber Road LLC	Asbury Holdings, LLC ( <i>fka HCSLR</i>
2325 Stemmons HoldCo, LLC	<i>Camelback Investors (Delaware), LLC</i> )
2325 Stemmons Hotel Partners, LLC	Ascendant Advisors
2325 Stemmons TRS, Inc.	Atlas IDF GP, LLC
300 Lamar, LLC	Atlas IDF, LP
3409 Rosedale, LLC	BB Votorantim Highland Infrastructure, LLC
3801 Maplewood, LLC	BDC Toys Holdco, LLC
3801 Shenandoah, L.P.	Beacon Mountain, LLC
3820 Goar Park LLC	Bedell Trust Ireland Limited (Charitable trust
400 Seaman, LLC	account)
401 Ame, L.P.	Ben Roby (third party)
4201 Locust, L.P.	BH Equities, LLC
4312 Belclaire, LLC	BH Heron Pointe, LLC
5833 Woodland, L.P.	BH Hollister, LLC
5906 DeLoache, LLC	BH Willowdale Manager, LLC
5950 DeLoache, LLC	Big Spring Partners, LLC
7758 Ronnie, LLC	Blair Investment Partners, LLC
7759 Ronnie, LLC	Bloomdale, LLC
AA Shotguns, LLC	Brave Holdings III Inc.
Aberdeen Loan Funding, Ltd.	Brentwood CLO, Ltd.
Acis CLO 2017-7 Ltd	Brentwood Investors Corp.
Acis CLO Management GP, LLC	Brian Mitts
Acis CLO Management GP, LLC ( <i>fka Acis</i>	Bristol Bay Funding Ltd.
<i>CLO Opportunity Funds GP, LLC</i> )	Bristol Bay Funding, Ltd.
Acis CLO Management Holdings, L.P.	BVP Property, LLC
Acis CLO Management Intermediate Holdings	C-1 Arbors, Inc.
I, LLC	C-1 Cutter's Point, Inc.
Acis CLO Management Intermediate Holdings	C-1 Eaglecrest, Inc.
II, LLC	C-1 Silverbrook, Inc.
Acis CLO Management, LLC ( <i>fka Acis CLO</i>	Cabi Holdco GP, LLC
<i>Opportunity Funds SLP, LLC</i> )	Cabi Holdco I, Ltd
Acis CLO Trust	Cabi Holdco I, Ltd.

Cabi Holdco, L.P.  
California Public Employees' Retirement System  
Camelback Residential Investors, LLC  
Camelback Residential Investors, LLC  
*(fka Sevilla Residential Partners, LLC)*  
Camelback Residential Partners, LLC  
Capital Real Estate - Latitude, LLC  
Castle Bio Manager, LLC  
Castle Bio, LLC  
CG Works, Inc.  
CG Works, Inc.  
*(fka Common Grace Ventures, Inc.)*  
Charitable DAF Fund, L.P.  
Charitable DAF GP, LLC  
Charitable DAF HoldCo, Ltd  
Charitable DAF HoldCo, Ltd.  
Claymore Holdings, LLC  
CLO HoldCo, Ltd  
CLO Holdco, Ltd.  
Corbusier, Ltd.  
Cornerstone Healthcare Group Holding, Inc.  
Corpus Weber Road Member LLC  
CP Equity Hotel Owner, LLC  
CP Equity Land Owner, LLC  
CP Equity Owner, LLC  
CP Hotel TRS, LLC  
CP Land Owner, LLC  
CP Tower Owner, LLC  
CRE - Lat, LLC  
Credit Suisse, Cayman Islands Branch  
Crossings 2017 LLC  
Crown Global Insurance Company (third party)  
Dallas Cityplace MF SPE Owner LLC  
Dallas Lease and Finance, L.P.  
Dana Scott Breault  
James Dondero  
Reese Avry Dondero  
Jameson Drue Dondero  
Dana Sprong (Third Party)  
David c. Hopson  
De Kooning, Ltd.

deKooning, Ltd.  
DFA/BH Autumn Ridge, LLC  
Dolomiti, LLC  
DrugCrafters, L.P.  
Dugaboy Investment Trust  
Dugaboy Management, LLC  
Dugaboy Project Management GP, LLC  
Eagle Equity Advisors, LLC  
Eames, Ltd.  
Eastland CLO, Ltd.  
Eastland Investors Corp.  
EDS Legacy Heliport, LLC  
EDS Legacy Partners Owner, LLC  
EDS Legacy Partners, LLC  
Empower Dallas Foundation, Inc.  
ENA 41, LLC  
Entegra Strat Superholdco, LLC  
Entegra-FRO Holdco, LLC  
Entegra-FRO Superholdco, LLC  
Entegra-HOCF Holdco, LLC  
Entegra-NHF Holdco, LLC  
Entegra-NHF Superholdco, LLC  
Entegra-RCP Holdco, LLC  
Estates on Maryland Holdco, LLC  
Estates on Maryland Owners SM, Inc.  
Estates on Maryland Owners, LLC  
Estates on Maryland, LLC  
Falcon E&P Four Holdings, LLC  
Falcon E&P One, LLC  
Falcon E&P Opportunities Fund, L.P.  
Falcon E&P Opportunities GP, LLC  
Falcon E&P Royalty Holdings, LLC  
Falcon E&P Six, LLC  
Falcon E&P Two, LLC  
Falcon Four Midstream, LLC  
Falcon Four Upstream, LLC  
Falcon Incentive Partners GP, LLC  
Falcon Incentive Partners, LP  
Falcon Six Midstream, LLC  
Flamingo Vegas Holdco, LLC *(fka Cabi Holdco, LLC)*  
Four Rivers Co-Invest GP, LLC  
Four Rivers Co-Invest, L.P.



FRBH Abbington SM, Inc.	Gardens of Denton II, L.P.
FRBH Abbington, LLC	Gardens of Denton III, L.P.
FRBH Arbors, LLC	Gleneagles CLO, Ltd.
FRBH Beechwood SM, Inc.	Goverannce RE, Ltd.
FRBH Beechwood, LLC	Governance Re, Ltd.
FRBH C1 Residential, LLC	Governance, Ltd.
FRBH Courtney Cove SM, Inc.	Grant Scott
FRBH Courtney Cove, LLC	Grant Scott, Trustee of The SLHC Trust
FRBH CP, LLC	Grayson CLO, Ltd.
FRBH Duck Creek, LLC	Grayson Investors Corp.
FRBH Eaglecrest, LLC	Greater Kansas City Community Foundation (third party)
FRBH Edgewater JV, LLC	Greenbriar CLO, Ltd.
FRBH Edgewater Owner, LLC	Greg Busseyt
FRBH Edgewater SM, Inc.	Gunwale LLC
FRBH JAX-TPA, LLC	Gunwale, LLC
FRBH Nashville Residential, LLC	Hakusan, LLC
FRBH Regatta Bay, LLC	Hammark Holdings LLC
FRBH Sabal Park SM, Inc.	Hampton Ridge Partners, LLC
FRBH Sabal Park, LLC	Harbourvest Entities
FRBH Silverbrook, LLC	Harko, LLC
FRBH Timberglen, LLC	Harry Bookey/Pam Bookey (third party)
FRBH Willow Grove SM, Inc.	Haverhill Acquisition Co., LLC
FRBH Willow Grove, LLC	Haygood, LLC
FRBH Woodbridge SM, Inc.	HB 2015 Family LP (third party)
FRBH Woodbridge, LLC	HCBH 11611 Ferguson, LLC
Freedom C1 Residential, LLC	HCBH Buffalo Pointe II, LLC
Freedom Duck Creek, LLC	HCBH Buffalo Pointe III, LLC
Freedom Edgewater, LLC	HCBH Buffalo Pointe, LLC
Freedom JAX-TPA Residential, LLC	HCBH Hampton Woods SM, Inc.
Freedom La Mirage, LLC	HCBH Hampton Woods, LLC
Freedom LHV LLC	HCBH Overlook SM, Inc.
Freedom Lubbock LLC	HCBH Overlook, LLC
Freedom Miramar Apartments, LLC	HCBH Rent Investors, LLC
Freedom Sandstone, LLC	HCMS Falcon GP, LLC
Freedom Willowdale, LLC	HCMS Falcon, L.P.
Fundo de Investimento em Direitos Creditórios BB Votorantim Highland Infraestrutura	HCO Holdings, LLC
G&E Apartment REIT The Heights at Olde Towne, LLC	HCOF Preferred Holdings, L.P.
G&E Apartment REIT The Myrtles at Olde Towne, LLC	HCOF Preferred Holdings, LP
GAF REIT, LLC	HCOF Preferred Holdings, Ltd.
GAF Toys Holdco, LLC	HCRE 1775 James Ave, LLC
	HCRE Addison TRS, LLC

HCRE Addison, LLC (*fka HWS Addison, LLC*)

HCRE Hotel Partner, LLC (*fka HCRE HWS Partner, LLC*)

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC (*fka HWS Las Colinas, LLC*)

HCRE Plano TRS, LLC

HCRE Plano, LLC (*fka HWS Plano, LLC*)

HCREF-I Holding Corp.

HCREF-II Holding Corp.

HCREF-III Holding Corp.

HCREF-IV Holding Corp.

HCREF-IX Holding Corp.

HCREF-V Holding Corp.

HCREF-VI Holding Corp.

HCREF-VII Holding Corp.

HCREF-VIII Holding Corp.

HCREF-XI Holding Corp.

HCREF-XII Holding Corp.

HCREF-XIII Holding Corp.

HCREF-XIV Holding Corp.

HCREF-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA*)

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. (*fka Pyxis Capital, L.P.*)

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.

Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP  
Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP  
Highland Capital of New York, Inc.  
Highland Capital Special Allocation, LLC  
Highland CDO Holding Company  
Highland CDO Opportunity Fund GP, L.P.  
Highland CDO Opportunity Fund, L.P.  
Highland CDO Opportunity Fund, Ltd.  
Highland CDO Opportunity GP, LLC  
Highland CDO Opportunity Master Fund, L.P.  
Highland CDO Trust  
Highland CLO 2018-1, Ltd.  
Highland CLO Assets Holdings Limited  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd. (*fka Acis Loan Funding, Ltd.*)  
Highland CLO Gaming Holdings, LLC  
Highland CLO Holdings Ltd.  
Highland CLO Holdings, Ltd. (as of 12.19.17)  
Highland CLO Management Ltd.  
Highland CLO Trust  
Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.  
Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC (*fka Highland Capital Loan GP, LLC*)

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. (*fka Highland Capital Loan Fund, L.P.*)

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. (*fka Highland Loan Fund, Ltd.*)

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. (*fka Highland Loan Master Fund, L.P.*)

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund (*fka Highland Energy and Materials Fund*)

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunitites Fund  
Highland Floating Rate Opportunities Fund  
Highland Fund Holdings, LLC  
Highland Funds I  
Highland Funds II  
Highland Funds III  
Highland GAF Chemical Holdings, LLC  
Highland General Partner, LP  
Highland Global Allocation Fund  
Highland Global Allocation Fund  
*(fka Highland Global Allocation Fund II)*  
Highland GP Holdings, LLC  
Highland HCF Advisor Ltd.  
Highland HCF Advisor, Ltd., as Trustee for  
and on behalf of Acis CLO Trust, as nominee  
for and on behalf of Highland CLO Funding,  
Ltd. (as of 3.29.18)  
Highland Healthcare Equity Income and  
Growth Fund  
Highland iBoxx Senior Loan ETF  
Highland Income Fund  
Highland Income Fund *(fka Highland  
Floating Rate Opportunities Fund)*  
Highland Kansas City Foundation, Inc.  
Highland Latin America Consulting, Ltd.  
Highland Latin America GP, Ltd.  
Highland Latin America LP, Ltd.  
Highland Latin America Trust  
Highland Legacy Limited  
Highland LF Chemical Holdings, LLC  
Highland Loan Funding V, LLC  
Highland Loan Funding V, Ltd.  
Highland Long/Short Equity Fund  
Highland Long/Short Healthcare Fund  
Highland Marcal Holding, Inc.  
Highland Merger Arbitrage Fund  
Highland Multi Strategy Credit Fund GP, L.P.  
Highland Multi Strategy Credit Fund GP, L.P.  
*(fka Highland Credit Opportunities CDO GP,  
L.P.)*  
Highland Multi Strategy Credit Fund, L.P.

Highland Multi Strategy Credit Fund, L.P. *(fka  
Highland Credit Opportunities Fund, L.P., fka  
Highland Credit Opportunities CDO, L.P.)*  
Highland Multi Strategy Credit Fund, Ltd.  
Highland Multi Strategy Credit Fund, Ltd. *(fka  
Highland Credit Opportunities Fund, Ltd.)*  
Highland Multi Strategy Credit GP, LLC  
Highland Multi Strategy Credit GP, LLC *(fka  
Highland Credit Opportunities CDO GP, LLC)*  
Highland Multi-Strategy Fund GP, LLC  
Highland Multi-Strategy Fund GP, LP  
Highland Multi-Strategy IDF GP, LLC  
Highland Multi-Strategy Master Fund, L.P.  
Highland Multi-Strategy Master Fund, LP  
Highland Multi-Strategy Onshore Master  
SubFund II, LLC  
Highland Multi-Strategy Onshore Master  
Subfund, LLC  
Highland Opportunistic Credit Fund  
Highland Park CDO 1, Ltd.  
Highland Park CDO I, Ltd.  
Highland Premier Growth Equity Fund  
Highland Premium Energy & Materials Fund  
Highland Prometheus Feeder Fund I, L.P.  
Highland Prometheus Feeder Fund I, LP  
Highland Prometheus Feeder Fund II, L.P.  
Highland Prometheus Feeder Fund II, LP  
Highland Prometheus Master Fund, L.P.  
Highland Receivables Finance I, LLC  
Highland Restoration Capital Partners GP,  
LLC  
Highland Restoration Capital Partners Master,  
L.P.  
Highland Restoration Capital Partners  
Offshore, L.P.  
Highland Restoration Capital Partners, L.P.  
Highland Santa Barbara Foundation, Inc.  
Highland Select Equity Fund GP, L.P.  
Highland Select Equity Fund, L.P.  
Highland Select Equity GP, LLC  
Highland Select Equity Master Fund, L.P.

Highland Small-Cap Equity Fund  
Highland Socially Responsible Equity Fund  
Highland Socially Responsible Equity Fund  
*(fka Highland Premier Growth Equity Fund)*

Highland Special Opportunities Holding  
Company

Highland SunBridge GP, LLC

Highland Tax-Exempt Fund

Highland TCI Holding Company, LLC

Highland Total Return Fund

Highland's Roads Land Holding Company,  
LLC

Hirst, Ltd.

HMCF PB Investors, LLC

HMx2 Investment Trust  
(Matt McGraner)

Hockney, Ltd.

HRT North Atlanta, LLC

HRT Timber Creek, LLC

HRTBH North Atlanta, LLC

HRTBH Timber Creek, LLC

Huber Funding LLC

Hunter Mountain Investment Trust

HWS Investors Holdco, LLC

Internal Investors

Intertrust

James D. Dondero

Reese Avry Dondero

Jameson Drue Dondero

James Dondero

James Dondero and Mark Okada

James Dondero

Reese Avry Dondero

Jameson Drue Dondero

Japan Trustee Services Bank, Ltd.

Jasper CLO, Ltd.

Jewelry Ventures I, LLC

JMIJM, LLC

Joanna E. Milne Irrevocable Trust dated Nov  
25 1998 (third party)

John Honis

John L. Holt, Jr.

John R. Sears, Jr.

Karisopolis, LLC

Keelhaul LLC

KHM Interests, LLC (third party)

Kuilima Montalban Holdings, LLC

Kuilima Resort Holdco, LLC

KV Cameron Creek Owner, LLC

Lakes at Renaissance Park Apartments  
Investors, L.P.

Lakeside Lane, LLC

Landmark Battleground Park II, LLC

Lane Britain

Larry K. Anders

LAT Battleground Park, LLC

LAT Briley Parkway, LLC

Lautner, Ltd.

Leawood RE Holdings, LLC

Liberty Cayman Holdings, Ltd.

Liberty CLO Holdco, Ltd.

Liberty CLO, Ltd.

Liberty Sub, Ltd.

Long Short Equity Sub, LLC

Longhorn Credit Funding LLC

Longhorn Credit Funding LLC - A

Longhorn Credit Funding LLC - B

Longhorn Credit Funding LLC (LHB)

Longhorn Credit Funding, LLC

Lurin Real Estate Holdings V, LLC

Maple Avenue Holdings, LLC

MaplesFS Limited

Marc C. Manzo

Mark and Pam Okada Family Trust - Exempt  
Descendants' Trust

Mark and Pam Okada Family Trust - Exempt  
Trust #2

Mark and Pamela Okada Family Trust -  
Exempt Descendants' Trust

Mark and Pamela Okada Family Trust -  
Exempt Descendants' Trust #2

Mark and Pamela Okada Family Trust -  
Exempt Trust #2

Mark K. Okada

Mark Okada



Mark Okada and Pam Okada  
 Mark Okada and Pam Okada, as joint owners  
 Mark Okada/Pamela Okada  
 Markham Fine Jewelers, L.P.  
 Markham Fine Jewelers, LP  
 Matt McGraner  
 Meritage Residential Partners, LLC  
 MGM Studios HoldCo, Ltd.  
 Michael Rossi  
 ML CLO XIX Sterling (Cayman), Ltd.  
 N/A  
 Nancy Dondero  
 NCI Apache Trail LLC  
 NCI Assets Holding Company LLC  
 NCI Country Club LLC  
 NCI Fort Worth Land LLC  
 NCI Front Beach Road LLC  
 NCI Minerals LLC  
 NCI Royse City Land LLC  
 NCI Stewart Creek LLC  
 NCI Storage, LLC  
 Neil Labatte  
 Neutra, Ltd.  
 New Jersey Tissue Company Holdco, LLC  
*(fka Marcal Paper Mills Holding Company, LLC)*  
 NexAnnuity Holdings, Inc.  
 NexBank Capital Trust I  
 NexBank Capital, Inc.  
 NexBank Land Advisors, Inc.  
 NexBank Securities Inc.  
 NexBank Securities, Inc.  
 NexBank SSB  
 NexBank Title, Inc.  
*(dba NexVantage Title Services)*  
 NexBank, SSB  
 NexPoint Advisors GP, LLC  
 NexPoint Advisors, L.P.  
 NexPoint Capital REIT, LLC  
 NexPoint Capital, Inc.  
 NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*

NexPoint CR F/H DST, LLC  
 NexPoint Credit Strategies Fund  
 NexPoint Discount Strategies Fund  
*(fka NexPoint Discount Yield Fund)*  
 NexPoint DRIP  
 NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*  
 NexPoint Event-Driven Fund  
*(fka NexPoint Merger Arbitrage Fund)*  
 NexPoint Flamingo DST  
 NexPoint Flamingo Investment Co, LLC  
 NexPoint Flamingo Leaseco, LLC  
 NexPoint Flamingo Manager, LLC  
 NexPoint Flamingo Property Manager, LLC  
 NexPoint Healthcare Opportunities Fund  
 NexPoint Hospitality Trust  
 NexPoint Hospitality, Inc.  
 NexPoint Hospitality, LLC  
 NexPoint Insurance Distributors, LLC  
 NexPoint Insurance Solutions GP, LLC  
 NexPoint Insurance Solutions GP, LLC  
*(fka Highland Capital Insurance Solutions GP, LLC)*  
 NexPoint Insurance Solutions, L.P.  
*(fka Highland Capital Insurance Solutions, L.P.)*  
 NexPoint Latin American Opportunities Fund  
 NexPoint Legacy 22, LLC  
 NexPoint Lincoln Porte Equity, LLC  
 NexPoint Lincoln Porte Manager, LLC  
 NexPoint Lincoln Porte, LLC  
*(fka NREA Lincoln Porte, LLC)*  
 NexPoint Multifamily Capital Trust, Inc.  
 NexPoint Multifamily Capital Trust, Inc.  
*(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)*  
 NexPoint Multifamily Operating Partnership, L.P.  
 NexPoint Peoria, LLC  
 NexPoint Polo Glen DST  
 NexPoint Polo Glen Holdings, LLC  
 NexPoint Polo Glen Investment Co, LLC

NexPoint Polo Glen Leaseco, LLC  
NexPoint Polo Glen Manager, LLC  
NexPoint RE Finance Advisor GP, LLC  
NexPoint RE Finance Advisor, L.P.  
NexPoint Real Estate Advisors GP, LLC  
NexPoint Real Estate Advisors II, L.P.  
NexPoint Real Estate Advisors II, L.P.  
NexPoint Real Estate Advisors III, L.P.  
NexPoint Real Estate Advisors IV, L.P.  
NexPoint Real Estate Advisors V, L.P.  
NexPoint Real Estate Advisors VI, L.P.  
NexPoint Real Estate Advisors VII GP, LLC  
NexPoint Real Estate Advisors VII, L.P.  
NexPoint Real Estate Advisors VIII, L.P.  
NexPoint Real Estate Advisors, L.P.  
NexPoint Real Estate Capital, LLC  
NexPoint Real Estate Capital, LLC (*fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC*)  
NexPoint Real Estate Finance OP GP, LLC  
NexPoint Real Estate Finance Operating Partnership, L.P.  
NexPoint Real Estate Finance, Inc.  
NexPoint Real Estate Opportunities, LLC  
NexPoint Real Estate Opportunities, LLC (*fka Freedom REIT LLC*)  
NexPoint Real Estate Partners, LLC (*fka HCRE Partners, LLC*)  
NexPoint Real Estate Partners, LLC (*fka HCRE Partners, LLC*)  
NexPoint Real Estate Strategies Fund  
NexPoint Residential Trust Inc.  
NexPoint Residential Trust Operating Partnership GP, LLC  
NexPoint Residential Trust Operating Partnership, L.P.  
NexPoint Residential Trust Operating Partnership, L.P.  
NexPoint Residential Trust, Inc.  
NexPoint Securities, Inc.  
(*fka Highland Capital Funds Distributor, Inc.*)  
(*fka Pyxis Distributors, Inc.*)

NexPoint Strategic Income Fund  
(*fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund*)  
NexPoint Strategic Opportunities Fund  
NexPoint Strategic Opportunities Fund  
(*fka NexPoint Credit Strategies Fund*)  
NexPoint Texas Multifamily Portfolio DST  
(*fka NREA Southeast Portfolio Two, DST*)  
NexPoint WLIF I Borrower, LLC  
NexPoint WLIF I, LLC  
NexPoint WLIF II Borrower, LLC  
NexPoint WLIF II, LLC  
NexPoint WLIF III Borrower, LLC  
NexPoint WLIF III, LLC  
NexPoint WLIF, LLC (Series I)  
NexPoint WLIF, LLC (Series II)  
NexPoint WLIF, LLC (Series III)  
NexStrat LLC  
NexVest, LLC  
NexWash LLC  
NFRO REIT Sub, LLC  
NFRO TRS, LLC  
NHF CCD, Inc.  
NHT 2325 Stemmons, LLC  
NHT Beaverton TRS, LLC  
(*fka NREA Hotel TRS, Inc.*)  
NHT Beaverton, LLC  
NHT Bend TRS, LLC  
NHT Bend, LLC  
NHT Destin TRS, LLC  
NHT Destin, LLC  
NHT DFW Portfolio, LLC  
NHT Holdco, LLC  
NHT Holdings, LLC  
NHT Intermediary, LLC  
NHT Nashville TRS, LLC  
NHT Nashville, LLC  
NHT Olympia TRS, LLC  
NHT Olympia, LLC  
NHT Operating Partnership GP, LLC  
NHT Operating Partnership II, LLC  
NHT Operating Partnership, LLC  
NHT Salem, LLC

NHT SP Parent, LLC  
NHT SP TRS, LLC  
NHT SP, LLC  
NHT Tigard TRS, LLC  
NHT Tigard, LLC  
NHT TRS, Inc.  
NHT Uptown, LLC  
NHT Vancouver TRS, LLC  
NHT Vancouver, LLC  
NLA Assets LLC  
NMRT TRS, Inc.  
NREA Adair DST Manager, LLC  
NREA Adair Investment Co, LLC  
NREA Adair Joint Venture, LLC  
NREA Adair Leaseco Manager, LLC  
NREA Adair Leaseco, LLC  
NREA Adair Property Manager LLC  
NREA Adair, DST  
NREA Ashley Village Investors, LLC  
NREA Cameron Creek Investors, LLC  
NREA Cityplace Hue Investors, LLC  
NREA Crossing Investors LLC  
NREA Crossings Investors, LLC  
NREA Crossings Ridgewood Coinvestment, LLC *(fka NREA Crossings Ridgewood Investors, LLC)*  
NREA DST Holdings, LLC  
NREA El Camino Investors, LLC  
NREA Estates Inc.  
NREA Estates Investment Co, LLC  
NREA Estates Leaseco, LLC  
NREA Estates Manager, LLC  
NREA Estates Property Manager, LLC  
NREA Estates, DST  
NREA Gardens DST Manager LLC  
NREA Gardens DST Manager, LLC  
NREA Gardens Investment Co, LLC  
NREA Gardens Leaseco Manager, LLC  
NREA Gardens Leaseco, LLC  
NREA Gardens Property Manager, LLC  
NREA Gardens Springing LLC  
NREA Gardens Springing Manager, LLC  
NREA Gardens, DST

NREA Hidden Lake Investment Co, LLC  
NREA Hue Investors, LLC  
NREA Keystone Investors, LLC  
NREA Meritage Inc.  
NREA Meritage Investment Co, LLC  
NREA Meritage Leaseco, LLC  
NREA Meritage Manager, LLC  
NREA Meritage Property Manager, LLC  
NREA Meritage, DST  
NREA Oaks Investors, LLC  
NREA Retreat Investment Co, LLC  
NREA Retreat Leaseco, LLC  
NREA Retreat Manager, LLC  
NREA Retreat Property Manager, LLC  
NREA Retreat, DST  
NREA SE MF Holdings LLC  
NREA SE MF Holdings, LLC  
NREA SE MF Investment Co, LLC  
NREA SE MF Investment Co, LLC  
NREA SE Multifamily LLC  
NREA SE Multifamily, LLC  
NREA SE One Property Manager, LLC  
NREA SE Three Property Manager, LLC  
NREA SE Two Property Manager, LLC  
NREA SE1 Andros Isles Leaseco, LLC  
NREA SE1 Andros Isles Manager, LLC  
NREA SE1 Andros Isles, DST  
(Converted from DK Gateway Andros, LLC)  
NREA SE1 Arborwalk Leaseco, LLC  
NREA SE1 Arborwalk Manager, LLC  
NREA SE1 Arborwalk, DST  
(Converted from MAR Arborwalk, LLC)  
NREA SE1 Towne Crossing Leaseco, LLC  
NREA SE1 Towne Crossing Manager, LLC  
NREA SE1 Towne Crossing, DST  
(Converted from Apartment REIT Towne Crossing, LP)  
NREA SE1 Walker Ranch Leaseco, LLC  
NREA SE1 Walker Ranch Manager, LLC  
NREA SE1 Walker Ranch, DST  
(Converted from SOF Walker Ranch Owner, L.P.)  
NREA SE2 Hidden Lake Leaseco, LLC

NREA SE2 Hidden Lake Manager, LLC  
NREA SE2 Hidden Lake, DST  
NREA SE2 Hidden Lake, DST  
(Converted from SOF Hidden Lake SA Owner,  
L.P.)

NREA SE2 Vista Ridge Leaseco, LLC  
NREA SE2 Vista Ridge Manager, LLC  
NREA SE2 Vista Ridge, DST  
NREA SE2 Vista Ridge, DST  
(Converted from MAR Vista Ridge, L.P.)  
NREA SE2 West Place Leaseco, LLC  
NREA SE2 West Place Manager, LLC  
NREA SE2 West Place, DST  
(Converted from Landmark at West Place,  
LLC)

NREA SE3 Arboleda Leaseco, LLC  
NREA SE3 Arboleda Manager, LLC  
NREA SE3 Arboleda, DST  
(Converted from G&E Apartment REIT  
Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC  
NREA SE3 Fairways Manager, LLC  
NREA SE3 Fairways, DST  
(Converted from MAR Fairways, LLC)  
NREA SE3 Grand Oasis Leaseco, LLC  
NREA SE3 Grand Oasis Manager, LLC  
NREA SE3 Grand Oasis, DST  
(Converted from Landmark at Grand Oasis,  
LP)

NREA Southeast Portfolio One Manager, LLC  
NREA Southeast Portfolio One, DST  
NREA Southeast Portfolio One, DST  
NREA Southeast Portfolio Three Manager,  
LLC

NREA Southeast Portfolio Three, DST  
NREA Southeast Portfolio Three, DST  
NREA Southeast Portfolio Two Manager, LLC  
NREA Southeast Portfolio Two, DST  
NREA Southeast Portfolio Two, LLC  
NREA SOV Investors, LLC  
NREA Uptown TRS, LLC  
NREA VB I LLC  
NREA VB II LLC

NREA VB III LLC  
NREA VB IV LLC  
NREA VB Pledgor I LLC  
NREA VB Pledgor I, LLC  
NREA VB Pledgor II LLC  
NREA VB Pledgor II, LLC  
NREA VB Pledgor III LLC  
NREA VB Pledgor III, LLC  
NREA VB Pledgor IV LLC  
NREA VB Pledgor IV, LLC  
NREA VB Pledgor V LLC  
NREA VB Pledgor V, LLC  
NREA VB Pledgor VI LLC  
NREA VB Pledgor VI, LLC  
NREA VB Pledgor VII LLC  
NREA VB Pledgor VII, LLC  
NREA VB SM, Inc.  
NREA VB V LLC  
NREA VB VI LLC  
NREA VB VII LLC  
NREA Vista Ridge Investment Co, LLC  
NREC AR Investors, LLC  
NREC BM Investors, LLC  
NREC BP Investors, LLC  
NREC Latitude Investors, LLC  
NREC REIT Sub, Inc.  
NREC TRS, Inc.  
NREC WW Investors, LLC  
NREF OP I Holdco, LLC  
NREF OP I SubHoldco, LLC  
NREF OP I, L.P.  
NREF OP II Holdco, LLC  
NREF OP II SubHoldco, LLC  
NREF OP II, L.P.  
NREF OP IV REIT Sub TRS, LLC  
NREF OP IV REIT Sub, LLC  
NREF OP IV, L.P.  
NREO NW Hospitality Mezz, LLC  
NREO NW Hospitality, LLC  
NREO Perilune, LLC  
NREO SAFStor Investors, LLC  
NREO TRS, Inc.  
NRESF REIT Sub, LLC

NXRT Abbington, LLC  
NXRT Atera II, LLC  
NXRT Atera, LLC  
NXRT AZ2, LLC  
NXRT Barrington Mill, LLC  
NXRT Bayberry, LLC  
NXRT Bella Solara, LLC  
NXRT Bella Vista, LLC  
NXRT Bloom, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine LP, LLC  
NXRT Brandywine LP, LLC  
NXRT Brentwood Owner, LLC  
NXRT Brentwood, LLC  
NXRT Cedar Pointe Tenant, LLC  
NXRT Cedar Pointe, LLC  
NXRT Cityview, LLC  
NXRT Cornerstone, LLC  
NXRT Crestmont, LLC  
NXRT Crestmont, LLC  
NXRT Enclave, LLC  
NXRT Glenview, LLC  
NXRT H2 TRS, LLC  
NXRT Heritage, LLC  
NXRT Hollister TRS LLC  
NXRT Hollister, LLC  
NXRT LAS 3, LLC  
NXRT Master Tenant, LLC  
NXRT Nashville Residential, LLC  
NXRT Nashville Residential, LLC (*fka Freedom Nashville Residential, LLC*)  
NXRT North Dallas 3, LLC  
NXRT Old Farm, LLC  
NXRT Pembroke Owner, LLC  
NXRT Pembroke, LLC  
NXRT PHX 3, LLC  
NXRT Radbourne Lake, LLC  
NXRT Rockledge, LLC  
NXRT Sabal Palms, LLC  
NXRT SM, Inc.

NXRT Steeplechase, LLC  
NXRT Stone Creek, LLC  
NXRT Summers Landing GP, LLC  
NXRT Summers Landing LP, LLC  
NXRT Torreyana, LLC  
NXRT Vanderbilt, LLC  
NXRT West Place, LLC  
NXRTBH AZ2, LLC  
NXRTBH Barrington Mill Owner, LLC  
NXRTBH Barrington Mill SM, Inc.  
NXRTBH Barrington Mill, LLC  
NXRTBH Bayberry, LLC  
NXRTBH Cityview, LLC  
NXRTBH Colonnade, LLC  
NXRTBH Cornerstone Owner, LLC  
NXRTBH Cornerstone SM, Inc.  
NXRTBH Cornerstone, LLC  
NXRTBH Dana Point SM, Inc.  
NXRTBH Dana Point, LLC  
NXRTBH Foothill SM, Inc.  
NXRTBH Foothill, LLC  
NXRTBH Heatherstone SM, Inc.  
NXRTBH Heatherstone, LLC  
NXRTBH Hollister Tenant, LLC  
NXRTBH Hollister, LLC  
NXRTBH Madera SM, Inc.  
NXRTBH Madera, LLC  
NXRTBH McMillan, LLC  
NXRTBH North Dallas 3, LLC  
NXRTBH Old Farm II, LLC  
NXRTBH Old Farm Tenant, LLC  
NXRTBH Old Farm, LLC  
NXRTBH Radbourne Lake, LLC  
NXRTBH Rockledge, LLC  
NXRTBH Sabal Palms, LLC  
NXRTBH Steeplechase, LLC  
(dba Southpoint Reserve at Stoney Creek)-VA  
NXRTBH Stone Creek, LLC  
NXRTBH Vanderbilt, LLC  
NXRTBH Versailles SM, Inc.  
NXRTBH Versailles, LLC  
Oak Holdco, LLC  
Oaks CGC, LLC



Okada Family Revocable Trust  
Oldenburg, Ltd.  
Pam Capital Funding GP Co. Ltd.  
Pam Capital Funding, L.P.  
PamCo Cayman Ltd.  
Park West 1700 Valley View Holdco, LLC  
Park West 2021 Valley View Holdco, LLC  
Park West Holdco, LLC  
Park West Portfolio Holdco, LLC  
Participants of Highland 401K Plan  
Patrick Willoughby-McCabe  
PCMG Trading Partners XXIII, L.P.  
PCMG Trading Partners XXIII, LP  
PDK Toys Holdco, LLC  
Pear Ridge Partners, LLC  
Penant Management GP, LLC  
Penant Management LP  
PensionDanmark Holding A/S  
PensionDanmark  
Pensionsforsikringsaktieselskab  
Peoria Place Development, LLC  
(30% cash contributions - profit participation  
only)  
Perilune Aero Equity Holdings One, LLC  
Perilune Aviation LLC  
PetroCap Incentive Holdings III. L.P.  
PetroCap Incentive Partners II GP, LLC  
PetroCap Incentive Partners II, L.P.  
PetroCap Incentive Partners III GP, LLC  
PetroCap Incentive Partners III, LP  
PetroCap Management Company LLC  
PetroCap Partners II GP, LLC  
PetroCap Partners II, L.P.  
PetroCap Partners III GP, LLC  
PetroCap Partners III, L.P.  
Pharmacy Ventures I, LLC  
Pharmacy Ventures II, LLC  
Pollack, Ltd.  
Powderhorn, LLC  
PWM1 Holdings, LLC  
PWM1, LLC  
Quest IRA, Inc FBO Jennifer G. Terry, IRA  
#1467511

Quest, IRA, Inc. FBO Joshua N. Terry, IRA  
#1467711  
RADCO - Bay Meadows, LLLP  
RADCO - Bay Park, LLLP  
RADCO NREC Bay Meadows Holdings, LLC  
RADCO NREC Bay Park Holdings, LLC  
Ramarim, LLC  
Rand Advisors Series I Insurance Fund  
Rand Advisors Series II Insurance Fund  
Rand Advisors, LLC  
Rand PE Fund I, L.P.  
Rand PE Fund I, L.P. - Series 1  
Rand PE Fund Management, LLC  
Rand PE Holdco, LLC  
Realdania  
Red River CLO, Ltd.  
Red River Investors Corp.  
Riverview Partners SC, LLC  
Rockwall CDO II Ltd.  
Rockwall CDO II, Ltd.  
Rockwall CDO, Ltd.  
Rockwall Investors Corp.  
Rothko, Ltd.  
RTT Bella Solara, LLC  
RTT Bloom, LLC  
RTT Financial, Inc.  
RTT Hollister, LLC  
RTT Rockledge, LLC  
RTT Torreyana, LLC  
SALI Fund Partners, LLC  
San Diego County Employees Retirement  
Association  
Sandstone Pasadena Apartments, LLC  
Sandstone Pasadena, LLC  
Santa Barbara Foundation (third party)  
Saturn Oil & Gas LLC  
SBC Master Pension Trust  
Scott Matthew Siekielski  
SE Battleground Park, LLC  
SE Battleground Park, LLC  
SE Glenview, LLC  
SE Governors Green Holdings, L.L.C.

SE Governors Green Holdings, L.L.C.  
*(fka SCG Atlas Governors Green Holdings, L.L.C.)*

SE Governors Green I, LLC  
SE Governors Green II, LLC  
SE Governors Green II, LLC  
SE Governors Green REIT, L.L.C.  
SE Governors Green REIT, L.L.C.  
*(fka SCG Atlas Governors Green REIT, L.L.C.)*

SE Governors Green, LLC  
*(fka SCG Atlas Governors Green, L.L.C.)*

SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles LP, LLC  
SE Gulfstream Isles LP, LLC  
SE Heights at Olde Towne, LLC  
SE Heights at Olde Towne, LLC  
SE Lakes at Renaissance Park GP I, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Multifamily Holdings LLC  
SE Multifamily Holdings, LLC  
SE Multifamily REIT Holdings LLC  
SE Myrtles at Olde Towne, LLC  
SE Myrtles at Olde Towne, LLC  
SE Oak Mill I Holdings, LLC  
SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*  
SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*  
SE Oak Mill I REIT, LLC  
SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*  
SE Oak Mill I, LLC  
SE Oak Mill I, LLC  
SE Oak Mill II Holdings, LLC  
SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*  
SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*

SE Oak Mill II REIT, LLC  
SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*  
SE Oak Mill II, LLC  
SE Oak Mill II, LLC  
SE Quail Landing, LLC  
SE River Walk, LLC  
SE Riverwalk, LLC  
SE SM, Inc.  
SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*  
SE Stoney Ridge Holdings, LLC  
SE Stoney Ridge I, LLC  
SE Stoney Ridge I, LLC  
SE Stoney Ridge II, LLC  
SE Stoney Ridge II, LLC  
SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*  
SE Stoney Ridge REIT, LLC  
SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*  
SE Victoria Park, LLC  
SE Victoria Park, LLC  
Sentinel Re Holdings, Ltd.  
Sentinel Reinsurance Ltd.  
SFH1, LLC  
SFR WLIF I, LLC  
*(fka NexPoint WLIF I, LLC)*  
SFR WLIF II, LLC  
*(NexPoint WLIF II, LLC)*  
SFR WLIF III, LLC  
*(NexPoint WLIF III, LLC)*  
SFR WLIF Manager, LLC  
*(NexPoint WLIF Manager, LLC)*  
SFR WLIF, LLC  
*(NexPoint WLIF, LLC)*  
SFR WLIF, LLC Series I  
SFR WLIF, LLC Series II  
SFR WLIF, LLC Series III  
SH Castle BioSciences, LLC  
Small Cap Equity Sub, LLC  
Socially Responsible Equity Sub, LLC  
SOF Brandywine I Owner, L.P.

SOF Brandywine II Owner, L.P.  
SOF-X GS Owner, L.P.  
Southfork Cayman Holdings, Ltd.  
Southfork CLO, Ltd.  
Specialty Financial Products Designated Activity Company (*fka Specialty Financial Products Limited*)  
Spiritus Life, Inc.  
SRL Sponsor LLC  
SRL Whisperwod LLC  
SRL Whisperwood Member LLC  
SRL Whisperwood Venture LLC  
SSB Assets LLC  
Starck, Ltd.  
Stemmons Hospitality, LLC  
Steve Shin  
Stonebridge Capital, Inc.  
Stonebridge-Highland Healthcare Private Equity Fund  
Strand Advisors III, Inc.  
Strand Advisors IV, LLC  
Strand Advisors IX, LLC  
Strand Advisors V, LLC  
Strand Advisors XIII, LLC  
Strand Advisors XVI, Inc.  
Strand Advisors, Inc.  
Stratford CLO, Ltd.  
Summers Landing Apartment Investors, L.P.  
Term Loan B  
(10% cash contributions - profit participation only)  
The Dallas Foundation  
The Dallas Foundation (third party)  
The Dondero Insurance Rabbi Trust  
The Dugaboy Investment Trust  
The Dugaboy Investment Trust U/T/A Dated Nov 15, 2010  
The Get Good Non-Exempt Trust No. 1  
The Get Good Non-Exempt Trust No. 2  
The Get Good Trust  
The Mark and Pamela Okada Family Trust - Exempt Descendants' Trust

The Mark and Pamela Okada Family Trust - Exempt Trust #2  
The Ohio State Life Insurance Company  
The Okada Family Foundation, Inc.  
The Okada Insurance Rabbi Trust  
The SLHC Trust  
The Trustees of Columbia University in the City of New York  
The Twentysix Investment Trust  
(Third Party Investor)  
Thomas A. Neville  
Thread 55, LLC  
Tihany, Ltd.  
Todd Travers  
Tranquility Lake Apartments Investors, L.P.  
Tuscany Acquisition, LLC  
Uptown at Cityplace Condominium Association, Inc.  
US Gaming OpCo, LLC  
US Gaming SPV, LLC  
US Gaming, LLC  
Valhalla CLO, Ltd.  
VB GP LLC  
VB Holding, LLC  
VB One, LLC  
VB OP Holdings LLC  
VBAnnex C GP, LLC  
VBAnnex C Ohio, LLC  
VBAnnex C, LP  
Ventoux Capital, LLC  
(Matt Goetz)  
VineBrook Annex B, L.P.  
VineBrook Annex I, L.P.  
VineBrook Homes Merger Sub II LLC  
VineBrook Homes Merger Sub LLC  
VineBrook Homes OP GP, LLC  
VineBrook Homes Operating Partnership, L.P.  
VineBrook Homes Trust, Inc.  
VineBrook Partners I, L.P.  
VineBrook Partners II, L.P.  
VineBrook Properties, LLC  
Virginia Retirement System  
Vizcaya Investment, LLC

Wake LV Holdings II, Ltd.  
Wake LV Holdings, Ltd.  
Walter Holdco GP, LLC  
Walter Holdco I, Ltd.  
Walter Holdco, L.P.  
Warhol, Ltd.  
Warren Chang  
Westchester CLO, Ltd.  
William L. Britain  
Wright Ltd.  
Wright, Ltd.  
Yellow Metal Merchants, Inc.

## **EXHIBIT “F”**



**DRAFT – SUBJECT TO BANKRUPTCY COURT APPROVAL OF DEBTOR'S PLAN**

**Second Amended and Restated Loan Agreement**

This Second Amended and Restated Loan Agreement (the "Agreement" and/or Loan Agreement") dated as of [REDACTED], by and between Frontier State Bank, an Oklahoma banking corporation, 5100 South I-35 Service Road, Oklahoma City, OK 73129 ("Bank"), and the Borrower described below.

**RECITALS**

WHEREAS, the Bank provided a loan to the Borrower under that certain loan agreement, dated as of August 17, 2015, between the Borrower and the Bank, which was subsequently amended and restated on March 30, 2018 (the "Original Loan Agreement");

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11;

WHEREAS, on November 13, 2020, the Debtor filed the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be amended, supplemented, or otherwise modified from time to time, the "Plan");<sup>1</sup>

WHEREAS, on [REDACTED], 2021, the Bankruptcy Court approved the Plan (the "Confirmation Order"); and

WHEREAS, pursuant to the terms of the Plan and the Confirmation Order, the Borrower and the Bank have agreed to further amend and restate the Original Loan Agreement in the form hereof and for the Loan to be binding on the Borrower as reorganized pursuant to the Plan and Confirmation Order.

NOW THEREFORE, in consideration of the Loan or Loans (the "Loan") described below and the mutual covenants and agreements contained herein and in the Plan, and intending to be legally bound hereby, Bank and Borrower agree, and the Original Loan Agreement is hereby amended, restated and superseded in its entirety, as follows:

1. **DEFINITIONS AND REFERENCE TERMS.** In addition to any other terms defined herein, the following terms shall have the meaning set forth with respect thereto:

- A. **Borrower:** Highland Capital Management, L.P., a Delaware limited partnership.
- B. **Borrower's Address:** 300 Crescent Court, Suite 700, Dallas, Texas 75201.
- C. **Current Assets.** Current Assets means the aggregate amount of all of Borrower's assets which would, in accordance with GAAP, properly be defined as current assets.
- D. **Current Liabilities.** Current Liabilities means the aggregate amount of all current liabilities as determined in accordance with GAAP, but in any event shall include all liabilities except those having a maturity date which is more than one year from the date as of which such computation is being made.
- E. **Loan.** Any loan described in Section 2 hereof.

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

F. **Loan Documents.** Loan Documents means this Loan Agreement and any and all promissory notes executed by Borrower in favor of Bank and all other documents, instruments, security and pledge agreements, certificates and agreements executed and/or delivered by Borrower or third parties in connection with any Loan.

G. **Accounting Terms.** All accounting terms not specifically defined or specified herein shall have the meanings generally attributed to such terms under generally accepted accounting principles ("GAAP"), as in effect from time to time, consistently applied, with respect to the financial statements referenced in Section 3.I. hereof.

## **2. LOANS AND COLLATERAL**

A. **Loan.** Bank, on or about March 30, 2018, previously made a loan to Borrower under the Original Loan Agreement in the aggregate principal amount of Seven Million Eight Hundred Seventy-Nine Thousand Six Hundred Eighty-Eight and No/100's Dollars (US \$7,879,688.00), evidenced by a promissory note (the "Original Promissory Note") dated as of March 30, 2018, and security and pledge agreement and related documents dated as of August 17, 2015. Under the Original Loan Agreement and Loan Documents, there is currently due and owing from Borrower to Bank as of the date of this Agreement the principal sum of Five Million One Hundred Ninety-Four Thousand Six Hundred Fifty-One and 50/100's Dollars (US \$5,194,651.50), plus accrued and unpaid interest through the date of this Agreement (the "Loan"). The obligation to repay the Loan is evidenced by a promissory note dated as of even date herewith (such promissory note, which hereby amends, restates and supersedes the Original Promissory Note in its entirety, together with any and all renewals, extensions or rearrangements thereof being hereafter collectively referred to as the "Note"). The Note shall have an interest rate of 5.25%, per annum with a maturity date of December 31, 2022 (the "Maturity Date"), with repayment terms of accrued interest only payable quarterly commencing on June 30, 2021, and on each subsequent September 30, December 30, March 30, and June 30 until the Maturity Date, whereupon all outstanding principal, interest, charges and expenses shall be paid in full by the Borrower. Borrower, as a condition precedent to the Loan and as set forth in the Plan and Confirmation Order, shall pay to Bank all accrued interest due and payable under the Original Promissory Note on the Effective Date of the Plan.

All costs incurred by the Bank, including all legal opinions and documentation costs, necessary to fully protect the interests of the Bank shall be paid by the Borrower at the time of closing, subject to the limitations set forth in Section 11.

The loan may be prepaid at any time without prepayment penalty.

B. **Collateral.** The collateral pledged to secure the Loan is as reflected in that certain Security and Pledge Agreement dated as of August 17, 2015 between Bank and Borrower (the "Security Agreement"), and shall be and remain as of the date hereof as follows: 171,724 shares of voting common stock of MGM Holdings, Inc. with a par value of \$0.01 per share (the "Shares"). Borrower, by executing below, ratifies, confirms and approves the prior grant of the Collateral security position in and to the Shares to Bank as reflected in the Security Agreement described herein, and acknowledges and agrees that such Shares, and all Collateral perfection documents, described in the Security Agreement and in this Agreement remain as Collateral for the Loan, and in full force and effect. Notwithstanding anything herein or in the Security Agreement to the contrary, nothing will prevent the Borrower from selling the Shares so long as the proceeds from such sale are applied pursuant to Section 3.B hereof.

C. **Loan to Value Ratio:** Borrower represents and warrants to the Bank that at the time of execution of this Agreement, the actual value of the Collateral pledged and in which the Bank has a security interest is [\$\_\_\_\_\_]. Borrower agrees that during the term of the Loan or any extended term of the Loan, that the outstanding principal balance of the Loan shall not be more than fifty percent (50%) of the actual value of the Collateral pledged (the "Loan to Value Ratio") as established on the last day of each calendar month that the Loan is in existence using the marks for the Collateral stated by Markit Partners. Failure by Borrower to maintain the required Loan to Value Ratio shall be an Event of Default if left uncured for a period of ten (10) business days following the end of each calendar month.

## **3. PREPAYMENT**

A. **Principal Paydown.** If the Loan is not paid in full on or before December 31, 2021, Borrower will pay the Bank an amount equal to fifty percent of the then outstanding principal amount on the Loan by 5:00 p.m. prevailing Dallas time on December 31, 2021.

B. **Sale of Shares.** If Borrower sells all or any portion of the Shares prior to the Maturity Date, the Borrower will use the proceeds of such sale to prepay the Loan. Borrower will make any prepayment pursuant to this Section 3.B

within five business days of the closing of the sale of any Shares. Any such prepayment will be applied first to principal and then to any accrued but unpaid interest. Such prepayment will not advance any payment dates.

C. **No Prepayment Penalty.** This Loan may be prepaid in full at any time without a prepayment penalty.

4. **EFFECTIVE DATE.** Each of Borrower and the Bank acknowledge and agree that this Agreement is being executed pursuant to the Plan and the Confirmation Order and that the obligations of each party hereunder are conditioned in all respects on the occurrence of the Effective Date of the Plan. As set forth in the Plan, except as expressly set forth herein, the terms, conditions, and protections set forth in the Security Agreement and the Bank's security interests in the Shares are not affected by the terms of the Plan or the Confirmation Order and are, and remain, in full force and effect.

5. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants to Bank as follows:

A. **Good Standing.** Borrower is a Delaware limited partnership and is duly organized, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to own its property and to carry on its business in each jurisdiction in which Borrower does business, including, but not limited to, the State of Oklahoma.

B. **Authority and Compliance.** Subject to the Plan and the Confirmation Order, Borrower has full power and authority to execute and deliver the Loan Documents and to incur and perform the obligations provided for therein, all of which have been duly authorized by all proper and necessary action of the appropriate governing body of Borrower. No consent or approval of any public authority or other third party is required as a condition to the validity of any Loan Document, and Borrower is in compliance with all laws and regulatory requirements to which it is subject.

C. **Binding Agreement.** This Agreement and the other Loan Documents executed by Borrower constitutes valid and legally binding obligations of Borrower, enforceable in accordance with their terms.

D. **Litigation.** There is no proceeding against Borrower pending or, to the knowledge of Borrower, threatened before any court or governmental authority, agency or arbitration authority, in each case, that could reasonably be expected to have a material adverse effect on the Borrower's ability to fulfill its obligations under the Loan Documents, except as disclosed to Bank in writing and acknowledged by Bank prior to the date of this Agreement.

E. **No Conflicting Agreements.** Borrower is not a party to any charter, bylaw, stock provision, partnership agreement or other document pertaining to the organization, power or authority of Borrower or any existing agreement, mortgage, indenture or contract that conflicts with or in any way prevents the execution, delivery or carrying out of the terms of this Agreement and the other Loan Documents.

F. **Ownership of Assets.** Borrower has good title to its assets, and its assets are free and clear of liens, except those granted to Bank and as disclosed to Bank.

G. **Taxes.** All taxes and assessments due and payable by Borrower have been paid or are being contested in good faith by appropriate proceedings and the Borrower has filed all tax returns which it is required to file.

H. **Financial Statements.** The financial statements of Borrower heretofore delivered to Bank have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved and fairly present Borrower's financial condition as of the date or dates thereof, and there has been no material adverse change in Borrower's financial condition or operations since the date thereof. All factual information furnished by Borrower to Bank in connection with this Agreement and the other Loan Documents is and will be accurate and complete on the date as of which such information is delivered to Bank and is not and will not be incomplete by the omission of any material fact necessary to make such information not misleading.

I. **Place of Business.** Borrower's chief executive offices are located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

J. **Continuation of Representations and Warranties.** All representations and warranties made under this Agreement shall be deemed to be made as of the date of any advance under any Loan.



6. **AFFIRMATIVE COVENANTS.** Until full payment and performance of all obligations of Borrower under the Loan Documents, Borrower shall, unless Bank consents otherwise in writing (and without limiting any requirement of any other Loan Document):

A. **Financial Statements and Other Information.** Maintain a system of accounting satisfactory to Bank and in accordance with GAAP applied on a consistent basis throughout the period involved, permit Bank's officers or authorized representatives to visit and inspect Borrower's books of account and other records at such reasonable times and as reasonably often as Bank may desire, but not more than twice per calendar year and only following reasonable prior written notice to Borrower, and pay the reasonable documented fees and disbursements of any accountants or other agents of Bank selected by Bank for the foregoing purposes. Unless written notice of another location is given to Bank, Borrower's books and records shall be located at Borrower's chief executive office set forth above. All financial statements called for below shall be prepared in form and content reasonably acceptable to Bank and by independent certified public accountants reasonably acceptable to Bank.

In addition, Borrower shall:

i. **Furnish to Bank certified financial statements of Borrower for each fiscal year of Borrower,** within one hundred eighty (180) days after the close of each such fiscal year. Further, Borrower shall provide to Bank Borrower prepared financial statements for each fiscal year within ninety (90) after the close of each such fiscal year.

ii. **Furnish to Bank promptly such additional information, reports and statements respecting the business operations and financial condition of Borrower, from time to time, as Bank may reasonably request.**

B. **Compliance.** Comply with all material laws, regulations and governmental requirements including, without limitation, environmental laws applicable to it or to any of its property, business operations and transactions.

C. **Adverse Conditions or Events.** Promptly advise Bank in writing of (i) any condition, event or act which comes to its attention that may materially adversely affect Borrower's financial condition or operations or Bank's rights under the Loan Documents, (ii) any litigation filed by or against Borrower that is reasonably likely to have a material adverse effect, and, (iii) any event that has occurred that would constitute an event of default under any Loan Documents.

D. **Taxes and Other Obligations.** Pay all of its taxes, assessments and other obligations, including, but not limited to taxes, costs or other expenses arising out of this transaction, as the same become due and payable, except to the extent the same are being contested in good faith by appropriate proceedings in a diligent manner.

E. **Maintenance.** Maintain all of its tangible property in good condition and repair and make all necessary replacements thereof, and preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of its business.

7. **NEGATIVE COVENANTS.** Until full payment and performance of all obligations of Borrower under the Loan Documents, Borrower shall not, without the prior written consent of Bank (and without limiting any requirement of any other Loan Documents):

A. **Transfer of Assets or Control.** Sell, lease, assign or otherwise dispose of or transfer the Shares unless such sale complies with the terms of the Agreement.

B. **Liens.** Grant, suffer or permit any contractual or noncontractual lien on or security interest in the Shares.

8. **DEFAULT.** Borrower shall be in default under this Agreement and under each of the other Loan Documents if it shall default in the payment of any amounts due and owing under the Loan or should it fail to timely and properly observe, keep or perform any term, covenant, agreement or condition in any Loan Document or in any other loan agreement, promissory note, security agreement, deed of trust, deed to secure debt, mortgage, pledge, assignment or other contract securing or evidencing payment of any indebtedness of Borrower to Bank. Any default not cured within ten (10) business days thereof shall be considered an "Event of Default".

9. **REMEDIES UPON DEFAULT.** If an Event of Default shall occur, Bank shall have all rights, powers and remedies available under each of the Loan Documents as well as all rights and remedies available at law or in equity.

10. **NOTICES.** All notices, requests or demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to the other party at the following address:

Borrower: Highland Capital Management, L.P.  
Attention: [ ]  
300 Crescent Court, Suite 700  
Dallas, Texas 75201

Bank: Frontier State Bank  
Attention: Mr. Steve Elliott  
5100 South I-35 Service Road  
Oklahoma City, Oklahoma 73129

or to such other address as any party may designate by written notice to the other party. Each such notice, request and demand shall be deemed given or made as follows:

A. If sent by mail, upon the earlier of the date of receipt or five (5) days after deposit in the U.S. Mail, first class postage prepaid;

B. If sent by any other means, upon delivery.

11. **COSTS, EXPENSES AND ATTORNEYS' FEES.** On the Effective Date of the Plan, Borrower shall promptly pay to Bank the full amount of all costs and expenses, including reasonable documented attorneys' fees (to include outside counsel fees), incurred by Bank in connection with (a) negotiation and preparation of this Agreement and each of the Loan Documents, and (b) all other reasonable and documented costs and attorneys' fees incurred by Bank for which Borrower is obligated to reimburse Bank in accordance with the Terms of the Loan Documents; provided such attorneys' fees shall be reimbursable only upon submission to Borrower of a detailed invoice from outside counsel.

12. **MISCELLANEOUS.** Borrower and Bank further covenant and agree as follows, without limiting any requirement of any other Loan Document:

A. **Cumulative Rights and No Waiver.** Each and every right granted to Bank under any Loan Document, or allowed it by law or equity shall be cumulative of each other and may be exercised in addition to any and all other rights of Bank, and no delay in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise by Bank of any right preclude any other or future exercise thereof or the exercise of any other right. Borrower expressly waives any presentment, demand, protest, or other notice of any kind, including but not limited to notice of intent to accelerate and notice of acceleration. No notice to or demand on Borrower in any case shall, of itself, entitle Borrower to any other or future notice or demand in similar or other circumstances.

B. **Applicable Law.** This Loan Agreement and the rights and obligations of the parties hereunder shall be deemed to have been made in the State of Oklahoma at Bank's address indicated at the beginning of this Loan Agreement and shall be governed by, and construed in accordance with, the laws of the State of Oklahoma, and is performable in the City and County of Oklahoma at the Bank's address indicated in the Notice above stated.

C. **Amendment.** No modification, consent, amendment or waiver of any provision of this Loan Agreement, nor consent to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by an officer of Bank, and then shall be effective only in the specified instance and for the purpose for which given. This Loan Agreement is binding upon Borrower, its successors and assigns, and inures to the benefit of Bank, its successors and assigns; however, no assignment or other transfer of Borrower's rights or obligations hereunder shall be made or be effective without Bank's prior written consent, nor shall it relieve Borrower of any obligations hereunder. There is no third party beneficiary of this Loan Agreement.



D. **Documents.** All documents, certificates and other items required under this Loan Agreement to be executed and/or delivered to Bank shall be in form and content reasonably satisfactory to Bank and its counsel.

E. **Partial Invalidity.** The unenforceability or invalidity of any provision of this Loan Agreement shall not affect the enforceability or validity of any other provision herein and the invalidity or unenforceability of any provision of any Loan Document to any person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

F. **Indemnification.** Notwithstanding anything to the contrary contained in Section 12(G), Borrower shall indemnify, defend and hold Bank and its successors and assigns harmless from and against any and all claims, demands, suits, losses, damages, assessments, fines, penalties, costs or other expenses (including reasonable attorneys' fees and court costs) arising from or in any way related to any of the transactions contemplated hereby.

G. **Survivability.** All covenants, agreements, representations and warranties made herein or in the other Loan Documents shall survive the making of the Loan and shall continue in full force and effect so long as the Loan is outstanding.

**13. ARBITRATION.** ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT OR ANY RELATED INSTRUMENTS, AGREEMENTS OR DOCUMENTS, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF AMERICAN ARBITRATION ASSOCIATION OR ANY SUCCESSOR THEREOF AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

A. **SPECIAL RULES.** THE ARBITRATION SHALL BE CONDUCTED IN OKLAHOMA COUNTY, OKLAHOMA AND ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION WHO WILL APPOINT AN ARBITRATOR. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL 60 DAYS.

B. **RESERVATION OF RIGHTS.** NOTHING IN THIS ARBITRATION PROVISION SHALL BE DEEMED TO (I) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS INSTRUMENT, AGREEMENT OR DOCUMENT; OR (II) BE A WAIVER BY BANK OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. SEC. 91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (III) LIMIT THE RIGHT OF BANK HERETO (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO FORECLOSE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL, OR (C) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. BANK MAY EXERCISE SUCH SELF HELP RIGHTS, FORECLOSE UPON SUCH PROPERTY, OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT. NEITHER THIS EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY SUCH ACTION, TO ARBITRATE THE MERITS OF THE CONTROVERSY OR CLAIM OCCASIONING RESORT TO SUCH REMEDIES.

**14. NOTICE OF FINAL AGREEMENT.** THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. BORROWER AGREES THAT ANY TERMS OF THE LOAN DOCUMENTS NOT SPECIFICALLY MODIFIED BY THIS SECOND AMENDED AND RESTATED LOAN AGREEMENT REMAIN IN FULL FORCE AND EFFECT, INCLUDING, BUT NOT LIMITED TO, THAT CERTAIN SECURITY AND PLEDGE AGREEMENT

BETWEEN BANK AND BORROWER DATED AS OF AUGUST 17, 2015, AND BORROWER AND BANK, BY EXECUTING BELOW, HEREBY RATIFY, CONFIRM AND APPROVE ALL TERMS OF ANY AND ALL CURRENT AND PREVIOUS LOAN DOCUMENTS BETWEEN BORROWER AND BANK NOT SPECIFICALLY MODIFIED BY THIS SECOND AMENDED AND RESTATED LOAN AGREEMENT. BORROWER ACKNOWLEDGES BANK'S COMPLIANCE IN EVERY RESPECT OF ALL OF BANK'S PRIOR OBLIGATIONS UNDER THE ORIGINAL LOAN AGREEMENT AND RELATED DOCUMENTS, AND HEREBY RELEASES BANK FROM ANY AND ALL CLAIMS AS OF THE DATE OF EXECUTION OF THIS AGREEMENT. NOTHING CONTAINED IN THIS SECOND AMENDED AND RESTATED LOAN AGREEMENT SHALL BE CONSTRUED OR ASSERTED BY ANY PARTY HERETO AS A NOVATION IN ANY EVENT.

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

**BORROWER:**

HIGHLAND CAPITAL MANAGEMENT, L.P.

BANK: FRONTIER STATE BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[DRAFT – SUBJECT TO BANKRUPTCY COURT APPROVAL OF DEBTOR'S PLAN]**

**Promissory Note**

<b>Bank:</b>  Frontier State Bank 5100 South I-35 Service Road. Oklahoma City, Oklahoma 73129	<b>Borrower:</b>  Highland Capital Management, L.P. 300 Crescent Court, Suite 700 Dallas, Texas 75201
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FOR VALUE RECEIVED, and executed on this \_\_\_\_ day of \_\_\_\_, 2021, the undersigned Borrower unconditionally promises to pay to the order of Frontier State Bank ("Bank"), its successors and assigns, without setoff, at its offices indicated at the beginning of this Promissory Note (the "Note"), or at such other place as may be designated by Bank, the principal amount of Five Million One Hundred Ninety-Four Thousand Six Hundred Fifty-One and 50/100's Dollars (US \$5,194,651.50), together with interest computed daily on the outstanding principal balance hereunder, at an annual interest rate, and in accordance with the payment schedule, indicated below.

This Note is being executed pursuant to the terms of that certain Second Amended and Restated Loan Agreement, dated as of even date herewith, by and between Bank and Borrower (the "Loan Agreement"). All capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement.

This Note supersedes and replaces any all previous promissory notes executed by Borrower in favor of Bank, including the Original Promissory Note.

1. **Rate.** The Rate shall be 5.25% per annum. Notwithstanding any provision of this Note, Bank does not intend to charge and Borrower shall not be required to pay any amount of interest or other charges in excess of the maximum permitted by the applicable law of the State of Oklahoma; if any higher rate ceiling is lawful, then that higher rate ceiling shall apply. Any payment in excess of such maximum shall be refunded to Borrower or credited against principal, at the option of Bank.

2. **Accrual Method.** Unless otherwise indicated, interest at the Rate set forth above will be calculated by the 365/365 day method.

3. **Payment Schedule.** All payments received hereunder shall be applied first to the payment of any expense or charges, including loan fees and attorney fees payable hereunder or under any other Loan Documents executed in connection with this Note, then to interest due and payable, with the balance applied to principal, or in such other order as Bank shall determine at its option.

Payments shall be made in the amount of accrued interest payable quarterly commencing on June 30, 2021, and on each subsequent September 30, December 30, March 30 and June 30 and until the maturity date of December 31, 2022 (the "Maturity Date"), whereupon all outstanding principal, interest, charges and expenses shall be paid in full by the Borrower.

**4. PREPAYMENT.**

A. **Principal Paydown.** If the Note is not paid in full on or before December 31, 2021, Borrower will pay the Bank an amount equal to fifty percent of the then outstanding principal amount on the Note by 5:00 p.m. prevailing Dallas time on December 31, 2021.

B. **Sale of Shares.** If Borrower sells all or any portion of the Shares prior to the Maturity Date, the Borrower will use the proceeds of such sale to prepay the Note. Borrower will make any prepayment pursuant to this Section 4.B within five business days of the closing of the sale of any Shares. Any such prepayment will be applied first to principal and then to any accrued but unpaid interest. Such prepayment will not advance any payment dates.

C. **No Prepayment Penalty.** This Note may be prepaid in full at any time without a prepayment penalty.



**5. Waivers, Consents and Covenants.** Borrower, any indorser or guarantor hereof, or any other party hereto (individually an "Obligor" and collectively "Obligors") and each of them jointly and severally: (a) waive presentment, demand, protest, notice of demand, notice of intent to accelerate, notice of acceleration of maturity, notice of protest, notice of nonpayment, notice of dishonor, and any other notice required to be given under the law to any Obligor in connection with the delivery, acceptance, performance, default or enforcement of this Note, any indorsement or guaranty of this Note, or any other documents executed in connection with this Note or any other note or other loan documents now or hereafter executed in connection with any obligation of Borrower to Bank (the "Loan Documents"); (b) consent to all delays, extensions or renewals of this Note or the Loan Documents, or waivers of any term hereof or of the Loan Documents, or release or discharge by Bank of any of Obligors, or release, substitution or exchange of any security for the payment hereof, or the failure to act on the part of Bank, or any indulgence shown by Bank (without notice to or further assent from any of Obligors), and agree that no such action, failure to act or failure to exercise any right or remedy by Bank shall in any way affect or impair the obligations of any Obligors or be construed as a waiver by Bank of, or otherwise affect, any of Bank's rights under this Note, under any indorsement or guaranty of this Note or under any of the Loan Documents; and (c) agree to pay, promptly upon written notice, all customary and reasonable documented costs and expenses of collection or defense of this Note or of any indorsement or guaranty hereof and/or the enforcement or defense of Bank's rights with respect to, or the administration, supervision, preservation, or protection of, or realization upon, any property securing payment hereof, including, without limitation, reasonable attorney's fees, including fees related to any suit, mediation or arbitration proceeding, out of court payment agreement, trial, appeal or bankruptcy proceedings, in such amount as may be determined reasonable by any arbitrator or court, whichever is applicable.

**6. Events of Default.** The following are events of default hereunder if left uncured for a period of ten (10) business days (any such uncured default an "Event of Default"): (a) the failure to pay or perform any obligation, liability or indebtedness of any Obligor to Bank, whether under this Note or any Loan Documents, as and when due (whether upon demand, at maturity or by acceleration); (b) the change in control of the Borrower; (c) the commencement of a proceeding against any Obligor for dissolution or liquidation, the voluntary or involuntary termination or dissolution of any Obligor or the merger or consolidation of any Obligor with or into another entity; (d) the insolvency of, the business failure of, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of, the assignment for the benefit of creditors by, or the filing of a petition under bankruptcy, insolvency or debtor's relief law or the filing of a petition for any adjustment of indebtedness, composition or extension by or against any Obligor; (e) the determination by Bank that any representation or warranty made to Bank by any Obligor in any Loan Documents is or was, when it was made, untrue or materially misleading; (f) the failure of any Obligor to timely deliver such financial statements, other statements of condition or other information, as Bank may reasonably request from time to time; (g) the entry of a judgment against any Obligor which Bank deems to be of a material nature, in Bank's sole discretion; (h) the seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover order for any property of any Obligor; (i) the determination by Bank that a material adverse change has occurred in the financial condition of any Obligor; or (j) the failure of Obligor's business to comply with any law or regulation controlling its operation that could reasonably be expected to have a material adverse effect on the Obligor's ability to fulfill its obligations under the Loan Documents.

**7. Remedies upon Default.** Whenever there is an Event of Default under this Note (a) the entire balance outstanding hereunder and all other obligations of any Obligor to Bank (however acquired or evidenced) shall, at the option of Bank, become immediately due and payable and any obligation of Bank to permit further borrowing under this Note shall immediately cease and terminate, and/or (b) to the extent permitted by law, the Rate of Interest on the unpaid principal shall be increased at Bank's discretion up to the maximum rate allowed by law, or if none, 18% per annum (the "Default Rate"). The provisions herein for a Default Rate shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" giving Obligor a right to cure any default. At Bank's option, any accrued and unpaid interest, fees or charges may, for purposes of computing and accruing interest on a daily basis after the due date of the Note or any installment thereof, be deemed to be a part of the principal balance, and interest shall accrue on a daily compounded basis after such date at the Default Rate provided in this Note until the entire outstanding balance of principal and interest is paid in full. Upon an Event of Default under this Note, Bank is hereby authorized at any time, at its option and without notice or demand, to set off and charge against any deposit accounts of any Obligor (as well as any money, instruments, securities, documents, chattel paper, credits, claims, demands, income and any other property, rights and interests of any Obligor), which at any time shall come into the possession or custody or under the control of Bank or any of its agents, affiliates or correspondents, any and all obligations due hereunder. Additionally, Bank shall have all rights and remedies available under each of the Loan Documents, as well as all rights and remedies available at law or in equity.

**8. Non-Waiver.** The failure at any time of Bank to exercise any of its options or any other rights hereunder shall not constitute a waiver thereof, nor shall it be a bar to the exercise of any of its options or rights at a later date. All rights and remedies of Bank shall be cumulative and may be pursued singly, successively or together, at the option of Bank. The acceptance by Bank of any partial payment shall not constitute a waiver of any default or of any of Bank's rights under this Note. No waiver of any of its rights hereunder, and no modification or amendment of this Note, shall be deemed to be made by Bank unless the same shall be in writing, duly signed on behalf of Bank; each such waiver shall apply only with respect to the specific instance involved, and shall in no way impair the rights of Bank or the obligations of Obligor to Bank in any other respect at any other time.

**9. Effective Date.** This Note is being executed pursuant to the Plan and the Confirmation Order and the obligations of each party hereunder are conditioned in all respects on the occurrence of the Effective Date of the Plan. As set forth in the Plan, except as expressly set forth herein, the



terms, conditions, and protections set forth in the Security Agreement and the Bank's security interests in the Shares are not affected by the terms of the Plan or the Confirmation Order and are, and remain, in full force and effect.

**10. Applicable Law, Venue and Jurisdiction.** Borrower agrees that this Note shall be deemed to have been made in the State of Oklahoma at Bank's address indicated at the beginning of this Note and shall be governed by, and construed in accordance with, the laws of the State of Oklahoma and is performable in the City and County of Oklahoma indicated at the beginning of this Note. In any litigation in connection with or to enforce this Note or any indorsement or guaranty of this Note or any Loan Documents, Obligor irrevocably consents to and confers personal jurisdiction on the courts of the State of Oklahoma or the United States courts located within the State of Oklahoma. Nothing contained herein shall, however, prevent Bank from bringing any action or exercising any rights within any other state or jurisdiction or from obtaining personal jurisdiction by any other means available under applicable law.

**11. Partial Invalidity.** The unenforceability or invalidity of any provision of this Note shall not affect the enforceability or validity of any other provision herein and the invalidity or unenforceability of any provision of this Note or of the Loan Documents to any person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

**12. Binding Effect.** This Note shall be binding upon and inure to the benefit of Borrower, Obligor and Bank and their respective successors, assigns, heirs and personal representatives, provided, however, that no obligations of Borrower or Obligor hereunder can be assigned without prior written consent of Bank.

**13. Controlling Document.** To the extent that this Note conflicts with or is in any way incompatible with any other document related specifically to the loan evidenced by this Note, this Note shall control over any other such document, and if this Note does not address an issue, then each other such document shall control to the extent that it deals most specifically with an issue.

**14. ARBITRATION.** ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT OR ANY RELATED INSTRUMENTS, AGREEMENTS OR DOCUMENTS, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF AMERICAN ARBITRATION ASSOCIATION OR ANY SUCCESSOR THEREOF AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

**A. SPECIAL RULES.** THE ARBITRATION SHALL BE CONDUCTED IN OKLAHOMA COUNTY, OKLAHOMA ADMINISTERED BY AMERICAN ARBITRATION ASSOCIATION WHO WILL APPOINT AN ARBITRATOR; ARBITRATION SHALL BE COMMENCED WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL 60 DAYS.

**B. RESERVATION OF RIGHTS.** NOTHING IN THIS ARBITRATION PROVISION SHALL BE DEEMED TO (i) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS INSTRUMENT, AGREEMENT OR DOCUMENT; OR (ii) BE A WAIVER BY BANK OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. SEC. 91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (iii) LIMIT THE RIGHT OF BANK HERETO (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO FORECLOSE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL, OR (C) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. BANK MAY EXERCISE SUCH SELF HELP RIGHTS, FORECLOSE UPON SUCH PROPERTY, OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT. NEITHER THIS EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY SUCH ACTION, TO ARBITRATE THE MERITS OF THE CONTROVERSY OR CLAIM OCCASIONING RESORT TO SUCH REMEDIES.

Borrower represents to Bank that the proceeds of this loan evidenced by this Note are to be used primarily for business, commercial or agricultural purposes. Borrower acknowledges having read and understood, and agrees to be bound by, all terms and conditions of this Note.



**NOTICE OF FINAL AGREEMENT:**

**THIS WRITTEN NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

**Borrower/Obligor:**

**Highland Capital Management, L.P.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

## **EXHIBIT “G”**

**Released Employees**

**Name**

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Abayarathna, Sahan  
Bannon, Lucy  
Baynard, Paul C.  
Beispiel, Michael  
Brewer, Brigid  
Broaddus, Paul  
Burns, Nathan  
Carter, Jerome  
Chisum, Naomi  
Clark, Stetson  
Collins, Brian  
Cotton, Austin  
Cournoyer, Timothy  
Covitz, Hunter  
Diorio, Matthew  
Eftekhari, Cyrus  
Eliason, Hayley  
Ellington, Scott \*  
Flaherty, Brendan  
Fox, Sean  
Goldsmith, Sarah B.  
Gosserand, William  
Gray, Matthew  
Groff, Scott  
Haltom, Steven  
Hendrix, Kristin  
Roeber, Blair A.  
Hoedebeck, Charlie  
Irving, Mary K.  
Jain, Bhawika  
Jeong, Sang K.  
Jimenez, Sarah  
Kim, Helen  
Klos, David  
Kovelan, Kari J.  
Leuthner, Andrew  
Leventon, Isaac \*  
Loiben, Tara J.  
Luu, Joye  
Mabry, William

Mckay, Bradley  
Mills Iv, James  
Nikolayev, Yegor  
Owens, David  
Patel, Vishal  
Patrick, Mark  
Rice, Christopher  
Richardson, Kellie  
Rios, Heriberto  
Rothstein, Jason  
Sachdev, Kunal  
Schroth, Melissa  
Sevilla, Jean-Paul  
Short, Lauren  
Staltari, Mauro  
Stevens, Kellie  
Stewart, Phoebe L.  
Surgent, Thomas \*  
Swadley, Rick  
Thedford, Lauren E.  
Thomas, Kristen  
Thottichira, Christina  
Throckmorton, Michael  
Vitiello, Stephanie  
Waterhouse, Frank \*

\* Senior Employee - Required to execute Senior Employee Stipulation.

## **EXHIBIT “H”**



Draft –

**SENIOR EMPLOYEE STIPULATION AND TOLLING  
AGREEMENT EXTENDING STATUTES OF LIMITATION**

This stipulation (the “Stipulation”) is entered into as of [\_\_\_\_], by and between [EMPLOYEE NAME] (the “Senior Employee”) and Highland Capital Management, L.P. (the “Debtor”). The Debtor and the Senior Employee are individually referred to as a “Party” and collectively as the “Parties”.

**RECITALS**

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case;

WHEREAS, on November 13, 2020, the Debtor filed the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”);<sup>1</sup>

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [\_\_\_\_] and in such role provided services to the Debtor;

WHEREAS, the Senior Employee was compensated for his services in part through certain deferred compensation that was required to be paid to the Senior Employee on [\_\_\_\_] (the “Deferred Compensation”);

WHEREAS, the Committee objected to the Senior Employee receiving the Deferred Compensation during the Chapter 11 Case and the Deferred Compensation, although earned, was not paid;

WHEREAS, as of the date hereof, the total Deferred Compensation through and including the date hereof owed to the Senior Employee is \$[\_\_\_\_];

WHEREAS, the Senior Employee may have other Claims against the Debtor in addition to the Deferred Compensation (the “Other Employee Claims”);

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been retained pursuant to the Plan (the “Causes of Action”);

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

WHEREAS, the Plan provides for the release of such Causes of Action against the Senior Employee (the “Employee Release”);

WHEREAS, the Employee Release is conditioned on the Senior Employee executing this Stipulation on or prior to the Effective Date of the Plan and reducing his Deferred Compensation as set forth herein;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the “CTOC”) to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee’s agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Deferred Compensation otherwise due to the Senior Employee, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the “HCMLP Parties”) agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the “Termination Date”). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Deferred Compensation set forth in Section 5 hereof or in the Plan.

2. Non-Compliance; Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the “Independent Members”), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the “Notice”) to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the “Notice Date”).

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the “Dissolution Date”).

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitation applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the “Tolling Period”). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively “Confidential Information”) relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee’s personal attorney, the Claimant Trustee or its respective representatives.

5. Deferred Compensation.

a. The Senior Employee has agreed to forfeit a percentage of his Deferred Compensation in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Deferred Compensation will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Deferred Compensation as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Deferred Compensation will be further reduced by 40% (the “Reduced Amount”), and (iv) the Reduced Amount will be forever waived and released.

Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim or prevent the Senior Employee from prosecuting or pursuing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Deferred Compensation pursuant to this Section 5.

6. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

7. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan and vote any Claims in favor of the Plan.

8. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.



g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

**Senior Employee**

[ ]

[ ]

[ ]

Email: [ ]

**HCMLP**

Highland Capital Management, L.P.

[ ]

[ ]

Attention: James P. Seery, Jr.

Telephone No.: [ ]

E-mail: [ ]

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law; Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Blank]*



**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SENIOR EMPLOYEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**DEBTOR'S NOTICE OF FILING OF PLAN SUPPLEMENT TO THE  
FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor"), filed the *Debtor's Notice of Filing of*

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



*Supplement to Third Amended Plan of Reorganization of Highland Capital Management, L.P.*, on November 13, 2020 [Docket No. 1389] (the “Initial Supplement”). The Initial Supplement included Exhibits A-H to the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.*, dated November 13, 2020 [Docket No. 1383] (the “Third Amended Plan”).

**PLEASE TAKE NOTICE** that on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the “Plan”).

**PLEASE TAKE NOTICE** that Exhibits A-H to the Third Amended Plan are Exhibits A-H to the Plan (as such exhibits may be amended as set forth herein).

**PLEASE TAKE NOTICE** that the Debtor hereby files the documents included herewith as Exhibits I-K (collectively, the “Plan Supplement”) supplementing the Plan.

**Exhibit I:** Schedule of Contracts and Leases to Be Assumed

**Exhibit J:** Amended Form of Senior Employee Stipulation

**Exhibit K:** Redline of Form of Senior Employee Stipulation

**PLEASE TAKE FURTHER NOTICE** that the Debtor anticipates filing amended versions of certain of the Exhibits to the Plan, including amendments to the Form of Claimant Trust Agreement (Exhibit A) and the Form of Litigation Sub-Trust Agreement (Exhibit D).

**PLEASE TAKE FURTHER NOTICE** that this *Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Notice of Plan Supplement”) is being served on parties-in-interest without the Plan Supplement attached. Any party-in-interest wishing to obtain copies of the Plan or the Plan Supplement may do so by (i) contacting the Debtor’s Solicitation Agent, KCC, at (i) 1-877-573-3984 (toll free) or 1-310-751-1829 (if international) or by email at HighlandInfo@kccllc.com, or (ii) viewing such

documents by accessing them online at <https://kccllc.net/HCMLP>. The documents are also available on the Court's website: [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov). Please note that a PACER password and login are needed to access documents on the Court's website.

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Dated: December 18, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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*Counsel for the Debtor and Debtor-in-Possession*



## EXHIBIT I

### **Schedule of Contracts and Leases to Be Assumed**

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.
17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.

18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)

34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest

## **EXHIBIT J**



**SENIOR EMPLOYEE STIPULATION AND TOLLING  
AGREEMENT EXTENDING STATUTES OF LIMITATION**

This stipulation (the “Stipulation”) is entered into as of [\_\_\_\_], by and between [EMPLOYEE NAME] (the “Senior Employee”) and Highland Capital Management, L.P. (the “Debtor”). The Debtor and the Senior Employee are individually referred to as a “Party” and collectively as the “Parties”.

**RECITALS**

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”):

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case;

WHEREAS, on November 13, 2020, the Debtor filed the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”):<sup>1</sup>

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [\_\_\_\_] and in such role provided services to the Debtor;

WHEREAS, the Senior Employee is owed for his services (i) certain amounts that were due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the “Earned Amounts”):

WHEREAS, the Committee objected to the Senior Employee receiving the Earned Amounts during the Chapter 11 Case and the Earned Amounts, although earned, was not paid;

WHEREAS, as of the date hereof, the total Earned Amounts through and including the date hereof owed to the Senior Employee is \$ [\_\_\_\_];

WHEREAS, the Senior Employee may have other prepetition and postpetition Claims against the Debtor in addition to the Earned Amounts (the “Other Employee Claims”):<sup>2</sup>

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> For the avoidance of doubt, the “Other Employee Claims” shall include all prepetition and postpetition Claims of the Senior Employee except for the Earned Amounts.

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been retained pursuant to the Plan (the “Causes of Action”):

WHEREAS, the Plan provides for the release of such Causes of Action against the Senior Employee (the “Employee Release”):

WHEREAS, the Employee Release is conditioned on the Senior Employee executing this Stipulation on or prior to the Effective Date of the Plan and reducing his Earned Amounts as set forth herein;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the “CTOC”) to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee’s agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Earned Amounts otherwise due to the Senior Employee, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the “HCMLP Parties”) agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the “Termination Date”). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Earned Amounts set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the “Independent Members”), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the

Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the “Notice”) to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the “Notice Date”).

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the “Dissolution Date”).

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor’s successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims. Additionally, this Agreement does not affect or impair Senior Employee’s rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor’s successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitation applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the “Tolling Period”). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively “Confidential Information”) relating to the activities or

planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Earned Amounts.

a. The Senior Employee has agreed to forfeit a percentage of his in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Earned Amounts will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Earned Amounts as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Earned Amounts will be further reduced by 40% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Earned Amounts pursuant to this Section 5.

6. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

7. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan and vote any Claims in favor of the Plan.

8. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

**Senior Employee**

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

With a copy to:

**Attorneys for Senior Employee**

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

**HCMLP**

Highland Capital Management, L.P

[\_\_\_\_\_]
[\_\_\_\_\_]

Attention: James P. Seery, Jr.



Telephone No.: [ ]  
Email: [ ]

With a copy to:

**Attorneys for HCMLP**

[ ]  
[ ]  
[ ]  
[ ]

Email: [ ]

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Blank]*

**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SENIOR EMPLOYEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## **EXHIBIT K**

## SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION

This stipulation (the “Stipulation”) is entered into as of [\_\_\_\_], by and between [EMPLOYEE NAME] (the “Senior Employee”) and Highland Capital Management, L.P. (the “Debtor”). The Debtor and the Senior Employee are individually referred to as a “Party” and collectively as the “Parties”.

### RECITALS

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case;

WHEREAS, on November 13, 2020, the Debtor filed the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”);<sup>1</sup>

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [\_\_\_\_] and in such role provided services to the Debtor;

WHEREAS, the Senior Employee ~~was compensated~~ is owed for his services ~~in part through (i) certain deferred compensation amounts that was required were due to be paid to the Senior Employee on [\_\_\_\_] (the “Deferred Compensation”); for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the “Earned Amounts”);~~

WHEREAS, the Committee objected to the Senior Employee receiving the ~~Deferred Compensation~~ Earned Amounts during the Chapter 11 Case and the ~~Deferred Compensation~~ Earned Amounts, although earned, was not paid;

WHEREAS, as of the date hereof, the total ~~Deferred Compensation~~ Earned Amounts through and including the date hereof owed to the Senior Employee is \$ [\_\_\_\_];

WHEREAS, the Senior Employee may have other prepetition and postpetition Claims against the Debtor in addition to the ~~Deferred Compensation~~ Earned Amounts (the “Other”

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Employee Claims”);<sup>2</sup>.

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been retained pursuant to the Plan (the “Causes of Action”);

WHEREAS, the Plan provides for the release of such Causes of Action against the Senior Employee (the “Employee Release”);

WHEREAS, the Employee Release is conditioned on the Senior Employee executing this Stipulation on or prior to the Effective Date of the Plan and reducing his ~~Deferred Compensation~~Earned Amounts as set forth herein;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the “CTOC”) to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee’s agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the ~~Deferred Compensation~~Earned Amounts otherwise due to the Senior Employee, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the “HCMLP Parties”) agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the “Termination Date”). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the ~~Deferred Compensation~~Earned Amounts set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the “Independent Members”), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- (1) sues, attempts to sue, or threatens or works with or assists

<sup>2</sup> For the avoidance of doubt, the “Other Employee Claims” shall include all prepetition and postpetition Claims of the Senior Employee except for the Earned Amounts.



any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the “Notice”) to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the “Notice Date”).

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the “Dissolution Date”).

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor’s successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims. Additionally, this Agreement does not affect or impair Senior Employee’s rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor’s successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitation applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the “Tolling Period”). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties’

“Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively “Confidential Information”) relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee’s personal attorney, the Claimant Trustee, or its respective representatives.

5. Deferred Compensation. Earned Amounts.

a. The Senior Employee has agreed to forfeit a percentage of his ~~Deferred Compensation~~ in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the ~~Deferred Compensation~~Earned Amounts will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his ~~Deferred Compensation~~Earned Amounts as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the ~~Deferred Compensation~~Earned Amounts will be further reduced by 40% (the “Reduced Amount”), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting or, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section ~~2.2~~, any such nullification will have no effect on the treatment of the Senior Employee’s ~~Deferred Compensation~~Earned Amounts pursuant to this Section ~~5.5~~.

6. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties’ obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

7. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan and vote any Claims in favor of the Plan.

8. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that

he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

Senior Employee	HCMLP
[ ]	Highland Capital Management, L.P.
[ ]	[ ]
[ ]	[ ]
Email: [ ]	Attention: James P. Seery, Jr.
	Telephone No.: [ ]
	E-mail: [ ]

i.

Senior Employee

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

With a copy to:

Attorneys for Senior Employee

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

HCMLP

Highland Capital Management, L.P

[\_\_\_\_\_]
[\_\_\_\_\_]

Attention: James P. Seery, Jr.

Telephone No.: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

With a copy to:

Attorneys for HCMLP

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

j. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

k. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any

such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

1. Governing Law; Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Blank]*





IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SENIOR EMPLOYEE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Document comparison by Workshare 9.5 on Friday, December 18, 2020 6:30:29 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/41454/6
Description	DOCS_NY-#41454-v6-Highland_-_Senior_Employee_Stipulation
Document 2 ID	PowerDocs://DOCS_NY/41454/10
Description	DOCS_NY-#41454-v10-Highland_-_Senior_Employee_Stipulation
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	71
Deletions	44
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	115

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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**DEBTOR'S NOTICE OF FILING OF PLAN SUPPLEMENT TO THE  
FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

**PLEASE TAKE NOTICE** that, on November 13, 2020, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor"), filed the *Debtor's*

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

*Notice of Filing of Supplement to Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] (the “Initial Supplement”). The Initial Supplement included Exhibits A-H to the *Third Amended Plan of Reorganization of Highland Capital Management, L.P.*, dated November 13, 2020 [Docket No. 1383] (the “Third Amended Plan”).

**PLEASE TAKE NOTICE** that, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the “Plan”).

**PLEASE TAKE NOTICE** that Exhibits A-H to the Third Amended Plan are Exhibits A-H to the Plan (as such exhibits may be amended as set forth herein).

**PLEASE TAKE NOTICE** that, on December 18, 2020, the Debtor filed the *Debtor’s Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, [Docket No. 1606] (the “Second Supplement”). The Second Supplement included Exhibits I-K to the Plan.

**PLEASE TAKE NOTICE** that the Debtor hereby files the documents included herewith as Exhibits L-P (collectively, the “Plan Supplement”) supplementing the Plan.

**Exhibit L:** Amended Schedule of Retained Causes of Action

**Exhibit M:** Amended Form of Claimant Trust Agreement

**Exhibit N:** Redline of Form of Claimant Trust Agreement

**Exhibit O:** Amended Form of Litigation Trust Agreement

**Exhibit P:** Redline of Form of Litigation Trust Agreement

**PLEASE TAKE FURTHER NOTICE** that this *Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the “Notice of Plan Supplement”) is being served on parties-in-interest without the Plan Supplement



attached. Any party-in-interest wishing to obtain copies of the Plan or the Plan Supplement may do so by contacting the Debtor's Solicitation Agent, KCC, at (i) 1-877-573-3984 (toll free) or 1-310-751-1829 (if international) or by email at HighlandInfo@kccllc.com, or (ii) viewing such documents by accessing them online at <https://kccllc.net/HCMLP>. The documents are also available on the Court's website: [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov). Please note that a PACER password and login are needed to access documents on the Court's website.

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Dated: January 4, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

-and-

**HAYWARD & ASSOCIATES PLLC**

/s/ Zachery Z. Annable

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Zachery Z. Annable  
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Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

## **EXHIBIT L**

### Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, substantive consolidation, recharacterization, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

## Annex 1

11 Estates Lane, LLC	Acis CLO Value Fund II Charitable DAF Ltd.
1110 Waters, LLC	Acis CMOA Trust
140 Albany, LLC	Advisors Equity Group LLC
1525 Dragon, LLC	Alamo Manhattan Hotel I, LLC
17720 Dickerson, LLC	(Third Party)
1905 Wylie LLC	Allenby, LLC
2006 Milam East Partners GP, LLC	Allisonville RE Holdings, LLC
2006 Milam East Partners, L.P.	AM Uptown Hotel, LLC
201 Tarrant Partners, LLC	Apex Care, L.P
2014 Corpus Weber Road LLC	Asbury Holdings, LLC ( <i>fka HCSLR</i>
2325 Stemmons HoldCo, LLC	<i>Camelback Investors (Delaware), LLC</i> )
2325 Stemmons Hotel Partners, LLC	Ascendant Advisors
2325 Stemmons TRS, Inc.	Atlas IDF GP, LLC
300 Lamar, LLC	Atlas IDF, LP
3409 Rosedale, LLC	BB Votorantim Highland Infrastructure, LLC
3801 Maplewood, LLC	BDC Toys Holdco, LLC
3801 Shenandoah, L.P.	Beacon Mountain, LLC
3820 Goar Park LLC	Bedell Trust Ireland Limited (Charitable trust
400 Seaman, LLC	account)
401 Ame, L.P.	Ben Roby (third party)
4201 Locust, L.P.	BH Equities, LLC
4312 Belclaire, LLC	BH Heron Pointe, LLC
5833 Woodland, L.P.	BH Hollister, LLC
5906 DeLoache, LLC	BH Willowdale Manager, LLC
5950 DeLoache, LLC	Big Spring Partners, LLC
7758 Ronnie, LLC	Blair Investment Partners, LLC
7759 Ronnie, LLC	Bloomdale, LLC
AA Shotguns, LLC	Brave Holdings III Inc.
Aberdeen Loan Funding, Ltd.	Brentwood CLO, Ltd.
Acis CLO 2017-7 Ltd	Brentwood Investors Corp.
Acis CLO Management GP, LLC	Brian Mitts
Acis CLO Management GP, LLC ( <i>fka Acis</i>	Bristol Bay Funding Ltd.
<i>CLO Opportunity Funds GP, LLC</i> )	Bristol Bay Funding, Ltd.
Acis CLO Management Holdings, L.P.	BVP Property, LLC
Acis CLO Management Intermediate Holdings	C-1 Arbors, Inc.
I, LLC	C-1 Cutter's Point, Inc.
Acis CLO Management Intermediate Holdings	C-1 Eaglecrest, Inc.
II, LLC	C-1 Silverbrook, Inc.
Acis CLO Management, LLC ( <i>fka Acis CLO</i>	Cabi Holdco GP, LLC
<i>Opportunity Funds SLP, LLC</i> )	Cabi Holdco I, Ltd
Acis CLO Trust	Cabi Holdco I, Ltd.



Cabi Holdco, L.P.  
California Public Employees' Retirement System  
Camelback Residential Investors, LLC  
Camelback Residential Investors, LLC  
*(fka Sevilla Residential Partners, LLC)*  
Camelback Residential Partners, LLC  
Capital Real Estate - Latitude, LLC  
Castle Bio Manager, LLC  
Castle Bio, LLC  
CG Works, Inc.  
CG Works, Inc.  
*(fka Common Grace Ventures, Inc.)*  
Charitable DAF Fund, L.P.  
Charitable DAF GP, LLC  
Charitable DAF HoldCo, Ltd  
Charitable DAF HoldCo, Ltd.  
Claymore Holdings, LLC  
CLO HoldCo, Ltd  
CLO Holdco, Ltd.  
Corbusier, Ltd.  
Cornerstone Healthcare Group Holding, Inc.  
Corpus Weber Road Member LLC  
CP Equity Hotel Owner, LLC  
CP Equity Land Owner, LLC  
CP Equity Owner, LLC  
CP Hotel TRS, LLC  
CP Land Owner, LLC  
CP Tower Owner, LLC  
CRE - Lat, LLC  
Credit Suisse, Cayman Islands Branch  
Crossings 2017 LLC  
Crown Global Insurance Company (third party)  
Dallas Cityplace MF SPE Owner LLC  
Dallas Lease and Finance, L.P.  
Dana Scott Breault  
James Dondero  
Reese Avry Dondero  
Jameson Drue Dondero  
Dana Sprong (Third Party)  
David c. Hopson  
De Kooning, Ltd.

deKooning, Ltd.  
DFA/BH Autumn Ridge, LLC  
Dolomiti, LLC  
DrugCrafters, L.P.  
Dugaboy Investment Trust  
Dugaboy Management, LLC  
Dugaboy Project Management GP, LLC  
Eagle Equity Advisors, LLC  
Eames, Ltd.  
Eastland CLO, Ltd.  
Eastland Investors Corp.  
EDS Legacy Heliport, LLC  
EDS Legacy Partners Owner, LLC  
EDS Legacy Partners, LLC  
Empower Dallas Foundation, Inc.  
ENA 41, LLC  
Entegra Strat Superholdco, LLC  
Entegra-FRO Holdco, LLC  
Entegra-FRO Superholdco, LLC  
Entegra-HOCF Holdco, LLC  
Entegra-NHF Holdco, LLC  
Entegra-NHF Superholdco, LLC  
Entegra-RCP Holdco, LLC  
Estates on Maryland Holdco, LLC  
Estates on Maryland Owners SM, Inc.  
Estates on Maryland Owners, LLC  
Estates on Maryland, LLC  
Falcon E&P Four Holdings, LLC  
Falcon E&P One, LLC  
Falcon E&P Opportunities Fund, L.P.  
Falcon E&P Opportunities GP, LLC  
Falcon E&P Royalty Holdings, LLC  
Falcon E&P Six, LLC  
Falcon E&P Two, LLC  
Falcon Four Midstream, LLC  
Falcon Four Upstream, LLC  
Falcon Incentive Partners GP, LLC  
Falcon Incentive Partners, LP  
Falcon Six Midstream, LLC  
Flamingo Vegas Holdco, LLC *(fka Cabi Holdco, LLC)*  
Four Rivers Co-Invest GP, LLC  
Four Rivers Co-Invest, L.P.

FRBH Abbington SM, Inc.	Gardens of Denton II, L.P.
FRBH Abbington, LLC	Gardens of Denton III, L.P.
FRBH Arbors, LLC	Gleneagles CLO, Ltd.
FRBH Beechwood SM, Inc.	Goverannce RE, Ltd.
FRBH Beechwood, LLC	Governance Re, Ltd.
FRBH C1 Residential, LLC	Governance, Ltd.
FRBH Courtney Cove SM, Inc.	Grant Scott
FRBH Courtney Cove, LLC	Grant Scott, Trustee of The SLHC Trust
FRBH CP, LLC	Grayson CLO, Ltd.
FRBH Duck Creek, LLC	Grayson Investors Corp.
FRBH Eaglecrest, LLC	Greater Kansas City Community Foundation (third party)
FRBH Edgewater JV, LLC	Greenbriar CLO, Ltd.
FRBH Edgewater Owner, LLC	Greg Busseyt
FRBH Edgewater SM, Inc.	Gunwale LLC
FRBH JAX-TPA, LLC	Gunwale, LLC
FRBH Nashville Residential, LLC	Hakusan, LLC
FRBH Regatta Bay, LLC	Hammark Holdings LLC
FRBH Sabal Park SM, Inc.	Hampton Ridge Partners, LLC
FRBH Sabal Park, LLC	Harbourvest Entities
FRBH Silverbrook, LLC	Harko, LLC
FRBH Timberglen, LLC	Harry Bookey/Pam Bookey (third party)
FRBH Willow Grove SM, Inc.	Haverhill Acquisition Co., LLC
FRBH Willow Grove, LLC	Haygood, LLC
FRBH Woodbridge SM, Inc.	HB 2015 Family LP (third party)
FRBH Woodbridge, LLC	HCBH 11611 Ferguson, LLC
Freedom C1 Residential, LLC	HCBH Buffalo Pointe II, LLC
Freedom Duck Creek, LLC	HCBH Buffalo Pointe III, LLC
Freedom Edgewater, LLC	HCBH Buffalo Pointe, LLC
Freedom JAX-TPA Residential, LLC	HCBH Hampton Woods SM, Inc.
Freedom La Mirage, LLC	HCBH Hampton Woods, LLC
Freedom LHV LLC	HCBH Overlook SM, Inc.
Freedom Lubbock LLC	HCBH Overlook, LLC
Freedom Miramar Apartments, LLC	HCBH Rent Investors, LLC
Freedom Sandstone, LLC	HCMS Falcon GP, LLC
Freedom Willowdale, LLC	HCMS Falcon, L.P.
Fundo de Investimento em Direitos Creditorios BB Votorantim Highland Infraestrutura	HCO Holdings, LLC
G&E Apartment REIT The Heights at Olde Towne, LLC	HCOF Preferred Holdings, L.P.
G&E Apartment REIT The Myrtles at Olde Towne, LLC	HCOF Preferred Holdings, LP
GAF REIT, LLC	HCOF Preferred Holdings, Ltd.
GAF Toys Holdco, LLC	HCRE 1775 James Ave, LLC
	HCRE Addison TRS, LLC

HCRE Addison, LLC (*fka HWS Addison, LLC*)

HCRE Hotel Partner, LLC (*fka HCRE HWS Partner, LLC*)

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC (*fka HWS Las Colinas, LLC*)

HCRE Plano TRS, LLC

HCRE Plano, LLC (*fka HWS Plano, LLC*)

HCRE-F-I Holding Corp.

HCRE-F-II Holding Corp.

HCRE-F-III Holding Corp.

HCRE-F-IV Holding Corp.

HCRE-F-IX Holding Corp.

HCRE-F-V Holding Corp.

HCRE-F-VI Holding Corp.

HCRE-F-VII Holding Corp.

HCRE-F-VIII Holding Corp.

HCRE-F-XI Holding Corp.

HCRE-F-XII Holding Corp.

HCRE-F-XIII Holding Corp.

HCRE-F-XIV Holding Corp.

HCRE-F-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA*)

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. (*fka Pyxis Capital, L.P.*)

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.

Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP  
Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP  
Highland Capital of New York, Inc.  
Highland Capital Special Allocation, LLC  
Highland CDO Holding Company  
Highland CDO Opportunity Fund GP, L.P.  
Highland CDO Opportunity Fund, L.P.  
Highland CDO Opportunity Fund, Ltd.  
Highland CDO Opportunity GP, LLC  
Highland CDO Opportunity Master Fund, L.P.  
Highland CDO Trust  
Highland CLO 2018-1, Ltd.  
Highland CLO Assets Holdings Limited  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd. (*fka Acis Loan Funding, Ltd.*)  
Highland CLO Gaming Holdings, LLC  
Highland CLO Holdings Ltd.  
Highland CLO Holdings, Ltd. (as of 12.19.17)  
Highland CLO Management Ltd.  
Highland CLO Trust  
Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.

Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC (*fka Highland Capital Loan GP, LLC*)

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. (*fka Highland Capital Loan Fund, L.P.*)

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. (*fka Highland Loan Fund, Ltd.*)

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. (*fka Highland Loan Master Fund, L.P.*)

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund (*fka Highland Energy and Materials Fund*)

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunites Fund  
Highland Floating Rate Opportunities Fund  
Highland Fund Holdings, LLC  
Highland Funds I  
Highland Funds II  
Highland Funds III  
Highland GAF Chemical Holdings, LLC  
Highland General Partner, LP  
Highland Global Allocation Fund  
Highland Global Allocation Fund  
*(fka Highland Global Allocation Fund II)*  
Highland GP Holdings, LLC  
Highland HCF Advisor Ltd.  
Highland HCF Advisor, Ltd., as Trustee for  
and on behalf of Acis CLO Trust, as nominee  
for and on behalf of Highland CLO Funding,  
Ltd. (as of 3.29.18)  
Highland Healthcare Equity Income and  
Growth Fund  
Highland iBoxx Senior Loan ETF  
Highland Income Fund  
Highland Income Fund *(fka Highland  
Floating Rate Opportunities Fund)*  
Highland Kansas City Foundation, Inc.  
Highland Latin America Consulting, Ltd.  
Highland Latin America GP, Ltd.  
Highland Latin America LP, Ltd.  
Highland Latin America Trust  
Highland Legacy Limited  
Highland LF Chemical Holdings, LLC  
Highland Loan Funding V, LLC  
Highland Loan Funding V, Ltd.  
Highland Long/Short Equity Fund  
Highland Long/Short Healthcare Fund  
Highland Marcal Holding, Inc.  
Highland Merger Arbitrage Fund  
Highland Multi Strategy Credit Fund GP, L.P.  
Highland Multi Strategy Credit Fund GP, L.P.  
*(fka Highland Credit Opportunities CDO GP,  
L.P.)*  
Highland Multi Strategy Credit Fund, L.P.

Highland Multi Strategy Credit Fund, L.P. *(fka  
Highland Credit Opportunities Fund, L.P., fka  
Highland Credit Opportunities CDO, L.P.)*  
Highland Multi Strategy Credit Fund, Ltd.  
Highland Multi Strategy Credit Fund, Ltd. *(fka  
Highland Credit Opportunities Fund, Ltd.)*  
Highland Multi Strategy Credit GP, LLC  
Highland Multi Strategy Credit GP, LLC *(fka  
Highland Credit Opportunities CDO GP, LLC)*  
Highland Multi-Strategy Fund GP, LLC  
Highland Multi-Strategy Fund GP, LP  
Highland Multi-Strategy IDF GP, LLC  
Highland Multi-Strategy Master Fund, L.P.  
Highland Multi-Strategy Master Fund, LP  
Highland Multi-Strategy Onshore Master  
SubFund II, LLC  
Highland Multi-Strategy Onshore Master  
Subfund, LLC  
Highland Opportunistic Credit Fund  
Highland Park CDO 1, Ltd.  
Highland Park CDO I, Ltd.  
Highland Premier Growth Equity Fund  
Highland Premium Energy & Materials Fund  
Highland Prometheus Feeder Fund I, L.P.  
Highland Prometheus Feeder Fund I, LP  
Highland Prometheus Feeder Fund II, L.P.  
Highland Prometheus Feeder Fund II, LP  
Highland Prometheus Master Fund, L.P.  
Highland Receivables Finance I, LLC  
Highland Restoration Capital Partners GP,  
LLC  
Highland Restoration Capital Partners Master,  
L.P.  
Highland Restoration Capital Partners  
Offshore, L.P.  
Highland Restoration Capital Partners, L.P.  
Highland Santa Barbara Foundation, Inc.  
Highland Select Equity Fund GP, L.P.  
Highland Select Equity Fund, L.P.  
Highland Select Equity GP, LLC  
Highland Select Equity Master Fund, L.P.



Highland Small-Cap Equity Fund  
Highland Socially Responsible Equity Fund  
Highland Socially Responsible Equity Fund  
*(fka Highland Premier Growth Equity Fund)*

Highland Special Opportunities Holding Company  
Highland SunBridge GP, LLC  
Highland Tax-Exempt Fund  
Highland TCI Holding Company, LLC  
Highland Total Return Fund  
Highland's Roads Land Holding Company, LLC

Hirst, Ltd.  
HMCf PB Investors, LLC  
HMx2 Investment Trust  
(Matt McGraner)  
Hockney, Ltd.  
HRT North Atlanta, LLC  
HRT Timber Creek, LLC  
HRTBH North Atlanta, LLC  
HRTBH Timber Creek, LLC  
Huber Funding LLC  
Hunter Mountain Investment Trust  
HWS Investors Holdco, LLC  
Internal Investors  
Intertrust  
James D. Dondero  
Reese Avry Dondero  
Jameson Drue Dondero

James Dondero  
James Dondero and Mark Okada  
James Dondero  
Reese Avry Dondero  
Jameson Drue Dondero

Japan Trustee Services Bank, Ltd.  
Jasper CLO, Ltd.  
Jewelry Ventures I, LLC  
JMIJM, LLC

Joanna E. Milne Irrevocable Trust dated Nov 25 1998 (third party)

John Honis  
John L. Holt, Jr.

John R. Sears, Jr.  
Karisopolis, LLC  
Keelhaul LLC  
KHM Interests, LLC (third party)  
Kuilima Montalban Holdings, LLC  
Kuilima Resort Holdco, LLC  
KV Cameron Creek Owner, LLC  
Lakes at Renaissance Park Apartments Investors, L.P.  
Lakeside Lane, LLC  
Landmark Battleground Park II, LLC  
Lane Britain  
Larry K. Anders  
LAT Battleground Park, LLC  
LAT Briley Parkway, LLC  
Lautner, Ltd.  
Leawood RE Holdings, LLC  
Liberty Cayman Holdings, Ltd.  
Liberty CLO Holdco, Ltd.  
Liberty CLO, Ltd.  
Liberty Sub, Ltd.  
Long Short Equity Sub, LLC  
Longhorn Credit Funding LLC  
Longhorn Credit Funding LLC - A  
Longhorn Credit Funding LLC - B  
Longhorn Credit Funding LLC (LHB)  
Longhorn Credit Funding, LLC  
Lurin Real Estate Holdings V, LLC  
Maple Avenue Holdings, LLC  
MaplesFS Limited  
Marc C. Manzo  
Mark and Pam Okada Family Trust - Exempt Descendants' Trust  
Mark and Pam Okada Family Trust - Exempt Trust #2  
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust  
Mark and Pamela Okada Family Trust - Exempt Descendants' Trust #2  
Mark and Pamela Okada Family Trust - Exempt Trust #2  
Mark K. Okada  
Mark Okada

Mark Okada and Pam Okada  
 Mark Okada and Pam Okada, as joint owners  
 Mark Okada/Pamela Okada  
 Markham Fine Jewelers, L.P.  
 Markham Fine Jewelers, LP  
 Matt McGraner  
 Meritage Residential Partners, LLC  
 MGM Studios HoldCo, Ltd.  
 Michael Rossi  
 ML CLO XIX Sterling (Cayman), Ltd.  
 N/A  
 Nancy Dondero  
 NCI Apache Trail LLC  
 NCI Assets Holding Company LLC  
 NCI Country Club LLC  
 NCI Fort Worth Land LLC  
 NCI Front Beach Road LLC  
 NCI Minerals LLC  
 NCI Royse City Land LLC  
 NCI Stewart Creek LLC  
 NCI Storage, LLC  
 Neil Labatte  
 Neutra, Ltd.  
 New Jersey Tissue Company Holdco, LLC  
*(fka Marcal Paper Mills Holding Company, LLC)*  
 NexAnnuity Holdings, Inc.  
 NexBank Capital Trust I  
 NexBank Capital, Inc.  
 NexBank Land Advisors, Inc.  
 NexBank Securities Inc.  
 NexBank Securities, Inc.  
  
 NexBank SSB  
 NexBank Title, Inc.  
*(dba NexVantage Title Services)*  
 NexBank, SSB  
 NexPoint Advisors GP, LLC  
 NexPoint Advisors, L.P.  
 NexPoint Capital REIT, LLC  
 NexPoint Capital, Inc.  
 NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*

NexPoint CR F/H DST, LLC  
 NexPoint Credit Strategies Fund  
 NexPoint Discount Strategies Fund  
*(fka NexPoint Discount Yield Fund)*  
 NexPoint DRIP  
 NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*  
 NexPoint Event-Driven Fund  
*(fka NexPoint Merger Arbitrage Fund)*  
 NexPoint Flamingo DST  
 NexPoint Flamingo Investment Co, LLC  
 NexPoint Flamingo Leaseco, LLC  
 NexPoint Flamingo Manager, LLC  
 NexPoint Flamingo Property Manager, LLC  
 NexPoint Healthcare Opportunities Fund  
 NexPoint Hospitality Trust  
 NexPoint Hospitality, Inc.  
 NexPoint Hospitality, LLC  
 NexPoint Insurance Distributors, LLC  
 NexPoint Insurance Solutions GP, LLC  
 NexPoint Insurance Solutions GP, LLC  
*(fka Highland Capital Insurance Solutions GP, LLC)*  
 NexPoint Insurance Solutions, L.P.  
*(fka Highland Capital Insurance Solutions, L.P.)*  
 NexPoint Latin American Opportunities Fund  
 NexPoint Legacy 22, LLC  
 NexPoint Lincoln Porte Equity, LLC  
 NexPoint Lincoln Porte Manager, LLC  
 NexPoint Lincoln Porte, LLC  
*(fka NREA Lincoln Porte, LLC)*  
 NexPoint Multifamily Capital Trust, Inc.  
 NexPoint Multifamily Capital Trust, Inc.  
*(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)*  
 NexPoint Multifamily Operating Partnership, L.P.  
 NexPoint Peoria, LLC  
 NexPoint Polo Glen DST  
 NexPoint Polo Glen Holdings, LLC  
 NexPoint Polo Glen Investment Co, LLC

NexPoint Polo Glen Leaseco, LLC  
 NexPoint Polo Glen Manager, LLC  
 NexPoint RE Finance Advisor GP, LLC  
 NexPoint RE Finance Advisor, L.P.  
 NexPoint Real Estate Advisors GP, LLC  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors III, L.P.  
 NexPoint Real Estate Advisors IV, L.P.  
 NexPoint Real Estate Advisors V, L.P.  
 NexPoint Real Estate Advisors VI, L.P.  
 NexPoint Real Estate Advisors VII GP, LLC  
 NexPoint Real Estate Advisors VII, L.P.  
 NexPoint Real Estate Advisors VIII, L.P.  
 NexPoint Real Estate Advisors, L.P.  
 NexPoint Real Estate Capital, LLC  
 NexPoint Real Estate Capital, LLC (*fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC*)  
 NexPoint Real Estate Finance OP GP, LLC  
 NexPoint Real Estate Finance Operating Partnership, L.P.  
 NexPoint Real Estate Finance, Inc.  
 NexPoint Real Estate Opportunities, LLC  
 NexPoint Real Estate Opportunities, LLC (*fka Freedom REIT LLC*)  
 NexPoint Real Estate Partners, LLC  
 (fka HCRE Partners, LLC)  
 NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)  
 NexPoint Real Estate Strategies Fund  
 NexPoint Residential Trust Inc.  
 NexPoint Residential Trust Operating Partnership GP, LLC  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust, Inc.  
 NexPoint Securities, Inc.  
 (*fka Highland Capital Funds Distributor, Inc.*)  
 (*fka Pyxis Distributors, Inc.*)

NexPoint Strategic Income Fund  
 (*fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund*)  
 NexPoint Strategic Opportunities Fund  
 NexPoint Strategic Opportunities Fund  
 (*fka NexPoint Credit Strategies Fund*)  
 NexPoint Texas Multifamily Portfolio DST  
 (*fka NREA Southeast Portfolio Two, DST*)  
 NexPoint WLIF I Borrower, LLC  
 NexPoint WLIF I, LLC  
 NexPoint WLIF II Borrower, LLC  
 NexPoint WLIF II, LLC  
 NexPoint WLIF III Borrower, LLC  
 NexPoint WLIF III, LLC  
 NexPoint WLIF, LLC (Series I)  
 NexPoint WLIF, LLC (Series II)  
 NexPoint WLIF, LLC (Series III)  
 NexStrat LLC  
 NexVest, LLC  
 NexWash LLC  
 NFRO REIT Sub, LLC  
 NFRO TRS, LLC  
 NHF CCD, Inc.  
 NHT 2325 Stemmons, LLC  
 NHT Beaverton TRS, LLC  
 (*fka NREA Hotel TRS, Inc.*)  
 NHT Beaverton, LLC  
 NHT Bend TRS, LLC  
 NHT Bend, LLC  
 NHT Destin TRS, LLC  
 NHT Destin, LLC  
 NHT DFW Portfolio, LLC  
 NHT Holdco, LLC  
 NHT Holdings, LLC  
 NHT Intermediary, LLC  
 NHT Nashville TRS, LLC  
 NHT Nashville, LLC  
 NHT Olympia TRS, LLC  
 NHT Olympia, LLC  
 NHT Operating Partnership GP, LLC  
 NHT Operating Partnership II, LLC  
 NHT Operating Partnership, LLC  
 NHT Salem, LLC

NHT SP Parent, LLC  
 NHT SP TRS, LLC  
 NHT SP, LLC  
 NHT Tigard TRS, LLC  
 NHT Tigard, LLC  
 NHT TRS, Inc.  
 NHT Uptown, LLC  
 NHT Vancouver TRS, LLC  
 NHT Vancouver, LLC  
 NLA Assets LLC  
 NMRT TRS, Inc.  
 NREA Adair DST Manager, LLC  
 NREA Adair Investment Co, LLC  
 NREA Adair Joint Venture, LLC  
 NREA Adair Leaseco Manager, LLC  
 NREA Adair Leaseco, LLC  
 NREA Adair Property Manager LLC  
 NREA Adair, DST  
 NREA Ashley Village Investors, LLC  
 NREA Cameron Creek Investors, LLC  
 NREA Cityplace Hue Investors, LLC  
 NREA Crossing Investors LLC  
 NREA Crossings Investors, LLC  
 NREA Crossings Ridgewood Coinvestment, LLC *(fka NREA Crossings Ridgewood Investors, LLC)*  
 NREA DST Holdings, LLC  
 NREA El Camino Investors, LLC  
 NREA Estates Inc.  
 NREA Estates Investment Co, LLC  
 NREA Estates Leaseco, LLC  
 NREA Estates Manager, LLC  
 NREA Estates Property Manager, LLC  
 NREA Estates, DST  
 NREA Gardens DST Manager LLC  
 NREA Gardens DST Manager, LLC  
 NREA Gardens Investment Co, LLC  
 NREA Gardens Leaseco Manager, LLC  
 NREA Gardens Leaseco, LLC  
 NREA Gardens Property Manager, LLC  
 NREA Gardens Springing LLC  
 NREA Gardens Springing Manager, LLC  
 NREA Gardens, DST

NREA Hidden Lake Investment Co, LLC  
 NREA Hue Investors, LLC  
 NREA Keystone Investors, LLC  
 NREA Meritage Inc.  
 NREA Meritage Investment Co, LLC  
 NREA Meritage Leaseco, LLC  
 NREA Meritage Manager, LLC  
 NREA Meritage Property Manager, LLC  
 NREA Meritage, DST  
 NREA Oaks Investors, LLC  
 NREA Retreat Investment Co, LLC  
 NREA Retreat Leaseco, LLC  
 NREA Retreat Manager, LLC  
 NREA Retreat Property Manager, LLC  
 NREA Retreat, DST  
 NREA SE MF Holdings LLC  
 NREA SE MF Holdings, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE Multifamily LLC  
 NREA SE Multifamily, LLC  
 NREA SE One Property Manager, LLC  
 NREA SE Three Property Manager, LLC  
 NREA SE Two Property Manager, LLC  
 NREA SE1 Andros Isles Leaseco, LLC  
 NREA SE1 Andros Isles Manager, LLC  
 NREA SE1 Andros Isles, DST  
 (Converted from DK Gateway Andros, LLC)  
 NREA SE1 Arborwalk Leaseco, LLC  
 NREA SE1 Arborwalk Manager, LLC  
 NREA SE1 Arborwalk, DST  
 (Converted from MAR Arborwalk, LLC)  
 NREA SE1 Towne Crossing Leaseco, LLC  
 NREA SE1 Towne Crossing Manager, LLC  
 NREA SE1 Towne Crossing, DST  
 (Converted from Apartment REIT Towne Crossing, LP)  
 NREA SE1 Walker Ranch Leaseco, LLC  
 NREA SE1 Walker Ranch Manager, LLC  
 NREA SE1 Walker Ranch, DST  
 (Converted from SOF Walker Ranch Owner, L.P.)  
 NREA SE2 Hidden Lake Leaseco, LLC

NREA SE2 Hidden Lake Manager, LLC  
 NREA SE2 Hidden Lake, DST  
 NREA SE2 Hidden Lake, DST  
 (Converted from SOF Hidden Lake SA Owner,  
 L.P.)

NREA SE2 Vista Ridge Leaseco, LLC  
 NREA SE2 Vista Ridge Manager, LLC  
 NREA SE2 Vista Ridge, DST  
 NREA SE2 Vista Ridge, DST  
 (Converted from MAR Vista Ridge, L.P.)

NREA SE2 West Place Leaseco, LLC  
 NREA SE2 West Place Manager, LLC  
 NREA SE2 West Place, DST  
 (Converted from Landmark at West Place,  
 LLC)

NREA SE3 Arboleda Leaseco, LLC  
 NREA SE3 Arboleda Manager, LLC  
 NREA SE3 Arboleda, DST  
 (Converted from G&E Apartment REIT  
 Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC  
 NREA SE3 Fairways Manager, LLC  
 NREA SE3 Fairways, DST  
 (Converted from MAR Fairways, LLC)

NREA SE3 Grand Oasis Leaseco, LLC  
 NREA SE3 Grand Oasis Manager, LLC  
 NREA SE3 Grand Oasis, DST  
 (Converted from Landmark at Grand Oasis,  
 LP)

NREA Southeast Portfolio One Manager, LLC  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio Three Manager,  
 LLC

NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Two Manager, LLC  
 NREA Southeast Portfolio Two, DST  
 NREA Southeast Portfolio Two, LLC  
 NREA SOV Investors, LLC  
 NREA Uptown TRS, LLC  
 NREA VB I LLC  
 NREA VB II LLC

NREA VB III LLC  
 NREA VB IV LLC  
 NREA VB Pledgor I LLC  
 NREA VB Pledgor I, LLC  
 NREA VB Pledgor II LLC  
 NREA VB Pledgor II, LLC  
 NREA VB Pledgor III LLC  
 NREA VB Pledgor III, LLC  
 NREA VB Pledgor IV LLC  
 NREA VB Pledgor IV, LLC  
 NREA VB Pledgor V LLC  
 NREA VB Pledgor V, LLC  
 NREA VB Pledgor VI LLC  
 NREA VB Pledgor VI, LLC  
 NREA VB Pledgor VII LLC  
 NREA VB Pledgor VII, LLC  
 NREA VB SM, Inc.  
 NREA VB V LLC  
 NREA VB VI LLC  
 NREA VB VII LLC  
 NREA Vista Ridge Investment Co, LLC  
 NREC AR Investors, LLC  
 NREC BM Investors, LLC  
 NREC BP Investors, LLC  
 NREC Latitude Investors, LLC  
 NREC REIT Sub, Inc.  
 NREC TRS, Inc.  
 NREC WW Investors, LLC  
 NREF OP I Holdco, LLC  
 NREF OP I SubHoldco, LLC  
 NREF OP I, L.P.  
 NREF OP II Holdco, LLC  
 NREF OP II SubHoldco, LLC  
 NREF OP II, L.P.  
 NREF OP IV REIT Sub TRS, LLC  
 NREF OP IV REIT Sub, LLC  
 NREF OP IV, L.P.  
 NREO NW Hospitality Mezz, LLC  
 NREO NW Hospitality, LLC  
 NREO Perilune, LLC  
 NREO SAFStor Investors, LLC  
 NREO TRS, Inc.  
 NRESF REIT Sub, LLC



NXRT Abbington, LLC	NXRT Steeplechase, LLC
NXRT Atera II, LLC	NXRT Stone Creek, LLC
NXRT Atera, LLC	NXRT Summers Landing GP, LLC
NXRT AZ2, LLC	NXRT Summers Landing LP, LLC
NXRT Barrington Mill, LLC	NXRT Torreyana, LLC
NXRT Bayberry, LLC	NXRT Vanderbilt, LLC
NXRT Bella Solara, LLC	NXRT West Place, LLC
NXRT Bella Vista, LLC	NXRTBH AZ2, LLC
NXRT Bloom, LLC	NXRTBH Barrington Mill Owner, LLC
NXRT Brandywine GP I, LLC	NXRTBH Barrington Mill SM, Inc.
NXRT Brandywine GP I, LLC	NXRTBH Barrington Mill, LLC
NXRT Brandywine GP II, LLC	NXRTBH Bayberry, LLC
NXRT Brandywine GP II, LLC	NXRTBH Cityview, LLC
NXRT Brandywine LP, LLC	NXRTBH Colonnade, LLC
NXRT Brandywine LP, LLC	NXRTBH Cornerstone Owner, LLC
NXRT Brentwood Owner, LLC	NXRTBH Cornerstone SM, Inc.
NXRT Brentwood, LLC	NXRTBH Cornerstone, LLC
NXRT Cedar Pointe Tenant, LLC	NXRTBH Dana Point SM, Inc.
NXRT Cedar Pointe, LLC	NXRTBH Dana Point, LLC
NXRT Cityview, LLC	NXRTBH Foothill SM, Inc.
NXRT Cornerstone, LLC	NXRTBH Foothill, LLC
NXRT Crestmont, LLC	NXRTBH Heatherstone SM, Inc.
NXRT Crestmont, LLC	NXRTBH Heatherstone, LLC
NXRT Enclave, LLC	NXRTBH Hollister Tenant, LLC
NXRT Glenview, LLC	NXRTBH Hollister, LLC
NXRT H2 TRS, LLC	NXRTBH Madera SM, Inc.
NXRT Heritage, LLC	NXRTBH Madera, LLC
NXRT Hollister TRS LLC	NXRTBH McMillan, LLC
NXRT Hollister, LLC	NXRTBH North Dallas 3, LLC
NXRT LAS 3, LLC	NXRTBH Old Farm II, LLC
NXRT Master Tenant, LLC	NXRTBH Old Farm Tenant, LLC
NXRT Nashville Residential, LLC	NXRTBH Old Farm, LLC
NXRT Nashville Residential, LLC ( <i>fka</i> <i>Freedom Nashville Residential, LLC</i> )	NXRTBH Radbourne Lake, LLC
NXRT North Dallas 3, LLC	NXRTBH Rockledge, LLC
NXRT Old Farm, LLC	NXRTBH Sabal Palms, LLC
NXRT Pembroke Owner, LLC	NXRTBH Steeplechase, LLC
NXRT Pembroke, LLC	(dba Southpoint Reserve at Stoney Creek)-VA
NXRT PHX 3, LLC	NXRTBH Stone Creek, LLC
NXRT Radbourne Lake, LLC	NXRTBH Vanderbilt, LLC
NXRT Rockledge, LLC	NXRTBH Versailles SM, Inc.
NXRT Sabal Palms, LLC	NXRTBH Versailles, LLC
NXRT SM, Inc.	Oak Holdco, LLC
	Oaks CGC, LLC

Okada Family Revocable Trust  
Oldenburg, Ltd.  
Pam Capital Funding GP Co. Ltd.  
Pam Capital Funding, L.P.  
PamCo Cayman Ltd.  
Park West 1700 Valley View Holdco, LLC  
Park West 2021 Valley View Holdco, LLC  
Park West Holdco, LLC  
Park West Portfolio Holdco, LLC  
Participants of Highland 401K Plan  
Patrick Willoughby-McCabe  
PCMG Trading Partners XXIII, L.P.  
PCMG Trading Partners XXIII, LP  
PDK Toys Holdco, LLC  
Pear Ridge Partners, LLC  
Penant Management GP, LLC  
Penant Management LP  
PensionDanmark Holding A/S  
PensionDanmark  
Pensionsforsikringsaktieselskab  
Peoria Place Development, LLC  
(30% cash contributions - profit participation  
only)  
Perilune Aero Equity Holdings One, LLC  
Perilune Aviation LLC  
PetroCap Incentive Holdings III, L.P.  
PetroCap Incentive Partners II GP, LLC  
PetroCap Incentive Partners II, L.P.  
PetroCap Incentive Partners III GP, LLC  
PetroCap Incentive Partners III, LP  
PetroCap Management Company LLC  
PetroCap Partners II GP, LLC  
PetroCap Partners II, L.P.  
PetroCap Partners III GP, LLC  
PetroCap Partners III, L.P.  
Pharmacy Ventures I, LLC  
Pharmacy Ventures II, LLC  
Pollack, Ltd.  
Powderhorn, LLC  
PWM1 Holdings, LLC  
PWM1, LLC  
Quest IRA, Inc FBO Jennifer G. Terry, IRA  
#1467511

Quest, IRA, Inc. FBO Joshua N. Terry, IRA  
#1467711  
RADCO - Bay Meadows, LLLP  
RADCO - Bay Park, LLLP  
RADCO NREC Bay Meadows Holdings, LLC  
RADCO NREC Bay Park Holdings, LLC  
Ramarim, LLC  
Rand Advisors Series I Insurance Fund  
Rand Advisors Series II Insurance Fund  
Rand Advisors, LLC  
Rand PE Fund I, L.P.  
Rand PE Fund I, L.P. - Series 1  
Rand PE Fund Management, LLC  
Rand PE Holdco, LLC  
Realdania  
Red River CLO, Ltd.  
Red River Investors Corp.  
Riverview Partners SC, LLC  
Rockwall CDO II Ltd.  
Rockwall CDO II, Ltd.  
Rockwall CDO, Ltd.  
Rockwall Investors Corp.  
Rothko, Ltd.  
RTT Bella Solara, LLC  
RTT Bloom, LLC  
RTT Financial, Inc.  
RTT Hollister, LLC  
RTT Rockledge, LLC  
RTT Torreyana, LLC  
SALI Fund Partners, LLC  
San Diego County Employees Retirement  
Association  
Sandstone Pasadena Apartments, LLC  
Sandstone Pasadena, LLC  
Santa Barbara Foundation (third party)  
Saturn Oil & Gas LLC  
SBC Master Pension Trust  
Scott Matthew Siekielski  
SE Battleground Park, LLC  
SE Battleground Park, LLC  
SE Glenview, LLC  
SE Governors Green Holdings, L.L.C.

SE Governors Green Holdings, L.L.C.  
*(fka SCG Atlas Governors Green Holdings, L.L.C.)*  
 SE Governors Green I, LLC  
 SE Governors Green II, LLC  
 SE Governors Green II, LLC  
 SE Governors Green REIT, L.L.C.  
 SE Governors Green REIT, L.L.C.  
*(fka SCG Atlas Governors Green REIT, L.L.C.)*

SE Governors Green, LLC  
*(fka SCG Atlas Governors Green, L.L.C.)*  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Heights at Olde Towne, LLC  
 SE Heights at Olde Towne, LLC  
 SE Lakes at Renaissance Park GP I, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Multifamily Holdings LLC  
 SE Multifamily Holdings, LLC  
 SE Multifamily REIT Holdings LLC  
 SE Myrtles at Olde Towne, LLC  
 SE Myrtles at Olde Towne, LLC  
 SE Oak Mill I Holdings, LLC  
 SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*  
 SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*  
 SE Oak Mill I REIT, LLC  
 SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*  
 SE Oak Mill I, LLC  
 SE Oak Mill I, LLC  
 SE Oak Mill II Holdings, LLC  
 SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*  
 SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*

SE Oak Mill II REIT, LLC  
 SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*  
 SE Oak Mill II, LLC  
 SE Oak Mill II, LLC  
 SE Quail Landing, LLC  
 SE River Walk, LLC  
 SE Riverwalk, LLC  
 SE SM, Inc.  
 SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*  
 SE Stoney Ridge Holdings, LLC  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge II, LLC  
 SE Stoney Ridge II, LLC  
 SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*  
 SE Stoney Ridge REIT, LLC  
 SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*  
 SE Victoria Park, LLC  
 SE Victoria Park, LLC  
 Sentinel Re Holdings, Ltd.  
 Sentinel Reinsurance Ltd.  
 SFH1, LLC  
 SFR WLIF I, LLC  
*(fka NexPoint WLIF I, LLC)*  
 SFR WLIF II, LLC  
*(NexPoint WLIF II, LLC)*  
 SFR WLIF III, LLC  
*(NexPoint WLIF III, LLC)*  
 SFR WLIF Manager, LLC  
*(NexPoint WLIF Manager, LLC)*  
 SFR WLIF, LLC  
*(NexPoint WLIF, LLC)*  
 SFR WLIF, LLC Series I  
 SFR WLIF, LLC Series II  
 SFR WLIF, LLC Series III  
 SH Castle BioSciences, LLC  
 Small Cap Equity Sub, LLC  
 Socially Responsible Equity Sub, LLC  
 SOF Brandywine I Owner, L.P.

SOF Brandywine II Owner, L.P.  
SOF-X GS Owner, L.P.  
Southfork Cayman Holdings, Ltd.  
Southfork CLO, Ltd.  
Specialty Financial Products Designated Activity Company (*fka Specialty Financial Products Limited*)  
Spiritus Life, Inc.  
SRL Sponsor LLC  
SRL Whisperwod LLC  
SRL Whisperwood Member LLC  
SRL Whisperwood Venture LLC  
SSB Assets LLC  
Starck, Ltd.  
Stemmons Hospitality, LLC  
Steve Shin  
Stonebridge Capital, Inc.  
Stonebridge-Highland Healthcare Private Equity Fund  
Strand Advisors III, Inc.  
Strand Advisors IV, LLC  
Strand Advisors IX, LLC  
Strand Advisors V, LLC  
Strand Advisors XIII, LLC  
Strand Advisors XVI, Inc.  
Strand Advisors, Inc.  
Stratford CLO, Ltd.  
Summers Landing Apartment Investors, L.P.  
Term Loan B  
(10% cash contributions - profit participation only)  
The Dallas Foundation  
The Dallas Foundation (third party)  
The Dondero Insurance Rabbi Trust  
The Dugaboy Investment Trust  
The Dugaboy Investment Trust U/T/A Dated Nov 15, 2010  
The Get Good Non-Exempt Trust No. 1  
The Get Good Non-Exempt Trust No. 2  
The Get Good Trust  
The Mark and Pamela Okada Family Trust - Exempt Descendants' Trust

The Mark and Pamela Okada Family Trust - Exempt Trust #2  
The Ohio State Life Insurance Company  
The Okada Family Foundation, Inc.  
The Okada Insurance Rabbi Trust  
The SLHC Trust  
The Trustees of Columbia University in the City of New York  
The Twentysix Investment Trust  
(Third Party Investor)  
Thomas A. Neville  
Thread 55, LLC  
Tihany, Ltd.  
Todd Travers  
Tranquility Lake Apartments Investors, L.P.  
Tuscany Acquisition, LLC  
Uptown at Cityplace Condominium Association, Inc.  
US Gaming OpCo, LLC  
US Gaming SPV, LLC  
US Gaming, LLC  
Valhalla CLO, Ltd.  
VB GP LLC  
VB Holding, LLC  
VB One, LLC  
VB OP Holdings LLC  
VBAnnex C GP, LLC  
VBAnnex C Ohio, LLC  
VBAnnex C, LP  
Ventoux Capital, LLC  
(Matt Goetz)  
VineBrook Annex B, L.P.  
VineBrook Annex I, L.P.  
VineBrook Homes Merger Sub II LLC  
VineBrook Homes Merger Sub LLC  
VineBrook Homes OP GP, LLC  
VineBrook Homes Operating Partnership, L.P.  
VineBrook Homes Trust, Inc.  
VineBrook Partners I, L.P.  
VineBrook Partners II, L.P.  
VineBrook Properties, LLC  
Virginia Retirement System  
Vizcaya Investment, LLC

Wake LV Holdings II, Ltd.  
Wake LV Holdings, Ltd.  
Walter Holdco GP, LLC  
Walter Holdco I, Ltd.  
Walter Holdco, L.P.  
Warhol, Ltd.  
Warren Chang  
Westchester CLO, Ltd.  
William L. Britain  
Wright Ltd.  
Wright, Ltd.  
Yellow Metal Merchants, Inc.



## EXHIBIT M

001847

DRAFT

### CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of \_\_\_\_\_, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and [ ] as Delaware trustee (the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

(vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

### **DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[\*] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.



(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.**

### **ESTABLISHMENT OF THE CLAIMANT TRUST**

#### **2.1 Creation of Name of Trust.**

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

## 2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

## 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust,

pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.



2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:[\_\_\_\_\_].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or

otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor’s Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust’s role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and

officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;



(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority



of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;
- (vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;
- (vii) borrow as may be necessary to fund activities of the Claimant Trust;
- (viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;
- (ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);
- (x) change the compensation of the Claimant Trustee;
- (xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and
- (xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and

(ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee’s resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days’ prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she

may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

### 3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any



accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation, including any severance, as agreed to by the Claimant Trustee and the Committee, if agreed upon prior to the Effective Date, or the Oversight Board if agreed upon on or after the Effective Date.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

#### (b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The



Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

**ARTICLE IV.**  
**THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight

Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be



deemed a “Conflicted Member” who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed “Conflicted Members” with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a “Committee Member Claim Matter”). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member’s successor is duly appointed or until such Member’s earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee’s filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee’s website a notice of



appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

## ARTICLE V. TRUST INTERESTS

### 5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the “GUC Beneficiaries”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the “Subordinated Beneficiaries”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary’s Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the “Equity Holders”). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the “GUC Payment Certification”). Equity Holders will only be deemed “Beneficiaries” under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed “Equity Trust Interests.” The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary’s Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant

Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys’ fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.



(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

## **ARTICLE VI.** **DISTRIBUTIONS**

### **6.1 Distributions.**

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.



6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

## **ARTICLE VII.** **TAX MATTERS**

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where

applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## ARTICLE VIII.

### STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the

approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the “Indemnified Parties”) shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party’s reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## **ARTICLE IX.** **TERMINATION**

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant



to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

#### ARTICLE X. AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

#### ARTICLE XI. MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in



respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o [insert contact info for Claimant Trustee]

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

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

Highland Capital Management, L.P.

By: \_\_\_\_\_  
James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By: \_\_\_\_\_  
James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee

## EXHIBIT N

DRAFT

### CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of \_\_\_\_\_, 2020~~2021~~ (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and [\_\_\_\_\_] as Delaware trustee (the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 13~~24~~, 2020, the Debtor filed the ~~Third~~Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Docket No. ~~1472~~] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> {which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2020~~2021~~, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”)};

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.



## DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

## ARTICLE I. DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with Article [3.13(b)] of this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) {“Employees” means the employees of the Debtor set forth in the Plan Supplement.}

(u) {“Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by employees any such Senior Employee of the Debtor prior to the Effective Date).}

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, ~~HarbourVest, Patrick Hagan Daugherty, and Integrated Financial Associates, Inc., and the Employees.~~  
~~[TBD: Employee Claims]~~

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the



terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

~~(mm)~~ ~~(ll)~~ “(Plan)” has the meaning set forth in the Recitals hereof.

~~(nn)~~ ~~(mm)~~ “(Privileges)” means all of the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Causes of Action Estate Claims or Employee Claims, including, but not limited without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product} so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

~~(oo)~~ “(PSZJ)” means Pachulski Stang Ziehl & Jones LLP.

~~(pp)~~ ~~(nn)~~ “(Redeemer Committee)” means the Redeemer Committee of the Highland Crusader Fund.

~~(qq)~~ ~~(oo)~~ “(Registrar)” has the meaning given to it in Section 5.3(a) hereof.

~~(rr)~~ ~~(pp)~~ “(Reorganized Debtor Assets)” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

~~(ss)~~ ~~(qq)~~ “(Securities Act)” means the Securities Act of 1933, as amended.

~~(tt)~~ ~~(rr)~~ “(Subordinated Beneficiaries)” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

~~(uu)~~ ~~(ss)~~ “(Subordinated Claim Trust Interests)” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

~~(vv)~~ ~~(tt)~~ “(TIA)” means the Trust Indenture Act of 1939, as amended.

~~(ww)~~ ~~(uu)~~ “(Trust Interests)” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

~~(xx)~~ ~~(vv)~~ “(Trust Register)” has the meaning given to it in Section 5.3(b) hereof.



(yy) ~~(ww)~~ “Trustees” means collectively the Claimant Trustee and Delaware Trustee.

(zz) ~~(xx)~~ “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.** **ESTABLISHMENT OF THE CLAIMANT TRUST**

### **2.1 Creation of Name of Trust.**

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

### **2.2 Objectives.**

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole

member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

### 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor ~~[(except for the Employee Claims, which shall, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee)]~~ and ~~to~~ (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims ~~[, the Employee Claims,]~~ and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed-in Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

#### 2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable

subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession ~~that relate to the Claimant Trust Assets and Estate Claims, custody or control,~~ (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, {with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee,} directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:[\_\_\_\_\_].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.



2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

#### 3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the ~~[Employee Claims and]~~ Estate Claims transferred to the Litigation Sub-Trust, ~~if any,~~ as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following



“[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor’s Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$[3,000,000] (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust’s role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xviii) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$[3,000,000] (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;
- (vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities, (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;
- (vii) borrow as may be necessary to fund activities of the Claimant Trust;
- (viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;
- (ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);
- (x) change the compensation of the Claimant Trustee;
- (xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and
- (xii) retain counsel, experts, advisors, or any other professionals—[TBD]; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]



3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee’s resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days’ prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.



(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

### 3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the

Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims[ and the Employee Claims]. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article {VII} herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide [quarterly] reporting to the Oversight Board [and Claimant Trust Beneficiaries] of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the [unanimous consent] of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. [As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation, including any severance, as agreed to by the Claimant Trustee and the Committee, if agreed upon prior to the Effective Date, or the Oversight Board if agreed upon on or after the Effective Date.]

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

#### (b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of



which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof.

#### 4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based



on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent,

the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

#### 4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed “Conflicted Members” with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a “Committee Member Claim Matter”). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member’s successor is duly appointed or until such Member’s earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than [90 days] prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee’s filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee’s website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. {Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member.}<sup>3</sup> Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

## ARTICLE V.

### TRUST INTERESTS

#### 5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

<sup>3</sup>—NTD: Compensation for Disinterested Member(s) to be discussed.



(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the “Subordinated Beneficiaries”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary’s Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the “Equity Holders”). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the “GUC Payment Certification”). Equity Holders will only be deemed “Beneficiaries” under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed “Equity Trust Interests.” The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary’s Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to



entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

#### 5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a

shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs required to shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.}

## **ARTICLE VI.** **DISTRIBUTIONS**

### **6.1 Distributions.**

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within {six} months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

**6.2 Manner of Payment or Distribution.** All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record {as of the twentieth (20th) day prior} to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

**6.3 Delivery of Distributions.** All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.

## ARTICLE VII. TAX MATTERS

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), and (iii) ~~the~~ The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). ~~The Claimant Trustee also will annually send to each Beneficiary, in accordance with the tax laws, a separate statement setting forth such holder's Beneficiary's interest in the Claimant Trust and share of items of income, gain, loss, deduction or credit as relevant for U.S. federal income tax purposes for such Beneficiaries to use in preparing their U.S. federal income tax returns.~~



(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## **ARTICLE VIII**

### **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, ~~or Delaware Trustee~~, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.



8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the “Indemnified Parties”) shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party’s reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, but and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense, and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory

Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## **ARTICLE IX.** **TERMINATION**

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, ~~without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes~~) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets~~[- provided, however, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years [without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes].~~

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to

provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

#### ARTICLE X. AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with [the unanimous approval] of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

#### ARTICLE XI. MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o [insert contact info for Claimant Trustee]

With a copy to:

~~[insert contact for counsel to the Claimant Trustee].~~

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszilaw.com)  
Ira Kharasch (ikharasch@pszilaw.com)  
Gregory Demo (gdemo@pszilaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.



11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]



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

Highland Capital Management, L.P.

By: \_\_\_\_\_

James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By: \_\_\_\_\_

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee

Document comparison by Workshare 9.5 on Monday, January 04, 2021 6:47:25 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/41280/5
Description	DOCS_NY-#41280-v5-Highland_-_Claimant_Trust_Agreement
Document 2 ID	PowerDocs://DOCS_NY/41280/9
Description	DOCS_NY-#41280-v9-Highland_-_Claimant_Trust_Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	85
Deletions	86
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	171

## **EXHIBIT O**

Draft

### LITIGATION SUB-TRUST AGREEMENT

This Litigation Sub-Trust Agreement, effective as of \_\_\_\_\_, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the “Claimant Trustee”), [ ] as Delaware Trustee, and Marc S. Kirschner as trustee (the “Litigation Trustee,” and together with the Claimant Trustee [and Delaware Trustee], the “Parties”) of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

### RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the “Debtor”) filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Litigation Sub-Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the Employee Claims; and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

## DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

## ARTICLE I. DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.
- (b) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.
- (c) “Claimant Trust Agreement” means the Claimant Trust Agreement dated [ ], 2021, by and between the Debtor, Claimant Trustee, and Delaware Trustee.
- (d) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.



(e) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.

(f) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(g) “Delaware Trustee” has the meaning set forth in the Claimant Trust Agreement.

(h) “Disability” means as a result of the Litigation Trustee’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(i) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(j) “Employee” means the employees of the Debtor set forth in the Plan Supplement.

(k) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(l) “Litigation Sub-Trust” means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) “Litigation Sub-Trust Agreement” means this Agreement.

(n) “Litigation Sub-Trust Assets” means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) “Litigation Sub-Trust Beneficiary” means the Claimant Trust.

(p) “Litigation Sub-Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) “Litigation Sub-Trust Expense Cash Reserve” means \$[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the

Litigation Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) “Litigation Trustee” means Marc S. Kirschner as the initial “Litigation Trustee” hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

(s) “Oversight Board” has the meaning set forth in the Claimant Trust Agreement.

(t) “Plan” has the meaning set forth in the Recitals hereof.

(u) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(v) “Securities Act” means the Securities Act of 1933, as amended.

(w) “TIA” means the Trust Indenture Act of 1939, as amended.

(x) “Trust Interests” means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

**ARTICLE II.**  
**ESTABLISHMENT OF THE LITIGATION SUB-TRUST**

**2.1 Establishment of Sub-Trust.**

(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole Litigation Sub-Trust Beneficiary, which shall be known as the “Highland Litigation Sub-Trust,” on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

**2.2 Nature and Purposes of the Litigation Sub-Trust.** The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trust Agreement, the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, Employee Claims. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement).

**2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.**

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically and irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, Employee Claims, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and Employee Claims and shall be treated as such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE LITIGATION TRUSTEE**

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 8**



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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

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*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith* [Dkt. # 2389]:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

### 3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement). To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims or Employee Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all

Estate Claims, Employee Claims, or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;

(viii) make all payments relating to the Litigation Sub-Trust Assets;

(ix) assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;

(x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;

(xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;

(xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;

(xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

/

(xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the

Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and

(xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the “Authorized Acts”).

(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

(i) terminate or extend the term of the Litigation Sub-Trust;

(ii) commence litigation with respect to any Estate Claims and, if applicable under the terms of the Claimant Trust Agreement, the Employee Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;

(iii) settle, dispose of, or abandon any Estate Claims (including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim);

(iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;

(v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;

(vi) change the compensation of the Litigation Trustee; and

(vii) retain counsel, experts, advisors, or any other professionals.

(c) [Reserved]

3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation



Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the “Interim Trustee”) until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person’s appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee’s capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

3.10 Litigation Trustee as “Estate Representative”. The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.

3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant

employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive initial compensation in a manner and amount as agreed upon by the Committee. Any additional compensation or compensation of a Successor Litigation Trustee shall be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.

#### (b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other

than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

#### ARTICLE IV. THE OVERSIGHT BOARD

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

#### ARTICLE V. TRUST INTERESTS

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.



5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

## **ARTICLE VI.** **DISTRIBUTIONS**

6.1 Distributions. The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within 30 days of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 Manner of Payment or Distribution. All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

## **ARTICLE VII.** **TAX MATTERS**

7.1 Tax Treatment and Tax Returns. It is intended that the Litigation Sub-Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) the sole beneficiary of which is the Claimant Trust. Consistent



with such treatment, it is intended that the transfer of the Litigation Sub Trust Assets from the Claimant Trust to the Litigation Sub Trust will be treated as a non-event for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). Further, because the Claimant Trust is itself intended to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), it is intended that the beneficiaries of the Claimant Trust will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Litigation Trustee shall cooperate with the Claimant Trustee in connection with the preparation and filing of any federal income tax returns (and foreign, state, and local income tax returns where applicable) or information statements relating to the Litigation Sub Trust Assets.

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.

## ARTICLE VIII.

### STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Litigation Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.

8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the “Indemnified Parties”) shall be indemnified by the Litigation Sub-Trust against and held harmless by the Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party’s reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

#### ARTICLE IX. TERMINATION

9.1 Duration. The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such

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third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets.

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

## **ARTICLE X.** **AMENDMENTS AND WAIVER**

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

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11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner  
c/o Goldin Associates LLC, a Teneo Company  
350 Fifth Avenue  
New York, New York 10118

With a copy to:

**[insert contact for counsel to the Litigation Trustee].**

(b) If to the Claimant Trustee:

Claimant Trustee  
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition



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or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

[Remainder of Page Intentionally Blank]



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IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By: \_\_\_\_\_

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant  
Trustee

Litigation Trustee

By: \_\_\_\_\_

Marc S. Kirschner, not individually but  
solely in his capacity as the Litigation Trustee

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**EXHIBIT P**

Draft

**LITIGATION SUB-TRUST AGREEMENT**

This Litigation Sub-Trust Agreement, effective as of \_\_\_\_\_, ~~2020~~2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the “Claimant Trustee”), [\_\_\_\_\_] as Delaware Trustee, and Marc S. Kirschner as trustee (the “Litigation Trustee,” and together with the Claimant Trustee [and Delaware Trustee], the “Parties”) of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

**RECITALS**

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the “Debtor”) filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November ~~13~~24, 2020, the Debtor filed the ~~Third~~Fifth *Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. ~~•1472~~] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> {which was confirmed by the Bankruptcy Court on \_\_\_\_\_, ~~2020~~2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”)};

WHEREAS, this Agreement, including all exhibits hereto, is the “Litigation Sub-Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the ~~Debtor~~ Employee Claims; and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

**DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

#### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.
- (b) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.
- (c) “Claimant Trust Agreement” means the Claimant Trust Agreement dated [ ], ~~2020~~, 2021, by and between the Debtor, Claimant Trustee, and Delaware Trustee.
- (d) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.
- (e) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.
- ~~(f) “Debtor Employee Claims” means any General Unsecured Claims filed by any Employee or former director, officer, or employee of the Debtor, other than the Claims of~~

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~~the Senior Employees subject to stipulations executed by employees of the Debtor prior to the Effective Date.]~~

(f) ~~(e)~~ “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(g) ~~(h)~~ “Delaware Trustee” has the meaning set forth in the Claimant Trust Agreement.

(h) ~~(i)~~ “Disability” means as a result of the Litigation Trustee’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(i) ~~(j)~~ “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(j) ~~(k)~~ “Employee” means the employees of the Debtor set forth in the Plan Supplement.]

(k) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(l) “Litigation Sub-Trust” means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) “Litigation Sub-Trust Agreement” means this Agreement.

(n) “Litigation Sub-Trust Assets” means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) “Litigation Sub-Trust Beneficiary” means the Claimant Trust.

(p) “Litigation Sub-Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) “Litigation Sub-Trust Expense Cash Reserve” means \$[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the Litigation



Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) “Litigation Trustee” means Marc S. Kirschner as the initial “Litigation Trustee” hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

(s) “Oversight Board” has the meaning set forth in the Claimant Trust Agreement.

(t) “Plan” has the meaning set forth in the Recitals hereof.

(u) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Debtor Employee Claims, including, without limitation, to attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence or any other privilege available under applicable law; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.—

(v) “Securities Act” means the Securities Act of 1933, as amended.

(w) “TIA” means the Trust Indenture Act of 1939, as amended.

(x) “Trust Interests” means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

**ARTICLE II.**  
**ESTABLISHMENT OF THE LITIGATION SUB-TRUST**

**2.1 Establishment of Sub-Trust.**

(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole Litigation Sub-Trust Beneficiary, which shall be known as the “Highland Litigation Sub-Trust,” on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

**2.2 Nature and Purposes of the Litigation Sub-Trust.** The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims}, and, subject to the terms of the Claimant Trustee Agreement, the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, ~~Debtor-Employee Claims~~. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and ~~Debtor-Employee Claims, other than those Claims constituting Reorganized Debtor Assets; provided, however, that the Litigation Trustee may, as part of his investigation mandate, investigate Estate Claims that would constitute Reorganized Debtor Assets and make a recommendation to the Oversight Board and the Reorganized Debtor on how to proceed with respect to any such Causes of Action~~Employee Claims (in accordance with the terms of the Claimant Trust Agreement).

**2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.**

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically and irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, ~~Debtor-Employee Claims~~, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and ~~Debtor-Employee Claims~~ and shall be treated as

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such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III. THE LITIGATION TRUSTEE**

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement). To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims or Employee Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without



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limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all Estate Claims, Employee Claims, or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;

(viii) make all payments relating to the Litigation Sub-Trust Assets;

(ix) {assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;}

(x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;

(xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;

(xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;



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(xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and

(xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the "Authorized Acts").

(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a {simple majority} of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

(i) terminate or extend the term of the Litigation Sub-Trust;

(ii) commence litigation with respect to any Estate Claims and, if applicable under the terms of the Claimant Trust Agreement, the Employee Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;

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(iii) settle, dispose of, or abandon any Estate Claims {(including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim)};

(iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;

(v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;

(vi) change the compensation of the Litigation Trustee; and

(vii) retain counsel, experts, advisors, or any other professionals.

(c) [Reserved]

3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

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### 3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the "Interim Trustee") until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person's appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee's capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of

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such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

3.10 Litigation Trustee as "Estate Representative". The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

### 3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall to retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.



### 3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive initial compensation in a manner and amount ~~to be~~ agreed upon by the Committee. Any additional compensation or compensation of a Successor Litigation Trustee shall be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.



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(b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law.

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Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

**ARTICLE IV.**  
**THE OVERSIGHT BOARD**

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

**ARTICLE V.**  
**TRUST INTERESTS**

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.

5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

## **ARTICLE VI. DISTRIBUTIONS**

6.1 Distributions. The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within {30 days} of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 Manner of Payment or Distribution. All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

## **ARTICLE VII. TAX MATTERS**

7.1 Tax Treatment and Tax Returns. ~~(a) It is intended for the initial transfer of that the Litigation Sub-Trust Assets to the Litigation Sub-Trust to~~ will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Litigation Sub-Trust Assets to the Litigation Sub-Trust Beneficiary and then, immediately thereafter, the Litigation Sub-Trust Beneficiary transferred the Litigation Sub-Trust Assets to the Litigation Sub-Trust the sole beneficiary of which is the Claimant Trust. Consistent with such treatment, (i) it is intended that the Litigation Sub-Trust will it is intended that the transfer of the Litigation Sub-Trust Assets from the Claimant Trust to the Litigation Sub-Trust will be treated as a non-event for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). Further, because the Claimant Trust is itself intended to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Litigation Sub-Trust Beneficiary beneficiaries of the Claimant Trust will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), and (iii) the, The Litigation Trustee shall file all cooperate with the Claimant Trustee in connection with the preparation and filing of any federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Litigation Sub-Trust Beneficiary as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Litigation Trustee also will annually send to the Litigation-

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~~Sub-Trust Beneficiary, in accordance with the tax laws, a separate statement setting forth such holder's interest in the Litigation Sub-Trust and share of items of income, gain, loss, deduction or credit as relevant for U.S. federal income tax purposes for such Litigation Sub-Trust Beneficiary to use in preparing their U.S. federal income tax returns. (b) The Litigation Trustee shall determine the fair market value of information statements relating to the Litigation Sub-Trust Assets as of the Effective Date and notify the Litigation Sub-Trust Beneficiary of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes. Trust Assets.~~

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.<sup>2</sup>

## **ARTICLE VIII.**

### **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Litigation Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.

8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the "Indemnified Parties") shall be indemnified by the Litigation Sub-Trust against and held harmless by the

<sup>2</sup>NTD: Subject to review by tax counsel.



Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party's reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

#### **ARTICLE IX.** **TERMINATION**

9.1 Duration. The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (~~not to exceed two years, together with any prior extensions, without a~~



~~favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Litigation Sub-Trust as a liquidating trust for federal income tax purposes}) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets; provided, however, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Litigation Sub-Trust Assets, by the Bankruptcy Court within six months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years [without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Litigation Sub-Trust as a liquidating trust for federal income tax purposes].~~

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

## ARTICLE X. AMENDMENTS AND WAIVER

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

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**ARTICLE XL**  
**MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner  
c/o Goldin Associates LLC, a Teneo Company  
350 Fifth Avenue  
New York, New York 10118

With a copy to:

**[insert contact for counsel to the Litigation Trustee].**

(b) If to the Claimant Trustee:

Claimant Trustee  
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

~~[insert contact for counsel to the Claimant Trustee].~~

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszilaw.com)  
Ira Kharasch (ikharasch@pszilaw.com)  
Gregory Demo (gdemo@pszilaw.com)

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Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

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IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By: \_\_\_\_\_

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant  
Trustee

Litigation Trustee

By: \_\_\_\_\_

Marc S. Kirschner, not individually but  
solely in his capacity as the Litigation Trustee

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Document comparison by Workshare 9.5 on Monday, January 04, 2021 6:46:22 PM

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Split/Merged cell	
Padding cell	

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Moved to	4
Style change	0
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Total changes	116



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*Supplement to Third Amended Plan of Reorganization of Highland Capital Management, L.P.*, on November 13, 2020 [Docket No. 1389] (the “Initial Supplement”). The Initial Supplement included Exhibits A-H to the Plan (as defined below).

**PLEASE TAKE NOTICE** that on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472].

**PLEASE TAKE NOTICE** that the Debtor filed the *Debtor’s Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* on December 18, 2020 [Docket No. 1606] (the “Second Supplement”). The Second Supplement included Exhibits I-K to the Plan.

**PLEASE TAKE NOTICE** that the Debtor filed the *Debtor’s Notice of Filing of Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* on January 4, 2021 [Docket No. 1656] (the “Third Supplement”). The Third Supplement included Exhibits L-P to the Plan.

**PLEASE TAKE NOTICE** that on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808] (as subsequently amended and/or modified, the “Plan”).

**PLEASE TAKE NOTICE** that the Debtor hereby files the documents included herewith as Exhibits Q-CC (collectively, the “Fourth Plan Supplement”) further supplementing the Plan:

- Exhibit Q:** Amended Schedule of Retained Causes of Action (supersedes Exhibits E and L);
- Exhibit R:** Amended Form of Claimant Trust Agreement (supersedes Exhibits A and M);
- Exhibit S:** Redline of Form of Claimant Trust Agreement (against Exhibit M);
- Exhibit T:** Amended Form of Litigation Trust Agreement (supersedes Exhibits D and O);

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- Exhibit U:** Redline of Form of Litigation Trust Agreement (against Exhibit P)
- Exhibit V:** Amended Form of Senior Employee Stipulation (supersedes Exhibit H and J);
- Exhibit W:** Redline of Form of Senior Employee Stipulation (against Exhibit J);
- Exhibit X:** Schedule of Contracts and Leases to Be Assumed (supersedes Exhibit H and I);
- Exhibit Y:** Related Entity List;
- Exhibit Z:** Form of Reorganized Limited Partnership Agreement (supersedes Exhibit C);
- Exhibit AA:** Redline of Form of Reorganized Limited Partnership Agreement (against Exhibit C);
- Exhibit BB:** Senior Employee Stipulation (executed by Thomas Surgent);
- Exhibit CC:** Senior Employee Stipulation (executed by Frank Waterhouse); and
- Exhibit DD:** Schedule of Employees (supersedes Exhibit G).

**PLEASE TAKE FURTHER NOTICE** that this *Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with technical modifications)* (the “Notice of Plan Supplement”) is being served on parties-in-interest without the Fourth Plan Supplement attached. Any party-in-interest wishing to obtain copies of the Plan or the Fourth Plan Supplement may do so by (i) contacting the Debtor’s Solicitation Agent, KCC, at (i) 1-877-573-3984 (toll free) or 1-310-751-1829 (if international) or by email at HighlandInfo@kcellc.com, or (ii) viewing such documents by accessing them online at <https://kcellc.net/HCMLP>. The documents are also available on the Court’s website: [www.txnb.uscourts.gov](http://www.txnb.uscourts.gov). Please note that a PACER password and login are needed to access documents on the Court’s website.

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Dated: January 22, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

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*Counsel for the Debtor and Debtor-in-Possession*

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**EXHIBIT Q**

001974



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### Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, substantive consolidation, recharacterization, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

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### Annex 1

11 Estates Lane, LLC	Acis CLO Value Fund II Charitable DAF Ltd.
1110 Waters, LLC	Acis CMOA Trust
140 Albany, LLC	Advisors Equity Group LLC
1525 Dragon, LLC	Alamo Manhattan Hotel I, LLC
17720 Dickerson, LLC	(Third Party)
1905 Wylie LLC	Allenby, LLC
2006 Milam East Partners GP, LLC	Allisonville RE Holdings, LLC
2006 Milam East Partners, L.P.	AM Uptown Hotel, LLC
201 Tarrant Partners, LLC	Apex Care, L.P
2014 Corpus Weber Road LLC	Asbury Holdings, LLC ( <i>fka HCSLR</i>
2325 Stemmons HoldCo, LLC	<i>Camelback Investors (Delaware), LLC</i> )
2325 Stemmons Hotel Partners, LLC	Ascendant Advisors
2325 Stemmons TRS, Inc.	Atlas IDF GP, LLC
300 Lamar, LLC	Atlas IDF, LP
3409 Rosedale, LLC	BB Votorantim Highland Infrastructure, LLC
3801 Maplewood, LLC	BDC Toys Holdco, LLC
3801 Shenandoah, L.P.	Beacon Mountain, LLC
3820 Goar Park LLC	Bedell Trust Ireland Limited (Charitable trust
400 Seaman, LLC	account)
401 Ame, L.P.	Ben Roby (third party)
4201 Locust, L.P.	BH Equities, LLC
4312 Belclaire, LLC	BH Heron Pointe, LLC
5833 Woodland, L.P.	BH Hollister, LLC
5906 DeLoache, LLC	BH Willowdale Manager, LLC
5950 DeLoache, LLC	Big Spring Partners, LLC
7758 Ronnie, LLC	Blair Investment Partners, LLC
7759 Ronnie, LLC	Bloomdale, LLC
AA Shotguns, LLC	Brave Holdings III Inc.
Aberdeen Loan Funding, Ltd.	Brentwood CLO, Ltd.
Acis CLO 2017-7 Ltd	Brentwood Investors Corp.
Acis CLO Management GP, LLC	Brian Mitts
Acis CLO Management GP, LLC ( <i>fka Acis</i>	Bristol Bay Funding Ltd.
<i>CLO Opportunity Funds GP, LLC</i> )	Bristol Bay Funding, Ltd.
Acis CLO Management Holdings, L.P.	BVP Property, LLC
Acis CLO Management Intermediate Holdings	C-1 Arbors, Inc.
I, LLC	C-1 Cutter's Point, Inc.
Acis CLO Management Intermediate Holdings	C-1 Eaglecrest, Inc.
II, LLC	C-1 Silverbrook, Inc.
Acis CLO Management, LLC ( <i>fka Acis CLO</i>	Cabi Holdco GP, LLC
<i>Opportunity Funds SLP, LLC</i> )	Cabi Holdco I, Ltd
Acis CLO Trust	Cabi Holdco I, Ltd.

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Cabi Holdco, L.P.  
California Public Employees' Retirement System  
Camelback Residential Investors, LLC  
Camelback Residential Investors, LLC  
(fka Sevilla Residential Partners, LLC)  
Camelback Residential Partners, LLC  
Capital Real Estate - Latitude, LLC  
Castle Bio Manager, LLC  
Castle Bio, LLC  
CG Works, Inc.  
CG Works, Inc.  
(fka Common Grace Ventures, Inc.)  
Charitable DAF Fund, L.P.  
Charitable DAF GP, LLC  
Charitable DAF HoldCo, Ltd  
Charitable DAF HoldCo, Ltd.  
Claymore Holdings, LLC  
CLO HoldCo, Ltd  
CLO Holdco, Ltd.  
Corbusier, Ltd.  
Cornerstone Healthcare Group Holding, Inc.  
Corpus Weber Road Member LLC  
CP Equity Hotel Owner, LLC  
CP Equity Land Owner, LLC  
CP Equity Owner, LLC  
CP Hotel TRS, LLC  
CP Land Owner, LLC  
CP Tower Owner, LLC  
CRE - Lat, LLC  
Credit Suisse, Cayman Islands Branch  
Crossings 2017 LLC  
Crown Global Insurance Company (third party)  
Dallas Cityplace MF SPE Owner LLC  
Dallas Lease and Finance, L.P.  
Dana Scott Breault  
James Dondero  
Reese Avry Dondero  
Jameson Drue Dondero  
  
Dana Sprong (Third Party)  
David c. Hopson  
De Kooning, Ltd.

deKooning, Ltd.  
DFA/BH Autumn Ridge, LLC  
Dolomiti, LLC  
DrugCrafters, L.P.  
Dugaboy Investment Trust  
Dugaboy Management, LLC  
Dugaboy Project Management GP, LLC  
Eagle Equity Advisors, LLC  
Eames, Ltd.  
Eastland CLO, Ltd.  
Eastland Investors Corp.  
EDS Legacy Heliport, LLC  
EDS Legacy Partners Owner, LLC  
EDS Legacy Partners, LLC  
Empower Dallas Foundation, Inc.  
ENA 41, LLC  
Entegra Strat Superholdco, LLC  
Entegra-FRO Holdco, LLC  
Entegra-FRO Superholdco, LLC  
Entegra-HOCF Holdco, LLC  
Entegra-NHF Holdco, LLC  
Entegra-NHF Superholdco, LLC  
Entegra-RCP Holdco, LLC  
Estates on Maryland Holdco, LLC  
Estates on Maryland Owners SM, Inc.  
Estates on Maryland Owners, LLC  
Estates on Maryland, LLC  
Falcon E&P Four Holdings, LLC  
Falcon E&P One, LLC  
Falcon E&P Opportunities Fund, L.P.  
Falcon E&P Opportunities GP, LLC  
Falcon E&P Royalty Holdings, LLC  
Falcon E&P Six, LLC  
Falcon E&P Two, LLC  
Falcon Four Midstream, LLC  
Falcon Four Upstream, LLC  
Falcon Incentive Partners GP, LLC  
Falcon Incentive Partners, LP  
Falcon Six Midstream, LLC  
Flamingo Vegas Holdco, LLC (fka Cabi Holdco, LLC)  
Four Rivers Co-Invest GP, LLC  
Four Rivers Co-Invest, L.P.

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FRBH Abbington SM, Inc.  
 FRBH Abbington, LLC  
 FRBH Arbors, LLC  
 FRBH Beechwood SM, Inc.  
 FRBH Beechwood, LLC  
 FRBH C1 Residential, LLC  
 FRBH Courtney Cove SM, Inc.  
 FRBH Courtney Cove, LLC  
 FRBH CP, LLC  
 FRBH Duck Creek, LLC  
 FRBH Eaglecrest, LLC  
 FRBH Edgewater JV, LLC  
 FRBH Edgewater Owner, LLC  
 FRBH Edgewater SM, Inc.  
 FRBH JAX-TPA, LLC  
 FRBH Nashville Residential, LLC  
 FRBH Regatta Bay, LLC  
 FRBH Sabal Park SM, Inc.  
 FRBH Sabal Park, LLC  
 FRBH Silverbrook, LLC  
 FRBH Timberglen, LLC  
 FRBH Willow Grove SM, Inc.  
 FRBH Willow Grove, LLC  
 FRBH Woodbridge SM, Inc.  
 FRBH Woodbridge, LLC  
 Freedom C1 Residential, LLC  
 Freedom Duck Creek, LLC  
 Freedom Edgewater, LLC  
 Freedom JAX-TPA Residential, LLC  
 Freedom La Mirage, LLC  
 Freedom LHV LLC  
 Freedom Lubbock LLC  
 Freedom Miramar Apartments, LLC  
 Freedom Sandstone, LLC  
 Freedom Willowdale, LLC  
 Fundo de Investimento em Direitos Creditórios  
 BB Votorantim Highland Infraestrutura  
 G&E Apartment REIT The Heights at Olde  
 Towne, LLC  
 G&E Apartment REIT The Myrtles at Olde  
 Towne, LLC  
 GAF REIT, LLC  
 GAF Toys Holdco, LLC

Gardens of Denton II, L.P.  
 Gardens of Denton III, L.P.  
 Gleneagles CLO, Ltd.  
 Goverannce RE, Ltd.  
 Governance Re, Ltd.  
 Governance, Ltd.  
 Grant Scott  
 Grant Scott, Trustee of The SLHC Trust  
 Grayson CLO, Ltd.  
 Grayson Investors Corp.  
 Greater Kansas City Community Foundation  
 (third party)  
 Greenbriar CLO, Ltd.  
 Greg Busseyt  
 Gunwale LLC  
 Gunwale, LLC  
 Hakusan, LLC  
 Hammark Holdings LLC  
 Hampton Ridge Partners, LLC  
 Harbourvest Entities  
 Harko, LLC  
 Harry Bookey/Pam Bookey (third party)  
 Haverhill Acquisition Co., LLC  
 Haygood, LLC  
 HB 2015 Family LP (third party)  
 HCBH 11611 Ferguson, LLC  
 HCBH Buffalo Pointe II, LLC  
 HCBH Buffalo Pointe III, LLC  
 HCBH Buffalo Pointe, LLC  
 HCBH Hampton Woods SM, Inc.  
 HCBH Hampton Woods, LLC  
 HCBH Overlook SM, Inc.  
 HCBH Overlook, LLC  
 HCBH Rent Investors, LLC  
 HCMS Falcon GP, LLC  
 HCMS Falcon, L.P.  
 HCO Holdings, LLC  
 HCOF Preferred Holdings, L.P.  
 HCOF Preferred Holdings, LP  
 HCOF Preferred Holdings, Ltd.  
 HCRE 1775 James Ave, LLC  
 HCRE Addison TRS, LLC

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HCRE Addison, LLC (*fka HWS Addison, LLC*)

HCRE Hotel Partner, LLC (*fka HCRE HWS Partner, LLC*)

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC (*fka HWS Las Colinas, LLC*)

HCRE Plano TRS, LLC

HCRE Plano, LLC (*fka HWS Plano, LLC*)

HCRE-I Holding Corp.

HCRE-II Holding Corp.

HCRE-III Holding Corp.

HCRE-IV Holding Corp.

HCRE-IX Holding Corp.

HCRE-V Holding Corp.

HCRE-VI Holding Corp.

HCRE-VII Holding Corp.

HCRE-VIII Holding Corp.

HCRE-XI Holding Corp.

HCRE-XII Holding Corp.

HCRE-XIII Holding Corp.

HCRE-XIV Holding Corp.

HCRE-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA*)

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. (*fka Pyxis Capital, L.P.*)

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.



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Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP  
Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP  
Highland Capital of New York, Inc.  
Highland Capital Special Allocation, LLC  
Highland CDO Holding Company  
Highland CDO Opportunity Fund GP, L.P.  
Highland CDO Opportunity Fund, L.P.  
Highland CDO Opportunity Fund, Ltd.  
Highland CDO Opportunity GP, LLC  
Highland CDO Opportunity Master Fund, L.P.  
Highland CDO Trust  
Highland CLO 2018-1, Ltd.  
Highland CLO Assets Holdings Limited  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd. (*fka Acis Loan Funding, Ltd.*)

Highland CLO Gaming Holdings, LLC  
Highland CLO Holdings Ltd.  
Highland CLO Holdings, Ltd. (as of 12.19.17)  
Highland CLO Management Ltd.  
Highland CLO Trust  
Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.  
Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.  
Highland Credit Strategies Fund, Ltd.  
Highland Credit Strategies Holding Corporation  
Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.  
Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC  
Highland Dynamic Income Fund GP, LLC (*fka Highland Capital Loan GP, LLC*)

Highland Dynamic Income Fund, L.P.  
Highland Dynamic Income Fund, L.P. (*fka Highland Capital Loan Fund, L.P.*)

Highland Dynamic Income Fund, Ltd.  
Highland Dynamic Income Fund, Ltd. (*fka Highland Loan Fund, Ltd.*)

Highland Dynamic Income Master Fund, L.P.  
Highland Dynamic Income Master Fund, L.P. (*fka Highland Loan Master Fund, L.P.*)

Highland Employee Retention Assets LLC  
Highland Energy Holdings, LLC  
Highland Energy MLP Fund (*fka Highland Energy and Materials Fund*)

Highland Equity Focus Fund, L.P.  
Highland ERA Management, LLC  
Highland eSports Private Equity Fund  
Highland Financial Corp.  
Highland Financial Partners, L.P.  
Highland Fixed Income Fund  
Highland Flexible Income UCITS Fund  
Highland Floating Rate Fund

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Highland Floating Rate Opportunitites Fund  
 Highland Floating Rate Opportunities Fund  
 Highland Fund Holdings, LLC  
 Highland Funds I  
 Highland Funds II  
 Highland Funds III  
 Highland GAF Chemical Holdings, LLC  
 Highland General Partner, LP  
 Highland Global Allocation Fund  
 Highland Global Allocation Fund  
 (fka Highland Global Allocation Fund II)  
 Highland GP Holdings, LLC  
 Highland HCF Advisor Ltd.  
 Highland HCF Advisor, Ltd., as Trustee for  
 and on behalf of Acis CLO Trust, as nominee  
 for and on behalf of Highland CLO Funding,  
 Ltd. (as of 3.29.18)  
 Highland Healthcare Equity Income and  
 Growth Fund  
 Highland iBoxx Senior Loan ETF  
 Highland Income Fund  
 Highland Income Fund (fka Highland  
 Floating Rate Opportunities Fund)  
 Highland Kansas City Foundation, Inc.  
 Highland Latin America Consulting, Ltd.  
 Highland Latin America GP, Ltd.  
 Highland Latin America LP, Ltd.  
 Highland Latin America Trust  
 Highland Legacy Limited  
 Highland LF Chemical Holdings, LLC  
 Highland Loan Funding V, LLC  
 Highland Loan Funding V, Ltd.  
 Highland Long/Short Equity Fund  
 Highland Long/Short Healthcare Fund  
 Highland Marcal Holding, Inc.  
 Highland Merger Arbitrage Fund  
 Highland Multi Strategy Credit Fund GP, L.P.  
 Highland Multi Strategy Credit Fund GP, L.P.  
 (fka Highland Credit Opportunities CDO GP,  
 L.P.)  
 Highland Multi Strategy Credit Fund, L.P.

Highland Multi Strategy Credit Fund, L.P. (fka  
 Highland Credit Opportunities Fund, L.P., fka  
 Highland Credit Opportunities CDO, L.P.)  
 Highland Multi Strategy Credit Fund, Ltd.  
 Highland Multi Strategy Credit Fund, Ltd. (fka  
 Highland Credit Opportunities Fund, Ltd.)  
 Highland Multi Strategy Credit GP, LLC  
 Highland Multi Strategy Credit GP, LLC (fka  
 Highland Credit Opportunities CDO GP, LLC)  
 Highland Multi-Strategy Fund GP, LLC  
 Highland Multi-Strategy Fund GP, LP  
 Highland Multi-Strategy IDF GP, LLC  
 Highland Multi-Strategy Master Fund, L.P.  
 Highland Multi-Strategy Master Fund, LP  
 Highland Multi-Strategy Onshore Master  
 SubFund II, LLC  
 Highland Multi-Strategy Onshore Master  
 Subfund, LLC  
 Highland Opportunistic Credit Fund  
 Highland Park CDO 1, Ltd.  
 Highland Park CDO I, Ltd.  
 Highland Premier Growth Equity Fund  
 Highland Premium Energy & Materials Fund  
 Highland Prometheus Feeder Fund I, L.P.  
 Highland Prometheus Feeder Fund I, LP  
 Highland Prometheus Feeder Fund II, L.P.  
 Highland Prometheus Feeder Fund II, LP  
 Highland Prometheus Master Fund, L.P.  
 Highland Receivables Finance I, LLC  
 Highland Restoration Capital Partners GP,  
 LLC  
 Highland Restoration Capital Partners Master,  
 L.P.  
 Highland Restoration Capital Partners  
 Offshore, L.P.  
 Highland Restoration Capital Partners, L.P.  
 Highland Santa Barbara Foundation, Inc.  
 Highland Select Equity Fund GP, L.P.  
 Highland Select Equity Fund, L.P.  
 Highland Select Equity GP, LLC  
 Highland Select Equity Master Fund, L.P.

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Highland Small-Cap Equity Fund  
 Highland Socially Responsible Equity Fund  
 Highland Socially Responsible Equity Fund  
*(fka Highland Premier Growth Equity Fund)*

Highland Special Opportunities Holding  
 Company

Highland SunBridge GP, LLC  
 Highland Tax-Exempt Fund  
 Highland TCI Holding Company, LLC  
 Highland Total Return Fund  
 Highland's Roads Land Holding Company,  
 LLC

Hirst, Ltd.

HMCF PB Investors, LLC  
 HMx2 Investment Trust  
 (Matt McGraner)

Hockney, Ltd.

HRT North Atlanta, LLC  
 HRT Timber Creek, LLC  
 HRTBH North Atlanta, LLC  
 HRTBH Timber Creek, LLC

Huber Funding LLC  
 Hunter Mountain Investment Trust  
 HWS Investors Holdco, LLC

Internal Investors

Intertrust

James D. Dondero  
 Reese Avry Dondero  
 Jameson Drue Dondero

James Dondero  
 James Dondero and Mark Okada  
 James Dondero  
 Reese Avry Dondero  
 Jameson Drue Dondero

Japan Trustee Services Bank, Ltd.  
 Jasper CLO, Ltd.

Jewelry Ventures I, LLC  
 JMIM, LLC

Joanna E. Milne Irrevocable Trust dated Nov  
 25 1998 (third party)

John Honis  
 John L. Holt, Jr.

John R. Sears, Jr.  
 Karisopolis, LLC  
 Keelhaul LLC  
 KHM Interests, LLC (third party)  
 Kuilima Montalban Holdings, LLC  
 Kuilima Resort Holdco, LLC  
 KV Cameron Creek Owner, LLC  
 Lakes at Renaissance Park Apartments  
 Investors, L.P.

Lakeside Lane, LLC  
 Landmark Battleground Park II, LLC  
 Lane Britain

Larry K. Anders  
 LAT Battleground Park, LLC  
 LAT Briley Parkway, LLC  
 Lautner, Ltd.

Leawood RE Holdings, LLC  
 Liberty Cayman Holdings, Ltd.  
 Liberty CLO Holdco, Ltd.

Liberty CLO, Ltd.

Liberty Sub, Ltd.

Long Short Equity Sub, LLC  
 Longhorn Credit Funding LLC  
 Longhorn Credit Funding LLC - A  
 Longhorn Credit Funding LLC - B  
 Longhorn Credit Funding LLC (LHB)

Longhorn Credit Funding, LLC  
 Lurin Real Estate Holdings V, LLC  
 Maple Avenue Holdings, LLC  
 MaplesFS Limited

Marc C. Manzo  
 Mark and Pam Okada Family Trust - Exempt  
 Descendants' Trust  
 Mark and Pam Okada Family Trust - Exempt  
 Trust #2

Mark and Pamela Okada Family Trust -  
 Exempt Descendants' Trust

Mark and Pamela Okada Family Trust -  
 Exempt Descendants' Trust #2

Mark and Pamela Okada Family Trust -  
 Exempt Trust #2

Mark K. Okada  
 Mark Okada

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Mark Okada and Pam Okada  
 Mark Okada and Pam Okada, as joint owners  
 Mark Okada/Pamela Okada  
 Markham Fine Jewelers, L.P.  
 Markham Fine Jewelers, LP  
 Matt McGraner  
 Meritage Residential Partners, LLC  
 MGM Studios HoldCo, Ltd.  
 Michael Rossi  
 ML CLO XIX Sterling (Cayman), Ltd.  
 N/A  
 Nancy Dondero  
 NCI Apache Trail LLC  
 NCI Assets Holding Company LLC  
 NCI Country Club LLC  
 NCI Fort Worth Land LLC  
 NCI Front Beach Road LLC  
 NCI Minerals LLC  
 NCI Royse City Land LLC  
 NCI Stewart Creek LLC  
 NCI Storage, LLC  
 Neil Labatte  
 Neutra, Ltd.  
 New Jersey Tissue Company Holdco, LLC  
*(fka Marcal Paper Mills Holding Company, LLC)*  
 NexAnnuity Holdings, Inc.  
 NexBank Capital Trust I  
 NexBank Capital, Inc.  
 NexBank Land Advisors, Inc.  
 NexBank Securities Inc.  
 NexBank Securities, Inc.  
  
 NexBank SSB  
 NexBank Title, Inc.  
 (dba NexVantage Title Services)  
 NexBank, SSB  
 NexPoint Advisors GP, LLC  
 NexPoint Advisors, L.P.  
 NexPoint Capital REIT, LLC  
 NexPoint Capital, Inc.  
 NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*

NexPoint CR F/H DST, LLC  
 NexPoint Credit Strategies Fund  
 NexPoint Discount Strategies Fund  
*(fka NexPoint Discount Yield Fund)*  
 NexPoint DRIP  
 NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*  
 NexPoint Event-Driven Fund  
*(fka NexPoint Merger Arbitrage Fund)*  
 NexPoint Flamingo DST  
 NexPoint Flamingo Investment Co, LLC  
 NexPoint Flamingo Leaseco, LLC  
 NexPoint Flamingo Manager, LLC  
 NexPoint Flamingo Property Manager, LLC  
 NexPoint Healthcare Opportunities Fund  
 NexPoint Hospitality Trust  
 NexPoint Hospitality, Inc.  
 NexPoint Hospitality, LLC  
 NexPoint Insurance Distributors, LLC  
 NexPoint Insurance Solutions GP, LLC  
 NexPoint Insurance Solutions GP, LLC  
*(fka Highland Capital Insurance Solutions GP, LLC)*  
 NexPoint Insurance Solutions, L.P.  
*(fka Highland Capital Insurance Solutions, L.P.)*  
 NexPoint Latin American Opportunities Fund  
 NexPoint Legacy 22, LLC  
 NexPoint Lincoln Porte Equity, LLC  
 NexPoint Lincoln Porte Manager, LLC  
 NexPoint Lincoln Porte, LLC  
*(fka NREA Lincoln Porte, LLC)*  
 NexPoint Multifamily Capital Trust, Inc.  
 NexPoint Multifamily Capital Trust, Inc.  
*(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)*  
 NexPoint Multifamily Operating Partnership, L.P.  
 NexPoint Peoria, LLC  
 NexPoint Polo Glen DST  
 NexPoint Polo Glen Holdings, LLC  
 NexPoint Polo Glen Investment Co, LLC

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NexPoint Polo Glen Leaseco, LLC  
 NexPoint Polo Glen Manager, LLC  
 NexPoint RE Finance Advisor GP, LLC  
 NexPoint RE Finance Advisor, L.P.  
 NexPoint Real Estate Advisors GP, LLC  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors III, L.P.  
 NexPoint Real Estate Advisors IV, L.P.  
 NexPoint Real Estate Advisors V, L.P.  
 NexPoint Real Estate Advisors VI, L.P.  
 NexPoint Real Estate Advisors VII GP, LLC  
 NexPoint Real Estate Advisors VII, L.P.  
 NexPoint Real Estate Advisors VIII, L.P.  
 NexPoint Real Estate Advisors, L.P.  
 NexPoint Real Estate Capital, LLC  
 NexPoint Real Estate Capital, LLC (*fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC*)  
 NexPoint Real Estate Finance OP GP, LLC  
 NexPoint Real Estate Finance Operating Partnership, L.P.  
 NexPoint Real Estate Finance, Inc.  
 NexPoint Real Estate Opportunities, LLC  
 NexPoint Real Estate Opportunities, LLC (*fka Freedom REIT LLC*)  
 NexPoint Real Estate Partners, LLC (*fka HCRE Partners, LLC*)  
 NexPoint Real Estate Partners, LLC (*fka HCRE Partners, LLC*)  
 NexPoint Real Estate Strategies Fund  
 NexPoint Residential Trust Inc.  
 NexPoint Residential Trust Operating Partnership GP, LLC  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust, Inc.  
 NexPoint Securities, Inc. (*fka Highland Capital Funds Distributor, Inc.*) (*fka Pyxis Distributors, Inc.*)

NexPoint Strategic Income Fund (*fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund*)  
 NexPoint Strategic Opportunities Fund  
 NexPoint Strategic Opportunities Fund (*fka NexPoint Credit Strategies Fund*)  
 NexPoint Texas Multifamily Portfolio DST (*fka NREA Southeast Portfolio Two, DST*)  
 NexPoint WLIF I Borrower, LLC  
 NexPoint WLIF I, LLC  
 NexPoint WLIF II Borrower, LLC  
 NexPoint WLIF II, LLC  
 NexPoint WLIF III Borrower, LLC  
 NexPoint WLIF III, LLC  
 NexPoint WLIF, LLC (Series I)  
 NexPoint WLIF, LLC (Series II)  
 NexPoint WLIF, LLC (Series III)  
 NexStrat LLC  
 NexVest, LLC  
 NexWash LLC  
 NFRO REIT Sub, LLC  
 NFRO TRS, LLC  
 NHF CCD, Inc.  
 NHT 2325 Stemmons, LLC  
 NHT Beaverton TRS, LLC (*fka NREA Hotel TRS, Inc.*)  
 NHT Beaverton, LLC  
 NHT Bend TRS, LLC  
 NHT Bend, LLC  
 NHT Destin TRS, LLC  
 NHT Destin, LLC  
 NHT DFW Portfolio, LLC  
 NHT Holdco, LLC  
 NHT Holdings, LLC  
 NHT Intermediary, LLC  
 NHT Nashville TRS, LLC  
 NHT Nashville, LLC  
 NHT Olympia TRS, LLC  
 NHT Olympia, LLC  
 NHT Operating Partnership GP, LLC  
 NHT Operating Partnership II, LLC  
 NHT Operating Partnership, LLC  
 NHT Salem, LLC



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NHT SP Parent, LLC  
 NHT SP TRS, LLC  
 NHT SP, LLC  
 NHT Tigard TRS, LLC  
 NHT Tigard, LLC  
 NHT TRS, Inc.  
 NHT Uptown, LLC  
 NHT Vancouver TRS, LLC  
 NHT Vancouver, LLC  
 NLA Assets LLC  
 NMRT TRS, Inc.  
 NREA Adair DST Manager, LLC  
 NREA Adair Investment Co, LLC  
 NREA Adair Joint Venture, LLC  
 NREA Adair Leaseco Manager, LLC  
 NREA Adair Leaseco, LLC  
 NREA Adair Property Manager LLC  
 NREA Adair, DST  
 NREA Ashley Village Investors, LLC  
 NREA Cameron Creek Investors, LLC  
 NREA Cityplace Hue Investors, LLC  
 NREA Crossing Investors LLC  
 NREA Crossings Investors, LLC  
 NREA Crossings Ridgewood Coinvestment, LLC (*fka NREA Crossings Ridgewood Investors, LLC*)  
 NREA DST Holdings, LLC  
 NREA El Camino Investors, LLC  
 NREA Estates Inc.  
 NREA Estates Investment Co, LLC  
 NREA Estates Leaseco, LLC  
 NREA Estates Manager, LLC  
 NREA Estates Property Manager, LLC  
 NREA Estates, DST  
 NREA Gardens DST Manager LLC  
 NREA Gardens DST Manager, LLC  
 NREA Gardens Investment Co, LLC  
 NREA Gardens Leaseco Manager, LLC  
 NREA Gardens Leaseco, LLC  
 NREA Gardens Property Manager, LLC  
 NREA Gardens Springing LLC  
 NREA Gardens Springing Manager, LLC  
 NREA Gardens, DST

NREA Hidden Lake Investment Co, LLC  
 NREA Hue Investors, LLC  
 NREA Keystone Investors, LLC  
 NREA Meritage Inc.  
 NREA Meritage Investment Co, LLC  
 NREA Meritage Leaseco, LLC  
 NREA Meritage Manager, LLC  
 NREA Meritage Property Manager, LLC  
 NREA Meritage, DST  
 NREA Oaks Investors, LLC  
 NREA Retreat Investment Co, LLC  
 NREA Retreat Leaseco, LLC  
 NREA Retreat Manager, LLC  
 NREA Retreat Property Manager, LLC  
 NREA Retreat, DST  
 NREA SE MF Holdings LLC  
 NREA SE MF Holdings, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE Multifamily LLC  
 NREA SE Multifamily, LLC  
 NREA SE One Property Manager, LLC  
 NREA SE Three Property Manager, LLC  
 NREA SE Two Property Manager, LLC  
 NREA SE1 Andros Isles Leaseco, LLC  
 NREA SE1 Andros Isles Manager, LLC  
 NREA SE1 Andros Isles, DST  
 (Converted from DK Gateway Andros, LLC)  
 NREA SE1 Arborwalk Leaseco, LLC  
 NREA SE1 Arborwalk Manager, LLC  
 NREA SE1 Arborwalk, DST  
 (Converted from MAR Arborwalk, LLC)  
 NREA SE1 Towne Crossing Leaseco, LLC  
 NREA SE1 Towne Crossing Manager, LLC  
 NREA SE1 Towne Crossing, DST  
 (Converted from Apartment REIT Towne Crossing, LP)  
 NREA SE1 Walker Ranch Leaseco, LLC  
 NREA SE1 Walker Ranch Manager, LLC  
 NREA SE1 Walker Ranch, DST  
 (Converted from SOF Walker Ranch Owner, L.P.)  
 NREA SE2 Hidden Lake Leaseco, LLC

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NREA SE2 Hidden Lake Manager, LLC  
 NREA SE2 Hidden Lake, DST  
 NREA SE2 Hidden Lake, DST  
 (Converted from SOF Hidden Lake SA Owner,  
 L.P.)

NREA SE2 Vista Ridge Leaseco, LLC  
 NREA SE2 Vista Ridge Manager, LLC  
 NREA SE2 Vista Ridge, DST  
 NREA SE2 Vista Ridge, DST  
 (Converted from MAR Vista Ridge, L.P.)  
 NREA SE2 West Place Leaseco, LLC  
 NREA SE2 West Place Manager, LLC  
 NREA SE2 West Place, DST  
 (Converted from Landmark at West Place,  
 LLC)

NREA SE3 Arboleda Leaseco, LLC  
 NREA SE3 Arboleda Manager, LLC  
 NREA SE3 Arboleda, DST  
 (Converted from G&E Apartment REIT  
 Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC  
 NREA SE3 Fairways Manager, LLC  
 NREA SE3 Fairways, DST  
 (Converted from MAR Fairways, LLC)  
 NREA SE3 Grand Oasis Leaseco, LLC  
 NREA SE3 Grand Oasis Manager, LLC  
 NREA SE3 Grand Oasis, DST  
 (Converted from Landmark at Grand Oasis,  
 LP)

NREA Southeast Portfolio One Manager, LLC  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio Three Manager,  
 LLC

NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Two Manager, LLC  
 NREA Southeast Portfolio Two, DST  
 NREA Southeast Portfolio Two, LLC  
 NREA SOV Investors, LLC  
 NREA Uptown TRS, LLC  
 NREA VB I LLC  
 NREA VB II LLC

NREA VB III LLC  
 NREA VB IV LLC  
 NREA VB Pledgor I LLC  
 NREA VB Pledgor I, LLC  
 NREA VB Pledgor II LLC  
 NREA VB Pledgor II, LLC  
 NREA VB Pledgor III LLC  
 NREA VB Pledgor III, LLC  
 NREA VB Pledgor IV LLC  
 NREA VB Pledgor IV, LLC  
 NREA VB Pledgor V LLC  
 NREA VB Pledgor V, LLC  
 NREA VB Pledgor VI LLC  
 NREA VB Pledgor VI, LLC  
 NREA VB Pledgor VII LLC  
 NREA VB Pledgor VII, LLC  
 NREA VB SM, Inc.  
 NREA VB V LLC  
 NREA VB VI LLC  
 NREA VB VII LLC  
 NREA Vista Ridge Investment Co, LLC  
 NREC AR Investors, LLC  
 NREC BM Investors, LLC  
 NREC BP Investors, LLC  
 NREC Latitude Investors, LLC  
 NREC REIT Sub, Inc.  
 NREC TRS, Inc.  
 NREC WW Investors, LLC  
 NREF OP I Holdco, LLC  
 NREF OP I SubHoldco, LLC  
 NREF OP I, L.P.  
 NREF OP II Holdco, LLC  
 NREF OP II SubHoldco, LLC  
 NREF OP II, L.P.  
 NREF OP IV REIT Sub TRS, LLC  
 NREF OP IV REIT Sub, LLC  
 NREF OP IV, L.P.  
 NREO NW Hospitality Mezz, LLC  
 NREO NW Hospitality, LLC  
 NREO Perilune, LLC  
 NREO SAFStor Investors, LLC  
 NREO TRS, Inc.  
 NRESF REIT Sub, LLC

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NXRT Abbington, LLC  
 NXRT Atera II, LLC  
 NXRT Atera, LLC  
 NXRT AZ2, LLC  
 NXRT Barrington Mill, LLC  
 NXRT Bayberry, LLC  
 NXRT Bella Solara, LLC  
 NXRT Bella Vista, LLC  
 NXRT Bloom, LLC  
 NXRT Brandywine GP I, LLC  
 NXRT Brandywine GP I, LLC  
 NXRT Brandywine GP II, LLC  
 NXRT Brandywine GP II, LLC  
 NXRT Brandywine LP, LLC  
 NXRT Brandywine LP, LLC  
 NXRT Brentwood Owner, LLC  
 NXRT Brentwood, LLC  
 NXRT Cedar Pointe Tenant, LLC  
 NXRT Cedar Pointe, LLC  
 NXRT Cityview, LLC  
 NXRT Cornerstone, LLC  
 NXRT Crestmont, LLC  
 NXRT Crestmont, LLC  
 NXRT Enclave, LLC  
 NXRT Glenview, LLC  
 NXRT H2 TRS, LLC  
 NXRT Heritage, LLC  
 NXRT Hollister TRS LLC  
 NXRT Hollister, LLC  
 NXRT LAS 3, LLC  
 NXRT Master Tenant, LLC  
 NXRT Nashville Residential, LLC  
 NXRT Nashville Residential, LLC (*fka Freedom Nashville Residential, LLC*)  
 NXRT North Dallas 3, LLC  
 NXRT Old Farm, LLC  
 NXRT Pembroke Owner, LLC  
 NXRT Pembroke, LLC  
 NXRT PHX 3, LLC  
 NXRT Radbourne Lake, LLC  
 NXRT Rockledge, LLC  
 NXRT Sabal Palms, LLC  
 NXRT SM, Inc.

NXRT Steeplechase, LLC  
 NXRT Stone Creek, LLC  
 NXRT Summers Landing GP, LLC  
 NXRT Summers Landing LP, LLC  
 NXRT Torreyana, LLC  
 NXRT Vanderbilt, LLC  
 NXRT West Place, LLC  
 NXRTBH AZ2, LLC  
 NXRTBH Barrington Mill Owner, LLC  
 NXRTBH Barrington Mill SM, Inc.  
 NXRTBH Barrington Mill, LLC  
 NXRTBH Bayberry, LLC  
 NXRTBH Cityview, LLC  
 NXRTBH Colonnade, LLC  
 NXRTBH Cornerstone Owner, LLC  
 NXRTBH Cornerstone SM, Inc.  
 NXRTBH Cornerstone, LLC  
 NXRTBH Dana Point SM, Inc.  
 NXRTBH Dana Point, LLC  
 NXRTBH Foothill SM, Inc.  
 NXRTBH Foothill, LLC  
 NXRTBH Heatherstone SM, Inc.  
 NXRTBH Heatherstone, LLC  
 NXRTBH Hollister Tenant, LLC  
 NXRTBH Hollister, LLC  
 NXRTBH Madera SM, Inc.  
 NXRTBH Madera, LLC  
 NXRTBH McMillan, LLC  
 NXRTBH North Dallas 3, LLC  
 NXRTBH Old Farm II, LLC  
 NXRTBH Old Farm Tenant, LLC  
 NXRTBH Old Farm, LLC  
 NXRTBH Radbourne Lake, LLC  
 NXRTBH Rockledge, LLC  
 NXRTBH Sabal Palms, LLC  
 NXRTBH Steeplechase, LLC  
 (dba Southpoint Reserve at Stoney Creek)-VA  
 NXRTBH Stone Creek, LLC  
 NXRTBH Vanderbilt, LLC  
 NXRTBH Versailles SM, Inc.  
 NXRTBH Versailles, LLC  
 Oak Holdco, LLC  
 Oaks CGC, LLC

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Okada Family Revocable Trust  
Oldenburg, Ltd.  
Pam Capital Funding GP Co. Ltd.  
Pam Capital Funding, L.P.  
PamCo Cayman Ltd.  
Park West 1700 Valley View Holdco, LLC  
Park West 2021 Valley View Holdco, LLC  
Park West Holdco, LLC  
Park West Portfolio Holdco, LLC  
Participants of Highland 401K Plan  
Patrick Willoughby-McCabe  
PCMG Trading Partners XXIII, L.P.  
PCMG Trading Partners XXIII, LP  
PDK Toys Holdco, LLC  
Pear Ridge Partners, LLC  
Penant Management GP, LLC  
Penant Management LP  
PensionDanmark Holding A/S  
PensionDanmark  
Pensionsforsikringsaktieselskab  
Peoria Place Development, LLC  
(30% cash contributions - profit participation only)  
Perilune Aero Equity Holdings One, LLC  
Perilune Aviation LLC  
PetroCap Incentive Holdings III, L.P.  
PetroCap Incentive Partners II GP, LLC  
PetroCap Incentive Partners II, L.P.  
PetroCap Incentive Partners III GP, LLC  
PetroCap Incentive Partners III, LP  
PetroCap Management Company LLC  
PetroCap Partners II GP, LLC  
PetroCap Partners II, L.P.  
PetroCap Partners III GP, LLC  
PetroCap Partners III, L.P.  
Pharmacy Ventures I, LLC  
Pharmacy Ventures II, LLC  
Pollack, Ltd.  
Powderhorn, LLC  
PWM1 Holdings, LLC  
PWM1, LLC  
RADCO - Bay Meadows, LLLP  
RADCO - Bay Park, LLLP

RADCO NREC Bay Meadows Holdings, LLC  
RADCO NREC Bay Park Holdings, LLC  
Ramarim, LLC  
Rand Advisors Series I Insurance Fund  
Rand Advisors Series II Insurance Fund  
Rand Advisors, LLC  
Rand PE Fund I, L.P.  
Rand PE Fund I, L.P. - Series 1  
Rand PE Fund Management, LLC  
Rand PE Holdco, LLC  
Realdania  
Red River CLO, Ltd.  
Red River Investors Corp.  
Riverview Partners SC, LLC  
Rockwall CDO II Ltd.  
Rockwall CDO II, Ltd.  
Rockwall CDO, Ltd.  
Rockwall Investors Corp.  
Rothko, Ltd.  
RTT Bella Solara, LLC  
RTT Bloom, LLC  
RTT Financial, Inc.  
RTT Hollister, LLC  
RTT Rockledge, LLC  
RTT Torreyana, LLC  
SALI Fund Partners, LLC  
San Diego County Employees Retirement Association  
Sandstone Pasadena Apartments, LLC  
Sandstone Pasadena, LLC  
Santa Barbara Foundation (third party)  
Saturn Oil & Gas LLC  
SBC Master Pension Trust  
Scott Matthew Siekielski  
SE Battleground Park, LLC  
SE Battleground Park, LLC  
SE Glenview, LLC  
SE Governors Green Holdings, L.L.C.  
SE Governors Green Holdings, L.L.C.  
(fka SCG Atlas Governors Green Holdings, L.L.C.)  
SE Governors Green I, LLC  
SE Governors Green II, LLC

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SE Governors Green II, LLC  
SE Governors Green REIT, L.L.C.  
SE Governors Green REIT, L.L.C.  
(fka SCG Atlas Governors Green REIT, L.L.C.)

SE Governors Green, LLC  
(fka SCG Atlas Governors Green, L.L.C.)  
SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles GP, LLC  
SE Gulfstream Isles LP, LLC  
SE Gulfstream Isles LP, LLC  
SE Heights at Olde Towne, LLC  
SE Heights at Olde Towne, LLC  
SE Lakes at Renaissance Park GP I, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park GP II, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Lakes at Renaissance Park LP, LLC  
SE Multifamily Holdings LLC  
SE Multifamily Holdings, LLC  
SE Multifamily REIT Holdings LLC  
SE Myrtles at Olde Towne, LLC  
SE Myrtles at Olde Towne, LLC  
SE Oak Mill I Holdings, LLC  
SE Oak Mill I Holdings, LLC (fka SCG Atlas Oak Mill I Holdings, L.L.C.)  
SE Oak Mill I Owner, LLC (fka SCG Atlas Oak Mill I, L.L.C.)  
SE Oak Mill I REIT, LLC  
SE Oak Mill I REIT, LLC (fka SCG Atlas Oak Mill I REIT, L.L.C.)  
SE Oak Mill I, LLC  
SE Oak Mill I, LLC  
SE Oak Mill II Holdings, LLC  
SE Oak Mill II Holdings, LLC (fka SCG Atlas Oak Mill II Holdings, L.L.C.)  
SE Oak Mill II Owner, LLC (fka SCG Atlas Oak Mill II, L.L.C.)  
SE Oak Mill II REIT, LLC  
SE Oak Mill II REIT, LLC (fka SCG Atlas Oak Mill II REIT, L.L.C.)  
SE Oak Mill II, LLC  
SE Oak Mill II, LLC

SE Quail Landing, LLC  
SE River Walk, LLC  
SE Riverwalk, LLC  
SE SM, Inc.  
SE Stoney Ridge Holdings, L.L.C. (fka SCG Atlas Stoney Ridge Holdings, L.L.C.)  
SE Stoney Ridge Holdings, LLC  
SE Stoney Ridge I, LLC  
SE Stoney Ridge I, LLC  
SE Stoney Ridge II, LLC  
SE Stoney Ridge II, LLC  
SE Stoney Ridge REIT, L.L.C. (fka SCG Atlas Stoney Ridge REIT, L.L.C.)  
SE Stoney Ridge REIT, LLC  
SE Stoney Ridge, LLC (fka SCG Atlas Stoney Ridge, L.L.C.)  
SE Victoria Park, LLC  
SE Victoria Park, LLC  
Sentinel Re Holdings, Ltd.  
Sentinel Reinsurance Ltd.  
SFH1, LLC  
SFR WLIF I, LLC  
(fka NexPoint WLIF I, LLC)  
SFR WLIF II, LLC  
(NexPoint WLIF II, LLC)  
SFR WLIF III, LLC  
(NexPoint WLIF III, LLC)  
SFR WLIF Manager, LLC  
(NexPoint WLIF Manager, LLC)  
SFR WLIF, LLC  
(NexPoint WLIF, LLC)  
SFR WLIF, LLC Series I  
SFR WLIF, LLC Series II  
SFR WLIF, LLC Series III  
SH Castle BioSciences, LLC  
Small Cap Equity Sub, LLC  
Socially Responsible Equity Sub, LLC  
SOF Brandywine I Owner, L.P.  
SOF Brandywine II Owner, L.P.  
SOF-X GS Owner, L.P.  
Southfork Cayman Holdings, Ltd.  
Southfork CLO, Ltd.



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Specialty Financial Products Designated Activity Company (*fka Specialty Financial Products Limited*)  
 Spiritus Life, Inc.  
 SRL Sponsor LLC  
 SRL Whisperwod LLC  
 SRL Whisperwood Member LLC  
 SRL Whisperwood Venture LLC  
 SSB Assets LLC  
 Starck, Ltd.  
 Stemmons Hospitality, LLC  
 Steve Shin  
 Stonebridge Capital, Inc.  
 Stonebridge-Highland Healthcare Private Equity Fund  
 Strand Advisors III, Inc.  
 Strand Advisors IV, LLC  
 Strand Advisors IX, LLC  
 Strand Advisors V, LLC  
 Strand Advisors XIII, LLC  
 Strand Advisors XVI, Inc.  
 Strand Advisors, Inc.  
 Stratford CLO, Ltd.  
 Summers Landing Apartment Investors, L.P.  
 Term Loan B  
 (10% cash contributions - profit participation only)  
 The Dallas Foundation  
 The Dallas Foundation (third party)  
 The Dondero Insurance Rabbi Trust  
 The Dugaboy Investment Trust  
 The Dugaboy Investment Trust U/T/A Dated Nov 15, 2010  
 The Get Good Non-Exempt Trust No. 1  
 The Get Good Non-Exempt Trust No. 2  
 The Get Good Trust  
 The Mark and Pamela Okada Family Trust - Exempt Descendants' Trust  
 The Mark and Pamela Okada Family Trust - Exempt Trust #2  
 The Ohio State Life Insurance Company  
 The Okada Family Foundation, Inc.  
 The Okada Insurance Rabbi Trust

The SLHC Trust  
 The Trustees of Columbia University in the City of New York  
 The Twentysix Investment Trust (Third Party Investor)  
 Thomas A. Neville  
 Thread 55, LLC  
 Tihany, Ltd.  
 Todd Travers  
 Tranquility Lake Apartments Investors, L.P.  
 Tuscany Acquisition, LLC  
 Uptown at Cityplace Condominium Association, Inc.  
 US Gaming OpCo, LLC  
 US Gaming SPV, LLC  
 US Gaming, LLC  
 Valhalla CLO, Ltd.  
 VB GP LLC  
 VB Holding, LLC  
 VB One, LLC  
 VB OP Holdings LLC  
 VBAnnex C GP, LLC  
 VBAnnex C Ohio, LLC  
 VBAnnex C, LP  
 Ventoux Capital, LLC  
 (Matt Goetz)  
 VineBrook Annex B, L.P.  
 VineBrook Annex I, L.P.  
 VineBrook Homes Merger Sub II LLC  
 VineBrook Homes Merger Sub LLC  
 VineBrook Homes OP GP, LLC  
 VineBrook Homes Operating Partnership, L.P.  
 VineBrook Homes Trust, Inc.  
 VineBrook Partners I, L.P.  
 VineBrook Partners II, L.P.  
 VineBrook Properties, LLC  
 Virginia Retirement System  
 Vizcaya Investment, LLC  
 Wake LV Holdings II, Ltd.  
 Wake LV Holdings, Ltd.  
 Walter Holdco GP, LLC  
 Walter Holdco I, Ltd.  
 Walter Holdco, L.P.

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Warhol, Ltd.  
Warren Chang  
Westchester CLO, Ltd.  
William L. Britain  
Wright Ltd.  
Wright, Ltd.  
Yellow Metal Merchants, Inc.

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**EXHIBIT R**

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of \_\_\_\_\_, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and [\_\_\_\_\_] as Delaware trustee (the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

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(vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

### **DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.



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(d) “Claimant Trust Agreement” means this Agreement.

(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

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(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.

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(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

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(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

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1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

**ARTICLE II.**  
**ESTABLISHMENT OF THE CLAIMANT TRUST**

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.



## 2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

## 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust,

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pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

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#### 2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

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2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address:\_\_\_\_\_].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE TRUSTEES**

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or



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otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor’s Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust’s role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and



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officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

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(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority

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of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;
- (vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;
- (vii) borrow as may be necessary to fund activities of the Claimant Trust;
- (viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;
- (ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);
- (x) change the compensation of the Claimant Trustee;
- (xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and
- (xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and

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(ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee’s resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days’ prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she

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may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

### 3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.



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3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any

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accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

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(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or that is otherwise contrary to law. Other than as

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expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.



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(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the



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Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or

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in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

#### 4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further

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evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

## **ARTICLE V.** **TRUST INTERESTS**

### **5.1 Claimant Trust Interests.**

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(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the “GUC Beneficiaries”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the “Subordinated Beneficiaries”). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary’s Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the “Equity Holders”). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder’s Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the “GUC Payment Certification”). Equity Holders will only be deemed “Beneficiaries” under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed “Equity Trust Interests.” The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary’s Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant



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Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.



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5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys’ fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

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(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

## **ARTICLE VI.** **DISTRIBUTIONS**

### **6.1 Distributions.**

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

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(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

## ARTICLE VII. TAX MATTERS

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes

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where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## **ARTICLE VIII.**

### **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise



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jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the “Indemnified Parties”) shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party’s reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties.



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For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## ARTICLE IX. TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

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9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

## ARTICLE X. AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

## ARTICLE XI. MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not

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permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o [insert contact info for Claimant Trustee]

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the

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Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

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

Highland Capital Management, L.P.

By: \_\_\_\_\_

James P. Seery, Jr.  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By: \_\_\_\_\_

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant Trustee



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**EXHIBIT S**

002030

DRAFT

**CLAIMANT TRUST AGREEMENT**

This Claimant Trust Agreement, effective as of \_\_\_\_\_, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the “Debtor”), as settlor, and James P. Seery, Jr., as trustee (the “Claimant Trustee”), and [\_\_\_\_\_] as Delaware trustee (the “Delaware Trustee,” and together with the Debtor and the Claimant Trustee, the “Parties”) for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

**RECITALS**

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Claimant Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries<sup>2</sup> in accordance with the Plan; (v) the Claimant Trustee can resolve Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

<sup>2</sup> For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

### DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

### ARTICLE I. DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) “Acis” means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.

(c) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) “Claimant Trust Agreement” means this Agreement.

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(e) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) “Claimant Trust Assets” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) “Claimant Trust Beneficiaries” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) “Claimant Trust Expense Cash Reserve” means \$[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) “Claimant Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) “Committee Member” means a Member who is/was also a member of the Creditors’ Committee.

(l) “Conflicted Member” has the meaning set forth in Section 4.6(c) hereof.

(m) “Contingent Trust Interests” means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

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(n) “Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) “Delaware Trustee” has the meaning set forth in the introduction hereof.

(q) “Disability” means as a result of the Claimant Trustee’s or a Member’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) “Disinterested Members” has the meaning set forth in Section 4.1 hereof.

(s) “Disputed Claims Reserve” means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) “Employees” means the employees of the Debtor set forth in the Plan Supplement.

(u) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) “Equity Trust Interests” has the meaning given to it in Section 5.1(c) hereof.

(x) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(y) “General Unsecured Claim Trust Interests” means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) “GUC Beneficiaries” means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) “GUC Payment Certification” has the meaning given to it in Section 5.1(c) hereof.



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(bb) “HarbourVest” means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(dd) “Investment Company Act” means the Investment Company Act of 1940, as amended.

(ee) “Litigation Sub-Trust” means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) “Litigation Sub-Trust Agreement” means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) “Litigation Trustee” means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) “Managed Funds” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however*, that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) “Material Claims” means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) “Member” means a Person that is member of the Oversight Board.

(kk) “New GP LLC” means the general partner of the Reorganized Debtor.

(ll) “Oversight Board” means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee’s performance of his duties and otherwise serve the functions set forth in this Agreement and those of the “Claimant Trust Oversight Committee” described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

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(mm) “Plan” has the meaning set forth in the Recitals hereof.

(nn) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) “PSZJ” means Pachulski Stang Ziehl & Jones LLP.

(pp) “Redeemer Committee” means the Redeemer Committee of the Highland Crusader Fund.

(qq) “Registrar” has the meaning given to it in Section 5.3(a) hereof.

(rr) “Reorganized Debtor Assets” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) “Securities Act” means the Securities Act of 1933, as amended.

(tt) “Subordinated Beneficiaries” means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) “Subordinated Claim Trust Interests” means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) “TIA” means the Trust Indenture Act of 1939, as amended.

(ww) “Trust Interests” means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

(yy) “Trustees” means collectively the Claimant Trustee and Delaware Trustee.

(zz) “UBS” means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) “WilmerHale” Wilmer Cutler Pickering Hale & Dorr LLP.

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1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## ARTICLE II.

### ESTABLISHMENT OF THE CLAIMANT TRUST

#### 2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the “Highland Claimant Trust.” The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

## 2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment, make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

## 2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section

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1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.



#### 2.4 Transfer of Assets and Rights to the Claimant Trust: Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

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2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: [\_\_\_\_\_].

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### ARTICLE III. THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that

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any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(c), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor’s Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to \$3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust’s role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board

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solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay, such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;



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(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority



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of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

- (i) terminate or extend the term of the Claimant Trust;
- (ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;
- (iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than \$3,000,000 (over a thirty-day period);
- (iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;
- (v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;
- (vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;
- (vii) borrow as may be necessary to fund activities of the Claimant Trust;
- (viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;
- (ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);
- (x) change the compensation of the Claimant Trustee;
- (xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and
- (xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and

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(ii) any other professional whose expected fees and expenses are estimated at less than or equal to \$200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys’ fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee’s resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause immediately upon notice thereof, or without Cause upon 60 days’ prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she

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may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

### 3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

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3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

### 3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any



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accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

### 3.13 Compensation and Reimbursement: Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, including any severance, as agreed to by the Claimant Trustee, on the one hand, and the Committee, if agreed upon prior to the Effective Date, or the Oversight Board, if agreed upon on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.



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(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or that is otherwise contrary to law. Other than as

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expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust.

#### **ARTICLE IV. THE OVERSIGHT BOARD**

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof.

#### 4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.7 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

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(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

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4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set forth in Sections 3.3(c), 4.9(a), 5.2, 5.4, 6.1, 9.1, and 10, herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to



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such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed “Conflicted Members” with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a “Committee Member Claim Matter”). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article X hereof. The Members of the Oversight Board will serve until such Member’s successor is duly appointed or until such Member’s earlier death or resignation pursuant to Section 4.7 below, or removal pursuant to Section 4.8 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving not less than 90 days prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day specified in such notice and (ii) the appointment of a successor in accordance with Section 4.9 below.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee’s filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee’s website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.



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(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.11.

## ARTICLE V. TRUST INTERESTS

### 5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class

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8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other right to direct Claimant Trust activities.

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5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the “Registrar”), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the “Trust Register”), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary’s Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this

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Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

#### 5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by



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Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

## **ARTICLE VI.** **DISTRIBUTIONS**

### **6.1 Distributions.**

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.



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6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 De Minimis Distributions. Distributions with a value of less than \$100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

## ARTICLE VII. TAX MATTERS

### 7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets

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for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

## **ARTICLE VIII.**

### **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of

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the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), Delaware Trustee, Oversight Board, and all past and present Members (collectively, in their capacities as such, the “Indemnified Parties”) shall be indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party’s reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and

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shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

## ARTICLE IX. TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been



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fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

## ARTICLE X. AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

## ARTICLE XI. MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.



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11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee  
c/o [insert contact info for Claimant Trustee]

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

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11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); provided, however, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

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

Highland Capital Management, L.P.

By:

**James P. Seery, Jr.**  
Chief Executive Officer and  
Chief Restructuring Officer

Claimant Trustee

By:

James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

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Document comparison by Workshare 9.5 on Friday, January 22, 2021 4:38:30 PM

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Description	DOCS_NY-#41280-v10-Highland_-_Claimant_Trust_Agreement
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Legend:	
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Split/Merged cell	
Padding cell	

Statistics:	
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Moved to	0
Style change	0
Format changed	0
Total changes	16

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## EXHIBIT T



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**LITIGATION SUB-TRUST AGREEMENT**

This Litigation Sub-Trust Agreement, effective as of \_\_\_\_\_, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the “Claimant Trustee”), [ ] as Delaware Trustee, and Marc S. Kirschner as trustee (the “Litigation Trustee,” and together with the Claimant Trustee and Delaware Trustee, the “Parties”) of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

**RECITALS**

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the “Debtor”) filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Litigation Sub-Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the Employee Claims; and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

### **DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

### **ARTICLE I.** **DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.
- (b) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.
- (c) “Claimant Trust Agreement” means the Claimant Trust Agreement dated [\_\_\_], 2021, by and between the Debtor, Claimant Trustee, and Delaware Trustee.
- (d) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.

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(e) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.

(f) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(g) “Delaware Trustee” has the meaning set forth in the Claimant Trust Agreement.

(h) “Disability” means as a result of the Litigation Trustee’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(i) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(j) “Employee” means the employees of the Debtor set forth in the Plan Supplement.

(k) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(l) “Litigation Sub-Trust” means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) “Litigation Sub-Trust Agreement” means this Agreement.

(n) “Litigation Sub-Trust Assets” means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) “Litigation Sub-Trust Beneficiary” means the Claimant Trust.

(p) “Litigation Sub-Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) “Litigation Sub-Trust Expense Cash Reserve” means \$[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the

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Litigation Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) “Litigation Trustee” means Marc S. Kirschner as the initial “Litigation Trustee” hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

(s) “Oversight Board” has the meaning set forth in the Claimant Trust Agreement.

(t) “Plan” has the meaning set forth in the Recitals hereof.

(u) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(v) “Securities Act” means the Securities Act of 1933, as amended.

(w) “TIA” means the Trust Indenture Act of 1939, as amended.

(x) “Trust Interests” means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

**ARTICLE II.**  
**ESTABLISHMENT OF THE LITIGATION SUB-TRUST**

**2.1 Establishment of Sub-Trust.**

(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole Litigation Sub-Trust Beneficiary, which shall be known as the “Highland Litigation Sub-Trust,” on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

**2.2 Nature and Purposes of the Litigation Sub-Trust.** The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trust Agreement, the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, Employee Claims. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement).

**2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.**

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically and irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, Employee Claims, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and Employee Claims and shall be treated as such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.



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(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE LITIGATION TRUSTEE**

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

### 3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement). To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims or Employee Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all

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Estate Claims, Employee Claims, or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor's property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;

(viii) make all payments relating to the Litigation Sub-Trust Assets;

(ix) assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;

(x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;

(xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;

(xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;

(xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the

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Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and

(xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the “Authorized Acts”).

(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

(i) terminate or extend the term of the Litigation Sub-Trust;

(ii) commence litigation with respect to any Estate Claims and, if applicable under the terms of the Claimant Trust Agreement, the Employee Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;

(iii) settle, dispose of, or abandon any Estate Claims (including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim);

(iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;

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(v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;

(vi) change the compensation of the Litigation Trustee; and

(vii) retain counsel, experts, advisors, or any other professionals.

(c) [Reserved]

3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation



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Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the "Interim Trustee") until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person's appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee's capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

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3.10 Litigation Trustee as “Estate Representative”. The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

### 3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.

### 3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant

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employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive initial compensation in a manner and amount as agreed upon by the Committee. Any additional compensation or compensation of a Successor Litigation Trustee shall be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.

#### (b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other

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than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

#### **ARTICLE V.** **TRUST INTERESTS**

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.



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5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

## ARTICLE VI. DISTRIBUTIONS

6.1 Distributions. The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within 30 days of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 Manner of Payment or Distribution. All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

## ARTICLE VII. TAX MATTERS

7.1 Tax Treatment and Tax Returns. It is intended that the Litigation Sub-Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) the sole beneficiary of which is the Claimant Trust. Consistent



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with such treatment, it is intended that the transfer of the Litigation Sub Trust Assets from the Claimant Trust to the Litigation Sub Trust will be treated as a non-event for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). Further, because the Claimant Trust is itself intended to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), it is intended that the beneficiaries of the Claimant Trust will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Litigation Trustee shall cooperate with the Claimant Trustee in connection with the preparation and filing of any federal income tax returns (and foreign, state, and local income tax returns where applicable) or information statements relating to the Litigation Sub Trust Assets.

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.

## ARTICLE VIII. STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Litigation

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Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.

8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the “Indemnified Parties”) shall be indemnified by the Litigation Sub-Trust against and held harmless by the Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party’s reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

#### ARTICLE IX. TERMINATION

9.1 Duration. The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify

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further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets.

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

## ARTICLE X. AMENDMENTS AND WAIVER

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

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**ARTICLE XI.**  
**MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner  
c/o Goldin Associates LLC, a Teneo Company  
350 Fifth Avenue  
New York, New York 10118

With a copy to:

**[insert contact for counsel to the Litigation Trustee].**

(b) If to the Claimant Trustee:

Claimant Trustee  
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)



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Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of,



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through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

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IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By:

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant  
Trustee

Litigation Trustee

By:

Marc S. Kirschner, not individually but  
solely in his capacity as the Litigation Trustee

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## EXHIBIT U

Draft

**LITIGATION SUB-TRUST AGREEMENT**

This Litigation Sub-Trust Agreement, effective as of \_\_\_\_\_, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this “Agreement”), by and among James P. Seery, Jr., as trustee of the Highland Claimant Trust (the “Claimant Trustee”), [ ] as Delaware Trustee, and Marc S. Kirschner as trustee (the “Litigation Trustee,” and together with the Claimant Trustee [and Delaware Trustee], the “Parties”) of the Litigation Sub-Trust for the benefit of the Claimant Trust as sole Litigation Sub-Trust Beneficiary.

**RECITALS**

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (the “Debtor”) filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>1</sup> which was confirmed by the Bankruptcy Court on \_\_\_\_\_, 2021, pursuant to the Findings of Fact and Order Confirming Plan of Reorganization for the Debtor [Docket No. •] (the “Confirmation Order”);

WHEREAS, this Agreement, including all exhibits hereto, is the “Litigation Sub-Trust Agreement” described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Litigation Sub-Trust Assets are hereby to be transferred by the Claimant Trust to the Litigation Sub-Trust (each as defined herein) created and evidenced by this Agreement so that (i) Estate Claims can be investigated, prosecuted, settled, abandoned, resolved, and otherwise monetized as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; (ii) proceeds of Estate Claims can be remitted to the Claimant Trust as Claimant Trust Assets for distribution to the Claimant Trust Beneficiaries (as defined in the Claimant Trust Agreement) in accordance with the Plan and Claimant Trust Agreement; (iii) the Litigation Trustee can investigate, litigate, settle, or otherwise resolve any Filed Claims relating to the Estate Claims, including the Employee Claims; and (iv) administrative services relating to the activities of the Litigation Sub-Trust can be performed by the Litigation Trustee.

**DECLARATION OF TRUST**

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Litigation Trustee and the Claimant Trustee have executed this Agreement for the benefit of the Claimant Trust as provided for in the Plan.

TO HAVE AND TO HOLD unto the Litigation Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Litigation Sub-Trust in accordance with Article IX hereof, this Litigation Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Litigation Sub-Trust Assets are to be strictly held and applied by the Litigation Trustee subject to the specific terms set forth below.

#### **ARTICLE I. DEFINITION AND TERMS**

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the “Definitions,” Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Bankruptcy Court” has the meaning set forth in the Recitals hereof.
- (b) “Cause” means (i) a Person’s willful failure to perform his material duties hereunder (which material duties shall include, without limitation, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person’s commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person’s conviction of a felony with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person’s gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.
- (c) “Claimant Trust Agreement” means the Claimant Trust Agreement dated [ ], 2021, by and between the Debtor, Claimant Trustee, and Delaware Trustee.
- (d) “Claimant Trustee” means James P. Seery, Jr., as the initial “Claimant Trustee” under the Claimant Trust Agreement and as defined in the Plan, and any successor Claimant Trustee who may be appointed pursuant to the terms of the Claimant Trust Agreement.
- (e) “Claimant Trust” means the “Highland Claimant Trust” established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to the Claimant Trust Agreement.
- (f) “Delaware Statutory Trust Act” means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.



(g) “Delaware Trustee” has the meaning set forth in the Claimant Trust Agreement.

(h) “Disability” means as a result of the Litigation Trustee’s incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Litigation Trustee, the Litigation Trustee has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(i) “Estate Claims” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(j) “Employee” means the employees of the Debtor set forth in the Plan Supplement.

(k) “Employee Claims” means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(l) “Litigation Sub-Trust” means the sub-trust created pursuant to this Agreement, and in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d).

(m) “Litigation Sub-Trust Agreement” means this Agreement.

(n) “Litigation Sub-Trust Assets” means the Estate Claims and the Litigation Sub-Trust Expense Cash Reserve.

(o) “Litigation Sub-Trust Beneficiary” means the Claimant Trust.

(p) “Litigation Sub-Trust Expenses” means the costs, expenses, liabilities and obligations incurred by the Litigation Sub-Trust and/or the Litigation Trustee in administering and conducting the affairs of the Litigation Sub-Trust, and otherwise carrying out the terms of the Litigation Sub-Trust and the Plan on behalf of the Litigation Sub-Trust, including without any limitation, any taxes owed by the Litigation Sub-Trust, and the fees and expenses of the Litigation Trustee and professional persons retained by the Litigation Sub-Trust or Litigation Trustee in accordance with Article 3.12(b) of this Agreement.

(q) “Litigation Sub-Trust Expense Cash Reserve” means \$[•] million in Cash to be funded by the Debtor or Reorganized Debtor, as applicable, pursuant to the Plan into a bank account of the Litigation Sub-Trust (or of the Claimant Trust for the benefit of the Litigation Sub-Trust) on or before the Effective Date for the purpose of paying Litigation Sub-Trust Expenses in accordance herewith.

(r) “Litigation Trustee” means Marc S. Kirschner as the initial “Litigation Trustee” hereunder and under the Plan, and any successor Litigation Trustee who may be appointed pursuant to the terms of this Agreement.

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(s) “Oversight Board” has the meaning set forth in the Claimant Trust Agreement.

(t) “Plan” has the meaning set forth in the Recitals hereof.

(u) “Privileges” means the Debtor’s rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to, attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that “Privileges” shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(v) “Securities Act” means the Securities Act of 1933, as amended.

(w) “TIA” means the Trust Indenture Act of 1939, as amended.

(x) “Trust Interests” means the trust interest(s) to be distributed to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary.

(y) “Trust Register” has the meaning given to it in Section 5.3(b) hereof.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all cases where they would apply. “Includes” and “including” are not limiting and “or” is not exclusive. References to “Articles,” “Sections” and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words “herein,” “hereafter” and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol “\$” shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

## **ARTICLE II.**

### **ESTABLISHMENT OF THE LITIGATION SUB-TRUST**

#### **2.1 Establishment of Sub-Trust.**

(a) The Parties, pursuant to the Plan and the Confirmation Order and in accordance with the applicable provisions of the Bankruptcy Code, hereby establish a statutory trust under the Delaware Statutory Trust Act on behalf of the Claimant Trust as the sole

Litigation Sub-Trust Beneficiary, which shall be known as the “Highland Litigation Sub-Trust,” on the terms set forth herein. The Litigation Trustee may use this name in accordance with the terms and conditions set forth herein as the Litigation Trustee sees fit.

(b) The Litigation Trustee shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in his capacity as Litigation Trustee, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

**2.2 Nature and Purposes of the Litigation Sub-Trust.** The Litigation Sub-Trust is organized and established as a trust for the purpose of monetizing the Estate Claims and making distributions to Litigation Sub-Trust Beneficiary in a manner consistent with “liquidating trust” status under Treasury Regulation Section 301.7701-4(d). The Litigation Sub-Trust shall serve as a mechanism for investigating, prosecuting, settling, resolving, and otherwise monetizing all Estate Claims and distributing the proceeds of such Estate Claims to the Claimant Trust in a timely fashion in accordance with the Plan, the Confirmation Order, and this Agreement. The Litigation Sub-Trust and Litigation Trustee shall have and retain any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Estate Claim as of the Petition Date. Except as otherwise provided herein, the Litigation Sub-Trust shall have the sole responsibility for the pursuit and settlement of the Estate Claims, and, subject to the terms of the Claimant Trust Agreement, the sole power and authority to allow or settle and compromise any Claims related to the Estate Claims, including, without limitation, Employee Claims. For the avoidance of doubt, the Litigation Sub-Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement).

### **2.3 Transfer of Assets and Rights to the Litigation Sub-Trust.**

(a) On or as soon as practicable after the Effective Date, the Claimant Trust shall automatically and irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims, Employee Claims, and Privileges. For purposes of the transfer of documents, the Litigation Sub-Trust is an assignee and successor to the Debtor in respect of the Estate Claims and Employee Claims and shall be treated as such in any review of confidentiality restrictions in requested documents. For the avoidance of doubt, following the Effective Date, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(b) Until the Litigation Sub-Trust terminates pursuant to the terms hereof, legal title to the Estate Claims shall be vested at all times in the Litigation Sub-Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Estate Claims to be vested in the Litigation Trustee, in which case title shall be deemed to be vested in the Litigation Trustee, solely in his capacity as Litigation Trustee. For purposes of such jurisdictions, the term Litigation Sub-Trust, as used herein, shall be read to mean the Litigation Trustee.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Estate Claims after the Effective Date. No Person or entity may rely on the absence of a specific reference in the Plan to any Estate Claim against them as any indication that the Litigation Trustee will not pursue any and all available Estate Claims or objections against them. Unless any Estate Claim against a Person or Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trustee expressly reserves all Estate Claims for later adjudication, and, therefore, no preclusion doctrine including the doctrine of res judicata, collateral, estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Estate Claims upon, after, or as a consequence of the Confirmation Order.

2.4 Principal Office. The principal office of the Litigation Sub-Trust shall be maintained by the Litigation Trustee at the following address: Goldin Associates, a Teneo Company, 350 Fifth Avenue, New York, New York 10118.

2.5 Acceptance. The Litigation Trustee accepts the Litigation Sub-Trust imposed by this Agreement and agrees to observe and perform that Litigation Sub-Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.6 Further Assurances. The Claimant Trustee and any successors thereof will, upon reasonable request of the Litigation Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Litigation Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Litigation Trustee the powers, instruments or funds in trust hereunder.

2.7 Incidents of Ownership. The Claimant Trust shall be the sole beneficiary of the Litigation Sub-Trust and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

### **ARTICLE III.** **THE LITIGATION TRUSTEE**

3.1 Role. In furtherance of and consistent with the purpose of the Litigation Sub-Trust, the Plan, and this Agreement, the Litigation Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Litigation Trustee with respect to the Litigation Sub-Trust Assets for the benefit of the Litigation Sub-Trust Beneficiary and maintain, manage, and take action on behalf of the Litigation Sub-Trust.

#### 3.2 Authority.

(a) In connection with the administration of the Litigation Sub-Trust, in addition to any and all of the powers enumerated elsewhere herein, the Litigation Trustee shall, in an expeditious but orderly manner, investigate, prosecute, settle, and otherwise resolve the Estate Claims. The Litigation Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement



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and the provisions of the Plan and the Confirmation Order relating to the Litigation Sub-Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law.

(b) The Litigation Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Estate Claims and Employee Claims (in accordance with the terms of the Claimant Trust Agreement). To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Estate Claims or Employee Claims prior to the Effective Date, on the Effective Date the Litigation Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following “Marc Kirschner, not individually but solely as Litigation Trustee for the Highland Litigation Sub-Trust, et al. v. [Defendant]”.

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Litigation Trustee shall have the power and authority to:

(i) hold legal title to any and all rights in or arising from the Litigation Sub-Trust Assets, including, but not limited to, the right to collect any and all money and other property belonging to the Litigation Sub-Trust (including any proceeds of the Litigation Sub-Trust Assets);

(ii) perform the duties, exercise the powers, and asserts the rights of a trustee under sections 1123(b)(3)(B) of the Bankruptcy Code with respect to the Litigation Sub-Trust Assets, including the right to assert claims, defenses, offsets, and privileges;

(iii) subject to any approval of the Oversight Board that may be required under Section 3.3(b), protect and enforce the rights of the Litigation Sub-Trust with respect to any Litigation Sub-Trust Assets by any method deemed appropriate, including, without limitation, by judicial proceeds, or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(iv) determine and satisfy any and all liabilities created, incurred, or assumed by the Litigation Sub-Trust;

(v) subject to any approval of the Oversight Board that may be required under Section 3.3(b), investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, prosecute, abandon, dismiss, exercise rights, powers and privileges with respect to or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, all Estate Claims, Employee Claims, or any other Causes of Action in favor of or against the Litigation Sub-Trust;

(vi) with respect to any Estate Claim, avoid and recover transfers of the Debtor’s property as may be permitted by the Bankruptcy Code or applicable state law;

(vii) subject to applicable law, seek the examination of any Entity or Person with respect to the Estate Claims;



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- (viii) make all payments relating to the Litigation Sub-Trust Assets;
- (ix) assess, enforce, release, or waive any privilege or defense on behalf of the Litigation Sub-Trust, the Litigation Sub-Trust Assets, or the Litigation Sub-Trust Beneficiary, if applicable;
- (x) prepare, or have prepared, and file, if necessary, with the appropriate taxing authority any and all tax returns, information returns, and other required documents with respect to the Litigation Sub-Trust, and pay taxes properly payable by the Litigation Sub-Trust;
- (xi) if not otherwise covered by insurance coverage obtained by the Claimant Trust, obtain reasonable insurance coverage with respect to any liabilities and obligations of the Litigation Trustee, solely in his capacity as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Litigation Sub-Trust Expense and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Reserve;
- (xii) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Litigation Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Litigation Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Litigation Trustee shall be Litigation Sub-Trust Expenses and paid by the Litigation Trustee from the Litigation Sub-Trust Expense Cash Reserve;
- (xiii) to the extent applicable, assert, enforce, release, or waive any Privilege or defense on behalf of the Litigation Sub-Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Litigation Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;
- (xiv) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Litigation Sub-Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder; and
- (xv) exercise such other powers and authority as may be vested in or assumed by the Litigation Trustee by any Final Order (the foregoing subparagraphs (i)-(xv) being collectively, the "Authorized Acts").

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(d) The Litigation Trustee has the power and authority to act as trustee of the Litigation Sub-Trust and perform the Authorized Acts through the date such Litigation Trustee resigns, is removed, or is otherwise unable to serve for any reason.

(e) Any determinations by the Liquidation Trustee, under the direction of the Oversight Board, with respect to the amount or timing of settlement or other disposition of any Estate Claims settled in accordance with the terms of this Agreement shall be conclusive and binding on the Litigation Sub-Trust Beneficiary and all other parties of interest following the entry of an order of a court of competent jurisdiction approving such settlement or other disposition to the extent required or obtained.

### 3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Litigation Sub-Trust and the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Estate Claims as required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, or (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Litigation Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 of the Claimant Trust Agreement, in order to:

- (i) terminate or extend the term of the Litigation Sub-Trust;
- (ii) commence litigation with respect to any Estate Claims and, if applicable under the terms of the Claimant Trust Agreement, the Employee Claims, including, without limitation, to (x) litigate, resolve, or settle coverage and/or the liability of any insurer under any insurance policy or legal action related thereto, or (y) pursue avoidance, recovery, or similar remedies that may be brought under chapter 5 of the Bankruptcy Code or under similar or related state or federal statutes or common law, including fraudulent transfer law;
- (iii) settle, dispose of, or abandon any Estate Claims (including any counterclaims to the extent such counterclaims are set off against the proceeds of any such Estate Claim);
- (iv) borrow funds as may be necessary to fund litigation or other costs of the Litigation Sub-Trust;
- (v) reserve or retain any cash or cash equivalents in the Litigation Sub-Trust Cash Reserve in an amount reasonably necessary to meet claims and contingent liabilities;
- (vi) change the compensation of the Litigation Trustee; and
- (vii) retain counsel, experts, advisors, or any other professionals.

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(c) [Reserved]

3.4 Binding Nature of Actions. All actions taken and determinations made by the Litigation Trustee in accordance with the provisions of this Agreement shall be final and binding upon the Litigation Sub-Trust Beneficiary.

3.5 Term of Service. The Litigation Trustee shall serve as the Litigation Trustee for the duration of the Litigation Sub-Trust, subject to death, resignation or removal.

3.6 Resignation. The Litigation Trustee may resign as trustee of the Litigation Sub-Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Litigation Trustee shall continue to serve as Litigation Trustee after delivery of the Litigation Trustee's resignation until the proposed effective date of such resignation, unless the Litigation Trustee and a [simple majority] of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Litigation Trustee in accordance with Section 3.8 hereof becomes effective.

3.7 Removal.

(a) The Litigation Trustee may be removed by a [simple majority] vote of the Oversight Board for Cause, immediately upon notice thereof, or without Cause, upon [60 days'] prior written notice.

(b) To the extent there is any dispute regarding the removal of a Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Litigation Trustee will continue to serve as the Litigation Trustee after his removal until the earlier of (i) the time when a successor Litigation Trustee will become effective in accordance with Section 3.8 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.8 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death, Disability, or removal of the Litigation Trustee, or prospective vacancy by reason of resignation, a successor Litigation Trustee shall be selected by a [simple majority] vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Litigation Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Litigation Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Litigation Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Litigation Sub-Trust, or the Claimant Trust on behalf of the Litigation Sub-Trust. The successor Litigation Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Litigation Trustee.

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(b) Vesting or Rights in Successor Litigation Trustee. Every successor Litigation Trustee appointed hereunder shall execute, acknowledge, and deliver to the Litigation Sub-Trust, the Claimant Trustee, the exiting Litigation Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Litigation Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Litigation Trustee except that the successor Litigation Trustee shall not be liable for the acts or omissions of the retiring Litigation Trustee. In no event shall the retiring Litigation Trustee be liable for the acts or omissions of the successor Litigation Trustee.

(c) Interim Litigation Trustee. During any period in which there is a vacancy in the position of Litigation Trustee, the Oversight Board shall appoint one of its Members or the Claimant Trustee to serve as the interim Litigation Trustee (the “Interim Trustee”) until a successor Litigation Trustee is appointed pursuant to Section 3.8(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Litigation Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board or Claimant Trustee, as applicable, merely by such Person’s appointment as Interim Trustee.

3.9 Continuance of Litigation Sub-Trust. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Sub-Trust created by this Agreement or to revoke any existing agency (other than any agency of the Litigation Trustee as the Litigation Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Litigation Trustee’s capacity under this Agreement and the conveyance of the Estate Claims then held by the exiting Litigation Trustee to the successor Litigation Trustee; (ii) deliver to the successor Litigation Trustee all non-privileged documents, instruments, records, and other writings relating to the Litigation Sub-Trust as may be in the possession or under the control of the exiting Litigation Trustee, provided, the exiting Litigation Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Litigation Trustee and the cost of making such copies shall be a Litigation Sub-Trust Expense to be paid by the Litigation Sub-Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Litigation Trustee’s obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Litigation Trustee by the Litigation Sub-Trust. The exiting Litigation Trustee shall irrevocably appoint the successor Litigation Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Litigation Trustee is obligated to perform under this Section 3.9.

3.10 Litigation Trustee as “Estate Representative”. The Litigation Trustee will be the exclusive trustee of the Litigation Sub-Trust Assets, for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the “Estate Representative”) with respect to the Estate Claims, with all rights and powers attendant thereto, in addition to all rights and powers granted



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in the Plan and in this Agreement. The Litigation Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Estate Claims, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interests constituting or relating to Estate Claims are preserved and retained and may be enforced by the Litigation Trustee as an Estate Representative.

### 3.11 Books and Records.

(a) The Litigation Trustee shall maintain, in respect of the Litigation Sub-Trust and the Claimant Trust, books and records pertinent to Estate Claims in its possession and the income of the Litigation Sub-Trust and payment of expenses, liabilities, and claims against or assumed by the Litigation Sub-Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Litigation Sub-Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Sub-Trust, or as a condition for managing any payment or distribution out of the Litigation Sub-Trust. Notwithstanding the foregoing, the Litigation Trustee shall retain such books and records, and for such periods, with respect to any Reorganized Debtor Assets as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

(b) The Litigation Trustee may dispose some or all of the books and records maintained by the Litigation Trustee at the later of (i) such time as the Litigation Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Litigation Sub-Trust, including with respect to the Estate Claims, or (ii) upon the termination and winding up of the Litigation Sub-Trust under Article IX of this Agreement.

### 3.12 Reports.

(a) Financial and Status Reports. The fiscal year of the Litigation Sub-Trust shall be the calendar year. Within 90 days after the end of each calendar year during the term of the Litigation Sub-Trust, and within 45 days after the end of each calendar quarter during (other than the fourth quarter) the term of the Litigation Sub-Trust and as soon as practicable upon termination of the Litigation Sub-Trust, the Litigation Trustee shall make available upon request to the Oversight Board or Litigation Sub-Trust Beneficiary appearing on its records as of the end of such period or such date of termination, a written report including: (i) unaudited financial statements of the Litigation Sub-Trust for such period, and, if the end of a calendar year, an unaudited report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee) reflecting the result of such agreed-upon procedures relating to the financial accounting administration of the Litigation Sub-Trust as proposed by the Litigation Trustee; (ii) a summary description of any action taken by the Litigation Sub-Trust that, in the judgment of the Litigation Trustee, materially affects the Litigation Sub-Trust and of which notice has not previously been given to the Oversight Board or Litigation Sub-Trust



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Beneficiary, provided, that any such description shall not include any privileged or confidential information of the Litigation Trustee; and (iii) a description of the progress of liquidating the Litigation Sub-Trust Assets and making distributions to the Litigation Sub-Trust Beneficiary and any other material information relating to the Litigation Sub-Trust Assets and the administration of the Litigation Sub-Trust deemed appropriate to be disclosed by the Litigation Trustee, which description shall include a written report detailing, among other things, the litigation status of the Estate Claims transferred to the Litigation Sub-Trust, any settlements entered into by the Litigation Sub-Trust with respect to the Estate Claims, the proceeds recovered to date from Estate Claims, and the distributions made by the Litigation Sub-Trust.

(b) Annual Plan and Budget. If instructed by the Oversight Board, the Litigation Trustee shall prepare and submit to the Oversight Board for approval an annual plan and budget in such detail as reasonably requested.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Litigation Trustee in connection with this Agreement, the Litigation Trustee shall receive initial compensation in a manner and amount as agreed upon by the Committee. Any additional compensation or compensation of a Successor Litigation Trustee shall be determined by the Oversight Board.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Litigation Trustee in the performance of his or her duties hereunder, shall be reimbursed as Litigation Sub-Trust Expenses paid by the Litigation Sub-Trust.

#### (b) Professionals.

(i) Engagement of Professionals. The Litigation Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Litigation Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Litigation Trustee shall pay the reasonable fees and expenses of any retained professionals as Litigation Sub-Trust Expenses.

3.14 Reliance by Litigation Trustee. Except as otherwise provided herein, the Litigation Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Litigation Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Litigation Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Litigation Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization

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and protection in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning Estate Claims, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Litigation Trustee in accordance therewith. The Litigation Sub-Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Litigation Sub-Trust Assets. The Litigation Trustee shall not commingle any of the Litigation Sub-Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee. The Delaware Trustee shall have the power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Litigation Sub-Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement as may be directed in a writing delivered to the Delaware Trustee by the Litigation Trustee; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Litigation Sub-Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Litigation Sub-Trust.]

#### **ARTICLE IV.** **THE OVERSIGHT BOARD**

The Oversight Board shall be governed by Article IV of the Claimant Trust Agreement.

#### **ARTICLE V.** **TRUST INTERESTS**

5.1 Litigation Sub-Trust Interests. On the date hereof, the Litigation Sub-Trust shall issue Trust Interests to the Claimant Trust as the sole Litigation Sub-Trust Beneficiary. The Litigation Sub-Trust Beneficiary shall be entitled to distributions from the Litigation Sub-Trust Assets in accordance with the terms of the Plan and this Agreement.

5.2 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected.

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5.3 Exemption from Registration. The Parties hereto intend that the rights of the Litigation Sub-Trust Beneficiary arising under this Litigation Sub-Trust shall not be “securities” under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Litigation Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Litigation Sub-Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Litigation Sub-Trust Beneficiary any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Litigation Trustee under this Agreement.

## ARTICLE VI. DISTRIBUTIONS

6.1 Distributions. The Litigation Trustee shall distribute Cash proceeds of the Estate Claims to the Claimant Trust within 30 days of receipt of such Cash proceeds, net of any amounts that (a) are reasonably necessary to maintain the value of the Litigation Sub-Trust Assets pending their monetization or other disposition during the term of the Litigation Sub-Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Litigation Sub-Trust Expenses and any other expenses incurred by the Litigation Sub-Trust (including, but not limited to, any taxes imposed on or payable by the Litigation Trustee with respect to the Litigation Sub-Trust Assets), and (c) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Litigation Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses).

6.2 Manner of Payment or Distribution. All distributions made by the Litigation Trustee on behalf of the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary shall be payable by the Litigation Trustee directly to the Claimant Trust, as sole Litigation Sub-Trust Beneficiary, on the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to the Claimant Trust shall be made pursuant to wire instructions provided by the Claimant Trustee to the Litigation Trustee.

## ARTICLE VII. TAX MATTERS

7.1 Tax Treatment and Tax Returns. It is intended that the Litigation Sub-Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) the sole beneficiary of which is the Claimant Trust. Consistent with such treatment, it is intended that the transfer of the Litigation Sub Trust Assets from the Claimant Trust to the Litigation Sub Trust will be treated as a non-event for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). Further, because

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the Claimant Trust is itself intended to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), it is intended that the beneficiaries of the Claimant Trust will be treated as the grantor of the Litigation Sub-Trust and owner of the Litigation Sub-Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Litigation Trustee shall cooperate with the Claimant Trustee in connection with the preparation and filing of any federal income tax returns (and foreign, state, and local income tax returns where applicable) or information statements relating to the Litigation Sub Trust Assets.

7.2 Withholding. The Litigation Trustee may withhold from any amount distributed from the Litigation Sub-Trust to the Litigation Sub-Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the Litigation Sub-Trust Beneficiary. As a condition to receiving any distribution from the Litigation Sub-Trust, the Litigation Trustee may require that the Litigation Sub-Trust Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Litigation Trustee to comply with applicable tax reporting and withholding laws.

#### **ARTICLE VIII.** **STANDARD OF CARE AND INDEMNIFICATION**

8.1 Standard of Care. None of the Litigation Trustee, acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan, the Oversight Board, or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Litigation Sub-Trust or to any Person (including the Litigation Sub-Trust Beneficiary and Claimant Trust Beneficiaries) in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Litigation Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Litigation Sub-Trust, the Litigation Trustee, or Oversight Board shall not be personally liable to the Litigation Sub-Trust or any other Person in connection with the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Litigation Trustee, Oversight Board, or any Member shall be personally liable to the Litigation Sub-Trust or to any Person for the acts or omissions of any employee, agent or professional of the Litigation Sub-Trust or Litigation Trustee, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Litigation Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Litigation Sub-Trust.



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8.2 Indemnification. The Litigation Trustee (including each former Litigation Trustee), Oversight Board, and all past and present Members (collectively, the “Indemnified Parties”) shall be indemnified by the Litigation Sub-Trust against and held harmless by the Litigation Sub-Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys’ fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Litigation Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Litigation Sub-Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party’s acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Litigation Sub-Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Litigation Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Litigation Trustee and/or Oversight Board of an indemnification obligation will not excuse the Litigation Sub-Trust from indemnifying the Indemnified Party unless such delay has caused the Litigation Sub-Trust material harm. The Litigation Sub-Trust shall periodically advance or otherwise reimburse on demand the Indemnified Party’s reasonable legal and other expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and related expenses) incurred in connection therewith as a Litigation Sub-Trust Expense, but the Indemnified Party shall be required to repay promptly to the Litigation Sub-Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, misconduct, or negligence in connection with the affairs of the Litigation Sub-Trust with respect to which such expenses were paid. The Litigation Sub-Trust shall indemnify and hold harmless the employees, agents and professionals of the Litigation Sub-Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Litigation Trustee or Member or the estate of any decedent Litigation Trustee or Member. The indemnification provided hereby shall be a Litigation Sub-Trust Expense.

8.3 To the extent applicable, the provisions and protections set forth in Article IX of the Plan will apply to the Litigation Sub-Trust, the Litigation Trustee, Oversight Board, and the Members.

#### **ARTICLE IX.** **TERMINATION**

9.1 Duration. The Litigation Trustee, the Litigation Sub-Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as the Litigation Trustee determines that the Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate, and all Distributions required to be made by the Litigation Trustee to the Litigation Sub-Trust Beneficiary under the Plan and this Agreement have been made, but in no event shall the Litigation Sub-Trust be dissolved later than [three years] from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such



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third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Litigation Sub-Trust Assets.

9.2 Continuance of the Litigation Trustee for Winding Up. After dissolution of the Litigation Sub-Trust and for purpose of liquidating and winding up the affairs of the Litigation Sub-Trust, the Litigation Trustee shall continue to act as such until the Litigation Trustee's duties have been fully performed. Prior to the final distribution of all remaining Litigation Sub-Trust Assets, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Litigation Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Litigation Sub-Trust, until such time as the winding up of the Litigation Sub-Trust is completed. Upon the dissolution of the Litigation Sub-Trust and completion of the winding up of the assets, liabilities and affairs of the Litigation Sub-Trust pursuant to the Delaware Statutory Trust Act, the Litigation Trustee shall file a certificate of cancellation with the State of Delaware to terminate the Litigation Sub-Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). Subject in all respects to 3.11, upon the Termination date, the Litigation Trustee shall retain for a period of two (2) years, as a Litigation Sub-Trust Expense, the books, records, and certificated and other documents and files that have been delivered to or created by the Litigation Trustee. Subject in all respects to Section 3.11, at the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.3 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Litigation Sub-Trust, the Litigation Trustee, the Oversight Board, and its Members shall have no further duties or obligations hereunder.

## **ARTICLE X.** **AMENDMENTS AND WAIVER**

The Litigation Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Litigation Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Litigation Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement.

## **ARTICLE XI.** **MISCELLANEOUS**

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Litigation Sub-Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Litigation Sub-Trust Beneficiary.

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11.2 Litigation Sub-Trust Beneficiary has No Legal Title to Litigation Sub-Trust Assets. The Litigation Sub-Trust Beneficiary shall have no legal title to any part of the Litigation Sub-Trust Assets.

11.3 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Litigation Trustee, Oversight Board, and the Litigation Sub-Trust Beneficiary any legal or equitable right, remedy or claim under or in respect of this Agreement. The Litigation Sub-Trust Assets shall be held for the sole and exclusive benefit of the Litigation Sub-Trust Beneficiary.

11.4 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Litigation Trustee:

Marc S. Kirschner  
c/o Goldin Associates LLC, a Teneo Company  
350 Fifth Avenue  
New York, New York 10118

With a copy to:

**[insert contact for counsel to the Litigation Trustee].**

(b) If to the Claimant Trustee:

Claimant Trustee  
c/o **[insert contact info for Claimant Trustee]**

With a copy to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd, 13<sup>th</sup> Floor  
Los Angeles, CA 90067  
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)  
Ira Kharasch (ikharasch@pszjlaw.com)  
Gregory Demo (gdemo@pszjlaw.com)

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.4 to the entity to be charged with knowledge of such change.

11.5 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition

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or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.6 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.7 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Litigation Sub-Trust, the Litigation Trustee, and the Litigation Sub-Trust Beneficiary, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Litigation Sub-Trust Beneficiary shall bind its successors and assigns.

11.8 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.9 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

11.10 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement or the Plan, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board, or any individual Member (solely in their capacity as Members of the Oversight Board); provided, however, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.11 Transferee Liabilities. The Litigation Sub-Trust shall have no liability for, and the Litigation Sub-Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Litigation Trustee or the Litigation Sub-Trust Beneficiary have any personal liability for such claims. If any liability shall be asserted against the Litigation Sub-Trust or the Litigation Trustee as the transferee of the Litigation Sub-Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Litigation Trustee may use such part of the Litigation Sub-Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Litigation Trustee as a Litigation Sub-Trust Expense.

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IN WITNESS HEREOF, the parties hereto have caused this Litigation Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Claimant Trustee

By:

James P. Seery, Jr., not individually but  
solely in his capacity as the Claimant  
Trustee

Litigation Trustee

By:

Marc S. Kirschner, not individually but  
solely in his capacity as the Litigation Trustee

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<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	6
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	9



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## EXHIBIT V

**SENIOR EMPLOYEE STIPULATION AND TOLLING  
AGREEMENT EXTENDING STATUTES OF LIMITATION**

This stipulation (the “Stipulation”) is entered into as of [\_\_\_\_], by and between [EMPLOYEE NAME] (the “Senior Employee”) and Highland Capital Management, L.P. (the “Debtor”). The Debtor and the Senior Employee are individually referred to as a “Party” and collectively as the “Parties”.

**RECITALS**

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”);

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case;

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the “Plan”)¹ [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [\_\_\_\_] and in such role provided services to the Debtor;

WHEREAS, (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the “Bonus Amount”) were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Bonus Amount through and including the date hereof is \$ [\_\_\_\_];

WHEREAS, on [\_\_\_\_], the Senior Employee filed a proof of claim [Claim No. [\_\_\_\_]] (the “Proof of Claim”), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other Claims against the Debtor in addition to the Bonus Amount (the “Other Employee Claims” and together with the Bonus Amount, the “Senior Employee Claims”)²:

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

² For the avoidance of doubt, the “Other Employee Claims” shall include all prepetition and postpetition Claims of

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WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the “Causes of Action”):

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the “Released Causes of Action”) against the Senior Employee as set forth in therein (the “Employee Release”):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the “CTOC”) to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee’s agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount which would otherwise be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the “HCMLP Parties”), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the “Termination Date”). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the “Independent Members”), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- (1) sues, attempts to sue, or threatens or works with or assists

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the Senior Employee, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable) but shall not include the Bonus Amount.

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any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the “Notice”) to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the “Notice Date”).

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the “Dissolution Date”).

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor’s successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee’s obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee’s rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor’s successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the “Tolling Period”). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Allowed Class 7 distribution on the Bonus Amount will be further reduced by 5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and any other Claims in favor of the Plan.

9. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and



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such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

**Senior Employee**

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

With a copy to:

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**Attorneys for Senior Employee**

[ ]  
[ ]  
[ ]  
[ ]

Email: [ ]

**HCMLP**

Highland Capital Management, L.P

[ ]  
[ ]

Attention: James P. Seery, Jr.

Telephone No.: [ ]

Email: [ ]

With a copy to:

**Attorneys for HCMLP**

[ ]  
[ ]  
[ ]  
[ ]

Email: [ ]

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

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*[Remainder of Page Blank]*

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**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SENIOR EMPLOYEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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## **EXHIBIT W**



# **SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION**

This stipulation (the “Stipulation”) is entered into as of [\_\_\_\_], by and between [EMPLOYEE NAME] (the “Senior Employee”) and Highland Capital Management, L.P. (the “Debtor”). The Debtor and the Senior Employee are individually referred to as a “Party” and collectively as the “Parties”.

## **RECITALS**

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”) and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the “Chapter 11 Case”):

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the “Committee”) in the Chapter 11 Case;

WHEREAS, on November 13, 2020, the Debtor filed the *Third/Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended, or supplemented, or otherwise modified from time to time, the “Plan”):<sup>1</sup> [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its [\_\_\_\_] and in such role provided services to the Debtor;

WHEREAS, the Senior Employee is owed for his services (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the “Earned Amounts”); WHEREAS, the Committee objected to the Senior Employee receiving the Earned Amounts during the Chapter 11 Case and the Earned Amounts, although earned, was not paid (Bonus Amount) were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Earned Amounts Bonus Amount through and including the date hereof owed to the Senior Employee is \$ [\_\_\_\_];

WHEREAS, on [\_\_\_\_], the Senior Employee filed a proof of claim [Claim No. [\_\_\_\_]] (the “Proof of Claim”), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other prepetition and postpetition Claims against the Debtor in addition to the Earned Amounts Bonus Amount (the “Other Employee Claims” and together with the Bonus Amount, the “Senior”

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Employee Claims”<sup>2</sup>:

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the “Causes of Action”):

WHEREAS, the Plan provides for the release of ~~such~~ certain of the Causes of Action (the “Released Causes of Action”) against the Senior Employee as set forth in therein (the “Employee Release”):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Effective Date of the Plan and ~~reducing his Earned Amounts as set forth herein~~ Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the “CTOC”) to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee’s agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the ~~Earned Amounts~~ Bonus Amount which would otherwise ~~be to be part of~~ the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the “HCMLP Parties”), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the “Termination Date”). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the ~~Earned Amounts~~ Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the “Independent Members”), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then

<sup>2</sup> For the avoidance of doubt, the “Other Employee Claims” shall include all prepetition and postpetition Claims of the Senior Employee ~~except for the Earned Amounts, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable) but shall not include the Bonus Amount.~~

currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the “Notice”) to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the “Notice Date”).

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the “Dissolution Date”).

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor’s successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee’s obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee’s rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor’s successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties’ “Covenant Not to Sue” (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the “Tolling Period”). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that

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this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Earned Amounts Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Earned Amounts Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Earned Amounts Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Earned Amounts Allowed Class 7 distribution on the Bonus Amount will be further reduced by 40.5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Earned Amounts Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan and vote any, including, without limitation, filing a notice of such Senior Employee's withdrawal from the Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and



any other Claims in favor of the Plan.

9. ~~8.~~ Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

**Senior Employee**

[  
[  
[



[ ]  
Email: [ ]

With a copy to:

**Attorneys for Senior Employee**

[ ]  
[ ]  
[ ]  
[ ]  
Email: [ ]

**HCMLP**

Highland Capital Management, L.P

[ ]  
[ ]  
Attention: James P. Seery, Jr.  
Telephone No.: [ ]  
Email: [ ]

With a copy to:

**Attorneys for HCMLP**

[ ]  
[ ]  
[ ]  
[ ]  
Email: [ ]

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

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k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Blank]*

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**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SENIOR EMPLOYEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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Document comparison by Workshare 9.5 on Thursday, January 21, 2021  
4:39:21 PM

Input:	
Document 1 ID	PowerDocs://DOCS_NY/41454/10
Description	DOCS_NY-#41454-v10-Highland_-_Senior_Employee_Stipulation
Document 2 ID	PowerDocs://DOCS_NY/41454/18
Description	DOCS_NY-#41454-v18-Highland_-_Senior_Employee_Stipulation
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	44
Deletions	32
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	76

**EXHIBIT X**



**Schedule of Contracts and Leases to Be Assumed**

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

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17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.
18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

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33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest
47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.
48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.
49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.
50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

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52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.
53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.
54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.
55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.
56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.
59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.
60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.
61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.
62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.
63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.
64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.
65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.

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66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.
67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.
68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.
69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.
70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.
71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.
74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.
75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd



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83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.
88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

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98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association
105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.
112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

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115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery
116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel
117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms
118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Date Center Solutions
119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC

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## **EXHIBIT Y**

**1. Debtor**

Highland Capital Management, L.P.

**2. Professionals**

Pachulski Stang Ziehl & Jones LLP  
Development Specialists, Inc.  
Bradley Sharp  
Kurtzman Carson Consultants LLC  
Jenner & Block  
Morris, Nichols, Arsht & Tunnel LLP  
Morrison Cohen LLP  
Latham & Watkins LLP  
Richards Layton & Finger  
Winstead PC  
Rogge Dunn Group, PC  
Blank Rome LLP  
FTI Consulting  
Young Conaway Stargatt & Taylor  
Reid Collins Tsai  
Deloitte  
Price Waterhouse Coopers  
Maples (Cayman)  
Bell Nunnally  
Rowlett Hill Collins LLP  
Anderson Mori & Tomotsune  
Culhane Meadows PLLC  
Kim & Chang  
Willkie Farr & Gallagher LLP  
Wilmer Hale  
Carey Olsen  
ASW Law  
Eric Felton  
Morris, Nichols, Arsht & Tunnell LLP  
Morrison Cohen LLP  
Latham & Watkins LLP  
Richards Layton & Finger  
Winstead PC  
Rogge Dunn Group, PC  
Blank Rome LLP



### **3. Top 20 Unsecured Creditors**

Acis Capital Management, L.P. and Acis Capital Management GP, LLC  
 American Arbitration Association  
 Andrews Kurth LLP  
 Bates White, LLC  
 Boies, Schiller & Flexner LLP  
 CLO Holdco, Ltd.  
 Connolly Gallagher LLP  
 Debevoise & Plimpton LLP  
 DLA Piper LLP (US)  
 Duff & Phelps, LLC  
 Foley Gardere  
 Joshua & Jennifer Terry  
 Lackey Hershman LLP  
 McKool Smith, P.C.  
 Meta-e Discovery LLC  
 NWCC, LLC  
 Patrick Daugherty  
 Redeemer Committee of The Highland Crusader Fund  
 Reid Collins & Tsai LLP  
 UBS AG, London Branch and UBS Securities LLC

### **4. Equity Holders (Direct and Indirect)**

Atlas IDF GP LLC  
 Beacon Mountain LLC  
 Hunter Mountain Investment Trust  
 James Dondero  
 Mark K. Okada  
 Strand Advisors, Inc.  
 The Dugaboy Investment Trust  
 The Mark and Pamela Okada Family Trust – Exempt Trust #1  
 The Mark and Pamela Okada Family Trust – Exempt Trust #2

### **5. Affiliated Parties**

Acis CLO Management GP, LLC  
 Acis CLO Management Holdings, L.P.  
 Acis CLO Management Intermediate Holdings I, LLC  
 Acis CLO Management Intermediate Holdings II, LLC  
 Acis CLO Management, LLC  
 Acis CMOA Trust  
 Advisors Equity Group LLC  
 Asbury Holdings, LLC  
 Castle Bio Manager, LLC  
 De Kooning, Ltd.  
 Eagle Equity Advisors, LLC  
 Eames, Ltd.  
 Gunwale LLC

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HCREFF-I Holding Corp.  
 HCREFF-XI Holding Corp.  
 HCREFF-XII Holding Corp.  
 HE Capital Fox Trails, LLC  
 HE Capital, LLC  
 HE Mezz Fox Trails, LLC  
 HE Peoria Place Property, LLC  
 HE Peoria Place, LLC  
 HFP CDO Construction Corp.  
 HFP GP, LLC  
 Highland Argentina Regional Opportunity Fund GP, LLC  
 Highland Brasil, LLC  
 Highland Capital Management (Singapore) Pte Ltd  
 Highland Capital Management Korea  
 Highland Capital Management Korea Limited  
 Highland Capital Management Korea Limited (Relying Advisor)  
 Highland Capital Multi-Strategy Fund, LP  
 Highland CDO Holding Company  
 Highland CDO Opportunity Fund GP, L.P.  
 Highland CDO Opportunity GP, LLC  
 Highland CLO Assets Holdings Limited  
 Highland CLO Holdings Ltd.  
 Highland CLO Management, Ltd.  
 Highland Dynamic Income Fund GP, LLC  
 Highland Employee Retention Assets LLC  
 Highland ERA Management, LLC  
 Highland Financial Corp.  
 Highland Financial Partners, L.P.  
 Highland Fund Holdings, LLC  
 Highland HCF Advisor Ltd. (Relying Advisor)  
 Highland HCF Advisors Ltd.  
 Highland Latin America Consulting, Ltd  
 Highland Latin America GP Ltd.  
 Highland Latin America GP, Ltd.  
 Highland Latin America LP, Ltd.  
 Highland Latin America Trust  
 Highland Multi Strategy Credit Fund GP, L.P.  
 Highland Multi Strategy Credit Fund, L.P.  
 Highland Multi Strategy Credit GP, LLC  
 Highland Multi-Strategy Fund GP, LLC  
 Highland Multi-Strategy Fund GP, LP  
 Highland Multi-Strategy Master Fund, L.P.  
 Highland Multi-Strategy Onshore Master SubFund II, LLC  
 Highland Multi-Strategy Onshore Master Subfund, LLC  
 Highland Receivables Finance I, LLC  
 Highland Restoration Capital Partners GP, LLC  
 Highland Select Equity GP, LLC  
 Highland Select Equity Master Fund, L.P.  
 Highland Special Opportunities Holding Company  
 Highland SunBridge GP, LLC  
 Hirst, Ltd.

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Hockney, Ltd.  
 Lautner, Ltd.  
 Maple Avenue Holdings, LLC  
 Neutra, Ltd.  
 NexPoint Insurance Distributors, LLC  
 NexPoint Insurance Solutions GP, LLC  
 NexPoint Insurance Solutions, L.P.  
 NHT Holdco, LLC  
 NREA SE MF Holdings, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE Multifamily, LLC  
 NREA SE1 Andros Isles Leaseco, LLC  
 NREA SE1 Andros Isles Manager, LLC  
 NREA SE1 Arborwalk Leaseco, LLC  
 NREA SE1 Arborwalk Manager, LLC  
 NREA SE1 Towne Crossing Leaseco, LLC  
 NREA SE1 Towne Crossing Manager, LLC  
 NREA SE1 Walker Ranch Leaseco, LLC  
 NREA SE1 Walker Ranch Manager, LLC  
 NREA SE2 Hidden Lake Leaseco, LLC  
 NREA SE2 Hidden Lake Manager, LLC  
 NREA SE2 Vista Ridge Leaseco, LLC  
 NREA SE2 Vista Ridge Manager, LLC  
 NREA SE2 West Place Leaseco, LLC  
 NREA SE2 West Place Manager, LLC  
 NREA SE3 Arboleda Leaseco, LLC  
 NREA SE3 Arboleda Manager, LLC  
 NREA SE3 Fairways Leaseco, LLC  
 NREA SE3 Fairways Manager, LLC  
 NREA SE3 Grand Oasis Leaseco, LLC  
 NREA SE3 Grand Oasis Manager, LLC  
 NREA Southeast Portfolio One Manager, LLC  
 NREA Southeast Portfolio Three Manager, LLC  
 NREA Southeast Portfolio Two Manager, LLC  
 Oldenburg, Ltd.  
 Penant Management LP  
 Pershing LLC  
 PetroCap Incentive Partners III, LP  
 Pollack, Ltd.  
 SE Battleground Park, LLC  
 SE Glenview, LLC  
 SE Governors Green II, LLC  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Heights at Olde Towne, LLC  
 SE Lakes at Renaissance Park GP I, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Multifamily Holdings LLC  
 SE Multifamily REIT Holdings LLC  
 SE Myrtles at Olde Towne, LLC

SE Quail Landing, LLC  
SE River Walk, LLC  
SE SM, Inc.  
SE Stoney Ridge II, LLC  
SE Victoria Park, LLC  
SH Castle BioSciences, LLC  
Starck, Ltd.  
The Dondero Insurance Rabbi Trust  
The Okada Insurance Rabbi Trust  
Tihany, Ltd.  
US Gaming SPV, LLC  
US Gaming, LLC  
Warhol, Ltd.  
Wright, Ltd.

#### **6. Other Parties**

11 Estates Lane, LLC  
1110 Waters, LLC  
140 Albany, LLC  
1525 Dragon, LLC  
17720 Dickerson, LLC  
1905 Wylie LLC  
2006 Milam East Partners GP, LLC  
2006 Milam East Partners, L.P.  
201 Tarrant Partners, LLC  
2014 Corpus Weber Road LLC  
2325 Stemmons HoldCo, LLC  
2325 Stemmons Hotel Partners, LLC  
2325 Stemmons TRS, Inc.  
300 Lamar, LLC  
3409 Rosedale, LLC  
3801 Maplewood, LLC  
3801 Shenandoah, L.P.  
3820 Goar Park LLC  
400 Seaman, LLC  
401 Ame, L.P.  
4201 Locust, L.P.  
4312 Belclaire, LLC  
5833 Woodland, L.P.  
5906 DeLoache, LLC  
5950 DeLoache, LLC  
7758 Ronnie, LLC  
7759 Ronnie, LLC  
AA Shotguns, LLC  
Aberdeen Loan Funding, Ltd.  
Acis CLO 2017-7 Ltd  
Acis CLO Trust  
Allenby, LLC  
Allisonville RE Holdings, LLC  
AM Uptown Hotel, LLC

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Apex Care, L.P  
 Ascendant Advisors  
 Asury Holdings, LLC (fka HCSLR Camelback Investors (Delaware), LLC)  
 Atlas IDF LP  
 Atlas IDF, LP  
 Baylor University  
 BB Votorantim Highland Infrastructure, LLC  
 BDC Toys Holdco, LLC  
 BH Willowdale Manager, LLC  
 Big Spring Partners, LLC  
 Bloomdale, LLC  
 Brentwood CLO, Ltd.  
 Brentwood Investors Corp.  
 Bristol Bay Funding Ltd.  
 C-1 Arbors, Inc.  
 C-1 Cutter's Point, Inc.  
 C-1 Eaglecrest, Inc.  
 C-1 Silverbrook, Inc.  
 Cabi Holdco GP, LLC  
 Cabi Holdco I, Ltd.  
 Cabi Holdco, L.P.  
 Camelback Residential Investors, LLC (fka Sevilla Residential Partners, LLC)  
 Camelback Residential Partners, LLC  
 Capital Real Estate - Latitude, LLC  
 Castle Bio, LLC  
 CG Works, Inc. (fka Common Grace Ventures, Inc.)  
 Claymore Holdings, LLC  
 Concord Management, LLC  
 Corbusier, Ltd.  
 CP Equity Hotel Owner, LLC  
 CP Equity Land Owner, LLC  
 CP Equity Owner, LLC  
 CP Hotel TRS, LLC  
 CP Land Owner, LLC  
 CP Tower Owner, LLC  
 Crossings 2017 LLC  
 Crown Global Insurance Company  
 Dallas Cityplace MF SPE Owner LLC  
 Dallas Lease and Finance, L.P.  
 DFA/BH Autumn Ridge, LLC  
 Dolomiti, LLC  
 DrugCrafters, L.P.  
 Dugaboy Management, LLC  
 Dugaboy Project Management GP, LLC  
 Dustin Norris  
 Eastland CLO, Ltd.  
 Eastland Investors Corp.  
 EDS Legacy Heliport, LLC  
 EDS Legacy Partners Owner, LLC  
 EDS Legacy Partners, LLC  
 Entegra Strat Superholdco, LLC



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Entegra-FRO Holdco, LLC  
 Entegra-FRO Superholdco, LLC  
 Entegra-HOCF Holdco, LLC  
 Entegra-NHF Holdco, LLC  
 Entegra-NHF Superholdco, LLC  
 Entegra-RCP Holdco, LLC  
 Estates on Maryland Holdco, LLC  
 Estates on Maryland Owners SM, Inc.  
 Estates on Maryland Owners, LLC  
 Estates on Maryland, LLC  
 Falcon E&P Four Holdings, LLC  
 Falcon E&P One, LLC  
 Falcon E&P Opportunities Fund GP LLC  
 Falcon E&P Opportunities Fund, L.P.  
 Falcon E&P Opportunities GP, LLC  
 Falcon E&P Royalty Holdings, LLC  
 Falcon E&P Six, LLC  
 Falcon E&P Two, LLC  
 Falcon Four Midstream, LLC  
 Falcon Four Upstream, LLC  
 Falcon Incentive Partners GP, LLC  
 Falcon Incentive Partners, LP  
 Falcon Six Midstream, LLC  
 Fix Asset Management  
 Flamingo Vegas Holdco, LLC (fka Cabi Holdco, LLC)  
 Four Rivers Co-Invest, L.P.  
 Frank Waterhouse  
 FRBH Abbington SM, Inc.  
 FRBH Abbington, LLC  
 FRBH Arbors, LLC  
 FRBH Beechwood SM, Inc.  
 FRBH Beechwood, LLC  
 FRBH C1 Residential, LLC  
 FRBH Courtney Cove SM, Inc.  
 FRBH Courtney Cove, LLC  
 FRBH CP, LLC  
 FRBH Duck Creek, LLC  
 FRBH Eaglecrest, LLC  
 FRBH Edgewater JV, LLC  
 FRBH Edgewater Owner, LLC  
 FRBH Edgewater SM, Inc.  
 FRBH JAX-TPA, LLC  
 FRBH Nashville Residential, LLC  
 FRBH Regatta Bay, LLC  
 FRBH Sabal Park SM, Inc.  
 FRBH Sabal Park, LLC  
 FRBH Silverbrook, LLC  
 FRBH Timberglenn, LLC  
 FRBH Willow Grove SM, Inc.  
 FRBH Willow Grove, LLC  
 FRBH Woodbridge SM, Inc.

FRBH Woodbridge, LLC  
 Freedom C1 Residential, LLC  
 Freedom Duck Creek, LLC  
 Freedom Edgewater, LLC  
 Freedom JAX-TPA Residential, LLC  
 Freedom La Mirage, LLC  
 Freedom LHV LLC  
 Freedom Lubbock LLC  
 Freedom Miramar Apartments, LLC  
 Freedom Sandstone, LLC  
 Freedom Willowdale, LLC  
 FRM Investment Management  
 Fundo de Investimento em Direitos Creditórios BB Votorantim Highland Infraestrutura  
 G&E Apartment REIT The Heights at Olde Towne, LLC  
 G&E Apartment REIT The Myrtles at Olde Towne, LLC  
 GAF REIT, LLC  
 GAF Toys Holdco, LLC  
 Gardens of Denton II, L.P.  
 Gardens of Denton III, L.P.  
 Gleneagles CLO, Ltd.  
 Governance Ltd.  
 Governance Re, Ltd.  
 Governance, Ltd.  
 Grayson CLO, Ltd.  
 Grayson Investors Corp.  
 Greenbriar CLO, Ltd.  
 Grosvenor Capital Management, L.P.  
 Hakusan, LLC  
 Hammark Holdings LLC  
 Hampton Ridge Partners, LLC  
 Harko, LLC  
 Haverhill Acquisition Co., LLC  
 Haygood, LLC  
 HCBH 11611 Ferguson, LLC  
 HCBH Buffalo Pointe II, LLC  
 HCBH Buffalo Pointe III, LLC  
 HCBH Buffalo Pointe, LLC  
 HCBH Hampton Woods SM, Inc.  
 HCBH Hampton Woods, LLC  
 HCBH Overlook SM, Inc.  
 HCBH Overlook, LLC  
 HCBH Rent Investors, LLC  
 HCF Funds  
 HCMS Falcon GP, LLC  
 HCMS Falcon, L.P.  
 HCO Holdings, LLC  
 HCOF Preferred Holdings, LP  
 HCOF Preferred Holdings, Ltd.  
 HCRE 1775 James Ave, LLC  
 HCRE Addison TRS, LLC  
 HCRE Addison, LLC (fka HWS Addison, LLC)

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HCRE Hotel Partner, LLC (fka HCRE HWS Partner, LLC)  
HCRE Las Colinas TRS, LLC  
HCRE Las Colinas, LLC (fka HWS Las Colinas, LLC)  
HCRE Partners, LLC  
HCRE Plano TRS, LLC  
HCRE Plano, LLC (fka HWS Plano, LLC)  
HCRE-III Holding Corp.  
HCRE-IV Holding Corp.  
HCRE-IX Holding Corp.  
HCRE-V Holding Corp.  
HCRE-VI Holding Corp.  
HCRE-VII Holding Corp.  
HCRE-VIII Holding Corp.  
HCRE-XIII Holding Corp.  
HCRE-XIV Holding Corp.  
HCRE-XV Holding Corp.  
HCSLR Camelback Investors (Cayman), Ltd.  
HCSLR Camelback, LLC  
HE 41, LLC  
HE Capital 232 Phase I Property, LLC  
HE Capital 232 Phase I, LLC  
HE Capital Asante, LLC  
HE Capital KR, LLC  
HE CLO Holdco, LLC  
HE Mezz KR, LLC  
Heron Pointe Investors, LLC  
HFP Asset Funding II, Ltd.  
HFP Asset Funding III, Ltd.  
HFRO Sub, LLC  
Hibiscus HoldCo, LLC  
Highland - First Foundation Income Fund  
Highland 401(k) Plan  
Highland Argentina Regional Opportunity Fund, L.P.  
Highland Argentina Regional Opportunity Fund, Ltd.  
Highland Argentina Regional Opportunity Master Fund, L.P.  
Highland Capital Brasil Gestora de Recursos (fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA)  
Highland Capital Insurance Solutions GP LLC  
Highland Capital Insurance Solutions LP  
Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)  
Highland Capital Management Fund Advisors, L.P. (fka Pyxis Capital, L.P.)  
Highland Capital Management Latin America, L.P.  
Highland Capital Management Latin America, L.P. (Relying Advisor)  
Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.  
Highland Capital Management Services, Inc.  
Highland Capital Management, L.P.  
Highland Capital Management, L.P. Charitable Fund  
Highland Capital Management, L.P. Retirement Plan and Trust  
Highland Capital of New York

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Highland Capital of New York, Inc.  
 Highland Capital Real Estate Fund GP, LLC  
 Highland Capital Special Allocation, LLC  
 Highland CDO Opportunity Fund, L.P.  
 Highland CDO Opportunity Fund, Ltd.  
 Highland CDO Opportunity Master Fund, L.P.  
 Highland CDO Trust  
 Highland CLO 2018-1, Ltd.  
 Highland CLO Assets Holdings Limited  
 Highland CLO Funding, Ltd. (fka Acis Loan Funding, Ltd.)  
 Highland CLO Gaming Holdings, LLC  
 Highland CLO Management Ltd.  
 Highland CLO Trust  
 Highland Credit Opportunities CDO Asset Holdings GP, Ltd.  
 Highland Credit Opportunities CDO Asset Holdings, L.P.  
 Highland Credit Opportunities CDO Financing, LLC  
 Highland Credit Opportunities CDO, Ltd.  
 Highland Credit Opportunities Holding Corporation  
 Highland Credit Opportunities Japanese Feeder Sub-Trust  
 Highland Credit Strategies Fund, L.P.  
 Highland Credit Strategies Fund, Ltd.  
 Highland Credit Strategies Holding Corporation  
 Highland Credit Strategies Master Fund, L.P.  
 Highland Crusader Fund  
 Highland Dynamic Income Fund, L.P. (fka Highland Capital Loan Fund, L.P.)  
 Highland Dynamic Income Fund, Ltd. (fka Highland Loan Fund, Ltd.)  
 Highland Dynamic Income Master Fund, L.P. (fka Highland Loan Master Fund, L.P.)  
 Highland Energy Holdings, LLC  
 Highland Energy MLP Fund (fka Highland Energy and Materials Fund)  
 Highland eSports Private Equity Fund  
 Highland Fixed Income Fund  
 Highland Flexible Income UCITS Fund  
 Highland Floating Rate Fund  
 Highland Floating Rate Opportunities Fund (fka Highland Floating Rate Opportunities Fund II)  
 Highland Fund Holdings, LLC  
 Highland Funds I  
 Highland Funds II  
 Highland Funds III  
 Highland GAF Chemical Holdings, LLC  
 Highland General Partner, LP  
 Highland Global Allocation Fund (fka Highland Global Allocation Fund II)  
 Highland GP Holdings, LLC  
 Highland Healthcare Equity Income and Growth Fund  
 Highland iBoxx Senior Loan ETF  
 Highland Income Fund (fka Highland Floating Rate Opportunities Fund)  
 Highland Legacy Limited  
 Highland LF Chemical Holdings, LLC  
 Highland Loan Funding V, Ltd.  
 Highland Long/Short Equity Fund  
 Highland Long/Short Healthcare Fund  
 Highland Marcal Holding, Inc.

Highland Merger Arbitrage Fund  
 Highland Multi Strategy Credit Fund, Ltd. (fka Highland Credit Opportunities Fund, Ltd.)  
 Highland Multi Strategy Credit Fund, Ltd. (fka Highland Credit Opportunities Fund, Ltd.)  
 Highland Multi-Strategy Fund GP, LLC  
 Highland Multi-Strategy Fund GP, LP  
 Highland Multi-Strategy IDF GP, LLC  
 Highland Opportunistic Credit Fund  
 Highland Park CDO 1, Ltd.  
 Highland Premium Energy & Materials Fund  
 Highland Prometheus Feeder Fund I, L.P.  
 Highland Prometheus Feeder Fund II, L.P.  
 Highland Prometheus Master Fund, L.P.  
 Highland RCP Fund II, L.P.  
 Highland RCP II GP, LLC  
 Highland RCP II SLP GP, LLC  
 Highland RCP II SLP, L.P.  
 Highland RCP Parallel Fund II, L.P.  
 Highland Restoration Capital Partners Master, L.P.  
 Highland Restoration Capital Partners Offshore, L.P.  
 Highland Restoration Capital Partners, L.P.  
 Highland Select Equity Fund GP, L.P.  
 Highland Select Equity Fund, L.P.  
 Highland Small-Cap Equity Fund  
 Highland Socially Responsible Equity Fund (fka Highland Premier Growth Equity Fund)  
 Highland Tax-Exempt Fund  
 Highland TCI Holding Company, LLC  
 Highland Total Return Fund  
 Highland's Roads Land Holding Company, LLC  
 HMCf PB Investors, LLC  
 HRT North Atlanta, LLC  
 HRT Timber Creek, LLC  
 HRTBH North Atlanta, LLC  
 HRTBH Timber Creek, LLC  
 Huber Funding LLC  
 HWS Investors Holdco, LLC  
 James Dondero  
 Jasper CLO, Ltd.  
 Jewelry Ventures I, LLC  
 JMIJM, LLC  
 John Honis  
 Karisopolis, LLC  
 Keelhaul LLC  
 Kuilima Montalban Holdings, LLC  
 Kuilima Resort Holdco, LLC  
 KV Cameron Creek Owner, LLC  
 Lakes at Renaissance Park Apartments Investors, L.P.  
 Lakeside Lane, LLC  
 Landmark Battleground Park II, LLC  
 LAT Battleground Park, LLC  
 LAT Briley Parkway, LLC  
 Lauren Thedford



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Leawood RE Holdings, LLC  
 Liberty Cayman Holdings, Ltd.  
 Liberty CLO, Ltd.  
 Long Short Equity Sub, LLC  
 Longhorn Credit Funding, LLC  
 Lurin Real Estate Holdings V, LLC  
 Mark and Pamela Okada Family Trust - Exempt Descendants' Trust  
 Mark and Pamela Okada Family Trust - Exempt Trust #2  
 Mark Okada  
 Markham Fine Jewelers, L.P.  
 Meritage Residential Partners, LLC  
 ML CLO XIX Sterling (Cayman), Ltd.  
 NCI Assets Holding Company LLC  
 New Jersey Tissue Company Holdco, LLC (fka Marcal Paper Mills Holding Company, LLC)  
 NexAnnuity Holdings, Inc.  
 NexBank Capital Inc.  
 NexBank Capital Trust I  
 NexBank Capital, Inc.  
 NexBank Land Advisors, Inc.  
 NexBank Securities, Inc.  
 NexBank SSB  
 NexBank Title, Inc. (dba NexVantage Title Services)  
 NexBank Wealth Advisors  
 NexPoint Advisors GP, LLC  
 NexPoint Advisors, L.P.  
 NexPoint Capital Inc.  
 NexPoint Capital REIT, LLC  
 NexPoint Capital, Inc. (fka NexPoint Capital, LLC)  
 NexPoint CR F/H DST, LLC  
 NexPoint Discount Strategies Fund (fka NexPoint Discount Yield Fund)  
 NexPoint Energy and Materials Opportunities Fund (fka NexPoint Energy Opportunities Fund)  
 NexPoint Event-Driven Fund (fka NexPoint Merger Arbitrage Fund)  
 NexPoint Flamingo DST  
 NexPoint Flamingo Investment Co, LLC  
 NexPoint Flamingo Leaseco, LLC  
 NexPoint Flamingo Manager, LLC  
 NexPoint Funds  
 NexPoint Healthcare Opportunities Fund  
 NexPoint Hospitality Trust  
 NexPoint Hospitality, Inc.  
 NexPoint Hospitality, LLC  
 NexPoint Latin American Opportunities Fund  
 NexPoint Legacy 22, LLC  
 NexPoint Lincoln Porte Equity, LLC  
 NexPoint Lincoln Porte Manager, LLC  
 NexPoint Lincoln Porte, LLC (fka NREA Lincoln Porte, LLC)  
 NexPoint Multifamily Capital Trust, Inc. (fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)  
 NexPoint Multifamily Operating Partnership, L.P.  
 NexPoint Peoria, LLC  
 NexPoint RE Finance Advisor GP, LLC

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NexPoint RE Finance Advisor, L.P.  
 NexPoint Real Estate Advisors GP, LLC  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors III, L.P.  
 NexPoint Real Estate Advisors IV, L.P.  
 NexPoint Real Estate Advisors V, L.P.  
 NexPoint Real Estate Advisors VI, L.P.  
 NexPoint Real Estate Advisors VII GP, LLC  
 NexPoint Real Estate Advisors VII, L.P.  
 NexPoint Real Estate Advisors VIII, L.P.  
 NexPoint Real Estate Advisors, L.P.  
 NexPoint Real Estate Capital, LLC (fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC)  
 NexPoint Real Estate Finance OP GP, LLC  
 NexPoint Real Estate Finance Operating Partnership, L.P.  
 NexPoint Real Estate Finance, Inc.  
 NexPoint Real Estate Opportunities, LLC (fka Freedom REIT LLC)  
 NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)  
 NexPoint Real Estate Strategies Fund  
 NexPoint Residential Trust Inc.  
 NexPoint Residential Trust Operating Partnership GP, LLC  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Securities, Inc. (fka Highland Capital Funds Distributor, Inc.) (fka Pyxis Distributors, Inc.)  
 NexPoint Strategic Income Fund (fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund)  
 NexPoint Strategic Opportunities Fund (fka NexPoint Credit Strategies Fund)  
 NexPoint Texas Multifamily Portfolio DST (fka NREA Southeast Portfolio Two, DST)  
 NexPoint WLIF I Borrower, LLC  
 NexPoint WLIF II Borrower, LLC  
 NexPoint WLIF III Borrower, LLC  
 NexStrat LLC  
 NexVest, LLC  
 NexWash LLC  
 NFRO REIT Sub, LLC  
 NFRO TRS, LLC  
 NHF CCD, Inc.  
 NHT 2325 Stemmons, LLC  
 NHT Beaverton TRS, LLC (fka NREA Hotel TRS, Inc.)  
 NHT Beaverton, LLC  
 NHT Bend TRS, LLC  
 NHT Bend, LLC  
 NHT Destin TRS, LLC  
 NHT Destin, LLC  
 NHT DFW Portfolio, LLC  
 NHT Holdings, LLC  
 NHT Intermediary, LLC  
 NHT Nashville TRS, LLC  
 NHT Nashville, LLC  
 NHT Olympia TRS, LLC  
 NHT Olympia, LLC  
 NHT Operating Partnership GP, LLC

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NHT Operating Partnership II, LLC  
NHT Operating Partnership, LLC  
NHT Salem, LLC  
NHT SP Parent, LLC  
NHT SP TRS, LLC  
NHT SP, LLC  
NHT Tigard TRS, LLC  
NHT Tigard, LLC  
NHT TRS, Inc.  
NHT Uptown, LLC  
NHT Vancouver TRS, LLC  
NHT Vancouver, LLC  
NMRT TRS, Inc.  
NREA Adair DST Manager, LLC  
NREA Adair Investment Co, LLC  
NREA Adair Joint Venture, LLC  
NREA Adair Leaseco Manager, LLC  
NREA Adair Leaseco, LLC  
NREA Adair Property Manager LLC  
NREA Adair, DST  
NREA Ashley Village Investors, LLC  
NREA Cameron Creek Investors, LLC  
NREA Cityplace Hue Investors, LLC  
NREA Crossings Investors, LLC  
NREA Crossings Ridgewood Coinvestment, LLC (fka NREA Crossings Ridgewood Investors, LLC)  
NREA DST Holdings, LLC  
NREA El Camino Investors, LLC  
NREA Estates Inc.  
NREA Estates Investment Co, LLC  
NREA Estates Leaseco, LLC  
NREA Estates Manager, LLC  
NREA Estates Property Manager, LLC  
NREA Estates, DST  
NREA Gardens DST Manager, LLC  
NREA Gardens Investment Co, LLC  
NREA Gardens Leaseco Manager, LLC  
NREA Gardens Leaseco, LLC  
NREA Gardens Property Manager, LLC  
NREA Gardens Springing LLC  
NREA Gardens Springing Manager, LLC  
NREA Gardens, DST  
NREA Hidden Lake Investment Co, LLC  
NREA Hue Investors, LLC  
NREA Keystone Investors, LLC  
NREA Meritage Inc.  
NREA Meritage Investment Co, LLC  
NREA Meritage Leaseco, LLC  
NREA Meritage Manager, LLC  
NREA Meritage Property Manager, LLC  
NREA Meritage, DST  
NREA Oaks Investors, LLC

NREA Retreat Investment Co, LLC  
 NREA Retreat Leaseco, LLC  
 NREA Retreat Manager, LLC  
 NREA Retreat Property Manager, LLC  
 NREA Retreat, DST  
 NREA SE One Property Manager, LLC  
 NREA SE Three Property Manager, LLC  
 NREA SE Two Property Manager, LLC  
 NREA SE1 Andros Isles, DST (Converted from DK Gateway Andros, LLC)  
 NREA SE1 Arborwalk, DST (Converted from MAR Arborwalk, LLC)  
 NREA SE1 Towne Crossing, DST (Converted from Apartment REIT Towne Crossing, LP)  
 NREA SE1 Walker Ranch, DST (Converted from SOF Walker Ranch Owner, L.P.)  
 NREA SE2 Hidden Lake, DST (Converted from SOF Hidden Lake SA Owner, L.P.)  
 NREA SE2 Vista Ridge, DST (Converted from MAR Vista Ridge, L.P.)  
 NREA SE2 West Place, DST (Converted from Landmark at West Place, LLC)  
 NREA SE3 Arboleda, DST (Converted from G&E Apartment REIT Arboleda, LLC)  
 NREA SE3 Fairways, DST (Converted from MAR Fairways, LLC)  
 NREA SE3 Grand Oasis, DST (Converted from Landmark at Grand Oasis, LP)  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Two, LLC  
 NREA SOV Investors, LLC  
 NREA Uptown TRS, LLC  
 NREA VB I LLC  
 NREA VB II LLC  
 NREA VB III LLC  
 NREA VB IV LLC  
 NREA VB Pledgor I LLC  
 NREA VB Pledgor II LLC  
 NREA VB Pledgor III LLC  
 NREA VB Pledgor IV LLC  
 NREA VB Pledgor V LLC  
 NREA VB Pledgor VI LLC  
 NREA VB Pledgor VII LLC  
 NREA VB SM, Inc.  
 NREA VB V LLC  
 NREA VB VI LLC  
 NREA VB VII LLC  
 NREA Vista Ridge Investment Co, LLC  
 NREC AR Investors, LLC  
 NREC Latitude Investors, LLC  
 NREC REIT Sub, Inc.  
 NREC TRS, Inc.  
 NREC WW Investors, LLC  
 NREF OP I Holdco, LLC  
 NREF OP I SubHoldco, LLC  
 NREF OP I, L.P.  
 NREF OP II Holdco, LLC  
 NREF OP II SubHoldco, LLC  
 NREF OP II, L.P.  
 NREF OP IV REIT Sub TRS, LLC

NREF OP IV REIT Sub, LLC  
NREF OP IV, L.P.  
NREO NW Hospitality Mezz, LLC  
NREO NW Hospitality, LLC  
NREO Perilune, LLC  
NREO SAFStor Investors, LLC  
NREO TRS, Inc.  
NRESF REIT Sub, LLC  
NXRT Abbington, LLC  
NXRT Atera II, LLC  
NXRT Atera, LLC  
NXRT AZ2, LLC  
NXRT Barrington Mill, LLC  
NXRT Bayberry, LLC  
NXRT Bella Solara, LLC  
NXRT Bella Vista, LLC  
NXRT Bloom, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine LP, LLC  
NXRT Brentwood Owner, LLC  
NXRT Brentwood, LLC  
NXRT Cedar Pointe Tenant, LLC  
NXRT Cedar Pointe, LLC  
NXRT Cityview, LLC  
NXRT Cornerstone, LLC  
NXRT Crestmont, LLC  
NXRT Enclave, LLC  
NXRT Glenview, LLC  
NXRT H2 TRS, LLC  
NXRT Heritage, LLC  
NXRT Hollister TRS LLC  
NXRT Hollister, LLC  
NXRT LAS 3, LLC  
NXRT Master Tenant, LLC  
NXRT Nashville Residential, LLC (fka Freedom Nashville Residential, LLC)  
NXRT North Dallas 3, LLC  
NXRT Old Farm, LLC  
NXRT Pembroke Owner, LLC  
NXRT Pembroke, LLC  
NXRT PHX 3, LLC  
NXRT Radbourne Lake, LLC  
NXRT Rockledge, LLC  
NXRT Sabal Palms, LLC  
NXRT SM, Inc.  
NXRT Steeplechase, LLC  
NXRT Stone Creek, LLC  
NXRT Summers Landing GP, LLC  
NXRT Summers Landing LP, LLC  
NXRT Torreyana, LLC  
NXRT Vanderbilt, LLC



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NXRT West Place, LLC  
NXRTBH AZ2, LLC  
NXRTBH Barrington Mill Owner, LLC  
NXRTBH Barrington Mill SM, Inc.  
NXRTBH Barrington Mill, LLC  
NXRTBH Bayberry, LLC  
NXRTBH Cityview, LLC  
NXRTBH Colonnade, LLC  
NXRTBH Cornerstone Owner, LLC  
NXRTBH Cornerstone SM, Inc.  
NXRTBH Cornerstone, LLC  
NXRTBH Dana Point SM, Inc.  
NXRTBH Dana Point, LLC  
NXRTBH Foothill SM, Inc.  
NXRTBH Foothill, LLC  
NXRTBH Heatherstone SM, Inc.  
NXRTBH Heatherstone, LLC  
NXRTBH Hollister Tenant, LLC  
NXRTBH Hollister, LLC  
NXRTBH Madera SM, Inc.  
NXRTBH Madera, LLC  
NXRTBH McMillan, LLC  
NXRTBH North Dallas 3, LLC  
NXRTBH Old Farm II, LLC  
NXRTBH Old Farm Tenant, LLC  
NXRTBH Old Farm, LLC  
NXRTBH Radbourne Lake, LLC  
NXRTBH Rockledge, LLC  
NXRTBH Sabal Palms, LLC  
NXRTBH Steeplechase, LLC (dba Southpoint Reserve at Stoney Creek)-VA  
NXRTBH Stone Creek, LLC  
NXRTBH Vanderbilt, LLC  
NXRTBH Versailles SM, Inc.  
NXRTBH Versailles, LLC  
Oak Holdco, LLC  
Oaks CGC, LLC  
Okada Family Revocable Trust  
Pam Capital Funding GP Co. Ltd.  
Pam Capital Funding, L.P.  
PamCo Cayman Ltd.  
Park West 1700 Valley View Holdco, LLC  
Park West 2021 Valley View Holdco, LLC  
Park West Holdco, LLC  
Park West Portfolio Holdco, LLC  
PCMG Trading Partners XXIII, L.P.  
PDK Toys Holdco, LLC  
Pear Ridge Partners, LLC  
Penant Management GP, LLC  
PensionDanmark Pensionsforsikringsaktieselskab  
Perilune Aero Equity Holdings One, LLC  
PetroCap Incentive Partners II, L.P.

PetroCap Partners II, L.P.  
 PetroCap Partners III, L.P.  
 Pharmacy Ventures I, LLC  
 Pharmacy Ventures II, LLC  
 Powderhorn, LLC  
 PWM1 Holdings, LLC  
 PWM1, LLC  
 RADCO NREC Bay Meadows Holdings, LLC  
 RADCO NREC Bay Park Holdings, LLC  
 Ramarim, LLC  
 Rand Advisors Series I Insurance Fund  
 Rand Advisors Series II Insurance Fund  
 Rand PE Fund I, L.P.  
 Rand PE Fund Management LLC  
 Red River CLO, Ltd.  
 Red River Investors Corp.  
 Riverview Partners SC, LLC  
 Rockwall CDO II Ltd.  
 Rockwall CDO, Ltd.  
 Rockwall Investors Corp.  
 Rothko, Ltd.  
 RTT Hollister, LLC  
 RTT Rockledge, LLC  
 Sandstone Pasadena Apartments, LLC  
 Scott Ellington  
 SE Governors Green Holdings, L.L.C. (fka SCG Atlas Governors Green Holdings, L.L.C.)  
 SE Governors Green I, LLC  
 SE Governors Green REIT, L.L.C. (fka SCG Atlas Governors Green REIT, L.L.C.)  
 SE Governors Green, LLC (fka SCG Atlas Governors Green, L.L.C.)  
 SE Oak Mill I Holdings, LLC (fka SCG Atlas Oak Mill I Holdings, L.L.C.)  
 SE Oak Mill I Owner, LLC (fka SCG Atlas Oak Mill I, L.L.C.)  
 SE Oak Mill I REIT, LLC (fka SCG Atlas Oak Mill I REIT, L.L.C.)  
 SE Oak Mill I, LLC  
 SE Oak Mill II Holdings, LLC (fka SCG Atlas Oak Mill II Holdings, L.L.C.)  
 SE Oak Mill II Owner, LLC (fka SCG Atlas Oak Mill II, L.L.C.)  
 SE Oak Mill II REIT, LLC (fka SCG Atlas Oak Mill II REIT, L.L.C.)  
 SE Oak Mill II, LLC  
 SE Stoney Ridge Holdings, L.L.C. (fka SCG Atlas Stoney Ridge Holdings, L.L.C.)  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge REIT, L.L.C. (fka SCG Atlas Stoney Ridge REIT, L.L.C.)  
 SE Stoney Ridge, LLC (fka SCG Atlas Stoney Ridge, L.L.C.)  
 SFH1, LLC  
 SFR WLIF I, LLC (fka NexPoint WLIF I, LLC)  
 SFR WLIF II, LLC (NexPoint WLIF II, LLC)  
 SFR WLIF III, LLC (NexPoint WLIF III, LLC)  
 SFR WLIF Manager, LLC (NexPoint WLIF Manager, LLC)  
 SFR WLIF, LLC (NexPoint WLIF, LLC)  
 SFR WLIF, LLC Series I  
 SFR WLIF, LLC Series II  
 SFR WLIF, LLC Series III  
 Small Cap Equity Sub, LLC

Socially Responsible Equity Sub, LLC  
 SOF Brandywine I Owner, L.P.  
 SOF Brandywine II Owner, L.P.  
 SOF-X GS Owner, L.P.  
 Southfork Cayman Holdings, Ltd.  
 Southfork CLO, Ltd.  
 Specialty Financial Products Designated Activity Company (fka Specialty Financial Products Limited)  
 Spiritus Life, Inc.  
 SRL Whisperwod LLC  
 SRL Whisperwood Member LLC  
 SRL Whisperwood Venture LLC  
 SSB Assets LLC  
 Stonebridge PEF  
 Stonebridge-Highland Healthcare Private Equity Fund  
 Strand Advisors III, Inc.  
 Strand Advisors IV, LLC  
 Strand Advisors IX, LLC  
 Strand Advisors V, LLC  
 Strand Advisors XIII, LLC  
 Strand Advisors XVI, Inc.  
 Strand Advisors, Inc.  
 Stratford CLO, Ltd.  
 Summers Landing Apartment Investors, L.P.  
 The Dugaboy Investment Trust  
 The Get Good Non-Exempt Trust No. 1  
 The Get Good Non-Exempt Trust No. 2  
 The Get Good Trust  
 The Ohio State Life Insurance Company  
 The Okada Family Foundation, Inc.  
 The SLHC Trust  
 Thread 55, LLC  
 Tranquility Lake Apartments Investors, L.P.  
 Trey Parker  
 Tricor Business Outsourcing  
 Turtle Bay Holdings, LLC  
 Tuscany Acquisition, LLC  
 United States Army Air Force Exchange Services  
 Uptown at Cityplace Condominium Association, Inc.  
 US Gaming OpCo, LLC  
 Valhalla CLO, Ltd.  
 VB GP LLC  
 VB Holding, LLC  
 VB One, LLC  
 VB OP Holdings LLC  
 VBAnnex C GP, LLC  
 VBAnnex C Ohio, LLC  
 VBAnnex C, LP  
 VineBrook Annex B, L.P.  
 VineBrook Annex I, L.P.  
 VineBrook Homes Merger Sub II LLC  
 VineBrook Homes Merger Sub LLC

VineBrook Homes OP GP, LLC  
VineBrook Homes Operating Partnership, L.P.  
VineBrook Homes Trust, Inc.  
VineBrook Partners I, L.P.  
VineBrook Partners II, L.P.  
VineBrook Properties, LLC  
Wake LV Holdings II, Ltd.  
Wake LV Holdings, Ltd.  
Walter Holdco GP, LLC  
Walter Holdco I, Ltd.  
Walter Holdco, L.P.  
Westchester CLO, Ltd.  
Yellow Metal Merchants, Inc.

**7. Taxing and Other Significant Governmental Authorities**

California Franchise Tax Board  
Internal Revenue Service  
Los Angeles County Tax Collector  
Delaware Division of Revenue

**8. Banks and Secured Parties**

BBVA  
KeyBank National Association  
Jeffries, LLC Prime Brokerage Services  
Frontier State Bank

**9. United States Bankruptcy Judges in the District of Delaware**

The Honorable Brendan L. Shannon  
The Honorable Christopher S. Sontchi, Chief Judge  
The Honorable John T. Dorsey  
The Honorable Karen B. Owens  
The Honorable Kevin Gross  
The Honorable Laurie Selber Silverstein  
The Honorable Mary F. Walrath

**10. United States Trustee for the District of Delaware (and Key Staff Members)**

Andrew Vara, Acting US Trustee  
Benjamin Hackman, Trial Attorney  
Christine Green, Paralegal Specialist  
David Buchbinder, Trial Attorney  
Diane Giordano, Bankruptcy Analyst  
Dion Wynn, Paralegal Specialist  
Edith A. Serrano, Paralegal Specialist  
Hannah M. McCollum, Trial Attorney  
Holly Dice, Auditor (Bankruptcy)

James R. O'Malley, Bankruptcy Analyst  
Jane Leamy, Trial Attorney  
Jeffrey Heck, Bankruptcy Analyst  
Juliet Sarkessian, Trial Attorney  
Karen Starr, Bankruptcy Analyst  
Linda Casey, Trial Attorney  
Linda Richenderfer, Trial Attorney  
Lauren Attix, OA Assistant  
Michael Panacio, Bankruptcy Analyst  
Michael West, Bankruptcy Analyst

Ramona Vinson, Paralegal Specialist  
Richard Schepacarter, Trial Attorney  
Shakima L. Dortch, Paralegal Specialist

T. Patrick Tinker, Assistant U.S. Trustee  
Timothy J. Fox, Jr., Trial Attorney

**11. Clerk of Court and Deputy for the District of Delaware**

Stephen Grant, Chief Deputy Clerk  
Una O'Boyle, Clerk of Court

**12. Notice Parties**

Alvarez & Marshal CF Management, LLC  
Coleman County TAD  
Fannin CAD  
Allen ISD  
Rockwall CAD  
Kaufman County  
Tarrant County  
Dallas County  
Upshur County  
Grayson County  
Irving ISD  
Pension Benefit Guaranty Corporation  
Patrick Daugherty  
Hunter Mountain Trust  
Integrated Financial Associates  
BET Investments, II, L.P.  
Crescent TC Investors, L.P.  
Intertrust Entities  
CLO Entities



**EXHIBIT Z**

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**FIFTH AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

(A Delaware Limited Partnership)

[ ], 2021

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This FIFTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this “*Agreement*”) of Highland Capital Management, L.P., (the “*Partnership*”), dated as of [\_\_\_\_], 2021 and entered into by and among the [*New GP Entity*] as general partner of the Partnership (the “*General Partner*”) and the limited partner of the Partnership as set forth on Schedule A hereto (the “*Limited Partner*”), amends and restates in its entirety the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership dated as of December 24, 2015 (as amended to date, the “*Prior Agreement*”), by and among Strand Advisors, Inc. (the “*Prior General Partner*”) and the former limited partners of the Partnership who were limited partners of the Partnership (the “*Prior Limited Partners*”). The General Partner and Limited Partners are collectively referred to as the “*Partners*.”

WHEREAS, the Prior Agreement, as amended pursuant to that certain amendment dated [\_\_\_\_], 2021, provides for the reconstitution and continuation of the Partnership if new limited partners are admitted to the partnership within 90 days after dissolution thereof and such new limited partners consent to the continuation of the Partnership.

WHEREAS, the Partnership was reorganized pursuant to the Plan of Reorganization of Highland Capital Management, L.P., that was approved by the United States Bankruptcy Court for Northern District of Texas, Dallas Division, on [\_\_\_\_] (the “*Plan*”).

WHEREAS, pursuant to the Plan the limited partnership interests of the Prior Limited Partners and the Prior General Partner were canceled on [\_\_\_\_] and new limited partnership interests were issued to the Limited Partner and the General Partner under the Prior Agreement.

WHEREAS, the General Partner and the Limited Partner wish to ratify the admission to the Partnership of the General Partner and the Limited Partner and to amend and restate the terms of the Partnership as set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the undersigned hereby agree as follows:

1. Continuation.

(a) Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 *Del.C.* §17-101, *et seq.*), as amended from time to time (the “*Act*”). This Agreement amends, restates, and supersedes the Prior Agreement and all other prior agreements or understandings with respect to the matters covered herein.

(b) The Limited Partner, being the sole limited partner of the Partnership, hereby (i) consents to the continuation of the Partnership and (ii) ratifies and approves the appointment of the General Partner as general partner of the Partnership.

2. Organizational Matters.

(a) *Name; Certificate.* The name of the Partnership is Highland Capital Management, L.P. The Partnership was organized as a limited partnership pursuant to the Act and

filed a Certificate of Limited Partnership (the “*Certificate*”) with the Secretary of State of the State of Delaware. Any person authorized to act on behalf of the General Partner or the Partnership may, subject to Section 19 below, cause the Partnership to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited partnership in accordance with the laws of the State of Delaware and any other jurisdictions in which the Partnership shall conduct business, and to maintain such filings for so long as the Partnership conducts business therein.

(b) *Offices.* The name of the resident agent for service of process for the Partnership and the address of the registered office of the Partnership in the State of Delaware is Corporation Services Company, 2023 Centre Road, Wilmington Delaware 19805-1297. The General Partner may establish places of business of the Partnership within and without the State of Delaware, as and when required by the Partnership’s business and in furtherance of its purposes set forth herein, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Partnership shall conduct business. The General Partner may from time to time in its sole discretion change the Partnership’s places of business, resident agent for service of process, and/or the location of its registered office in Delaware.

3. Purpose: Powers. The Partnership is formed for the purpose of engaging in any lawful act or activity for which limited partnerships may be formed under the Act. Without limiting the foregoing, the general character and purposes of the business of the Partnership are to (a) engage in the business, directly and/or through one or more subsidiaries, of liquidating assets of, and performing investment management and advisory services for, pooled investment vehicles, funds, investment holdings, accounts, and interests therein; and (b) engage in any lawful activities (including, subject to the other provisions of this Agreement, the borrowing of money and the issuance of guarantees of indebtedness of others) directly or indirectly related or incidental thereto and in which a Delaware limited partnership may lawfully engage. The Partnership shall have and exercise all of the powers and rights conferred upon limited partnerships formed pursuant to the Act.

4. Management.

(a) *Authority of the General Partner.* The business and affairs of the Partnership shall be managed exclusively by and under the direction of the General Partner, which shall have the right, power and authority to exercise all of the powers of the Partnership except as otherwise provided by law or this Agreement. Decisions or actions made or approved by the General Partner in accordance with this Agreement shall constitute decisions or actions by the Partnership and shall be binding upon the Partnership and each Limited Partner of the Partnership. The General Partner may not be removed or replaced by the Limited Partners. In the event of the withdrawal, resignation or dissolution of the General Partner, a new General Partner shall be designated in writing by a majority in interest of the Limited Partners, who shall provide written notice to the remaining Limited Partners of such designation.

(b) *Delegation of Powers; Officers.* Notwithstanding anything to the contrary herein, the General Partner may delegate any or all or any portion of its rights, powers, authority, duties and responsibilities with respect to the management of the Partnership to such officers of the Partnership with such titles as the General Partner may determine (“*Officers*”). The General Partner

may authorize any such Officers to sign agreements, contracts, instruments, or other documents in the name of and on behalf of the Partnership, and such authority may be general or limited to specific instances. The power and authority of any Officer appointed by the General Partner under this Section 4(b) shall not exceed the power and authority possessed by the General Partner under this Agreement. The Officers shall hold office until their successors are duly appointed or their earlier death, resignation, or removal. Any Officer so appointed may be removed at any time, with or without cause, by the written consent of the General Partner. Any Officer may resign from his or her office upon prior written notice to the Partnership. If any office shall become vacant, a replacement Officer may be appointed by the written consent of the General Partner. Two or more offices may be held by the same person. The initial Officers of the Partnership are set forth on Schedule B.

(c) *Limited Partners.* No Limited Partner shall have any right to participate in the management of the Partnership as a Limited Partner. Moreover, no Limited Partner shall have any voting rights except with respect to consent to amendments as set forth in Section 19 below, or as otherwise required by the Act.

(d) *Transactions with Affiliates.* The General Partner or any person controlling, controlled by, or under common control with the General Partner (an “*Affiliate*”) may engage in transactions with the Partnership from time to time, including without limitation for lending to or borrowing from the Partnership, engaging in the provision of services to the Partnership, or otherwise engaging in business transactions with the Partnership, provided that such transactions are entered into in good faith. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Act or any other applicable law, rule, or regulation.

## 5. Partners.

(a) *General.* The name, address, and percentage interest ownership interest of the General Partner and each Limited Partner in the Partnership (the “*Percentage Interest*”) are set forth on Schedule A hereto. Additional Limited Partners may be admitted to the Partnership, and Schedule A may be amended, only with the written consent of the General Partner (provided, that failure to update Schedule A shall not itself be conclusive of whether consent of the General Partner has been obtained). No Limited Partner shall have the right or power to resign, withdraw or retire from the Partnership, except upon (i) the occurrence of any event described in Section 17-801 of the Act (in which case the Limited Partner(s) with respect to which such event has occurred shall, automatically and with no further action necessary by any person, cease to be a Limited Partner, and shall be deemed to have solely the interest of an assignee (within the meaning of Section 17 of the Act) with respect to such Limited Partner’s Limited Partnership Interest), or (ii) with the consent of the General Partner. For the avoidance of doubt, no action may be taken to reduce, directly or indirectly, the Percentage Interest of any Partner without the written consent of such Partner.



(b) *Capital Contributions.* The Partners may, in their sole discretion, make additional capital contribution to the Partnership if requested by the General Partner. All capital, whenever contributed, shall be subject in all respects to the risks of the business and subordinate in right of payment to the claims of present or future creditors of the Partnership in accordance with this Agreement.

(c) *Capital Accounts.* The Partnership shall maintain a capital account for each Partner in accordance with Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”), and the principles of the Treasury Regulations promulgated thereunder.

(d) *Tax Representative.* The General Partner shall serve as the “tax representative” to be the Partnership’s designated representative within the meaning of Section 6223 of the Code with sole authority to act on behalf of the Partnership for purposes of subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws (the “*Tax Representative*”). The Tax Representative is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service, properly designating a particular individual to act on its behalf of the Tax Representative and taking such other action as may from time to time be required under Treasury Regulations. The Tax Representative is hereby authorized to and shall perform all duties of a “tax representative” and shall serve as Tax Representative until its resignation or until the designation of its successor, whichever occurs sooner.

#### 6. Allocation of Income and Losses.

(a) *Definitions.* For purposes of this Agreement, “*Income*” and “*Loss*” of the Partnership shall mean the taxable income and loss, respectively, of the Partnership computed with the adjustments set forth in Treasury Regulation under Code Section 704(b) including (A) adjustments pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g), (B) the inclusion of the amount of any tax-exempt income as an item of income, (C) the inclusion of the amount of any nondeductible, noncapitalizable expense as an item of deduction and (D) the inclusion of the amount of unrealized gain or unrealized loss with respect to an asset of the Partnership as an item of income or gain (as applicable) upon distribution of such asset in kind or as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

(b) *Allocations Generally.* The Income and Loss of the Partnership for each fiscal year or other applicable period shall be allocated to and among the Partners in proportion to their respective Percentage Interests.

(c) *Adjustments.* Notwithstanding Section 6(b) (but subject to Section 6(c)),

- (i) Items of income or gain for any taxable period shall be allocated to the Partner in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and
- (ii) In no event shall any Loss or item of deduction be allocated to a Partner if such allocation would cause or increase a negative balance

in such Partner's capital account determined by increasing the Partner's capital account balance by any amount the Partner may be obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and by decreasing such capital account balance by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(d) *Nonrecourse Debt.* If at any time the Partnership incurs any "nonrecourse debt" (*i.e.*, debt that is treated as nonrecourse for purposes of Treasury Regulation Section 1.1001-2), the following provisions will apply notwithstanding anything to the contrary expressed elsewhere in this Agreement:

- (i) "Nonrecourse deductions" (as defined in Treasury Regulation Sections 1.704-2(b) and (c)) shall be allocated to the Partners in proportion to their respective Percentage Interests.
- (ii) All other allocations relating to such nonrecourse debt shall be allocated in accordance with Treasury Regulation Section 1.704-2; and
- (iii) For purposes of Sections 6(b) and 6(c), each Partner's capital account balance shall be increased by the Partner's share of minimum gain and of partner nonrecourse debt minimum gain (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

(e) *Deductions, Credits.* Except as otherwise provided herein or as required by Code Section 704, for federal income tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss.

(f) *Regulatory Allocations.* Notwithstanding the provisions of Sections 6(a)-(e) above, allocations of Income and Loss shall be made in the order of priority set forth in Exhibit I to this Agreement.

(g) *Withholding.* To the extent that the Partnership is required to withhold and pay over any amounts to any Governmental Authority with respect to Distributions or allocations to any Limited Partner, the amount withheld shall be treated as a Distribution to that Limited Partner pursuant to Sections 4.02, 4.03 or 4.05, as applicable. In the event of any claimed over-withholding, Limited Partners shall be limited to an action against the applicable jurisdiction and not against the Partnership (unless the Partnership has not yet paid such amounts over to such jurisdiction). If any amount required to be withheld was not, in fact, actually withheld from one or more Distributions and the Partnership shall have been required to pay such amount to such Governmental Entity, the Partnership may, at its option, (i) require the affected Limited Partner to reimburse the Partnership for such withholding or (ii) reduce any subsequent Distributions to such Limited Partner by the amount of such withholding, in each case plus interest. Each Limited Partner agrees to furnish the Partnership with such documentation as shall reasonably be requested by the Partnership to assist it in determining the extent of, and in fulfilling, its withholding

obligations. Each Limited Partner will indemnify the General Partner and the Partnership against any losses and liabilities (including interest and penalties) related to any withholding obligations with respect to allocations or Distributions made to such Limited Partner by the Partnership.

(h) *Consistent Tax Reporting.* Except as otherwise unanimously agreed to in writing by the Limited Partners, for U.S. federal, state and local income tax purposes, the Limited Partners agree, as a condition to their admission to the Partnership, to report all taxable income, loss and items thereof (including the character and timing of such items) in a manner consistent with the manner in which such taxable income, loss or item thereof is reported by the Partnership on its tax returns and the Schedules K-1 (or any successor form) furnished by the Partnership to the Limited Partners.

7. Distributions. Distributions shall be made from the undistributed profit and loss account to the Partners at the times and in the aggregate amounts determined by the General Partner in its sole discretion; provided, that distributions shall be made to the Partners in accordance with their Percentage Interests. Distributions may be in cash or in kind as determined by the General Partner in its sole discretion. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Limited Partners on account of its interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

8. Other Business. The Partners and their affiliates may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

9. Limited Liability. The debts, obligations, and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and the General Partner. No Limited Partner shall have any liability (personal or otherwise) for any such debt, obligation, or liability of the Partnership solely by reason of acting in such capacity. For the avoidance of doubt, to the extent a Limited Partner is an Officer of the Partnership (regardless of title) and/or has authority to act on behalf of the General Partner of the Partnership, such Limited Partner shall remain a Limited Partner of the Partnership and shall not be subject to any liability (personal or otherwise) for any debt, obligation or liability of the Partnership.

10. Exculpation; Indemnification.

(a) *Exculpation.* Neither the General Partner nor any Covered Person (as defined below) shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts of omissions that do not constitute gross negligence, fraud, or willful misconduct. The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its officers, directors, agents, trustees, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(b) *Indemnification.* To the fullest extent permitted by law, subject to Section 10(d) below, the Partnership shall indemnify each Covered Person for any and all losses, claims,

demands, costs, damages, liabilities (joint and several), expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Covered Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. For the avoidance of doubt, the indemnification under this Section 10(b) shall apply even though at the time of such claim, demand, action, suit or proceeding such person is no longer a Covered Person (except as set forth in Section 10(c)(iii) below). Any indemnity under this Section 10(b) shall be provided out of and only to the extent of the Partnership's assets, and no Limited Partner shall have personal liability on account thereof. For the avoidance of doubt, any indemnification obligations of the Partnership under the Prior Agreement are null and void and are superseded in their entirety by this Section 10.

(c) *Covered Persons.* "**Covered Person**" means each of the following:

- (i) the General Partner, and each member, partner, director, officer, and agent thereof,
- (ii) each person who is or becomes an Officer of the Partnership on or after the date of this Agreement, and
- (iii) each person who is or becomes an employee or agent of the Partnership on or after the date of this Agreement if the General Partner determines in its sole discretion that such employee or agent should be a Covered Person.

"Covered Person" shall *not* include any former officer, former partner, former director, former employee, or former agent of the Partnership or the General Partner (unless such Person is a "Covered Person" as defined in clause (i) or (ii) above on or after the date of this Agreement), *unless* the General Partner in its sole discretion determines that such Person should be a Covered Person.

(d) *Limitations on Indemnification.* Notwithstanding anything to the contrary herein, no indemnification shall be provided for any Covered Person (i) with respect to any action brought by such Covered Person as a plaintiff against the Partnership or another Covered Person, or (ii) for any loss, damage or claim arising from such Covered Person's fraud, gross negligence or willful misconduct (in each case as determined by a final and binding judgment of a court or arbitrator).

(e) *Advancement of Expenses.* Expenses reasonably incurred in defending any claim, action, suit or proceeding of the character described in Section 10(b), to the extent available, shall be advanced by the Partnership prior to the final disposition of such claim, action, suit or proceeding upon receipt of a written undertaking by or on behalf of the recipient to repay all such advances if it is ultimately determined by the General Partner that such Covered Person is not entitled to indemnification pursuant to Section 10(d).



(f) *Third Party Beneficiaries.* Covered Persons shall be deemed to be third-party beneficiaries solely for purposes of this Section 10. All rights of any Covered Person under this Section shall inure to the benefit of such Covered Person's heirs and assigns. Except as expressly provided in this Section 10(f), this Agreement is intended solely for the benefit of the parties hereto and, to the extent allowed by this Agreement, their respective permitted successors and assigns, and this Agreement is not for the benefit of, nor may any provision hereof be enforced by, any other person.

11. Fiscal Year. The fiscal year of the Partnership shall end on December 31<sup>st</sup> of each year.

12. Transfers of Limited Partner Interests. No Limited Partner may transfer, in whole or in part, whether by sale, exchange, lease, license, assignment, distribution, gift, transfer or other disposition or alienation in any way, its interest in the Partnership, without the prior consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner and may include such terms and conditions as the General Partner shall deem appropriate in its sole discretion. In addition, it shall be a condition precedent to every transfer of all or any portion of a Limited Partner's interest permitted hereunder, the transferring Limited Partner shall demonstrate to the satisfaction of the General Partner that (i) the proposed transfer will not cause or result in a breach of any violation of law, including U.S. federal or state securities laws, and (ii) that the transfer would not adversely affect the classification of the Partnership as a partnership for U.S. federal tax purposes (including by causing the Partnership to be treated as a "publicly traded partnership" under Section 7704 of the Code), terminate it as a partnership under Code Section 708, or have a substantial adverse effect with respect to U.S. federal income taxes payable by the Partnership.

13. Dissolution. The Partnership shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the General Partner; (ii) at any time there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in a manner permitted by the Act; or (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act. Following the foregoing event, the General Partner shall proceed diligently to liquidate the assets of the Partnership in a manner consistent with commercially reasonable business practices. In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Partnership in an orderly manner), and the assets of the Partnership shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act. Liquidating distributions to the Partners shall be made in accordance with their Percentage Interests.

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

15. Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.



16. Facsimile Signature Page. This Agreement may be executed and delivered by the parties hereto by an executed signature page transmitted by facsimile, and any failure to deliver the originally executed signature page shall not affect the validity, legality or enforceability of this Agreement.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to the conflicts of law principles), all rights and remedies being governed by said laws.

19. Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for the Northern District of Texas, Dallas Division, for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement.

20. Amendments. No amendment of this Agreement shall be valid or binding unless such amendment is made with the written consent of the General Partner. Further, any amendment of this Agreement that reduces the Percentage Interest or economic rights of any Limited Partner in a manner that is disproportionate to other Limited Partners shall require the written consent of the affected Limited Partner. For the avoidance of doubt, amendment includes any merger, combination or other reorganization or any amendment of the Certificate that has the effect of changing or superseding the terms of this Agreement.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first set forth above.

**GENERAL PARTNER:**

*[NEW GP ENTITY]*

---

By:

Its:

**LIMITED PARTNER:**

*[CLAIMANT TRUST]*

---

By:

Its: Trustee

*[Signature Page to Fifth Amended and Restated  
Agreement of Limited Partnership of Highland Capital Management, L.P.]*

Schedule ASCHEDULE OF PARTNERS

[Date], 2021

General Partner

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
[New GP Entity]	[Insert Address]	[1.00]%

Limited Partners

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
[Claimant Trust]	[Insert Address]	[99.00]%

Schedule A

Schedule B

SCHEDULE OF OFFICERS

[Date], 2021

<u>Name</u>	<u>Officer Title</u>
James P. Seery, Jr.	Chief Executive Officer
[Name]	[Title]
[Name]	[Title]

*Schedule B*

Exhibit IREGULATORY ALLOCATIONS

(i) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the minimum extent required by the “minimum gain chargeback” provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

(ii) All “nonrecourse deductions” (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Partnership for any year shall be allocated to the Partners in accordance with their respective Percentage Interests; provided, however, that nonrecourse deductions attributable to “partner nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Partners in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

(iii) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(iv) In no event shall Loss of the Partnership be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner’s Adjusted Capital Account (determined for purposes of this Exhibit I only, by increasing the Partner’s Adjusted Capital Account balance by the amount the Partner is obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and decreasing it by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(v) For tax purposes, except as otherwise provided herein or as required by Code Section 704, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss; provided, however, that if the Book Value of any property of the Partnership differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Partners so as to take account of the variation between the adjusted basis of the property for tax purposes and its Book Value in the manner provided for under Code Section 704(c).

(vi) For purposes hereof, the following terms have the meanings set forth below:

“**Adjusted Capital Account**” means, for each Partner, such Partner’s capital account balance increased by such Partner’s share of “minimum gain” and of “partner nonrecourse debt minimum gain” (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

“**Book Value**” means, with respect to any asset, the asset’s adjusted basis for U.S. federal income tax purposes; provided, however, that (i) the initial Book Value of any asset contributed to the Partnership shall be adjusted to equal its fair market value as determined by the General Partner at the time of its contribution, and (ii) the Book Values of all assets held by the Partnership shall be

*Schedule B*



adjusted to equal their respective fair market values as determined by the General Partner (taking Code Section 7701(g) into account) upon an election by the Partnership to revalue its property in accordance with Regulation Section 1.704-1(b)(2)(iv)(f) and upon liquidation of the Partnership. The Book Value of any asset whose Book Value was adjusted pursuant to the preceding sentence shall thereafter be adjusted in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(g).

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 9**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

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*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith* [Dkt. # 2389]:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

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		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
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and Get Good Trust

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

**EXHIBIT AA**

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**FIFTH AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
(A Delaware Limited Partnership)**

| \_\_\_\_\_], 20202021

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This FIFTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP (this “**Agreement**”) of Highland Capital Management, L.P., (the “**Partnership**”), dated as of [\_\_\_\_], ~~2020~~2021 and entered into by and among the [New GP Entity] as general partner of the Partnership (the “**General Partner**”) and the limited partner of the Partnership as set forth on Schedule A hereto (the “**Limited Partner**”), amends and restates in its entirety the Fourth Amended and Restated Agreement of Limited Partnership of the Partnership dated as of December 24, 2015 (as amended to date, the “**Prior Agreement**”), by and among Strand Advisors, Inc. (the “**Prior General Partner**”) and the former limited partners of the Partnership who were limited partners of the Partnership (the “**Prior Limited Partners**”). The General Partner and Limited Partners are collectively referred to as the “**Partners**.”

WHEREAS, the Prior Agreement, as amended pursuant to that certain amendment dated [\_\_\_\_], ~~2020~~2021, provides for the reconstitution and continuation of the Partnership if new limited partners are admitted to the partnership within 90 days after dissolution thereof and such new limited partners consent to the continuation of the Partnership.

WHEREAS, the Partnership was reorganized pursuant to the Plan of Reorganization of Highland Capital Management, L.P., that was approved by the United States Bankruptcy Court for Northern District of Texas, Dallas Division, on [\_\_\_\_] (the “**Plan**”).

WHEREAS, pursuant to the Plan the limited partnership interests of the Prior Limited Partners and the Prior General Partner were canceled on [\_\_\_\_] and new limited partnership interests were issued to the Limited Partner and the General Partner under the Prior Agreement.

WHEREAS, the General Partner and the Limited Partner wish to ratify the admission to the Partnership of the General Partner and the Limited Partner and to amend and restate the terms of the Partnership as set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein, the undersigned hereby agree as follows:

1. Continuation.

(a) Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Revised Uniform Limited Partnership Act (6 *Del.C.* §17-101, *et seq.*), as amended from time to time (the “**Act**”). This Agreement amends, restates, and supersedes the Prior Agreement and all other prior agreements or understandings with respect to the matters covered herein.

(b) The Limited Partner, being the sole limited partner of the Partnership, hereby (i) consents to the continuation of the Partnership and (ii) ratifies and approves the appointment of the General Partner as general partner of the Partnership.

2. Organizational Matters.

(a) *Name; Certificate.* The name of the Partnership is Highland Capital Management, L.P. The Partnership was organized as a limited partnership pursuant to the Act and

filed a Certificate of Limited Partnership (the “*Certificate*”) with the Secretary of State of the State of Delaware. Any person authorized to act on behalf of the General Partner or the Partnership may, subject to Section 19 below, cause the Partnership to file such other certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited partnership in accordance with the laws of the State of Delaware and any other jurisdictions in which the Partnership shall conduct business, and to maintain such filings for so long as the Partnership conducts business therein.

(b) *Offices.* The name of the resident agent for service of process for the Partnership and the address of the registered office of the Partnership in the State of Delaware is Corporation Services Company, 2023 Centre Road, Wilmington Delaware 19805-1297. The General Partner may establish places of business of the Partnership within and without the State of Delaware, as and when required by the Partnership’s business and in furtherance of its purposes set forth herein, and may appoint (or cause the appointment of) agents for service of process in all jurisdictions in which the Partnership shall conduct business. The General Partner may from time to time in its sole discretion change the Partnership’s places of business, resident agent for service of process, and/or the location of its registered office in Delaware.

3. Purpose; Powers. The Partnership is formed for the purpose of engaging in any lawful act or activity for which limited partnerships may be formed under the Act. Without limiting the foregoing, the general character and purposes of the business of the Partnership are to (a) engage in the business, directly and/or through one or more subsidiaries, of liquidating assets of, and performing investment management and advisory services for, pooled investment vehicles, funds, investment holdings, accounts, and interests therein; and (b) engage in any lawful activities (including, subject to the other provisions of this Agreement, the borrowing of money and the issuance of guarantees of indebtedness of others) directly or indirectly related or incidental thereto and in which a Delaware limited partnership may lawfully engage. The Partnership shall have and exercise all of the powers and rights conferred upon limited partnerships formed pursuant to the Act.

4. Management.

(a) *Authority of the General Partner.* The business and affairs of the Partnership shall be managed exclusively by and under the direction of the General Partner, which shall have the right, power and authority to exercise all of the powers of the Partnership except as otherwise provided by law or this Agreement. Decisions or actions made or approved by the General Partner in accordance with this Agreement shall constitute decisions or actions by the Partnership and shall be binding upon the Partnership and each Limited Partner of the Partnership. The General Partner may not be removed or replaced by the Limited Partners. In the event of the withdrawal, resignation or dissolution of the General Partner, a new General Partner shall be designated in writing by a majority in interest of the Limited Partners, who shall provide written notice to the remaining Limited Partners of such designation.

(b) *Delegation of Powers; Officers.* Notwithstanding anything to the contrary herein, the General Partner may delegate any or all or any portion of its rights, powers, authority, duties and responsibilities with respect to the management of the Partnership to such officers of the Partnership with such titles as the General Partner may determine (“*Officers*”). The General Partner may authorize any such Officers to sign agreements, contracts, instruments, or other documents in

the name of and on behalf of the Partnership, and such authority may be general or limited to specific instances. The power and authority of any Officer appointed by the General Partner under this Section 4(b) shall not exceed the power and authority possessed by the General Partner under this Agreement. The Officers shall hold office until their successors are duly appointed or their earlier death, resignation, or removal. Any Officer so appointed may be removed at any time, with or without cause, by the written consent of the General Partner. Any Officer may resign from his or her office upon prior written notice to the Partnership. If any office shall become vacant, a replacement Officer may be appointed by the written consent of the General Partner. Two or more offices may be held by the same person. The initial Officers of the Partnership are set forth on Schedule B.

(c) *Limited Partners.* No Limited Partner shall have any right to participate in the management of the Partnership as a Limited Partner. Moreover, no Limited Partner shall have any voting rights except with respect to consent to amendments as set forth in Section 19 below, or as otherwise required by the Act.

(d) *Transactions with Affiliates.* The General Partner or any person controlling, controlled by, or under common control with the General Partner (an “*Affiliate*”) may engage in transactions with the Partnership from time to time, including without limitation for lending to or borrowing from the Partnership, engaging in the provision of services to the Partnership, or otherwise engaging in business transactions with the Partnership, provided that such transactions are entered into in good faith. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Act or any other applicable law, rule, or regulation.

## 5. Partners.

(a) *General.* The name, address, and percentage interest ownership interest of the General Partner and each Limited Partner in the Partnership (the “*Percentage Interest*”) are set forth on Schedule A hereto. Additional Limited Partners may be admitted to the Partnership, and Schedule A may be amended, only with the written consent of the General Partner (provided, that failure to update Schedule A shall not itself be conclusive of whether consent of the General Partner has been obtained). No Limited Partner shall have the right or power to resign, withdraw or retire from the Partnership, except upon (i) the occurrence of any event described in Section 17-801 of the Act (in which case the Limited Partner(s) with respect to which such event has occurred shall, automatically and with no further action necessary by any person, cease to be a Limited Partner, and shall be deemed to have solely the interest of an assignee (within the meaning of Section 17 of the Act) with respect to such Limited Partner’s Limited Partnership Interest), or (ii) with the consent of the General Partner. For the avoidance of doubt, no action may be taken to reduce, directly or indirectly, the Percentage Interest of any Partner without the written consent of such Partner.

(b) *Capital Contributions.* The Partners may, in their sole discretion, make additional capital contribution to the Partnership if requested by the General Partner. All capital,

whenever contributed, shall be subject in all respects to the risks of the business and subordinate in right of payment to the claims of present or future creditors of the Partnership in accordance with this Agreement.

(c) *Capital Accounts.* The Partnership shall maintain a capital account for each Partner in accordance with Section 704(b) and 704(c) of the Internal Revenue Code of 1986, as amended (the “*Code*”), and the principles of the Treasury Regulations promulgated thereunder.

(d) *Tax Representative.* The General Partner shall serve as the “tax representative” to be the Partnership’s designated representative within the meaning of Section 6223 of the Code with sole authority to act on behalf of the Partnership for purposes of subchapter C of Chapter 63 of the Code and any comparable provisions of state or local income tax laws (the “*Tax Representative*”). The Tax Representative is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service, properly designating a particular individual to act on its behalf of the Tax Representative and taking such other action as may from time to time be required under Treasury Regulations. The Tax Representative is hereby authorized to and shall perform all duties of a “tax representative” and shall serve as Tax Representative until its resignation or until the designation of its successor, whichever occurs sooner.

#### 6. Allocation of Income and Losses.

(a) *Definitions.* For purposes of this Agreement, “*Income*” and “*Loss*” of the Partnership shall mean the taxable income and loss, respectively, of the Partnership computed with the adjustments set forth in Treasury Regulation under Code Section 704(b) including (A) adjustments pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(g), (B) the inclusion of the amount of any tax-exempt income as an item of income, (C) the inclusion of the amount of any nondeductible, noncapitalizable expense as an item of deduction and (D) the inclusion of the amount of unrealized gain or unrealized loss with respect to an asset of the Partnership as an item of income or gain (as applicable) upon distribution of such asset in kind or as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(f).

(b) *Allocations Generally.* The Income and Loss of the Partnership for each fiscal year or other applicable period shall be allocated to and among the Partners in proportion to their respective Percentage Interests.

(c) *Adjustments.* Notwithstanding Section 6(b) (but subject to Section 6(c)),

- (i) Items of income or gain for any taxable period shall be allocated to the Partner in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and
- (ii) In no event shall any Loss or item of deduction be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner’s capital account determined by increasing the Partner’s capital account balance by any amount the Partner may be



obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and by decreasing such capital account balance by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(d) *Nonrecourse Debt.* If at any time the Partnership incurs any “nonrecourse debt” (*i.e.*, debt that is treated as nonrecourse for purposes of Treasury Regulation Section 1.1001-2), the following provisions will apply notwithstanding anything to the contrary expressed elsewhere in this Agreement:

- (i) “Nonrecourse deductions” (as defined in Treasury Regulation Sections 1.704-2(b) and (c)) shall be allocated to the Partners in proportion to their respective Percentage Interests.
- (ii) All other allocations relating to such nonrecourse debt shall be allocated in accordance with Treasury Regulation Section 1.704-2; and
- (iii) For purposes of Sections 6(b) and 6(c), each Partner’s capital account balance shall be increased by the Partner’s share of minimum gain and of partner nonrecourse debt minimum gain (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

(e) *Deductions, Credits.* Except as otherwise provided herein or as required by Code Section 704, for federal income tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss.

(f) *Regulatory Allocations.* Notwithstanding the provisions of Sections 6(a)-(e) above, allocations of Income and Loss shall be made in the order of priority set forth in Exhibit I to this Agreement.

(g) *Withholding.* To the extent that the Partnership is required to withhold and pay over any amounts to any Governmental Authority with respect to Distributions or allocations to any Limited Partner, the amount withheld shall be treated as a Distribution to that Limited Partner pursuant to Sections 4.02, 4.03 or 4.05, as applicable. In the event of any claimed over-withholding, Limited Partners shall be limited to an action against the applicable jurisdiction and not against the Partnership (unless the Partnership has not yet paid such amounts over to such jurisdiction). If any amount required to be withheld was not, in fact, actually withheld from one or more Distributions and the Partnership shall have been required to pay such amount to such Governmental Entity, the Partnership may, at its option, (i) require the affected Limited Partner to reimburse the Partnership for such withholding or (ii) reduce any subsequent Distributions to such Limited Partner by the amount of such withholding, in each case plus interest. Each Limited Partner agrees to furnish the Partnership with such documentation as shall reasonably be requested by the Partnership to assist it in determining the extent of, and in fulfilling, its withholding obligations. Each Limited Partner will indemnify the General Partner and the Partnership against any losses and liabilities (including



interest and penalties) related to any withholding obligations with respect to allocations or Distributions made to such Limited Partner by the Partnership.

(h) *Consistent Tax Reporting.* Except as otherwise unanimously agreed to in writing by the Limited Partners, for U.S. federal, state and local income tax purposes, the Limited Partners agree, as a condition to their admission to the Partnership, to report all taxable income, loss and items thereof (including the character and timing of such items) in a manner consistent with the manner in which such taxable income, loss or item thereof is reported by the Partnership on its tax returns and the Schedules K-1 (or any successor form) furnished by the Partnership to the Limited Partners.

7. *Distributions.* Distributions shall be made from the undistributed profit and loss account to the Partners at the times and in the aggregate amounts determined by the General Partner in its sole discretion; provided, that distributions shall be made to the Partners in accordance with their Percentage Interests. Distributions may be in cash or in kind as determined by the General Partner in its sole discretion. Notwithstanding any provision to the contrary contained in this Agreement, the Partnership shall not make a distribution to the Limited Partners on account of its interest in the Partnership if such distribution would violate Section 17-607 of the Act or other applicable law.

8. *Other Business.* The Partners and their affiliates may engage in or possess an interest in other business ventures (unconnected with the Partnership) of every kind and description, independently or with others. The Partnership shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

9. *Limited Liability.* The debts, obligations, and liabilities of the Partnership, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Partnership and the General Partner. No Limited Partner shall have any liability (personal or otherwise) for any such debt, obligation, or liability of the Partnership solely by reason of acting in such capacity. For the avoidance of doubt, to the extent a Limited Partner is an Officer of the Partnership (regardless of title) and/or has authority to act on behalf of the General Partner of the Partnership, such Limited Partner shall remain a Limited Partner of the Partnership and shall not be subject to any liability (personal or otherwise) for any debt, obligation or liability of the Partnership.

10. *Exculpation: Indemnification.*

(a) *Exculpation.* Neither the General Partner nor any Covered Person (as defined below) shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts of omissions that do not constitute gross negligence, fraud, or willful misconduct. The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its officers, directors, agents, trustees, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(b) ~~(a) General Indemnification.~~ To the fullest extent permitted by law, subject to Section 10(ed) below, the Partnership shall indemnify each Covered Person ~~(as defined below)~~ for any and all losses, claims, demands, costs, damages, liabilities (joint and several), expenses of any

nature (including attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which such Covered Person may be involved or threatened to be involved, as a party or otherwise, by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Partnership and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement. For the avoidance of doubt, the indemnification under this Section 10(ab) shall apply even though at the time of such claim, demand, action, suit or proceeding such person is no longer a Covered Person (except as set forth in Section 10(c)(iii) below). Any indemnity under this Section 10(ab) shall be provided out of and only to the extent of the Partnership's assets, and no Limited Partner shall have personal liability on account thereof. For the avoidance of doubt, any indemnification obligations of the Partnership under the Prior Agreement are null and void and are superseded in their entirety by this Section 10.

(c) ~~(b)~~ *Covered Persons.* **"Covered Person"** means each of the following:

- (i) the General Partner, and each member, partner, director, officer, and agent thereof,
- (ii) each person who is or becomes an Officer of the Partnership on or after the date ~~hereof~~ of this Agreement, and
- (iii) each person who is or becomes an employee or agent of the Partnership on or after the date of this Agreement if the General Partner determines in its sole discretion that such employee or agent should be a Covered Person.

~~(iii)~~ "Covered Person" shall *not* include any other current or former officer, former partner, former director, former employee, or former agent ~~for~~ of the Partnership or the General Partner, in each case to the extent determined by (unless such Person is a "Covered Person" as defined in clause (i) or (ii) above on or after the date of this Agreement), *unless* the General Partner in its sole discretion determines that such Person should be a Covered Person.

(d) ~~(c)~~ *Limitations on Indemnification.* Notwithstanding anything to the contrary herein, no indemnification shall be provided for any Covered Person (i) with respect to any action brought by such Covered Person as a plaintiff against the Partnership or another Covered Person, or (ii) for any loss, damage or claim arising from such Covered Person's fraud, gross negligence or willful misconduct (in each case as determined by a final and binding judgment of a court or arbitrator).

(e) ~~(d)~~ *Advancement of Expenses.* Expenses reasonably incurred in defending any claim, action, suit or proceeding of the character described in Section 10(ab), to the extent available, shall be advanced by the Partnership prior to the final disposition of such claim, action, suit or proceeding upon receipt of a written undertaking by or on behalf of the recipient to repay all such advances if it is ultimately determined by the General Partner that such Covered Person is not entitled to indemnification pursuant to Section 10(ed).

(f) ~~(e)~~ *Third Party Beneficiaries.* Covered Persons shall be deemed to be third-party beneficiaries solely for purposes of this Section 10. All rights of any Covered Person under this Section shall inure to the benefit of such Covered Person's heirs and assigns. Except as expressly provided in this Section 10(f), this Agreement is intended solely for the benefit of the parties hereto and, to the extent allowed by this Agreement, their respective permitted successors and assigns, and this Agreement is not for the benefit of, nor may any provision hereof be enforced by, any other person.

11. Fiscal Year. The fiscal year of the Partnership shall end on December 31<sup>st</sup> of each year.

12. Transfers of Limited Partner Interests. No Limited Partner may transfer, in whole or in part, whether by sale, exchange, lease, license, assignment, distribution, gift, transfer or other disposition or alienation in any way, its interest in the Partnership, without the prior consent of the General Partner, which consent may be given or withheld in the sole discretion of the General Partner and may include such terms and conditions as the General Partner shall deem appropriate in its sole discretion. In addition, it shall be a condition precedent to every transfer of all or any portion of a Limited Partner's interest permitted hereunder, the transferring Limited Partner shall demonstrate to the satisfaction of the General Partner that (i) the proposed transfer will not cause or result in a breach of any violation of law, including U.S. federal or state securities laws, and (ii) that the transfer would not adversely affect the classification of the Partnership as a partnership for U.S. federal tax purposes (including by causing the Partnership to be treated as a "publicly traded partnership" under Section 7704 of the Code), terminate it as a partnership under Code Section 708, or have a substantial adverse effect with respect to U.S. federal income taxes payable by the Partnership.

13. Dissolution. The Partnership shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the General Partner; (ii) at any time there are no Limited Partners of the Partnership, unless the business of the Partnership is continued in a manner permitted by the Act; or (iii) the entry of a decree of judicial dissolution under Section 17-802 of the Act. Following the foregoing event, the General Partner shall proceed diligently to liquidate the assets of the Partnership in a manner consistent with commercially reasonable business practices. In the event of dissolution, the Partnership shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Partnership in an orderly manner), and the assets of the Partnership shall be applied in the manner, and in the order of priority, set forth in Section 17-804 of the Act. Liquidating distributions to the Partners shall be made in accordance with their Percentage Interests.

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

15. Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.

16. Facsimile Signature Page. This Agreement may be executed and delivered by the parties hereto by an executed signature page transmitted by facsimile, and any failure to deliver the originally executed signature page shall not affect the validity, legality or enforceability of this Agreement.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

18. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware (without regard to the conflicts of law principles), all rights and remedies being governed by said laws.

19. Consent to Jurisdiction. Each of the parties hereto consents and submits to the exclusive jurisdiction of the Bankruptcy Court for the Northern District of Texas, Dallas Division, for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement.

20. 19. Amendments. No amendment of this Agreement shall be valid or binding unless such amendment is made with the written consent of the General Partner. Further, any amendment of this Agreement that reduces the Percentage Interest or economic rights of any Limited Partner in a manner that is disproportionate to other Limited Partners shall require the written consent of the affected Limited Partner. For the avoidance of doubt, amendment includes any merger, combination or other reorganization or any amendment of the Certificate that has the effect of changing or superseding the terms of this Agreement.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first set forth above.

**GENERAL PARTNER:**

[NEW GP ENTITY]

\_\_\_\_\_  
By:

Its:

**LIMITED PARTNER:**

[CLAIMANT TRUST]

\_\_\_\_\_  
By:

Its: Trustee

*[Signature Page to Fifth Amended and Restated  
Agreement of Limited Partnership of Highland Capital Management, L.P.]*



Schedule A

SCHEDULE OF PARTNERS

[Date], 20202021

General Partner

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
[New GP Entity]	[Insert Address]	[1.00]%

Limited Partners

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
[Claimant Trust]	[Insert Address]	[99.00]%

Schedule A

Schedule B

SCHEDULE OF OFFICERS

[Date], 20202021

Name	Officer Title
{James P. Seery}, Jr.	{Chief Executive Officer}
[Name]	[Title]
[Name]	[Title]

Schedule B

**Exhibit I****REGULATORY ALLOCATIONS**

(i) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the minimum extent required by the “minimum gain chargeback” provisions of Treasury Regulation Section 1.704-2(f) and Treasury Regulation Section 1.704-2(i)(4).

(ii) All “nonrecourse deductions” (as defined in Treasury Regulation Section 1.704-2(b)(1)) of the Partnership for any year shall be allocated to the Partners in accordance with their respective Percentage Interests; provided, however, that nonrecourse deductions attributable to “partner nonrecourse debt” (as defined in Treasury Regulation Section 1.704-2(b)(4)) shall be allocated to the Partners in accordance with the provisions of Treasury Regulation Section 1.704-2(i)(1).

(iii) Items of income or gain (computed in accordance with Section 6(a), including the adjustments therein) for any taxable period shall be allocated to the Partners in the manner and to the extent required by the “qualified income offset” provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(iv) In no event shall Loss of the Partnership be allocated to a Partner if such allocation would cause or increase a negative balance in such Partner’s Adjusted Capital Account (determined for purposes of this Exhibit I only, by increasing the Partner’s Adjusted Capital Account balance by the amount the Partner is obligated to restore to the Partnership pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(c) and decreasing it by the amounts specified in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)).

(v) For tax purposes, except as otherwise provided herein or as required by Code Section 704, all items of income, gain, loss, deduction or credit shall be allocated to the Partners in the same manner as are Income and Loss; provided, however, that if the Book Value of any property of the Partnership differs from its adjusted basis for tax purposes, then items of income, gain, loss, deduction or credit related to such property for tax purposes shall be allocated among the Partners so as to take account of the variation between the adjusted basis of the property for tax purposes and its Book Value in the manner provided for under Code Section 704(c).

(vi) For purposes hereof, the following terms have the meanings set forth below:

“**Adjusted Capital Account**” means, for each Partner, such Partner’s capital account balance increased by such Partner’s share of “minimum gain” and of “partner nonrecourse debt minimum gain” (as determined pursuant to Treasury Regulation Sections 1.704-2(g) and 1.704-2(i)(5), respectively).

“**Book Value**” means, with respect to any asset, the asset’s adjusted basis for U.S. federal income tax purposes; provided, however, that (i) the initial Book Value of any asset contributed to the Partnership shall be adjusted to equal its fair market value as determined by the General Partner

*Schedule B*

at the time of its contribution, and (ii) the Book Values of all assets held by the Partnership shall be adjusted to equal their respective fair market values as determined by the General Partner (taking Code Section 7701(g) into account) upon an election by the Partnership to revalue its property in accordance with Regulation Section 1.704-1(b)(2)(iv)(f) and upon liquidation of the Partnership. The Book Value of any asset whose Book Value was adjusted pursuant to the preceding sentence shall thereafter be adjusted in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv)(g).

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**EXHIBIT BB**

**SENIOR EMPLOYEE STIPULATION AND TOLLING  
AGREEMENT EXTENDING STATUTES OF LIMITATION**

This stipulation (the "Stipulation") is entered into as of January 20, 2021, by and between Thomas Surgent (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

**RECITALS**

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the "Plan")<sup>1</sup> [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its Chief Compliance Officer and in such role provided services to the Debtor;

WHEREAS, (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 ((i) and (ii), collectively, the "Bonus Amount") were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Bonus Amount through and including the date hereof is \$ [REDACTED]

WHEREAS, on May 26, 2020, the Senior Employee filed a proof of claim [Claim No. 183] (the "Proof of Claim"), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other Claims against the Debtor in addition to the Bonus Amount (the "Other Employee

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Claims" and together with the Bonus Amount, the "Senior Employee Claims")<sup>2</sup>:

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the "Causes of Action"):

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth in therein (the "Employee Release"):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Confirmation Date;

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub- Trust and the appointment of the Claimant Trust Oversight Committee (the "CTOC") to oversee such entities;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount which would otherwise be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant

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<sup>2</sup> For the avoidance of doubt, the "Other Employee Claims" shall include all prepetition and postpetition Claims of the Senior Employee, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable), but shall not include the Bonus Amount.

Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

(2) has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets,

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation; provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor's successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee's obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and



extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Allowed Class 7 distribution on the Bonus Amount will be further reduced by 5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.



8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and any other Claims in favor of the Plan.

9. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address

as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

**Senior Employee**

Thomas Sargent



With a copy to:

**Attorneys for Senior Employee**

M. Michelle Hartmann  
Baker McKenzie  
1900 N. Pearl Street  
Suite 1500  
Dallas, Texas 75201  
Email: michelle.hartmann@bakermckenzie.com

**HCMLP**

Highland Capital Management, L.P  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: (631) 804-2049  
Email: jpseeryjr@gmail.com

With a copy to:

**Attorneys for HCMLP**

John A. Morris  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue  
34<sup>th</sup> Floor  
New York, New York 10017-2024  
Telephone No.: (212) 561-7760  
Email: jmorris@pszjlaw.com

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered

any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law: Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.


*[Remainder of Page Blank]*

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

SENIOR EMPLOYEE

By:  \_\_\_\_\_  
Name: Thomas Sargent \_\_\_\_\_  
Its: CCO \_\_\_\_\_

**EXHIBIT CC**



### SENIOR EMPLOYEE STIPULATION AND TOLLING AGREEMENT EXTENDING STATUTES OF LIMITATION

This stipulation (the "Stipulation") is entered into as of January 20, 2021, by and between Frank Waterhouse (the "Senior Employee") and Highland Capital Management, L.P. (the "Debtor"). The Debtor and the Senior Employee are individually referred to as a "Party" and collectively as the "Parties".

#### RECITALS

WHEREAS, on October 16, 2019, the Debtor filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on October 29, 2019, the U.S. Trustee appointed the official committee of unsecured creditors (the "Committee") in the Chapter 11 Case;

WHEREAS, On November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (as may be further amended or supplemented, the "Plan")<sup>1</sup> [Docket No. 1472]. A hearing to consider confirmation of the Plan is currently scheduled for January 26, 2021.

WHEREAS, prior to and during the course of the Chapter 11 Case, the Senior Employee was employed by the Debtor as its Chief Financial Officer and in such role provided services to the Debtor;

WHEREAS, (i) certain amounts that were allegedly due to be paid to the Senior Employee for the partial year of 2018 in installments due on February 28, 2020 and August 31, 2020; and (ii) certain amounts that were due to the Senior Employee in respect of the 2017 Deferred Award that vested after three years on May 31, 2020 (i) and (ii), collectively, the "Bonus Amount") were not paid because of objections raised by the Committee;

WHEREAS, as of the date hereof, the total Bonus Amount through and including the date hereof is [REDACTED];

WHEREAS, on May 26, 2020, the Senior Employee filed a proof of claim [Claim No. 182] (the "Proof of Claim"), which included a claim for the Bonus Amount;

WHEREAS, as set forth in the Proof of Claim, the Senior Employee may have other Claims against the Debtor in addition to the Bonus Amount (the "Other Employee Claims" and together

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

with the Bonus Amount, the "Senior Employee Claims")<sup>2</sup>:

WHEREAS, the Committee has alleged that certain causes of action against the Senior Employee may exist, which causes of action have been or will be retained pursuant to the Plan (the "Causes of Action"):

WHEREAS, the Plan provides for the release of certain of the Causes of Action (the "Released Causes of Action") against the Senior Employee as set forth in therein (the "Employee Release"):

WHEREAS, both the Employee Release and the payment of the Bonus Amount (as reduced pursuant to this Agreement) are conditioned on the Senior Employee executing this Stipulation on or prior to the Confirmation Date:

WHEREAS, the Plan provides for the creation of the Claimant Trust and Litigation Sub-Trust and the appointment of the Claimant Trust Oversight Committee (the "CTOC") to oversee such entities:

NOW, THEREFORE, in consideration of the mutual promises set forth herein, each of the Parties stipulates and agrees as follows:

1. Covenant Not to Sue. In consideration of the Senior Employee's agreement to toll the statutes of limitation with respect to any Causes of Action that can be asserted against him and to waive a portion of the Bonus Amount which would otherwise be part of the Senior Employee Claim, the Debtor and any of its successors or assigns, including the Claimant Trust or the Litigation Sub-Trust (collectively, the "HCMLP Parties"), agree not to initiate or commence any lawsuit, action or proceeding for the purpose of prosecuting any Released Causes of Action against the Senior Employee from the date of this Stipulation until the earlier of (a) thirty calendar days after the Notice Date and (b) the Dissolution Date (each as defined below) (such date, the "Termination Date"). This Stipulation shall expire upon the Termination Date and shall thereafter be of no further force and effect; *provided, however*, that the termination of this Stipulation shall not affect the treatment of the Bonus Amount set forth in Section 5 hereof or in the Plan.

2. Non-Compliance: Vesting.

a. As set forth in the Plan, the Senior Employee acknowledges and agrees that the Employee Release will be deemed null and void and of no force and effect (1) if there is more than one member of the CTOC who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full CTOC) that such Employee (regardless of whether the Employee is then

<sup>2</sup> For the avoidance of doubt, the "Other Employee Claims" shall include all prepetition and postpetition Claims of the Senior Employee, including paid time off claims, claims (if applicable) for severance amounts under applicable employment agreements, and administrative claims (if applicable), but shall not include the Bonus Amount.

currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

(1) sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date.

(2) has taken any action that impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets.

(3) has violated the confidentiality provisions of Section 4 below, or

(4) (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (i) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (ii) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing. If such determination under this Section 2a is made, the Claimant Trustee will deliver a notice of non-compliance with the Plan (the "Notice") to the Senior Employee. Such Notice will be effective when deemed delivered pursuant to Section 8.h hereof (the "Notice Date").

b. Notwithstanding anything herein to the contrary, Employee Release will vest and all Released Causes of Action that may or could be brought against the Senior Employee will be indefeasibly released solely to the extent set forth in Article IX.D of the Plan so long as the Notice Date does not occur on or before the date that the Claimant Trust is dissolved (such date, the "Dissolution Date").

c. Notwithstanding anything to the contrary in this Stipulation or any other document, Senior Employee expressly reserves the right to take all actions necessary to pursue enforcement and payment of the Other Employee Claims, and such actions shall not violate the terms of this Stipulation: provided, that, for the avoidance of doubt, nothing in this Stipulation shall prejudice the rights of the Debtor, or any of the Debtor's successor in interests under the Plan, to object to or otherwise challenge any Other Employee Claims or limit the Senior Employee's obligations under Section 8 hereof. Additionally, this Agreement does not affect or impair Senior Employee's rights, if any, to seek indemnification from any party, including, without limitation, the Debtor, any HCMLP Parties, or any other affiliates thereof nor does it affect or impair the right of the Debtor, or any of the Debtor's successor in interests under the Plan, to challenge such request.

3. Tolling of Statutes of Limitation. In consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that the statute of limitations applicable to any Cause of Action is hereby tolled as of, and extended from, the date of this Stipulation through and including the Termination Date (the "Tolling Period"). The Tolling Period shall be excluded from any calculation of any statute of limitations period applicable to any Cause of Action that may be brought by the HCMLP Parties against the Senior Employee. The Senior Employee acknowledges that he will be estopped from arguing that this Stipulation is

ineffective to extend the time within which the HCMLP Parties must commence an action to pursue any Cause of Action.

4. Confidentiality. In further consideration of the HCMLP Parties' "Covenant Not to Sue" (set forth in Section 1 hereof), the Senior Employee agrees that, in addition to existing obligations to maintain all business sensitive information concerning the HCMLP Parties in strictest confidence, each Senior Employee further agrees to keep all discussions, information and observations including, but not limited to, attorney-client privileged or work product information (collectively "Confidential Information") relating to the activities or planned activities of the HCMLP Parties strictly confidential. Each Senior Employee covenants and represents that it will not discuss such Confidential Information with anyone, other than the Senior Employee's personal attorney, the Claimant Trustee, or its respective representatives.

5. Bonus Amount.

a. The Senior Employee has agreed to forfeit a percentage of his Bonus Amount in consideration for the Employee Release and acknowledges that such agreement is an integral part of this Stipulation. The Senior Employee hereby agrees that (i) the Bonus Amount will be treated as an Allowed Class 7 (Convenience Claim) under the Plan and, to the extent required, will reduce his Bonus Amount as required to qualify for such treatment, (ii) the Senior Employee will receive the treatment provided to other Allowed Class 7 (Convenience Claims), (iii) the Allowed Class 7 distribution on the Bonus Amount will be further reduced by 5% (the "Reduced Amount"), and (iv) the Reduced Amount will be forever waived and released. Except as set forth herein, nothing herein will prejudice or otherwise impact any Other Employee Claim, or prevent the Senior Employee from prosecuting, pursuing, or enforcing any Other Employee Claim ~~as a Class 8 Claim in accordance with the Plan~~.

b. For the avoidance of doubt, although the Employee Release can be nullified as set forth in Section 2, any such nullification will have no effect on the treatment of the Senior Employee's Bonus Amount pursuant to this Section 5.

6. Other Employee Claims. The Parties acknowledge and agree that the Senior Employee is not entitled to make the Convenience Class Election with respect to the Other Employee Claims.

7. Effective Date. The Parties acknowledge and agree that this Stipulation and the Parties' obligations hereunder are conditioned in all respects on the approval of the Plan by the Bankruptcy Court and the occurrence of the Effective Date of the Plan. If, for any reason, the Plan is not approved by the Bankruptcy Court or the Effective Date does not occur, this Stipulation will be null and void and of no force and effect.

8. Plan Support. The Senior Employee agrees that he will use commercially reasonable efforts to assist the Debtor in confirmation of the Plan, including, without limitation, filing a notice of such Senior Employee's withdrawal from the *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1669], and vote, if applicable, the Bonus Amount, the Other Employee Claims, and any other Claims in favor of the Plan.



9. Miscellaneous.

a. Counterparts. This Stipulation may be signed in counterparts and such signatures may be delivered by facsimile or other electronic means.

b. Binding Effect. This Stipulation shall inure to the benefit of, and be binding upon, any and all successors-in-interests, assigns, and legal representatives, of any Party.

c. Authority. Each Party to this Stipulation and each person executing this document on behalf of any Party to this Stipulation warrants and represents that he, she, or it has the power and authority to execute, deliver and perform its obligations under this Stipulation.

d. Entire Agreement. This Stipulation sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written and oral agreements and discussions. This Stipulation may only be amended by an agreement in writing signed by the Parties.

e. No Waiver and Reservation of Rights. Except as otherwise provided herein, nothing in this Stipulation shall be, or deemed to be, a waiver of any rights, remedies, or privileges of any of the Parties. Except as otherwise provided herein, this Stipulation is without prejudice to any Party's rights, privileges and remedies under applicable law, whether at law or in equity, and each Party hereby reserves all of such rights, privileges and remedies under applicable law.

f. No Admission of Liability. The Parties acknowledge that there is a bona fide dispute with respect to the Causes of Action. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Senior Employee and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Senior Employee.

g. No Waiver If Breach. The Parties agree that no breach of any provision hereof can be waived except in writing. The waiver of a breach of any provision hereof shall not be deemed a waiver of any other breach of any provision hereof.

h. Notice. Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered by email, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be subsequently specified in writing by any Party and delivered to all other Parties pursuant to this Section:

**Senior Employee**

Frank Waterhouse





With a copy to:

**Attorneys for Senior Employee**

M. Michelle Hartmann  
Baker McKenzie  
1900 N. Pearl Street  
Suite 1500  
Dallas, Texas 75201  
Email: michelle.hartmann@bakermckenzie.com

**HCMLP**

Highland Capital Management, L.P  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: (631) 804-2049  
Email: jpseeryjr@gmail.com

With a copy to:

**Attorneys for HCMLP**

John A. Morris  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue  
34<sup>th</sup> Floor  
New York, New York 10017-2024  
Telephone No.: (212) 561-7760  
Email: jmorris@pszjlaw.com

i. Advice of Counsel. Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Stipulation; (b) executed this Stipulation upon the advice of such counsel; (c) read this Stipulation, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Stipulation and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

j. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

k. Governing Law; Venue. The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the jurisdiction of the Bankruptcy Court with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Blank]*

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: [Signature]  
Name: CEO/CRO  
Its: CEO/CRO

SENIOR EMPLOYEE

By: [Signature]

Name: FRANK WASELHANS

Its: \_\_\_\_\_

**EXHIBIT DD**

## Name

002217



\* Senior Employee - Required to execute Senior Employee Stipulation.

PACHULSKI STANG ZIEHL & JONES LLP  
 Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
 Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	
	)	

**DEBTOR'S NOTICE OF FILING OF PLAN SUPPLEMENT TO THE FIFTH  
 AMENDED PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
 MANAGEMENT, L.P. (AS MODIFIED)**

**PLEASE TAKE NOTICE** that on January 22, 2021, the Debtor filed the *Fifth Amended*

*Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* [Docket No. 1808]

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

(as subsequently amended and/or modified, the “Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the “Debtor”), filed the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* on November 24, 2020 [Docket No. 1473] (the “Disclosure Statement”).

**PLEASE TAKE FURTHER NOTICE** that attached as Exhibit C to the Disclosure Statement was the Debtor’s Liquidation Analysis/Financial Projections.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** are the Debtor’s amended Liquidation Analysis/Financial Projections (the “Amended Liquidation Analysis/Financial Projections”), which supersede the Liquidation Analysis/Financial Projections filed on November 24, 2020, with the Disclosure Statement.

**PLEASE TAKE FURTHER NOTICE** that a prior version of the Amended Liquidation Analysis/Financial Projections was provided to parties in interests on January 28, 2021, in advance of the deposition of James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer, and that the Amended Liquidation Analysis/Financial Projections differ from such version in two respects:

- The Amended Liquidation Analysis/Financial Projections include the settlement in principle between UBS and the Debtor, which provides for UBS receiving a Class 8 (General Unsecured Claim) of \$50,000,000 and a Class 9 (Subordinated Claim) of \$25,000,000. The prior Liquidation Analysis/Financial Projections included a Class 8 (General Unsecured Claim) in the amount of \$94,761,076 pursuant to the Court’s order temporarily allowing the UBS claim in that amount for voting purposes; and
- The Debtor inadvertently understated the aggregate amount of Class 8 (General Unsecured Claims) by \$4,392,937, which error is corrected in the Amended Liquidation Analysis/Financial Projections.

**PLEASE TAKE NOTICE** that the Debtor hereby files the documents included herewith

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings given to them in the Plan.

as **Exhibits DD-FF** (collectively, the “**Fifth Plan Supplement**”) as Exhibits DD-FF to the Plan:

**Exhibit DD:** Schedule of Retained Causes of Action (supersedes Exhibits E, L, and Q);

**Exhibit EE:** Revisions to Form of Claimant Trust Agreement (amends Exhibit R); and

**Exhibit FF:** Schedule of Contracts and Leases to Be Assumed (supersedes Exhibit H, I, and X).<sup>3</sup>

PLEASE TAKE NOTICE that the Debtor hereby gives notice of supplemental amendments (the “**Plan Amendments**”) to the Plan, which are set forth in the redlined excerpts of the Plan attached hereto as **Exhibit B**.

*[Remainder of Page Intentionally Blank]*

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<sup>3</sup> The Schedule of Contracts and Leases includes an agreement with Bloomberg Finance, L.P. (“**Bloomberg**”). The Debtor is currently in discussions with Bloomberg regarding the assumption of such agreement.

Dated: February 1, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
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[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

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*Counsel for the Debtor and Debtor-in-Possession*



## EXHIBIT A

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**Highland Capital Management, L.P.  
Disclaimer For Financial Projections**

This document includes financial projections for July 2020 through December 2022 (the “Projections”) for Highland Capital Management, L.P. (“Company”). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This document includes certain statements, estimates and forecasts provided by the Company with respect to the Company’s anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

2/1/2021

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**Highland Capital Management, L.P.**  
**Statement of Assumptions**

- A. Plan effective date is March 1, 2021
- B. All investment assets are sold by December 31, 2022.
- C. All demand notes are collected in the year 2021; 3 term notes defaulted and have been demanded based on default provisions; payment estimated in 2021
- D. Dugaboy term note with maturity date beyond 12/31/2022 are sold in Q1 2022; in the interim interest income and principal payments are not collected due to prepayment on note
- E. Fixed assets currently used in daily operations are sold in June 2021 for \$0
- F. Highland bonus plan has been terminated in accordance with its terms. Accrual for employee bonuses as of January 2021 are reversed and not paid.
- G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
- H. Post-effective date, the reorganized Debtor would retain up to ten HCMLP employees (or hire similar employees) to help monetize the remaining assets.
- I. Litigation Trustee budget is \$6,500,000.
- J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
- K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive interest on their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
- L. Plan assumes zero allowed claims for IFA and Hunter Mountain Investment Trust ("HM").
- M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume \$0 for IFA and HM, \$50.0 million for UBS and \$45.0 million for Class 7.
- N. Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
- O. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
- P. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate \$13.15 million. Plan currently projects Class 7 payout of \$10.3 million.
- P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date (no Plan requirement to do so):
  - o By September 30, 2021 - \$50,000,000
  - o By March 31, 2022 – additional \$50,000,000
  - o By June 30, 2022 – additional \$25,000,000
  - o All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.
- Q. Assumptions subject to revision based on business decision and performance of the business

**Highland Capital Management, L.P.**  
**Plan Analysis Vs. Liquidation Analysis**  
*(US \$000's)*

	Plan Analysis
Estimated cash on hand at 1/31/2020	\$ 24,290
Estimated proceeds from monetization of assets [1][2]	257,941
Estimated expenses through final distribution[1][3]	(59,573)
Total estimated \$ available for distribution	222,658
Less: Claims paid in full	
Unclassified [4]	(1,080)
Administrative claims [5]	(10,574)
Class 1 - Jefferies Secured Claim	-
Class 2 - Frontier Secured Claim [6]	(5,781)
Class 3 - Other Secured Claims	(62)
Class 4 - Priority Non-Tax Claims	(16)
Class 5 - Retained Employee Claims	-
Class 6 - PTO Claims [5]	-
Class 7 - Convenience Claims [7][8]	(10,280)
Subtotal	(27,793)
Estimated amount remaining for distribution to general unsecured claims	194,865
% Distribution to Class 7 (Class 7 claims included in Class 8 in Liquidation scenario)	85.00%
Class 8 - General Unsecured Claims [8][10]	273,219
Subtotal	273,219
% Distribution to general unsecured claims	71.32%
Estimated amount remaining for distribution	-
Class 9 - Subordinated Claims	no distribution
Class 10 - Class B/C Limited Partnership Interests	no distribution
Class 11 - Class A Limited Partnership Interest	no distribution

**Footnotes:**

[1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee

Assumes Chapter 7 Trustee engages new professionals to help liquidate assets and terminates any management agreements with funds or

[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable; Plan includes revenue from manag

**Highland Capital Management, L.P.**  
**Balance Sheet**  
**(US \$000's)**

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21
<b>Assets</b>							
Cash and Cash Equivalents	\$ 14,994	\$ 5,888	\$ 31,047	\$ 10,328	\$ 40,063	\$ 42,833	\$ 135,137
Other Current Assets	13,182	13,651	13,784	15,172	14,671	14,220	9,943
Investment Assets	320,912	305,961	283,812	280,946	233,234	171,174	47,503
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-
<b>TOTAL ASSETS</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 331,235</b>	<b>\$ 307,793</b>	<b>\$ 287,968</b>	<b>\$ 228,227</b>	<b>\$ 192,583</b>
<b>Liabilities</b>							
Post-petition Liabilities	\$ 142,730	\$ 135,597	\$ 131,230	\$ 12,891	\$ 10,249	\$ 10,503	\$ -
Pre-petition Liabilities	9,861	9,884	10,000	-	-	-	-
Claims							
Unclassified	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,528	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	273,219	273,219	223,219	223,219
Class 9 – Subordinated Claims [1]	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-
Claim Payable	9,861	9,884	10,000	278,747	273,219	223,219	223,219
<b>TOTAL LIABILITIES</b>	<b>\$ 152,591</b>	<b>\$ 145,481</b>	<b>\$ 141,230</b>	<b>\$ 291,639</b>	<b>\$ 283,468</b>	<b>\$ 233,723</b>	<b>\$ 223,219</b>
Partners' Capital	199,551	182,842	190,005	16,154	4,500	(5,495)	(30,636)

002227



**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Actual		Actual		Forecast --->		3 month
	Jan 2020 to June		3 month ended		3 month ended		Mar
	2020 Total		Sept 2020		Dec 2020		Total 2020
Revenue							
Management Fees	\$	6,572	\$	1,949	\$	2,804	\$ 11,325
Shared Service Fees		7,672		3,765		3,788	15,225
Other Income		3,126		538		340	4,004
Total revenue	\$	17,370	\$	6,252	\$	6,931	\$ 30,554
Operating Expenses [1]		13,328		9,171		9,399	31,899
Income/(loss) From Operations	\$	4,042	\$	(2,918)	\$	(2,468)	\$ (1,345)
Professional Fees		17,522		7,707		8,351	33,581
Other Income/(Expenses) [2]		2,302		1,518		1,059	4,879
Operating Gain/(Loss)	\$	(11,178)	\$	(9,107)	\$	(9,761)	\$ (30,046)
Realized and Unrealized Gain/(Loss)							
Other Realized Gains/(Loss)		-		-		-	-
Net Realized Gain/(Loss) on Sale of Investment		(28,418)		1,549		(8,850)	(35,719)
Net Change in Unrealized Gain/(Loss) of Investments		(29,929)		(7,450)		4,523	(32,857)
Net Realized Gain/(Loss) from Equity Method Investees		-		-		(364)	(364)
Net Change in Unrealized Gain/(Loss) from Equity Method Investees		(80,782)		(1,700)		-	(82,482)
Total Realized and Unrealized Gain/(Loss)	\$	(139,129)	\$	(7,601)	\$	(4,692)	\$ (151,422)
Net Income	\$	(150,307)	\$	(16,708)	\$	(14,453)	\$ (181,468)

Continued

002228

**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Forecast --->				Total
	3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	
Revenue					
Management Fees	\$ 580	\$ 580	\$ 580	\$ 580	\$
Shared Service Fees	-	-	-	-	
Other Income	-	-	-	-	
Total revenue	\$ 580	\$ 580	\$ 580	\$ 580	\$
Operating Expenses	3,635	2,679	1,739	6,425	
Income/(loss) From Operations	\$ (3,056)	\$ (2,099)	\$ (1,159)	\$ (5,846)	\$
Professional Fees	2,921	2,761	1,461	2,176	
Other Income/(Expenses)	(103)	(101)	(100)	(350)	
Operating Gain/(Loss)	\$ (6,079)	\$ (4,961)	\$ (2,719)	\$ (8,371)	\$
Realized and Unrealized Gain/(Loss)					
Other Realized Gains/(Loss)	-	-	-	(25,587)	
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	
Net Realized Gain/(Loss) from Equity Method Investees	-	-	-	-	
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	-	-	-	-	
Total Realized and Unrealized Gain/(Loss)	\$ -	\$ -	\$ -	\$ (25,587)	\$
Net Income	\$ (6,079)	\$ (4,961)	\$ (2,719)	\$ (33,958)	\$



## **EXHIBIT B**

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, ~~direct and indirect majority owned subsidiaries, and the Managed Funds,~~ (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.



126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to ~~11 U.S.C. § 510 or an~~ order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

#### **C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed Priority Tax Claim, ~~(b) in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or~~ (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

### **ARTICLE III. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

#### **A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. ~~Under section 510 of the Bankruptcy Code, upon~~ Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.**  
**MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts



forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee) and any applicable parties in Section VII.A of this Plan, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or



**EXHIBIT DD**

#### Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, substantive consolidation, recharacterization, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

## Annex 1

11 Estates Lane, LLC	Acis CLO Value Fund II Charitable DAF Ltd.
1110 Waters, LLC	Acis CMOA Trust
140 Albany, LLC	Advisors Equity Group LLC
1525 Dragon, LLC	Alamo Manhattan Hotel I, LLC
17720 Dickerson, LLC	(Third Party)
1905 Wylie LLC	Allenby, LLC
2006 Milam East Partners GP, LLC	Allisonville RE Holdings, LLC
2006 Milam East Partners, L.P.	AM Uptown Hotel, LLC
201 Tarrant Partners, LLC	Apex Care, L.P.
2014 Corpus Weber Road LLC	Asbury Holdings, LLC ( <i>fka HCSLR</i>
2325 Stemmons HoldCo, LLC	<i>Camelback Investors (Delaware), LLC</i> )
2325 Stemmons Hotel Partners, LLC	Ascendant Advisors
2325 Stemmons TRS, Inc.	Atlas IDF GP, LLC
300 Lamar, LLC	Atlas IDF, LP
3409 Rosedale, LLC	BB Votorantim Highland Infrastructure, LLC
3801 Maplewood, LLC	BDC Toys Holdco, LLC
3801 Shenandoah, L.P.	Beacon Mountain, LLC
3820 Goar Park LLC	Bedell Trust Ireland Limited (Charitable trust
400 Seaman, LLC	account)
401 Ame, L.P.	Ben Roby (third party)
4201 Locust, L.P.	BH Equities, LLC
4312 Belclaire, LLC	BH Heron Pointe, LLC
5833 Woodland, L.P.	BH Hollister, LLC
5906 DeLoache, LLC	BH Willowdale Manager, LLC
5950 DeLoache, LLC	Big Spring Partners, LLC
7758 Ronnie, LLC	Blair Investment Partners, LLC
7759 Ronnie, LLC	Bloomdale, LLC
AA Shotguns, LLC	Brave Holdings III Inc.
Aberdeen Loan Funding, Ltd.	Brentwood CLO, Ltd.
Acis CLO 2017-7 Ltd	Brentwood Investors Corp.
Acis CLO Management GP, LLC	Brian Mitts
Acis CLO Management GP, LLC ( <i>fka Acis</i>	Bristol Bay Funding Ltd.
<i>CLO Opportunity Funds GP, LLC</i> )	Bristol Bay Funding, Ltd.
Acis CLO Management Holdings, L.P.	BVP Property, LLC
Acis CLO Management Intermediate Holdings	C-1 Arbors, Inc.
I, LLC	C-1 Cutter's Point, Inc.
Acis CLO Management Intermediate Holdings	C-1 Eaglecrest, Inc.
II, LLC	C-1 Silverbrook, Inc.
Acis CLO Management, LLC ( <i>fka Acis CLO</i>	Cabi Holdco GP, LLC
<i>Opportunity Funds SLP, LLC</i> )	Cabi Holdco I, Ltd
Acis CLO Trust	Cabi Holdco I, Ltd.

Cabi Holdco, L.P.  
 California Public Employees' Retirement System  
 Camelback Residential Investors, LLC  
 Camelback Residential Investors, LLC  
*(fka Sevilla Residential Partners, LLC)*  
 Camelback Residential Partners, LLC  
 Capital Real Estate - Latitude, LLC  
 Castle Bio Manager, LLC  
 Castle Bio, LLC  
 Cayco Admin Ltd.  
 Cayco Insolvency Ltd.  
 CG Works, Inc.  
 CG Works, Inc.  
*(fka Common Grace Ventures, Inc.)*  
 Charitable DAF Fund, L.P.  
 Charitable DAF GP, LLC  
 Charitable DAF HoldCo, Ltd  
 Charitable DAF HoldCo, Ltd.  
 Claymore Holdings, LLC  
 CLO HoldCo, Ltd  
 CLO Holdco, Ltd.  
 Corbusier, Ltd.  
 Cornerstone Healthcare Group Holding, Inc.  
 Corpus Weber Road Member LLC  
 CP Equity Hotel Owner, LLC  
 CP Equity Land Owner, LLC  
 CP Equity Owner, LLC  
 CP Hotel TRS, LLC  
 CP Land Owner, LLC  
 CP Tower Owner, LLC  
 CRE - Lat, LLC  
 Credit Suisse, Cayman Islands Branch  
 Crossings 2017 LLC  
 Crown Global Insurance Company (third party)  
 Dallas Cityplace MF SPE Owner LLC  
 Dallas Lease and Finance, L.P.  
 Dana Scott Breault  
 James Dondero  
 Reese Avry Dondero  
 Jameson Drue Dondero  
 Dana Sprong (Third Party)

David c. Hopson  
 De Kooning, Ltd.  
 deKooning, Ltd.  
 DFA/BH Autumn Ridge, LLC  
 Dolomiti, LLC  
 DrugCrafters, L.P.  
 Dugaboy Investment Trust  
 Dugaboy Management, LLC  
 Dugaboy Project Management GP, LLC  
 Eagle Equity Advisors, LLC  
 Eames, Ltd.  
 Eastland CLO, Ltd.  
 Eastland Investors Corp.  
 EDS Legacy Heliport, LLC  
 EDS Legacy Partners Owner, LLC  
 EDS Legacy Partners, LLC  
 Empower Dallas Foundation, Inc.  
 ENA 41, LLC  
 Entegra Strat Superholdco, LLC  
 Entegra-FRO Holdco, LLC  
 Entegra-FRO Superholdco, LLC  
 Entegra-HOCF Holdco, LLC  
 Entegra-NHF Holdco, LLC  
 Entegra-NHF Superholdco, LLC  
 Entegra-RCP Holdco, LLC  
 Estates on Maryland Holdco, LLC  
 Estates on Maryland Owners SM, Inc.  
 Estates on Maryland Owners, LLC  
 Estates on Maryland, LLC  
 Falcon E&P Four Holdings, LLC  
 Falcon E&P One, LLC  
 Falcon E&P Opportunities Fund, L.P.  
 Falcon E&P Opportunities GP, LLC  
 Falcon E&P Royalty Holdings, LLC  
 Falcon E&P Six, LLC  
 Falcon E&P Two, LLC  
 Falcon Four Midstream, LLC  
 Falcon Four Upstream, LLC  
 Falcon Incentive Partners GP, LLC  
 Falcon Incentive Partners, LP  
 Falcon Six Midstream, LLC  
 Flamingo Vegas Holdco, LLC *(fka Cabi Holdco, LLC)*

Four Rivers Co-Invest GP, LLC  
 Four Rivers Co-Invest, L.P.  
 FRBH Abbington SM, Inc.  
 FRBH Abbington, LLC  
 FRBH Arbors, LLC  
 FRBH Beechwood SM, Inc.  
 FRBH Beechwood, LLC  
 FRBH C1 Residential, LLC  
 FRBH Courtney Cove SM, Inc.  
 FRBH Courtney Cove, LLC  
 FRBH CP, LLC  
 FRBH Duck Creek, LLC  
 FRBH Eaglecrest, LLC  
 FRBH Edgewater JV, LLC  
 FRBH Edgewater Owner, LLC  
 FRBH Edgewater SM, Inc.  
 FRBH JAX-TPA, LLC  
 FRBH Nashville Residential, LLC  
 FRBH Regatta Bay, LLC  
 FRBH Sabal Park SM, Inc.  
 FRBH Sabal Park, LLC  
 FRBH Silverbrook, LLC  
 FRBH Timberglen, LLC  
 FRBH Willow Grove SM, Inc.  
 FRBH Willow Grove, LLC  
 FRBH Woodbridge SM, Inc.  
 FRBH Woodbridge, LLC  
 Freedom C1 Residential, LLC  
 Freedom Duck Creek, LLC  
 Freedom Edgewater, LLC  
 Freedom JAX-TPA Residential, LLC  
 Freedom La Mirage, LLC  
 Freedom LHV LLC  
 Freedom Lubbock LLC  
 Freedom Miramar Apartments, LLC  
 Freedom Sandstone, LLC  
 Freedom Willowdale, LLC  
 Fundo de Investimento em Direitos Creditórios  
 BB Votorantim Highland Infraestrutura  
 G&E Apartment REIT The Heights at Olde  
 Towne, LLC  
 G&E Apartment REIT The Myrtles at Olde  
 Towne, LLC

GAF REIT, LLC  
 GAF Toys Holdco, LLC  
 Gardens of Denton II, L.P.  
 Gardens of Denton III, L.P.  
 Gleneagles CLO, Ltd.  
 Goveranance RE, Ltd.  
 Governancè Re, Ltd.  
 Governance, Ltd.  
 Grant Scott  
 Grant Scott, Trustee of The SLHC Trust  
 Grayson CLO, Ltd.  
 Grayson Investors Corp.  
 Greater Kansas City Community Foundation  
 (third party)  
 Greenbriar CLO, Ltd.  
 Greg Busseyt  
 Gunwale LLC  
 Gunwale, LLC  
 Hakusan, LLC  
 Hammark Holdings LLC  
 Hampton Ridge Partners, LLC  
 Harko, LLC  
 Harry Bookey/Pam Bookey (third party)  
 Haverhill Acquisition Co., LLC  
 Haygood, LLC  
 HB 2015 Family LP (third party)  
 HCBH 11611 Ferguson, LLC  
 HCBH Buffalo Pointe II, LLC  
 HCBH Buffalo Pointe III, LLC  
 HCBH Buffalo Pointe, LLC  
 HCBH Hampton Woods SM, Inc.  
 HCBH Hampton Woods, LLC  
 HCBH Overlook SM, Inc.  
 HCBH Overlook, LLC  
 HCBH Rent Investors, LLC  
 HCMS Falcon GP, LLC  
 HCMS Falcon, L.P.  
 HCO Holdings, LLC  
 HCOF Preferred Holdings, L.P.  
 HCOF Preferred Holdings, LP  
 HCOF Preferred Holdings, Ltd.  
 HCRE 1775 James Ave, LLC  
 HCRE Addison TRS, LLC



HCRE Addison, LLC (*fka HWS Addison, LLC*)

HCRE Hotel Partner, LLC (*fka HCRE HWS Partner, LLC*)

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC (*fka HWS Las Colinas, LLC*)

HCRE Plano TRS, LLC

HCRE Plano, LLC (*fka HWS Plano, LLC*)

HCRE-I Holding Corp.

HCRE-II Holding Corp.

HCRE-III Holding Corp.

HCRE-IV Holding Corp.

HCRE-IX Holding Corp.

HCRE-V Holding Corp.

HCRE-VI Holding Corp.

HCRE-VII Holding Corp.

HCRE-VIII Holding Corp.

HCRE-XI Holding Corp.

HCRE-XII Holding Corp.

HCRE-XIII Holding Corp.

HCRE-XIV Holding Corp.

HCRE-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA*)

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. (*fka Pyxis Capital, L.P.*)

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.

Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP  
Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP  
Highland Capital of New York, Inc.  
Highland Capital Special Allocation, LLC  
Highland CDO Holding Company  
Highland CDO Opportunity Fund GP, L.P.  
Highland CDO Opportunity Fund, L.P.  
Highland CDO Opportunity Fund, Ltd.  
Highland CDO Opportunity GP, LLC  
Highland CDO Opportunity Master Fund, L.P.  
Highland CDO Trust  
Highland CLO 2018-1, Ltd.  
Highland CLO Assets Holdings Limited  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd.  
Highland CLO Funding, Ltd. (*fka Acis Loan Funding, Ltd.*)

Highland CLO Gaming Holdings, LLC  
Highland CLO Holdings Ltd.  
Highland CLO Holdings, Ltd. (as of 12.19.17)  
Highland CLO Management Ltd.  
Highland CLO Trust  
Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.  
Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation  
Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC (*fka Highland Capital Loan GP, LLC*)

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. (*fka Highland Capital Loan Fund, L.P.*)

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. (*fka Highland Loan Fund, Ltd.*)

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. (*fka Highland Loan Master Fund, L.P.*)

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund (*fka Highland Energy and Materials Fund*)

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunitites Fund  
 Highland Floating Rate Opportunitites Fund  
 Highland Fund Holdings, LLC  
 Highland Funds I  
 Highland Funds II  
 Highland Funds III  
 Highland GAF Chemical Holdings, LLC  
 Highland General Partner, LP  
 Highland Global Allocation Fund  
 Highland Global Allocation Fund  
 (*fka Highland Global Allocation Fund II*)  
 Highland GP Holdings, LLC  
 Highland HCF Advisor Ltd.  
 Highland HCF Advisor, Ltd., as Trustee for  
 and on behalf of Acis CLO Trust, as nominee  
 for and on behalf of Highland CLO Funding,  
 Ltd. (as of 3.29.18)  
 Highland Healthcare Equity Income and  
 Growth Fund  
 Highland iBoxx Senior Loan ETF  
 Highland Income Fund  
 Highland Income Fund (*fka Highland  
 Floating Rate Opportunitites Fund*)  
 Highland Kansas City Foundation, Inc.  
 Highland Latin America Consulting, Ltd.  
 Highland Latin America GP, Ltd.  
 Highland Latin America LP, Ltd.  
 Highland Latin America Trust  
 Highland Legacy Limited  
 Highland LF Chemical Holdings, LLC  
 Highland Loan Funding V, LLC  
 Highland Loan Funding V, Ltd.  
 Highland Long/Short Equity Fund  
 Highland Long/Short Healthcare Fund  
 Highland Marcal Holding, Inc.  
 Highland Merger Arbitrage Fund  
 Highland Multi Strategy Credit Fund GP, L.P.  
 Highland Multi Strategy Credit Fund GP, L.P.  
 (*fka Highland Credit Opportunities CDO GP,  
 L.P.*)  
 Highland Multi Strategy Credit Fund, L.P.

Highland Multi Strategy Credit Fund, L.P. (*fka  
 Highland Credit Opportunities Fund, L.P., fka  
 Highland Credit Opportunities CDO, L.P.*)  
 Highland Multi Strategy Credit Fund, Ltd.  
 Highland Multi Strategy Credit Fund, Ltd. (*fka  
 Highland Credit Opportunities Fund, Ltd.*)  
 Highland Multi Strategy Credit GP, LLC  
 Highland Multi Strategy Credit GP, LLC (*fka  
 Highland Credit Opportunities CDO GP, LLC*)  
 Highland Multi-Strategy Fund GP, LLC  
 Highland Multi-Strategy Fund GP, LP  
 Highland Multi-Strategy IDF GP, LLC  
 Highland Multi-Strategy Master Fund, L.P.  
 Highland Multi-Strategy Master Fund, LP  
 Highland Multi-Strategy Onshore Master  
 SubFund II, LLC  
 Highland Multi-Strategy Onshore Master  
 Subfund, LLC  
 Highland Opportunistic Credit Fund  
 Highland Park CDO 1, Ltd.  
 Highland Park CDO I, Ltd.  
 Highland Premier Growth Equity Fund  
 Highland Premium Energy & Materials Fund  
 Highland Prometheus Feeder Fund I, L.P.  
 Highland Prometheus Feeder Fund I, LP  
 Highland Prometheus Feeder Fund II, L.P.  
 Highland Prometheus Feeder Fund II, LP  
 Highland Prometheus Master Fund, L.P.  
 Highland Receivables Finance I, LLC  
 Highland Restoration Capital Partners GP,  
 LLC  
 Highland Restoration Capital Partners Master,  
 L.P.  
 Highland Restoration Capital Partners  
 Offshore, L.P.  
 Highland Restoration Capital Partners, L.P.  
 Highland Santa Barbara Foundation, Inc.  
 Highland Select Equity Fund GP, L.P.  
 Highland Select Equity Fund, L.P.  
 Highland Select Equity GP, LLC  
 Highland Select Equity Master Fund, L.P.

Highland Small-Cap Equity Fund  
 Highland Socially Responsible Equity Fund  
 Highland Socially Responsible Equity Fund  
*(fka Highland Premier Growth Equity Fund)*

Highland Special Opportunities Holding  
 Company  
 Highland SunBridge GP, LLC  
 Highland Tax-Exempt Fund  
 Highland TCI Holding Company, LLC  
 Highland Total Return Fund  
 Highland's Roads Land Holding Company,  
 LLC

Hinduja Bank (Switzerland) Ltd  
 Hirst, Ltd.

HMCF PB Investors, LLC  
 HMx2 Investment Trust  
 (Matt McGraner)

Hockney, Ltd.  
 HRT North Atlanta, LLC  
 HRT Timber Creek, LLC  
 HRTBH North Atlanta, LLC  
 HRTBH Timber Creek, LLC

Huber Funding LLC  
 Hunter Mountain Investment Trust  
 HWS Investors Holdco, LLC  
 Internal Investors

Intertrust  
 James D. Dondero  
 Reese Avry Dondero  
 Jameson Drue Dondero

James Dondero  
 James Dondero and Mark Okada  
 James Dondero  
 Reese Avry Dondero  
 Jameson Drue Dondero

Japan Trustee Services Bank, Ltd.  
 Jasper CLO, Ltd.

Jewelry Ventures I, LLC  
 JMIJM, LLC

Joanna E. Milne Irrevocable Trust dated Nov  
 25 1998 (third party)

John Honis

John L. Holt, Jr.  
 John R. Sears, Jr.  
 Karisopolis, LLC  
 Keelhaul LLC  
 KHM Interests, LLC (third party)  
 Kuilima Montalban Holdings, LLC  
 Kuilima Resort Holdco, LLC  
 KV Cameron Creek Owner, LLC  
 Lakes at Renaissance Park Apartments  
 Investors, L.P.

Lakeside Lane, LLC  
 Landmark Battleground Park II, LLC  
 Lane Britain

Larry K. Anders  
 LAT Battleground Park, LLC  
 LAT Briley Parkway, LLC

Lautner, Ltd.  
 Leawood RE Holdings, LLC  
 Liberty Cayman Holdings, Ltd.  
 Liberty CLO Holdco, Ltd.

Liberty CLO, Ltd.  
 Liberty Sub, Ltd.

Long Short Equity Sub, LLC  
 Longhorn Credit Funding LLC  
 Longhorn Credit Funding LLC - A  
 Longhorn Credit Funding LLC - B  
 Longhorn Credit Funding LLC (LHB)

Longhorn Credit Funding, LLC  
 Lurin Real Estate Holdings V, LLC  
 Maple Avenue Holdings, LLC

MaplesFS Limited

Marc C. Manzo

Mark and Pam Okada Family Trust - Exempt  
 Descendants' Trust

Mark and Pam Okada Family Trust - Exempt  
 Trust #2

Mark and Pamela Okada Family Trust -  
 Exempt Descendants' Trust

Mark and Pamela Okada Family Trust -  
 Exempt Descendants' Trust #2

Mark and Pamela Okada Family Trust -  
 Exempt Trust #2

Mark K. Okada

Mark Okada  
 Mark Okada and Pam Okada  
 Mark Okada and Pam Okada, as joint owners  
 Mark Okada/Pamela Okada  
 Markham Fine Jewelers, L.P.  
 Markham Fine Jewelers, LP  
 Matt McGraner  
 Meritage Residential Partners, LLC  
 MGM Studios HoldCo, Ltd.  
 Michael Rossi  
 ML CLO XIX Sterling (Cayman), Ltd.  
 N/A  
 Nancy Dondero  
 NCI Apache Trail LLC  
 NCI Assets Holding Company LLC  
 NCI Country Club LLC  
 NCI Fort Worth Land LLC  
 NCI Front Beach Road LLC  
 NCI Minerals LLC  
 NCI Royse City Land LLC  
 NCI Stewart Creek LLC  
 NCI Storage, LLC  
 Neil Labatte  
 Neutra, Ltd.  
 New Jersey Tissue Company Holdco, LLC  
*(fka Marcal Paper Mills Holding Company, LLC)*  
 NexAnnuity Holdings, Inc.  
 NexBank Capital Trust I  
 NexBank Capital, Inc.  
 NexBank Land Advisors, Inc.  
 NexBank Securities Inc.  
 NexBank Securities, Inc.  
  
 NexBank SSB  
 NexBank Title, Inc.  
 (dba NexVantage Title Services)  
 NexBank, SSB  
 NexPoint Advisors GP, LLC  
 NexPoint Advisors, L.P.  
 NexPoint Capital REIT, LLC  
 NexPoint Capital, Inc.

NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*  
 NexPoint CR F/H DST, LLC  
 NexPoint Credit Strategies Fund  
 NexPoint Discount Strategies Fund  
*(fka NexPoint Discount Yield Fund)*  
 NexPoint DRIP  
 NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*  
 NexPoint Event-Driven Fund  
*(fka NexPoint Merger Arbitrage Fund)*  
 NexPoint Flamingo DST  
 NexPoint Flamingo Investment Co, LLC  
 NexPoint Flamingo Leaseco, LLC  
 NexPoint Flamingo Manager, LLC  
 NexPoint Flamingo Property Manager, LLC  
 NexPoint Healthcare Opportunities Fund  
 NexPoint Hospitality Trust  
 NexPoint Hospitality, Inc.  
 NexPoint Hospitality, LLC  
 NexPoint Insurance Distributors, LLC  
 NexPoint Insurance Solutions GP, LLC  
 NexPoint Insurance Solutions GP, LLC  
*(fka Highland Capital Insurance Solutions GP, LLC)*  
 NexPoint Insurance Solutions, L.P.  
*(fka Highland Capital Insurance Solutions, L.P.)*  
 NexPoint Latin American Opportunities Fund  
 NexPoint Legacy 22, LLC  
 NexPoint Lincoln Porte Equity, LLC  
 NexPoint Lincoln Porte Manager, LLC  
 NexPoint Lincoln Porte, LLC  
*(fka NREA Lincoln Porte, LLC)*  
 NexPoint Multifamily Capital Trust, Inc.  
 NexPoint Multifamily Capital Trust, Inc.  
*(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)*  
 NexPoint Multifamily Operating Partnership, L.P.  
 NexPoint Peoria, LLC  
 NexPoint Polo Glen DST



NexPoint Polo Glen Holdings, LLC  
 NexPoint Polo Glen Investment Co, LLC  
 NexPoint Polo Glen Leaseco, LLC  
 NexPoint Polo Glen Manager, LLC  
 NexPoint RE Finance Advisor GP, LLC  
 NexPoint RE Finance Advisor, L.P.  
 NexPoint Real Estate Advisors GP, LLC  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors III, L.P.  
 NexPoint Real Estate Advisors IV, L.P.  
 NexPoint Real Estate Advisors V, L.P.  
 NexPoint Real Estate Advisors VI, L.P.  
 NexPoint Real Estate Advisors VII GP, LLC  
 NexPoint Real Estate Advisors VII, L.P.  
 NexPoint Real Estate Advisors VIII, L.P.  
 NexPoint Real Estate Advisors, L.P.  
 NexPoint Real Estate Capital, LLC  
 NexPoint Real Estate Capital, LLC (*fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC*)  
 NexPoint Real Estate Finance OP GP, LLC  
 NexPoint Real Estate Finance Operating Partnership, L.P.  
 NexPoint Real Estate Finance, Inc.  
 NexPoint Real Estate Opportunities, LLC  
 NexPoint Real Estate Opportunities, LLC (*fka Freedom REIT LLC*)  
 NexPoint Real Estate Partners, LLC  
 (fka HCRE Partners, LLC)  
 NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)  
 NexPoint Real Estate Strategies Fund  
 NexPoint Residential Trust Inc.  
 NexPoint Residential Trust Operating Partnership GP, LLC  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust, Inc.

NexPoint Securities, Inc.  
 (*fka Highland Capital Funds Distributor, Inc.*)  
 (*fka Pyxis Distributors, Inc.*)  
 NexPoint Strategic Income Fund  
 (*fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund*)  
 NexPoint Strategic Opportunities Fund  
 NexPoint Strategic Opportunities Fund  
 (*fka NexPoint Credit Strategies Fund*)  
 NexPoint Texas Multifamily Portfolio DST  
 (*fka NREA Southeast Portfolio Two, DST*)  
 NexPoint WLIF I Borrower, LLC  
 NexPoint WLIF I, LLC  
 NexPoint WLIF II Borrower, LLC  
 NexPoint WLIF II, LLC  
 NexPoint WLIF III Borrower, LLC  
 NexPoint WLIF III, LLC  
 NexPoint WLIF, LLC (Series I)  
 NexPoint WLIF, LLC (Series II)  
 NexPoint WLIF, LLC (Series III)  
 NexStrat LLC  
 NexVest, LLC  
 NexWash LLC  
 NFRO REIT Sub, LLC  
 NFRO TRS, LLC  
 NHF CCD, Inc.  
 NHT 2325 Stemmons, LLC  
 NHT Beaverton TRS, LLC  
 (*fka NREA Hotel TRS, Inc.*)  
 NHT Beaverton, LLC  
 NHT Bend TRS, LLC  
 NHT Bend, LLC  
 NHT Destin TRS, LLC  
 NHT Destin, LLC  
 NHT DFW Portfolio, LLC  
 NHT Holdco, LLC  
 NHT Holdings, LLC  
 NHT Intermediary, LLC  
 NHT Nashville TRS, LLC  
 NHT Nashville, LLC  
 NHT Olympia TRS, LLC  
 NHT Olympia, LLC  
 NHT Operating Partnership GP, LLC

NHT Operating Partnership II, LLC  
 NHT Operating Partnership, LLC  
 NHT Salem, LLC  
 NHT SP Parent, LLC  
 NHT SP TRS, LLC  
 NHT SP, LLC  
 NHT Tigard TRS, LLC  
 NHT Tigard, LLC  
 NHT TRS, Inc.  
 NHT Uptown, LLC  
 NHT Vancouver TRS, LLC  
 NHT Vancouver, LLC  
 NLA Assets LLC  
 NMRT TRS, Inc.  
 NREA Adair DST Manager, LLC  
 NREA Adair Investment Co, LLC  
 NREA Adair Joint Venture, LLC  
 NREA Adair Leaseco Manager, LLC  
 NREA Adair Leaseco, LLC  
 NREA Adair Property Manager LLC  
 NREA Adair, DST  
 NREA Ashley Village Investors, LLC  
 NREA Cameron Creek Investors, LLC  
 NREA Cityplace Hue Investors, LLC  
 NREA Crossing Investors LLC  
 NREA Crossings Investors, LLC  
 NREA Crossings Ridgewood Coinvestment, LLC (*fka NREA Crossings Ridgewood Investors, LLC*)  
 NREA DST Holdings, LLC  
 NREA El Camino Investors, LLC  
 NREA Estates Inc.  
 NREA Estates Investment Co, LLC  
 NREA Estates Leaseco, LLC  
 NREA Estates Manager, LLC  
 NREA Estates Property Manager, LLC  
 NREA Estates, DST  
 NREA Gardens DST Manager LLC  
 NREA Gardens DST Manager, LLC  
 NREA Gardens Investment Co, LLC  
 NREA Gardens Leaseco Manager, LLC  
 NREA Gardens Leaseco, LLC  
 NREA Gardens Property Manager, LLC

NREA Gardens Springing LLC  
 NREA Gardens Springing Manager, LLC  
 NREA Gardens, DST  
 NREA Hidden Lake Investment Co, LLC  
 NREA Hue Investors, LLC  
 NREA Keystone Investors, LLC  
 NREA Meritage Inc.  
 NREA Meritage Investment Co, LLC  
 NREA Meritage Leaseco, LLC  
 NREA Meritage Manager, LLC  
 NREA Meritage Property Manager, LLC  
 NREA Meritage, DST  
 NREA Oaks Investors, LLC  
 NREA Retreat Investment Co, LLC  
 NREA Retreat Leaseco, LLC  
 NREA Retreat Manager, LLC  
 NREA Retreat Property Manager, LLC  
 NREA Retreat, DST  
 NREA SE MF Holdings LLC  
 NREA SE MF Holdings, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE Multifamily LLC  
 NREA SE Multifamily, LLC  
 NREA SE One Property Manager, LLC  
 NREA SE Three Property Manager, LLC  
 NREA SE Two Property Manager, LLC  
 NREA SE1 Andros Isles Leaseco, LLC  
 NREA SE1 Andros Isles Manager, LLC  
 NREA SE1 Andros Isles, DST  
 (Converted from DK Gateway Andros, LLC)  
 NREA SE1 Arborwalk Leaseco, LLC  
 NREA SE1 Arborwalk Manager, LLC  
 NREA SE1 Arborwalk, DST  
 (Converted from MAR Arborwalk, LLC)  
 NREA SE1 Towne Crossing Leaseco, LLC  
 NREA SE1 Towne Crossing Manager, LLC  
 NREA SE1 Towne Crossing, DST  
 (Converted from Apartment REIT Towne Crossing, LP)  
 NREA SE1 Walker Ranch Leaseco, LLC  
 NREA SE1 Walker Ranch Manager, LLC

NREA SE1 Walker Ranch, DST  
(Converted from SOF Walker Ranch Owner, L.P.)

NREA SE2 Hidden Lake Leaseco, LLC  
NREA SE2 Hidden Lake Manager, LLC  
NREA SE2 Hidden Lake, DST  
NREA SE2 Hidden Lake, DST  
(Converted from SOF Hidden Lake SA Owner, L.P.)

NREA SE2 Vista Ridge Leaseco, LLC  
NREA SE2 Vista Ridge Manager, LLC  
NREA SE2 Vista Ridge, DST  
NREA SE2 Vista Ridge, DST  
(Converted from MAR Vista Ridge, L.P.)

NREA SE2 West Place Leaseco, LLC  
NREA SE2 West Place Manager, LLC  
NREA SE2 West Place, DST  
(Converted from Landmark at West Place, LLC)

NREA SE3 Arboleda Leaseco, LLC  
NREA SE3 Arboleda Manager, LLC  
NREA SE3 Arboleda, DST  
(Converted from G&E Apartment REIT Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC  
NREA SE3 Fairways Manager, LLC  
NREA SE3 Fairways, DST  
(Converted from MAR Fairways, LLC)

NREA SE3 Grand Oasis Leaseco, LLC  
NREA SE3 Grand Oasis Manager, LLC  
NREA SE3 Grand Oasis, DST  
(Converted from Landmark at Grand Oasis, LP)

NREA Southeast Portfolio One Manager, LLC  
NREA Southeast Portfolio One, DST  
NREA Southeast Portfolio One, DST  
NREA Southeast Portfolio Three Manager, LLC

NREA Southeast Portfolio Three, DST  
NREA Southeast Portfolio Three, DST  
NREA Southeast Portfolio Two Manager, LLC  
NREA Southeast Portfolio Two, DST  
NREA Southeast Portfolio Two, LLC

NREA SOV Investors, LLC  
NREA Uptown TRS, LLC  
NREA VB I LLC  
NREA VB II LLC  
NREA VB III LLC  
NREA VB IV LLC  
NREA VB Pledgor I LLC  
NREA VB Pledgor I, LLC  
NREA VB Pledgor II LLC  
NREA VB Pledgor II, LLC  
NREA VB Pledgor III LLC  
NREA VB Pledgor III, LLC  
NREA VB Pledgor IV LLC  
NREA VB Pledgor IV, LLC  
NREA VB Pledgor V LLC  
NREA VB Pledgor V, LLC  
NREA VB Pledgor VI LLC  
NREA VB Pledgor VI, LLC  
NREA VB Pledgor VII LLC  
NREA VB Pledgor VII, LLC  
NREA VB SM, Inc.  
NREA VB V LLC  
NREA VB VI LLC  
NREA VB VII LLC  
NREA Vista Ridge Investment Co, LLC  
NREC AR Investors, LLC  
NREC BM Investors, LLC  
NREC BP Investors, LLC  
NREC Latitude Investors, LLC  
NREC REIT Sub, Inc.  
NREC TRS, Inc.  
NREC WW Investors, LLC  
NREF OP I Holdco, LLC  
NREF OP I SubHoldco, LLC  
NREF OP I, L.P.  
NREF OP II Holdco, LLC  
NREF OP II SubHoldco, LLC  
NREF OP II, L.P.  
NREF OP IV REIT Sub TRS, LLC  
NREF OP IV REIT Sub, LLC  
NREF OP IV, L.P.  
NREO NW Hospitality Mezz, LLC  
NREO NW Hospitality, LLC

NREO Perilune, LLC  
 NREO SAFStor Investors, LLC  
 NREO TRS, Inc.  
 NRESF REIT Sub, LLC  
 NXRT Abbingdon, LLC  
 NXRT Atera II, LLC  
 NXRT Atera, LLC  
 NXRT AZ2, LLC  
 NXRT Barrington Mill, LLC  
 NXRT Bayberry, LLC  
 NXRT Bella Solara, LLC  
 NXRT Bella Vista, LLC  
 NXRT Bloom, LLC  
 NXRT Brandywine GP I, LLC  
 NXRT Brandywine GP I, LLC  
 NXRT Brandywine GP II, LLC  
 NXRT Brandywine GP II, LLC  
 NXRT Brandywine LP, LLC  
 NXRT Brandywine LP, LLC  
 NXRT Brentwood Owner, LLC  
 NXRT Brentwood, LLC  
 NXRT Cedar Pointe Tenant, LLC  
 NXRT Cedar Pointe, LLC  
 NXRT Cityview, LLC  
 NXRT Cornerstone, LLC  
 NXRT Crestmont, LLC  
 NXRT Crestmont, LLC  
 NXRT Enclave, LLC  
 NXRT Glenview, LLC  
 NXRT H2 TRS, LLC  
 NXRT Heritage, LLC  
 NXRT Hollister TRS LLC  
 NXRT Hollister, LLC  
 NXRT LAS 3, LLC  
 NXRT Master Tenant, LLC  
 NXRT Nashville Residential, LLC  
 NXRT Nashville Residential, LLC (*fka*  
*Freedom Nashville Residential, LLC*)  
 NXRT North Dallas 3, LLC  
 NXRT Old Farm, LLC  
 NXRT Pembroke Owner, LLC  
 NXRT Pembroke, LLC  
 NXRT PHX 3, LLC

NXRT Radbourne Lake, LLC  
 NXRT Rockledge, LLC  
 NXRT Sabal Palms, LLC  
 NXRT SM, Inc.  
 NXRT Steeplechase, LLC  
 NXRT Stone Creek, LLC  
 NXRT Summers Landing GP, LLC  
 NXRT Summers Landing LP, LLC  
 NXRT Torreyana, LLC  
 NXRT Vanderbilt, LLC  
 NXRT West Place, LLC  
 NXRTBH AZ2, LLC  
 NXRTBH Barrington Mill Owner, LLC  
 NXRTBH Barrington Mill SM, Inc.  
 NXRTBH Barrington Mill, LLC  
 NXRTBH Bayberry, LLC  
 NXRTBH Cityview, LLC  
 NXRTBH Colonnade, LLC  
 NXRTBH Cornerstone Owner, LLC  
 NXRTBH Cornerstone SM, Inc.  
 NXRTBH Cornerstone, LLC  
 NXRTBH Dana Point SM, Inc.  
 NXRTBH Dana Point, LLC  
 NXRTBH Foothill SM, Inc.  
 NXRTBH Foothill, LLC  
 NXRTBH Heatherstone SM, Inc.  
 NXRTBH Heatherstone, LLC  
 NXRTBH Hollister Tenant, LLC  
 NXRTBH Hollister, LLC  
 NXRTBH Madera SM, Inc.  
 NXRTBH Madera, LLC  
 NXRTBH McMillan, LLC  
 NXRTBH North Dallas 3, LLC  
 NXRTBH Old Farm II, LLC  
 NXRTBH Old Farm Tenant, LLC  
 NXRTBH Old Farm, LLC  
 NXRTBH Radbourne Lake, LLC  
 NXRTBH Rockledge, LLC  
 NXRTBH Sabal Palms, LLC  
 NXRTBH Steeplechase, LLC  
 (dba Southpoint Reserve at Stoney Creek)-VA  
 NXRTBH Stone Creek, LLC  
 NXRTBH Vanderbilt, LLC

NXRTBH Versailles SM, Inc.  
 NXRTBH Versailles, LLC  
 Oak Holdco, LLC  
 Oaks CGC, LLC  
 Okada Family Revocable Trust  
 Oldenburg, Ltd.  
 Pam Capital Funding GP Co. Ltd.  
 Pam Capital Funding, L.P.  
 PamCo Cayman Ltd.  
 Park West 1700 Valley View Holdco, LLC  
 Park West 2021 Valley View Holdco, LLC  
 Park West Holdco, LLC  
 Park West Portfolio Holdco, LLC  
 Participants of Highland 401K Plan  
 Patrick Willoughby-McCabe  
 PCMG Trading Partners XXIII, L.P.  
 PCMG Trading Partners XXIII, LP  
 PDK Toys Holdco, LLC  
 Pear Ridge Partners, LLC  
 Penant Management GP, LLC  
 Penant Management LP  
 PensionDanmark Holding A/S  
 PensionDanmark  
 Pensionsforsikringsaktieselskab  
 Peoria Place Development, LLC  
 (30% cash contributions - profit participation  
 only)  
 Perilune Aero Equity Holdings One, LLC  
 Perilune Aviation LLC  
 PetroCap Incentive Holdings III, L.P.  
 PetroCap Incentive Partners II GP, LLC  
 PetroCap Incentive Partners II, L.P.  
 PetroCap Incentive Partners III GP, LLC  
 PetroCap Incentive Partners III, LP  
 PetroCap Management Company LLC  
 PetroCap Partners II GP, LLC  
 PetroCap Partners II, L.P.  
 PetroCap Partners III GP, LLC  
 PetroCap Partners III, L.P.  
 Pharmacy Ventures I, LLC  
 Pharmacy Ventures II, LLC  
 Pollack, Ltd.  
 Powderhorn, LLC

PWM1 Holdings, LLC  
 PWM1, LLC  
 RADCO - Bay Meadows, LLLP  
 RADCO - Bay Park, LLLP  
 RADCO NREC Bay Meadows Holdings, LLC  
 RADCO NREC Bay Park Holdings, LLC  
 Ramarim, LLC  
 Rand Advisors Series I Insurance Fund  
 Rand Advisors Series II Insurance Fund  
 Rand Advisors, LLC  
 Rand PE Fund I, L.P.  
 Rand PE Fund I, L.P. - Series 1  
 Rand PE Fund Management, LLC  
 Rand PE Holdco, LLC  
 Realdania  
 Red River CLO, Ltd.  
 Red River Investors Corp.  
 Riverview Partners SC, LLC  
 Rockwall CDO II Ltd.  
 Rockwall CDO II, Ltd.  
 Rockwall CDO, Ltd.  
 Rockwall Investors Corp.  
 Rothko, Ltd.  
 RTT Bella Solara, LLC  
 RTT Bloom, LLC  
 RTT Financial, Inc.  
 RTT Hollister, LLC  
 RTT Rockledge, LLC  
 RTT Torreyana, LLC  
 SALI Fund Partners, LLC  
 SAS Management  
 SAS Asset Recovery Ltd.  
  
 San Diego County Employees Retirement  
 Association  
 Sandstone Pasadena Apartments, LLC  
 Sandstone Pasadena, LLC  
 Santa Barbara Foundation (third party)  
 Saturn Oil & Gas LLC  
 SBC Master Pension Trust  
 Scott Matthew Siekielski  
 SE Battleground Park, LLC  
 SE Battleground Park, LLC



SE Glenview, LLC  
 SE Governors Green Holdings, L.L.C.  
 SE Governors Green Holdings, L.L.C.  
*(fka SCG Atlas Governors Green Holdings, L.L.C.)*  
 SE Governors Green I, LLC  
 SE Governors Green II, LLC  
 SE Governors Green II, LLC  
 SE Governors Green REIT, L.L.C.  
 SE Governors Green REIT, L.L.C.  
*(fka SCG Atlas Governors Green REIT, L.L.C.)*  
 SE Governors Green, LLC  
*(fka SCG Atlas Governors Green, L.L.C.)*  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Heights at Olde Towne, LLC  
 SE Heights at Olde Towne, LLC  
 SE Lakes at Renaissance Park GP I, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Multifamily Holdings LLC  
 SE Multifamily Holdings, LLC  
 SE Multifamily REIT Holdings LLC  
 SE Myrtles at Olde Towne, LLC  
 SE Myrtles at Olde Towne, LLC  
 SE Oak Mill I Holdings, LLC  
 SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*  
 SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*  
 SE Oak Mill I REIT, LLC  
 SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*  
 SE Oak Mill I, LLC  
 SE Oak Mill I, LLC  
 SE Oak Mill II Holdings, LLC  
 SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*

SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*  
 SE Oak Mill II REIT, LLC  
 SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*  
 SE Oak Mill II, LLC  
 SE Oak Mill II, LLC  
 SE Quail Landing, LLC  
 SE River Walk, LLC  
 SE Riverwalk, LLC  
 SE SM, Inc.  
 SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*  
 SE Stoney Ridge Holdings, LLC  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge II, LLC  
 SE Stoney Ridge II, LLC  
 SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*  
 SE Stoney Ridge REIT, LLC  
 SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*  
 SE Victoria Park, LLC  
 SE Victoria Park, LLC  
 Sentinel Re Holdings, Ltd.  
 Sentinel Reinsurance Ltd.  
 Sentinel Reinsurance Limited  
 SFH1, LLC  
 SFR WLIF I, LLC  
*(fka NexPoint WLIF I, LLC)*  
 SFR WLIF II, LLC  
*(NexPoint WLIF II, LLC)*  
 SFR WLIF III, LLC  
*(NexPoint WLIF III, LLC)*  
 SFR WLIF Manager, LLC  
*(NexPoint WLIF Manager, LLC)*  
 SFR WLIF, LLC  
*(NexPoint WLIF, LLC)*  
 SFR WLIF, LLC Series I  
 SFR WLIF, LLC Series II  
 SFR WLIF, LLC Series III  
 SH Castle BioSciences, LLC

Small Cap Equity Sub, LLC  
 Socially Responsible Equity Sub, LLC  
 SOF Brandywine I Owner, L.P.  
 SOF Brandywine II Owner, L.P.  
 SOF-X GS Owner, L.P.  
 Southfork Cayman Holdings, Ltd.  
 Southfork CLO, Ltd.  
 Specialty Financial Products Designated  
 Activity Company (*fka Specialty Financial  
 Products Limited*)  
 Spiritus Life, Inc.  
 SRL Sponsor LLC  
 SRL Whisperwood LLC  
 SRL Whisperwood Member LLC  
 SRL Whisperwood Venture LLC  
 SSB Assets LLC  
 Starck, Ltd.  
 Stemmons Hospitality, LLC  
 Steve Shin  
 Stonebridge Capital, Inc.  
 Stonebridge-Highland Healthcare Private  
 Equity Fund  
 Strand Advisors III, Inc.  
 Strand Advisors IV, LLC  
 Strand Advisors IX, LLC  
 Strand Advisors V, LLC  
 Strand Advisors XIII, LLC  
 Strand Advisors XVI, Inc.  
 Strand Advisors, Inc.  
 Stratford CLO, Ltd.  
 Summers Landing Apartment Investors, L.P.  
 Term Loan B  
 (10% cash contributions - profit participation  
 only)  
 The Dallas Foundation  
 The Dallas Foundation (third party)  
 The Dondero Insurance Rabbi Trust  
 The Dugaboy Investment Trust  
 The Dugaboy Investment Trust U/T/A Dated  
 Nov 15, 2010  
 The Get Good Non-Exempt Trust No. 1  
 The Get Good Non-Exempt Trust No. 2  
 The Get Good Trust

The Mark and Pamela Okada Family Trust -  
 Exempt Descendants' Trust  
 The Mark and Pamela Okada Family Trust -  
 Exempt Trust #2  
 The Ohio State Life Insurance Company  
 The Okada Family Foundation, Inc.  
 The Okada Insurance Rabbi Trust  
 The SLHC Trust  
 The Trustees of Columbia University in the  
 City of New York  
 The Twentysix Investment Trust  
 (Third Party Investor)  
 Thomas A. Neville  
 Thread 55, LLC  
 Tihany, Ltd.  
 Todd Travers  
 Tranquility Lake Apartments Investors, L.P.  
 Tuscany Acquisition, LLC  
 Uptown at Cityplace Condominium  
 Association, Inc.  
 US Gaming OpCo, LLC  
 US Gaming SPV, LLC  
 US Gaming, LLC  
 Valhalla CLO, Ltd.  
 VB GP LLC  
 VB Holding, LLC  
 VB One, LLC  
 VB OP Holdings LLC  
 VBAnnex C GP, LLC  
 VBAnnex C Ohio, LLC  
 VBAnnex C, LP  
 Ventoux Capital, LLC  
 (Matt Goetz)  
 VineBrook Annex B, L.P.  
 VineBrook Annex I, L.P.  
 VineBrook Homes Merger Sub II LLC  
 VineBrook Homes Merger Sub LLC  
 VineBrook Homes OP GP, LLC  
 VineBrook Homes Operating Partnership, L.P.  
 VineBrook Homes Trust, Inc.  
 VineBrook Partners I, L.P.  
 VineBrook Partners II, L.P.  
 VineBrook Properties, LLC

Virginia Retirement System  
Vizcaya Investment, LLC  
Wake LV Holdings II, Ltd.  
Wake LV Holdings, Ltd.  
Walter Holdco GP, LLC  
Walter Holdco I, Ltd.  
Walter Holdco, L.P.  
Warhol, Ltd.  
Warren Chang  
Westchester CLO, Ltd.  
William L. Britain  
Wright Ltd.  
Wright, Ltd.  
Yellow Metal Merchants, Inc.

**EXHIBIT EE**

accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

### 3.13 Compensation and Reimbursement; Engagement of Professionals.

#### (a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of \$150,000 per month ~~(the "Base Salary")~~. Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) ~~the Base Salary~~ a base salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.



**EXHIBIT FF**

### Schedule of Contracts and Leases to Be Assumed

1. Advisory Services Agreement, dated November 21, 2011, effective June 20, 2011, by and between Carey International, Inc., and Highland Capital Management, L.P.
2. Amended and Restated Advisory Services Agreement, dated March 4, 2013, by and between Trussway Holdings, Inc., and Highland Capital Management, L.P.
3. Reference Portfolio Management Agreement, dated March 4, 2004, by and between Highland Capital Management, L.P., and Citibank N.A.
4. Advisory Services Agreement, dated May 25, 2011, by and between CCS Medical, Inc., and Highland Capital Management, L.P.
5. Amended and Restated Advisory Services Agreement, dated February 28, 2013, by and between Cornerstone Healthcare Group Holding, Inc., and Highland Capital Management, L.P.
6. Prime Brokerage Agreement by and between Jefferies LLC and Highland Capital Management, L.P., dated May 24, 2013.
7. Amended and Restated Shared Services Agreement, dated August 21, 2015, by and between Highland Capital Management, L.P., and Falcon E&P Opportunities GP, LLC.
8. Amended and Restated Administrative Services Agreement, effective as of August 21, 2015, by and between Highland Capital Management, L.P., and Petrocap Partners II GP, LLC.
9. Office Lease, between Crescent Investors, L.P., and Highland Capital Management, L.P.
10. Paylocity Corporation Services Agreement, between Highland Capital Management, L.P., and Paylocity Corporation, dated November 19, 2012.
11. Electronic Trading Services Agreement, between SunTrust Robinson Humphrey Inc., and Highland Capital Management, L.P., dated February 6, 2019.
12. Letter Agreement, between FTI Consulting, Inc., and Highland Capital Management, L.P., dated November 19, 2018.
13. Administrative Services Agreement, dated January 1, 2018, between Highland Capital Management, L.P., and Liberty Life Assurance Company of Boston.
14. Electronic Communications: Customer Authorization & Indemnification, between Highland Capital Management, L.P., and The Bank of New York Mellon Corporation, dated August 9, 2016.
15. Letter Agreement, dated August 9, 2016, Electronic Access Terms and Conditions, by and between The Bank of New York Mellon Trust Company, N.A., and Highland Capital Management, L.P.
16. Shared Services Agreement by and between Highland HCF Advisor, Ltd., and Highland Capital Management, L.P., dated effective October 27, 2017.

17. Sub-Advisory Agreement, by and between Highland HCF Advisors, Ltd., and Highland Capital Management, dated effective October 27, 2017.
18. Collateral Management Agreement, dated November 2, 2006, by and between Highland Credit Opportunities CDO Ltd. and Highland Capital Management, L.P.
19. Management Agreement, dated November 15, 2007, between Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Partners Master L.P., Highland Restoration Capital Partners GP, LLC, and Highland Capital Management, L.P.
20. Investment Management Agreement, between Highland Capital Multi-Strategy Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
21. Investment Management Agreement, between Highland Capital Multi-Strategy Master Fund, L.P., and Highland Capital Management, L.P., dated July 31, 2006.
22. Management Agreement, dated August 22, 2007, between and among Highland Capital Management, L.P., and Walkers Fund Services Limited, as trustee of Highland Credit Opportunities Japanese Unit Trust.
23. Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013.
24. Investment Management Agreement, dated March 31, 2015, by and among Highland Select Equity Master Fund, L.P., Highland Select Equity Fund GP, L.P., and Highland Capital Management, L.P.
25. Amended and Restated Investment Management Agreement, dated February 27, 2017, by and among Highland Prometheus Master Fund L.P., Highland Prometheus Feeder Fund I, L.P., Highland Prometheus Feeder Fund II, L.P., Highland SunBridge GP, LLC, and Highland Capital Management, L.P.
26. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
27. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
28. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
29. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
30. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
31. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
32. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.

33. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
34. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
35. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
36. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
37. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
38. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
39. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
40. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
41. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
42. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
43. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.
44. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
45. AT&T Managed Internet Service, between Highland Capital Management, L.P. and AT&T Corp., dated February 24, 2015.
46. ViaWest, Master Service Agreement, dated October 3, 2011, between Highland Capital Management, L.P. and ViaWest
47. Stockholders' Agreement, dated April 15, 2005, by and between American Banknote Corporation and Highland Capital Management, L.P.
48. Stockholders' Agreement and Amendment No. 1, dated January 25, 2011, by and between Carey Holdings, Inc. and Highland Capital Management, L.P.
49. Stockholders' Agreement and Amendment, dated March 24, 2010, by and between Cornerstone Healthcare Group Holding, Inc. and Highland Capital Management, L.P.
50. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
51. Stock Purchase and Sale Agreement and Amendment, dated January 16, 2013, by and between Progenics Pharmaceuticals, Inc. and Highland Capital Management, L.P.

52. Stockholders' Agreement and Amendments, dated October 24, 2008, by and between JHT Holdings, Inc. and Highland Capital Management, L.P.
53. Amended and Restated Limited Partnership Agreement of Highland Dynamic Income Fund, L.P., dated February 25, 2013, by and between Highland Dynamic Income Fund GP, LLC and Highland Capital Management, L.P.
54. Highland Multi-Strategy Fund, L.P. Limited Partnership Agreement, dated July 6, 2006, by and between Highland Multi-Strategy Fund GP, L.P. and Highland Capital Management, L.P.
55. Operating Agreement of HE Capital, LLC (as amended), dated September 27, 2007, by and between ENA Capital, LLC Ellman Management Group, Inc. and Highland Capital Management, L.P.
56. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund II, LLC, dated February 27, 2007, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
57. Limited Liability Company Agreement of Highland Multi-Strategy Onshore Master SubFund, LLC, dated July 19, 2006, by and between Highland Multi-Strategy Master Fund, L.P. and Highland Capital Management, L.P.
58. Highland Capital Management, L.P., Limited Liability Company Agreement of Highland Receivables Finance 1, LLC, by and between Highland Capital Management, L.P. and Highland Capital Management, L.P.
59. Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. and Amendments, dated November 6, 2007, by and between Highland Restoration Capital Partners GP, LLC and Highland Capital Management, L.P.
60. Agreement of Limited Partnership of Highland Select Equity Fund GP, L.P., dated October 2005, by and between Highland Select Equity Fund GP, LLC and Highland Capital Management, L.P.
61. Agreement of Limited Partnership of Penant Management LP, dated December 12, 2012, by and between Penant Management GP, LLC and Highland Capital Management, L.P.
62. Agreement of Limited Partnership of Petrocap Incentive Partners III, LP, dated April 12, 2018, by and between Petrocap Incentive Partners III GP, LLC, Petrocap Incentive Holdings III, LP and Highland Capital Management, L.P.
63. Amended and Restated Agreement of Limited Partnership of Petrocap Partners II, LP, dated October 30, 2014, by and between Petrocap Partners II GP, LLC, Petrocap Incentive Partners II, LP and Highland Capital Management, L.P.
64. Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.P., dated December 29, 2005, by and between Highland Credit Opportunities CDO GP, LLC and Highland Capital Management, L.P.
65. Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014, by and between Highland Multi Strategy Credit Fund GP, L.P. and Highland Capital Management, L.P.



66. DUO Security, 2 factor authentication, by and between DUO Security and Highland Capital Management, L.P.
67. GoDaddy Domain Registrations, by and between GoDaddy and Highland Capital Management, L.P.
68. Highland Loan Fund, Ltd. et al, Investment Management Agreement, dated July 31, 2001, by and between Highland Loan Fund, Ltd. et al and Highland Capital Management, L.P.
69. E Mailflow Monitoring, by and between Mxtoolbox and Highland Capital Management, L.P.
70. Cloud single sign on for HR related employee login, by and between Onelogin and Highland Capital Management, L.P.
71. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
72. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
73. Order Addenda, dated January 28, 2020, by and between CenturyLink Communications, LLC and Highland Capital Management, L.P.
74. Service Agreement (as amended), dated April 1, 2005, by and between Intex Solutions, Inc. and Highland Capital Management, L.P.
75. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
76. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
77. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
78. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
79. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
80. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
81. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
82. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd

83. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
84. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
85. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
86. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
87. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.
88. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
89. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
90. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
91. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
92. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
93. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
94. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
95. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
96. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
97. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust

98. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
99. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
100. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
101. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
102. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
103. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
104. Securities Account Control Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Highland CDO Opportunity Fund, Ltd.; JPMorgan Chase Bank, National Association
105. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
106. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
107. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
108. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
109. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
110. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
111. Extension/Buy-Out Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Citigroup Financial Products Inc.; Citigroup Global Markets Inc.
112. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
113. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
114. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company

115. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery
116. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel
117. Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms
118. Colocation Service Order dated October 14, 2019 between Highland Capital Management and Dawn US Holdings, LLC d/b/a Evoque Data Center Solutions
119. Tradesuite Web Module Services/Agreement between Highland Capital Management and DTCC ITP LLC
120. Bloomberg (Terminal) Agreement No. 306371 between Highland Capital Management and Bloomberg Finance, L.P.<sup>1</sup>
121. Master Service Agreement between Highland Capital Management and Via West
122. Amendment to Bloomberg Order Management System Addendum and Bloomberg Order Management System Schedule of Services Account No. 167969 between Highland Capital Management and Bloomberg Finance, L.P.
123. Fourth Amendment to Software License and Services Agreement between Highland Capital Management and Markit WSO Corporation
124. Master Services Agreement, First Amendment to Master Services Agreement, Second Amendment and Restatement of Master Services Agreement between Highland Capital Management and Siepe Services, LLC
125. Internet Agreement Account No. 831-000-7888-651 between Highland Capital Management and AT&T
126. Landline Fax Agreement Account No. 831-000-2532-176 between Highland Capital Management and AT&T
127. Amazon Web Services Account No. 353534426569 between Highland Capital Management and Amazon Web Service, Inc.
128. Website Hosting Agreement Account No. 325667 between Highland Capital Management and WP Engine

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<sup>1</sup> The Debtor is currently in discussions with Bloomberg regarding the assumption of this agreement.



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed February 22, 2021

  
United States Bankruptcy Judge

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054-sgj11
Debtor.	)	

**ORDER (I) CONFIRMING THE FIFTH AMENDED  
PLAN OF REORGANIZATION OF HIGHLAND CAPITAL  
MANAGEMENT, L.P. (AS MODIFIED) AND (II) GRANTING RELATED RELIEF**

The Bankruptcy Court<sup>2</sup> having:

- a. entered, on November 24, 2020, the *Order (A) Approving the Adequacy of the Disclosure Statement, (B) Scheduling A Hearing to Confirm the Fifth Amended Plan of Reorganization (C) Establishing Deadline for Filing Objections to Confirmation of Plan, (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures, and (E) Approving Form and Manner of Notice* [Docket No. 1476] (the “Disclosure Statement Order”), pursuant to which the Bankruptcy Court approved the adequacy of the *Disclosure Statement Relating to the Fifth*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Plan (as defined below). The rules of interpretation set forth in Article I of the Plan apply to this Confirmation Order.



*Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1473] (the “Disclosure Statement”) under section 1125 of the Bankruptcy Code and authorized solicitation of the Disclosure Statement;

- b. set January 5, 2021, at 5:00 p.m. prevailing Central Time (the “Objection Deadline”), as the deadline for filing objections to confirmation of the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, supplemented or modified, the “Plan”);
- c. set January 5, 2021, at 5:00 p.m. prevailing Central Time, as the deadline for voting on the Plan (the “Voting Deadline”) in accordance with the Disclosure Statement Order;
- d. initially set January 13, 2021, at 9:30 a.m. prevailing Central Time, as the date and time to commence the hearing to consider confirmation of the Plan pursuant to Bankruptcy Rules 3017 and 3018, sections 1126, 1128, and 1129 of the Bankruptcy Code, and the Disclosure Statement Order, which hearing was continued to January 26, 2021, at 9:30 a.m. prevailing Central Time and further continued to February 2, 2021;
- e. reviewed: (i) the Plan; (ii) the Disclosure Statement; and (iii) *Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm; and (III) Related Important Dates* (the “Confirmation Hearing Notice”), the form of which is attached as Exhibit 1-B to the Disclosure Statement Order;
- f. reviewed: (i) the *Debtor’s Notice of Filing of Plan Supplement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1389] filed November 13, 2020; (ii) *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1606] filed on December 18, 2020; (iii) the *Debtor’s Notice of Filing of Plan Supplement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1656] filed on January 4, 2021; (iv) *Notice of Filing Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (with Technical Modifications)* dated January 22, 2021 [Docket No. 1811]; and (v) *Debtor’s Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland of Highland Capital Management, L.P. (As Modified)* on February 1, 2021 [Docket No. 1875]; (collectively, the documents listed in (i) through (v) of this paragraph, the “Plan Supplements”);
- g. reviewed: (i) the *Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on December 30, 2020 [Docket No. 1648]; (ii) the *Second Notice of (I) Executory Contracts and*

*Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 11, 2021 [Docket No. 1719]; (iii) the *Third Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith* filed on January 15, 2021 [Docket No. 1749]; (iv) the *Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan* [Docket No. 1791]; (v) the *Fourth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on January 27, 2021 [Docket No. 1847]; (vi) the *Notice of Hearing on Agreed Motion to (I) Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P. Upon Confirmation of Plan and (II) Extend Assumption Deadline* filed on January 28, 2021 [Docket No. 1857]; and (vii) the *Fifth Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan (II) Cure Amounts, if Any, and (III) Released Procedures in Connection Therewith* filed on February 1, 2021 [Docket No. 1873] (collectively, the documents referred to in (i) to (vii) are referred to as “List of Assumed Contracts”);

- h. reviewed: (i) the *Debtor’s Memorandum of Law in Support of Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1814] (the “Confirmation Brief”); (ii) the *Debtor’s Omnibus Reply to Objections to Confirmation of the Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management*; [Docket No. 1807]; and (iii) the *Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1772] and *Supplemental Certification of Patrick M. Leathem With Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1887] filed on February 3, 2021 (together, the “Voting Certifications”).
- i. reviewed: (i) the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505]; (ii) the *Certificate of Service* dated December 23, 2020 [Docket No. 1630]; (iii) the *Supplemental Certificate of Service* dated December 24, 2020 [Docket No. 1637]; (iv) the *Second Supplemental Certificate of Service* dated December 31, 2020 [Docket No. 1653]; (v) the *Certificate of Service* dated December 23, 2020 [Docket No. 1627]; (vi) the *Certificate of Service* dated January 6, 2021 [Docket No. 1696]; (vii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1699]; (viii) the *Certificate of Service* dated January 7, 2021 [Docket No. 1700]; (ix) the *Certificate of Service* dated January 15, 2021 [Docket No. 1761]; (x) the *Certificate of Service* dated January 19, 2021 [Docket No. 1775]; (xi) the

*Certificate of Service* dated January 20, 2021 [Docket No. 1787]; (xii) the *Certificate of Service* dated January 26, 2021 [Docket No. 1844]; (xiii) the *Certificate of Service* dated January 27, 2021 [Docket No. 1854]; (xiv) the *Certificate of Service* dated February 1, 2021 [Docket No. 1879]; (xv) the *Certificates of Service* dated February 3, 2021 [Docket No. 1891 and 1893]; and (xvi) the *Certificates of Service* dated February 5, 2021 [Docket Nos. 1906, 1907, 1908 and 1909] (collectively, the “Affidavits of Service and Publication”);

- j. reviewed all filed<sup>3</sup> pleadings, exhibits, statements, and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements, and reservations of rights;
- k. conducted a hearing to consider confirmation of the Plan, which commenced on February 2, 2021, at 9:30 a.m. prevailing Central Time and concluded on February 3, 2021, and issued its oral ruling on February 8, 2021 (collectively, the “Confirmation Hearing”);
- l. heard the statements and arguments made by counsel in respect of confirmation of the Plan and having considered the record of this Chapter 11 Case and taken judicial notice of all papers and pleadings filed in this Chapter 11 Case; and
- m. considered all oral representations, testimony, documents, filings, and other evidence regarding confirmation of the Plan, including (a) all of the exhibits admitted into evidence;<sup>4</sup> (b) the sworn testimony of (i) James P. Seery, Jr., the Debtor’s Chief Executive Officer and Chief Restructuring Officer and a member of the Board of Directors of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner; (ii) John S. Dubel, a member of the Board of Strand; (iii) Marc Tauber, a Vice President at Aon Financial Services; and (iv) Robert Jason Post, the Chief Compliance Officer of NexPoint Advisors, LP (collectively, the “Witnesses”); (c) the credibility of the Witnesses; and (d) the Voting Certifications.

NOW, THEREFORE, after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

<sup>3</sup> Unless otherwise indicated, use of the term “filed” herein refers also to the service of the applicable document filed on the docket in this Chapter 11 Case, as applicable.

<sup>4</sup> The Court admitted the following exhibits into evidence: (a) all of the Debtor’s exhibits lodged at Docket No. 1822 (except TTTT, which was withdrawn by the Debtor); (b) all of the Debtor’s exhibits lodged at Docket No. 1866; (c) all of the Debtor’s exhibits lodged at Docket No. 1877; (d) all of the Debtor’s exhibits lodged at Docket No. 1895; and (e) Exhibits 6-12 and 15-17 offered by Mr. James Dondero and lodged at Docket No. 1874.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Findings of Fact and Conclusions of Law.** The findings and conclusions set forth herein, together with the findings of fact and conclusions of law set forth in the record during the Confirmation Hearing, constitute the Bankruptcy Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable to this proceeding pursuant to Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. **Introduction and Summary of the Plan.** Prior to addressing the specific requirements under the Bankruptcy Code and Bankruptcy Rules with respect to the confirmation of the Plan, the Bankruptcy Court believes it would be useful to first provide the following background of the Debtor's Chapter 11 Case, the parties involved therewith, and some of the major events that have transpired culminating in the filing and solicitation of the Plan of this very unusual case. Before the Bankruptcy Court is the *Debtor's Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, filed on November 24, 2020, as modified on January 22, 2021 and again on February 1, 2021. The parties have repeatedly referred to the Plan as an "asset monetization plan" because it involves the orderly wind-down of the Debtor's estate, including the sale of assets and certain of its funds over time, with the Reorganized Debtor continuing to manage certain other funds, subject to the oversight of the Claimant Trust Oversight Board. The Plan provides for a Claimant Trust to, among other things, manage and monetize the Claimant Trust Assets for the benefit of the Debtor's economic stakeholders. The Claimant Trustee is responsible

for this process, among other duties specified in the Plan's Claimant Trust Agreement. There is also anticipated to be a Litigation Sub-trust established for the purpose of pursuing certain avoidance or other causes of action for the benefit of the Debtor's economic constituents.

3. **Confirmation Requirements Satisfied.** The Plan is supported by the Committee and all claimants with Convenience Claims (*i.e.*, general unsecured claims under \$1 million) who voted in Class 7. Claimants with Class 8 General Unsecured Claims, however, voted to reject the Plan because, although the Plan was accepted by 99.8% of the amount of Claims in that class, only 17 claimants voted to accept the Plan while 27 claimants voted to reject the Plan. As a result of such votes, and because Mr. Dondero and the Dondero Related Entities (as defined below) objected to the Plan on a variety of grounds primarily relating to the Plan's release, exculpation and injunction provisions, the Bankruptcy Court heard two full days of evidence on February 2 and 3, 2021, and considered testimony from five witnesses and thousands of pages of documentary evidence in determining whether the Plan satisfies the confirmation standards required under the Bankruptcy Code. The Bankruptcy Court finds and concludes that the Plan meets all of the relevant requirements of sections 1123, 1124, and 1129, and other applicable provisions of the Bankruptcy Code, as more fully set forth below with respect to each of the applicable confirmation requirements.

4. **Not Your Garden Variety Debtor.** The Debtor's case is not a garden variety chapter 11 case. The Debtor is a multibillion-dollar global investment adviser registered with the SEC, pursuant to the Investment Advisers Act of 1940. It was founded in 1993 by James Dondero and Mark Okada. Mark Okada resigned from his role with Highland prior to the



bankruptcy case being filed on October 16, 2019 (the “Petition Date”). Mr. Dondero controlled the Debtor as of the Petition Date but agreed to relinquish control of it on or about January 9, 2020, pursuant to an agreement reached with the Committee, as described below. Although Mr. Dondero remained with the Debtor as an unpaid employee/portfolio manager after January 9, 2020, his employment with the Debtor terminated on October 9, 2020. Mr. Dondero continues to work for and/or control numerous non-debtor entities in the complex Highland enterprise.

5. **The Debtor.** The Debtor is headquartered in Dallas, Texas. As of the Petition Date, the Debtor employed approximately 76 employees. The Debtor is privately-owned: (a) 99.5% by the Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust, a trust created to manage the assets of Mr. Dondero and his family; (c) 0.0627% by Mark Okada, personally and through family trusts; and (d) 0.25% by Strand, the Debtor’s general partner.

6. **The Highland Enterprise.** Pursuant to various contractual arrangements, the Debtor provides money management and advisory services for billions of dollars of assets, including collateralized loan obligation vehicles (“CLOs”), and other investments. Some of these assets are managed by the Debtor pursuant to shared services agreements with certain affiliated entities, including other affiliated registered investment advisors. In fact, there are approximately 2,000 entities in the byzantine complex of entities under the Highland umbrella. None of these affiliated entities filed for chapter 11 protection. Most, but not all, of these entities are not subsidiaries (direct or indirect) of the Debtor. Many of the Debtor’s affiliated companies are

offshore entities, organized in jurisdictions such as the Cayman Islands and Guernsey. *See* Disclosure Statement, at 17-18.

7. **Debtor's Operational History.** The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course, primarily through a brokerage account at Jefferies, LLC. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and cause those proceeds to be distributed to the Debtor in the ordinary course of business. The Debtor's current Chief Executive Officer, James P. Seery, Jr., credibly testified at the Confirmation Hearing that the Debtor was "run at a deficit for a long time and then would sell assets or defer employee compensation to cover its deficits." The Bankruptcy Court cannot help but wonder if that was necessitated because of enormous litigation fees and expenses incurred by the Debtor due to its culture of litigation—as further addressed below.

8. **Not Your Garden Variety Creditor's Committee.** The Debtor and this chapter 11 case are not garden variety for so many reasons. One of the most obvious standouts in this case is the creditor constituency. The Debtor did not file for bankruptcy because of any of the typical reasons that large companies file chapter 11. For example, the Debtor did not have a large, asset-based secured lender with whom it was in default; it only had relatively insignificant secured indebtedness owing to Jeffries, with whom it had a brokerage account, and one other entity, Frontier State Bank. The Debtor also did not have problems with its trade vendors or landlords.

The Debtor also did not suffer any type of catastrophic business calamity. In fact, the Debtor filed for Chapter 11 protection six months before the onset of the COVID-19 pandemic. Rather, the Debtor filed for Chapter 11 protection due to a myriad of massive, unrelated, business litigation claims that it faced—many of which had finally become liquidated (or were about to become liquidated) after a decade or more of contentious litigation in multiple forums all over the world. The Committee in this case has referred to the Debtor—under its former chief executive, Mr. Dondero—as a “serial litigator.” The Bankruptcy Court agrees with that description. By way of example, the members of the Committee (and their history of litigation with the Debtor and others in the Highland complex) are as follows:

- a. **The Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”).** This Committee member obtained an arbitration award against the Debtor in the amount of \$190,824,557, inclusive of interest, approximately five months before the Petition Date, from a panel of the American Arbitration Association. It was on the verge of having that award confirmed by the Delaware Chancery Court immediately prior to the Petition Date, after years of disputes that started in late 2008 (and included legal proceedings in Bermuda). This creditor’s claim was settled during this Chapter 11 Case in the amount of approximately \$137,696,610 (subject to other adjustments and details not relevant for this purpose).
- b. **Acis Capital Management, L.P., and Acis Capital Management GP, LLC (“Acis”).** Acis was formerly in the Highland complex of companies, but was not affiliated with Highland as of the Petition Date. This Committee member and its now-owner, Joshua Terry, were involved in litigation with the Debtor dating back to 2016. Acis was forced by Mr. Terry (who was a former Highland portfolio manager) into an involuntary chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of Texas, Dallas Division before the Bankruptcy Court in 2018, after Mr. Terry obtained an approximately \$8 million arbitration award and judgment against Acis. Mr. Terry ultimately was awarded the equity ownership of Acis by the Bankruptcy Court in the Acis bankruptcy case. Acis subsequently asserted a multi-million dollar claim against Highland in the Bankruptcy Court for Highland’s alleged denuding of Acis to defraud its creditors—primarily Mr. Terry. The litigation involving Acis and Mr. Terry dates back to mid-2016 and has

continued on with numerous appeals of Bankruptcy Court orders, including one appeal still pending at the Fifth Circuit Court of Appeals. There was also litigation involving Mr. Terry and Acis in the Royal Court of the Island of Guernsey and in a state court in New York. The Acis claim was settled during this Chapter 11 Case, in Bankruptcy Court-ordered mediation, for approximately \$23 million (subject to other details not relevant for this purpose), and is the subject of an appeal being pursued by Mr. Dondero.

- c. **UBS Securities LLC and UBS AG London Branch (“UBS”).** UBS is a Committee member that filed a proof of claim in the amount of \$1,039,957,799.40 in this Chapter 11 Case. The UBS Claim was based on a judgment that UBS received from a New York state court in 2020. The underlying decision was issued in November 2019, after a multi-week bench trial (which had occurred many months earlier) on a breach of contract claim against non-Debtor entities in the Highland complex. The UBS litigation related to activities that occurred in 2008 and 2009. The litigation involving UBS and Highland and affiliates was pending for more than a decade (there having been numerous interlocutory appeals during its history). The Debtor and UBS recently announced an agreement in principle for a settlement of the UBS claim (which came a few months after Bankruptcy Court-ordered mediation) which will be subject to a 9019 motion to be filed with the Bankruptcy Court on a future date.
- d. **Meta-E Discovery (“Meta-E”).** Meta-E is a Committee member that is a vendor who happened to supply litigation and discovery-related services to the Debtor over the years. It had unpaid invoices on the Petition Date of more than \$779,000.

It is fair to say that the members of the Committee in this case all have wills of steel. They fought hard before and during this Chapter 11 Case. The members of the Committee, all of whom have volunteered to serve on the Claimant Trust Oversight Board post-confirmation, are highly sophisticated and have had highly sophisticated professionals representing them. They have represented their constituency in this case as fiduciaries extremely well.

9. **Other Key Creditor Constituents.** In addition to the Committee members who were all embroiled in years of litigation with Debtor and its affiliates in various ways, the Debtor has been in litigation with Patrick Daugherty, a former limited partner and employee of the Debtor, for many years in both Delaware and Texas state courts. Mr. Daugherty filed an amended

proof of claim in this Chapter 11 Case for \$40,710,819.42 relating to alleged breaches of employment-related agreements and for defamation arising from a 2017 press release posted by the Debtor. The Debtor and Mr. Daugherty recently announced a settlement of Mr. Daugherty's claim pursuant to which he will receive \$750,000 in cash on the Effective Date of the Plan, an \$8.25 million general unsecured claim, and a \$2.75 million subordinated claim (subject to other details not relevant for this purpose). Additionally, entities collectively known as "HarbourVest" invested more than \$70 million with an entity in the Highland complex and asserted a \$300 million proof of claim against the Debtor in this case, alleging, among other things, fraud and RICO violations. HarbourVest's claim was settled during the bankruptcy case for a \$45 million general unsecured claim and a \$35 million subordinated claim, and that settlement is also being appealed by a Dondero Entity.

10. **Other Claims Asserted.** Other than the Claims just described, most of the other Claims in this Chapter 11 Case are Claims asserted against the Debtor by: (a) entities in the Highland complex—most of which entities the Bankruptcy Court finds to be controlled by Mr. Dondero; (b) employees who contend that are entitled to large bonuses or other types of deferred compensation; and (c) numerous law firms that worked for the Debtor prior to the Petition Date and had outstanding amounts due for their prepetition services.

11. **Not Your Garden Variety Post-Petition Corporate Governance Structure.** Yet another reason this is not your garden variety chapter 11 case is its post-petition corporate governance structure. Immediately from its appointment, the Committee's relationship with the Debtor was contentious at best. First, the Committee moved for a change of venue from



Delaware to Dallas. Second, the Committee (and later, the United States Trustee) expressed its then-desire for the appointment of a chapter 11 trustee due to its concerns over and distrust of Mr. Dondero, his numerous conflicts of interest, and his history of alleged mismanagement (and perhaps worse).

12. **Post-Petition Corporate Governance Settlement with Committee.** After spending many weeks under the threat of the potential appointment of a trustee, the Debtor and Committee engaged in substantial and lengthy negotiations resulting in a corporate governance settlement approved by the Bankruptcy Court on January 9, 2020.<sup>5</sup> As a result of this settlement, among other things, Mr. Dondero relinquished control of the Debtor and resigned his positions as an officer or director of the Debtor and its general partner, Strand. As noted above, Mr. Dondero agreed to this settlement pursuant a stipulation he executed,<sup>6</sup> and he also agreed not to cause any Related Entity (as defined in the Settlement Motion) to terminate any agreements with the Debtor. The January 9 Order also (a) required that the Bankruptcy Court serve as “gatekeeper” prior to the commencement of any litigation against the three independent board members appointed to oversee and lead the Debtor’s restructuring in lieu of Mr. Dondero and (b) provided for the exculpation of those board members by limiting claims subject to the “gatekeeper” provision to those alleging willful misconduct and gross negligence.

<sup>5</sup> This order is hereinafter referred to as the “January 9 Order” and was entered by the Court on January 9, 2020 [Docket No. 339] pursuant to the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding the Governance of the Debtor and Procedures for Operation in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”).

<sup>6</sup> See *Stipulation in Support of Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in Ordinary Course* [Docket No. 338] (the “Stipulation”).

13. **Appointment of Independent Directors.** As part of the Bankruptcy Court-approved settlement, three eminently qualified independent directors were chosen to lead Highland through its Chapter 11 Case. They are: James P. Seery, Jr., John S. Dubel (each chosen by the Committee), and Retired Bankruptcy Judge Russell Nelms. These three individuals are each technically independent directors of Strand (Mr. Dondero had previously been the sole director of Strand and, thus, the sole person in ultimate control of the Debtor). The three independent board members' resumes are in evidence. The Bankruptcy Court later approved Mr. Seery's appointment as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative. Suffice it to say that this settlement and the appointment of the independent directors changed the entire trajectory of the case and saved the Debtor from the appointment of a trustee. The Bankruptcy Court and the Committee each trusted the independent directors. They were the right solution at the right time. Because of the unique character of the Debtor's business, the Bankruptcy Court believed the appointment of three qualified independent directors was a far better outcome for creditors than the appointment of a conventional chapter 11 trustee. Each of the independent directors brought unique qualities to the table. Mr. Seery, in particular, knew and had vast experience at prominent firms with high-yield and distressed investing similar to the Debtor's business. Mr. Dubel had 40 years of experience restructuring large complex businesses and serving on boards in this context. And Retired Judge Nelms had not only vast bankruptcy experience but seemed particularly well-suited to help the Debtor maneuver through conflicts and ethical quandaries. By way of comparison, in the chapter 11 case of Acis, the former affiliate of Highland that the Bankruptcy Court presided over and which company was

much smaller in size and scope than Highland (managing only 5-6 CLOs), the creditors elected a chapter 11 trustee who was not on the normal trustee rotation panel in this district but, rather, was a nationally known bankruptcy attorney with more than 45 years of large chapter 11 experience. While the Acis chapter 11 trustee performed valiantly, he was sued by entities in the Highland complex shortly after he was appointed (which the Bankruptcy Court had to address). The Acis trustee was also unable to persuade the Debtor and its affiliates to agree to any actions taken in the case, and he finally obtained confirmation of Acis' chapter 11 plan over the objections of the Debtor and its affiliates on his fourth attempt (which confirmation was promptly appealed).

14. **Conditions Required by Independent Directors.** Given the experiences in Acis and the Debtor's culture of constant litigation, it was not as easy to get such highly qualified persons to serve as independent board members and, later, as the Debtor's Chief Executive Officer, as it would be in an ordinary chapter 11 case. The independent board members were stepping into a morass of problems. Naturally, they were worried about getting sued no matter how defensible their efforts—given the litigation culture that enveloped Highland historically. Based on the record of this Case and the proceedings in the Acis chapter 11 case, it seemed as though everything always ended in litigation at Highland. The Bankruptcy Court heard credible testimony that none of the independent directors would have taken on the role of independent director without (1) an adequate directors and officers' ("D&O") insurance policy protecting them; (2) indemnification from Strand that would be guaranteed by the Debtor; (3) exculpation for mere negligence claims; and (4) a gatekeeper provision prohibiting the commencement of litigation against the independent directors without the Bankruptcy Court's prior authority. This gatekeeper provision was also

included in the Bankruptcy Court's order authorizing the appointment of Mr. Seery as the Debtor's Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative entered on July 16, 2020.<sup>7</sup> The gatekeeper provisions in both the January 9 Order and July 16 Order are precisely analogous to what bankruptcy trustees have pursuant to the so-called "Barton Doctrine" (first articulated in an old Supreme Court case captioned *Barton v. Barbour*, 104 U.S. 126 (1881)). The Bankruptcy Court approved all of these protections in the January 9 Order and the July 16 Order, and no one appealed either of those orders. As noted above, Mr. Dondero signed the Stipulation that led to the settlement that was approved by the January 9 Order. The Bankruptcy Court finds that, like the Committee, the independent board members have been resilient and unwavering in their efforts to get the enormous problems in this case solved. They seem to have at all times negotiated hard and in good faith, which culminated in the proposal of the Plan currently before the Bankruptcy Court. As noted previously, they completely changed the trajectory of this case.

15. **Not Your Garden Variety Mediators.** And still another reason why this was not your garden variety case was the mediation effort. In the summer of 2020, roughly nine months into the chapter 11 case, the Bankruptcy Court ordered mediation among the Debtor, Acis, UBS, the Redeemer Committee, and Mr. Dondero. The Bankruptcy Court selected co-mediators because mediation among these parties seemed like such a Herculean task—especially during COVID-19 where people could not all be in the same room. Those co-mediators were: Retired

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<sup>7</sup> See Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020 [Docket No. 854] entered on July 16, 2020 (the "July 16 Order")

Bankruptcy Judge Alan Gropper from the Southern District of New York, who had a distinguished career presiding over complex chapter 11 cases, and Ms. Sylvia Mayer, who likewise has had a distinguished career, first as a partner at a preeminent law firm working on complex chapter 11 cases, and subsequently as a mediator and arbitrator in Houston, Texas. As noted earlier, the Redeemer Committee and Acis claims were settled during the mediation—which seemed nothing short of a miracle to the Bankruptcy Court—and the UBS claim was settled several months later and the Bankruptcy Court believes the ground work for that ultimate settlement was laid, or at least helped, through the mediation. And, as earlier noted, other significant claims have been settled during this case, including those of HarbourVest (who asserted a \$300 million claim) and Patrick Daugherty (who asserted a \$40 million claim). The Bankruptcy Court cannot stress strongly enough that the resolution of these enormous claims—and the acceptance by all of these creditors of the Plan that is now before the Bankruptcy Court—seems nothing short of a miracle. It was more than a year in the making.

16. **Not Your Garden Variety Plan Objectors (That Is, Those That Remain).** Finally, a word about the current, remaining objectors to the Plan before the Bankruptcy Court. Once again, the Bankruptcy Court will use the phrase “not your garden variety”, which phrase applies to this case for many reasons. Originally, there were over a dozen objections filed to the Plan. The Debtor then made certain amendments or modifications to the Plan to address some of these objections, none of which require further solicitation of the Plan for reasons set forth in more detail below. The only objectors to the Plan left at the time of the Confirmation Hearing



were Mr. Dondero [Docket No. 1661] and entities that the Bankruptcy Court finds are owned and/or controlled by him and that filed the following objections:

- a. *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust and The Dugaboy Investment Trust) [Docket No. 1667];
- b. *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670];
- c. *A Joinder to the Objection filed at 1670 by: NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by the foregoing* [Docket No. 1677];
- d. *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; and
- e. *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676]. The entities referred to in (i) through (v) of this paragraph are hereinafter referred to as the "Dondero Related Entities").

#### 17. Questionability of Good Faith as to Outstanding Confirmation

**Objections.** Mr. Dondero and the Dondero Related Entities technically have standing to object to the Plan, but the remoteness of their economic interests is noteworthy, and the Bankruptcy Court

questions the good faith of Mr. Dondero's and the Dondero Related Entities' objections. In fact, the Bankruptcy Court has good reason to believe that these parties are not objecting to protect economic interests they have in the Debtor but to be disruptors. Mr. Dondero wants his company back. This is understandable, but it is not a good faith basis to lob objections to the Plan. As detailed below, the Bankruptcy Court has slowed down plan confirmation multiple times and urged the parties to talk to Mr. Dondero in an attempt to arrive at what the parties have repeatedly referred to as a "grand bargain," the ultimate goal to resolve the Debtor's restructuring. The Debtor and the Committee represent that they have communicated with Mr. Dondero regarding a grand bargain settlement, and the Bankruptcy Court believes that they have.

18. **Remote Interest of Outstanding Confirmation Objectors.** To be specific about the remoteness of Mr. Dondero's and the Dondero Related Entities' interests, the Bankruptcy Court will address them each separately. First, Mr. Dondero has a pending objection to the Plan. Mr. Dondero's only economic interest with regard to the Debtor is an unliquidated indemnification claim (and, based on everything the Bankruptcy Court has heard, his indemnification claims would be highly questionable at this juncture). Mr. Dondero owns no equity in the Debtor directly. Mr. Dondero owns the Debtor's general partner, Strand, which in turn owns a quarter percent of the total equity in the Debtor. Second, a joint objection has been filed by The Dugaboy Trust ("Dugaboy") and the Get Good Trust ("Get Good"). The Dugaboy Trust was created to manage the assets of Mr. Dondero and his family and owns a 0.1866% limited partnership interest in the Debtor. *See* Disclosure Statement at 7, n.3. The Bankruptcy Court is not clear what economic interest the Get Good Trust has, but it likewise seems to be related to Mr. Dondero. Get Good

filed three proofs of claim relating to a pending federal tax audit of the Debtor's 2008 return, which the Debtor believes arise from Get Good's equity security interests and are subject to subordination as set forth in its Confirmation Brief. Dugaboy filed three claims against the Debtor: (a) an administrative claim relating to the Debtor's alleged postpetition management of Multi-Strat Credit Fund, L.P., (b) a prepetition claim against a subsidiary of the Debtor for which it seeks to pierce the corporate veil, each of which the Debtor maintains are frivolous in the Confirmation Brief, and (c) a claim arising from its equity security interest in the Debtor, which the Debtor asserts should be subordinated. Another group of objectors that has joined together in one objection is what the Bankruptcy Court will refer to as the "Highland Advisors and Funds." See Docket No. 1863. The Bankruptcy Court understands they assert disputed administrative expense claims against the estate that were filed shortly before the Confirmation Hearing on January 23, 2021 [Docket No. 1826], and during the Confirmation Hearing on February 3, 2021 [Docket No. 1888]. At the Confirmation Hearing, Mr. Post testified on behalf of the Highland Advisors and Funds that the Funds have independent board members that run the Funds, but the Bankruptcy Court was not convinced of their independence from Mr. Dondero because none of the so-called independent board members have ever testified before the Bankruptcy Court and all have been engaged with the Highland complex for many years. Notably, the Court questions Mr. Post's credibility because, after more than 12 years of service, he abruptly resigned from the Debtor in October 2020 at the exact same time that Mr. Dondero resigned at the Board of Directors' request, and he is currently employed by Mr. Dondero. Moreover, Dustin Norris, a witness in a prior proceeding (whose testimony was made part of the record at the Confirmation Hearing), recently

testified on behalf of the Highland Advisors and Funds in another proceeding that Mr. Dondero owned and/or controlled these entities. Finally, various NexBank entities objected to the Plan. The Bankruptcy Court does not believe they have liquidated claims against the Debtor. Mr. Dondero appears to be in control of these entities as well.

19. **Background Regarding Dondero Objecting Parties.** To be clear, the Bankruptcy Court has allowed all these objectors to fully present arguments and evidence in opposition to confirmation, even though their economic interests in the Debtor appear to be extremely remote and the Bankruptcy Court questions their good faith. Specifically, the Bankruptcy Court considers them all to be marching pursuant to the orders of Mr. Dondero. In the recent past, Mr. Dondero has been subject to a temporary restraining order and preliminary injunction by the Bankruptcy Court for interfering with Mr. Seery's management of the Debtor in specific ways that were supported by evidence. Around the time that this all came to light and the Bankruptcy Court began setting hearings on the alleged interference, Mr. Dondero's company phone, which he had been asked to turn in to Highland, mysteriously went missing. The Bankruptcy Court merely mentions this in this context as one of many reasons that the Bankruptcy Court has to question the good faith of Mr. Dondero and his affiliates in raising objections to confirmation of the Plan.

20. **Other Confirmation Objections.** Other than the objections filed by Mr. Dondero and the Dondero Related Entities, the only other pending objection to the Plan is the *United States Trustee's Limited Objection to Confirmation of Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1671], which objected to the Plan's exculpation, injunction, and

Debtor release provisions. In juxtaposition, to these pending objections, the Bankruptcy Court notes that the Debtor resolved the following objections to the Plan:

- a. *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph VV of the Confirmation Order;
- b. *Objection of Dallas County, City of Allen, Allen ISD, City of Richardson, and Kaufman County to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1662]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph QQ of the Confirmation Order;
- c. *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization (filed by Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon)* [Docket No. 1669]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraph 82 and paragraphs RR and SS of the Confirmation Order;
- d. *Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1666] and the amended joinder filed by Davis Deadman, Paul Kauffman and Todd Travers [Docket No. 1679]. This Objection and the amended joinder were resolved by agreement of the parties pursuant to modifications to the Plan filed by the Debtor;
- e. *United States' (IRS) Limited Objection to Debtor's Fifth Amended Plan of Reorganization* [Docket No. 1668]. This Objection has been resolved pursuant to mutually agreed language by the parties set forth in paragraphs TT and UU of the Confirmation Order; and
- f. *Patrick Hagaman Daugherty's Objection to Confirmation of Fifth Amended Plan of Reorganization* [Docket No. 1678]. This objection was resolved by the parties pursuant to the settlement of Mr. Daugherty's claim announced on the record of the Confirmation Hearing.

21. **Capitalized Terms.** Capitalized terms used herein, but not defined herein, shall have the respective meanings attributed to such terms in the Plan and the Disclosure Statement, as applicable.



22. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction over the Debtor's Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Chapter 11 Case is proper in this district and in the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23. **Chapter 11 Petition.** On the Petition Date, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which case was transferred to the Bankruptcy Court on December 19, 2019. The Debtor continues to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. The Office of the United States Trustee appointed the Committee on October 29, 2019.

24. **Judicial Notice.** The Bankruptcy Court takes judicial notice of the docket in this Chapter 11 Case maintained by the clerk of the Bankruptcy Court and the court-appointed claims agent, Kurtzman Carson Consultants LLC ("KCC"), including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before the Bankruptcy Court during this Chapter 11 Case, including, without limitation, the hearing to consider the adequacy of the Disclosure Statement and the Confirmation Hearing, as well as all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at hearings held before the Bankruptcy Court or the District Court for the Northern District of Texas in

connection with an adversary proceeding or appellate proceeding, respectively, related to this Chapter 11 Case.

25. **Plan Supplement Documents.** Prior to the Confirmation Hearing, the Debtor filed each of the Plan Supplements. The Plan Supplements contain, among other documents, the Retained Causes of Action, the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Senior Employee Stipulation, the Related Entity List, the Schedule of Employees, the Reorganized Limited Partnership Agreement, supplements to the Liquidation Analysis/Financial Projections, the Schedule of Contracts and Leases to be Assumed, and the other Plan Documents set forth therein (collectively, the “Plan Supplement Documents”).

26. **Retained Causes of Action Adequately Preserved.** The Bankruptcy Court finds that the list of Retained Causes of Action included in the Plan Supplements sufficiently describes all potential Retained Causes of Action, provides all persons with adequate notice of any Causes of Action regardless of whether any specific claim to be brought in the future is listed therein or whether any specific potential defendant or other party is listed therein, and satisfies applicable law in all respects to preserve all of the Retained Causes of Action. The definition of the Causes of Action and Schedule of Retained Causes of Action, and their inclusion in the Plan, specifically and unequivocally preserve the Causes of Action for the benefit of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust, as applicable.

27. **Plan Modifications Are Non-Material.** In addition to the Plan Supplements, the Debtor made certain non-material modifications to the Plan, which are reflected in (i) the *Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*

(as Modified) filed on January 22, 2021 [Docket No. 1809], and (ii) Exhibit B to the *Debtor's Notice of Filing of Plan Supplement to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)* filed on February 1, 2021 [Docket No. 1875] (collectively, the "Plan Modifications"). Section 1127(a) of the Bankruptcy Code provides that a plan proponent may modify its plan at any time before confirmation so long as such modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. None of the modifications set forth in the Plan Supplements or the Plan Modifications require any further solicitation pursuant to sections 1125, 1126, or 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, because, among other things, they do not materially adversely change the treatment of the claims of any creditors or interest holders who have not accepted, in writing, such supplements and modifications. Among other things, there were changes to the projections that the Debtor filed shortly before the Confirmation Hearing (which included projected distributions to creditors and a comparison of projected distributions under the Plan to potential distributions under a hypothetical chapter 7 liquidation). The Plan Supplements and Plan Modifications did not mislead or prejudice any creditors or interest holders nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes to accept or reject the Plan. Specifically, the Amended Liquidation Analysis/Financial Projections filed on February 1, 2021 [Docket No. 1875] do not constitute any material adverse change to the treatment of any creditors or interest holders but, rather, simply update the estimated distributions based on Claims that were settled in the interim and provide updated financial data. The filing and notice of the Plan Supplements and Plan Modifications were appropriate and complied with the requirements of

section 1127(a) of the Bankruptcy Code and the Bankruptcy Rules, and no other solicitation or disclosure or further notice is or shall be required. The Plan Supplements and Plan Modifications each became part of the Plan pursuant section 1127(a) of the Bankruptcy Code. The Debtor or Reorganized Debtor, as applicable, is authorized to modify the Plan or Plan Supplement Documents following entry of this Confirmation Order in a manner consistent with section 1127(b) of the Bankruptcy Code, the Plan, and, if applicable, the terms of the applicable Plan Supplement Document.

28. **Notice of Transmittal, Mailing and Publication of Materials.** As is evidenced by the Voting Certifications and the Affidavits of Service and Publication, the transmittal and service of the Plan, the Disclosure Statement, Ballots, and Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties required to be given notice of the Confirmation Hearing (including the deadline for filing and serving objections to the confirmation of the Plan) have been given due, proper, timely, and adequate notice in accordance with the Disclosure Statement Order and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable non-bankruptcy law, and such parties have had an opportunity to appear and be heard with respect thereto. No other or further notice is required. The publication of the Confirmation Hearing Notice, as set forth in the *Notice of Affidavit of Publication* dated December 3, 2020 [Docket No. 1505], complied with the Disclosure Statement Order.

29. **Voting.** The Bankruptcy Court has reviewed and considered the Voting Certifications. The procedures by which the Ballots for acceptance or rejection of the Plan were

distributed and tabulated, including the tabulation as subsequently amended to reflect the settlement of certain Claims to be Allowed in Class 7, were fairly and properly conducted and complied with the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

30. **Bankruptcy Rule 3016(a).** In accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the proponent of the Plan.

31. **Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)).** As set forth below, the Plan complies with all of the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

32. **Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1122 of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interest of such class. The Claims and Equity Interests placed in each Class are substantially similar to other Claims and Equity Interests, as the case may be, in each such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests.

33. **Classification of Secured Claims.** Class 1 (Jefferies Secured Claim) and Class 2 (Frontier Secured Claim) each constitute separate secured claims held by Jefferies LLC and Frontier State Bank, respectively, and it is proper and consistent with section 1122 of the Bankruptcy Code to separately classify the claims of these secured creditors. Class 3 (Other



Secured Claims) consists of other secured claims (to the extent any exist) against the Debtor, are not substantially similar to the Secured Claims in Class 1 or Class 2, and are also properly separately classified.

34. **Classification of Priority Claims.** Class 4 (Priority Non-Tax Claims) consists of Claims entitled to priority under section 507(a), other than Priority Tax Claims, and are properly separately classified from non-priority unsecured claims. Class 5 (Retained Employee Claims) consists of the potential claims of employees who may be retained by the Debtor on the Effective Date, which claims will be Reinstated under the Plan, are not substantially similar to other Claims against the Debtor, and are properly classified.

35. **Classification of Unsecured Claims.** Class 6 (PTO Claims) consists solely of the claims of the Debtor's employees for unpaid paid time off in excess of the \$13,650 statutory cap amount under sections 507(a)(4) and (a)(5) of the Bankruptcy Code and are dissimilar from other unsecured claims in Class 7 and Class 8. Class 7 (Convenience Claims) allows holders of eligible and liquidated Claims (below a certain threshold dollar amount) to receive a cash payout of the lesser of 85% of the Allowed amount of the creditor's Claim or such holder's *pro rata* share of the Convenience Claims Cash Pool. Class 7 (Convenience Claims) are provided for administrative convenience purposes in order to allow creditors, most of whom are either trade creditors or holders of professional claims, to receive treatment provided under Class 7 in lieu of the treatment of Class 8 (General Unsecured Claims). The Plan also provides for reciprocal "opt out" mechanisms to allow holders of Class 7 Claims to elect to receive the treatment for Class 8 Claims. Class 8 creditors primarily constitute the litigation claims of the Debtor. Class 8 Creditors

will receive Claimant Trust Interests which will be satisfied pursuant to the terms of the Plan. Class 8 also contains an “opt out” mechanism to allow holders of liquidated Class 8 Claims at or below a \$1 million threshold to elect to receive the treatment of Class 7 Convenience Claims. The Claims in Class 7 (primarily trade and professional Claims against the Debtor) are not substantially similar to the Claims in Class 8 (primarily the litigation Claims against the Debtor), and are appropriately separately classified. Valid business reasons also exist to classify creditors in Class 7 separately from creditors in Class 8. Class 7 creditors largely consist of liquidated trade or service providers to the Debtor. In addition, the Claims of Class 7 creditors are small relative to the large litigation claims in Class 8. Furthermore, the Class 8 Claims were overwhelmingly unliquidated when the Plan was filed. The nature of the Class 7 Claims as being largely liquidated created an expectation of expedited payment relative to the largely unliquidated Claims in Class 8, which consists in large part of parties who have been engaged in years, and in some cases over a decade of litigation with the Debtor. Separate classification of Class 7 and Class 8 creditors was the subject of substantial arm’s-length negotiations between the Debtor and the Committee to appropriately reflect these relative differences.

36. **Classification of Equity Interests.** The Plan properly separately classifies the Equity Interests in Class 10 (Class B/C Limited Partnership Interests) from the Equity Interests in Class 11 (Class A Limited Partnership Interests) because they represent different types of equity security interests in the Debtor and different payment priorities.

37. **Elimination of Vacant Classes.** Section III.C of the Plan provides for the elimination of Classes that do not have at least one holder of a Claim or Equity Interest that is

Allowed in an amount greater than zero for purposes of voting to accept or reject the Plan, and are disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class. The purpose of this provision is to provide that a Class that does not have voting members shall not be included in the tabulation of whether that Class has accepted or rejected the Plan. Pursuant to the Voting Certifications, the only voting Class of Claims or Equity Interests that did not have any members is Class 5 (Retained Employees). As noted above, Class 5 does not have any voting members because any potential Claims in Class 5 would not arise, except on account of any current employees of the Debtor who may be employed as of the Effective Date, which is currently unknown. Thus, the elimination of vacant Classes provided in Article III.C of the Plan does not violate section 1122 of the Bankruptcy Code. Class 5 is properly disregarded for purposes of determining whether or not the Plan has been accepted under Bankruptcy Code section 1129(a)(8) because there are no members in that Class. However, the Plan properly provides for the treatment of any Claims that may potentially become members of Class 5 as of the Effective Date in accordance with the terms of the Plan. The Plan therefore satisfies section 1122 of the Bankruptcy Code.

38. **Classification of Claims and Designation of Non-Classified Claims (11 U.S.C. §§ 1122, 1123(a)(1)).** Section 1123(a)(1) of the Bankruptcy Code requires that the Plan specify the classification of claims and equity security interests pursuant to section 1122 of the Bankruptcy Code, other than claims specified in sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code. In addition to Administrative Claims, Professional Fee Claims, and Priority Tax Claims, each of which need not be classified pursuant to section 1123(a)(1) of the Bankruptcy

Code, the Plan designates eleven (11) Classes of Claims and Equity Interests. The Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

39. **Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)).** Article III of the Plan specifies that each of Class 1 (Jefferies Secured Claim), Class 3 (Other Secured Claims), Class 4 (Priority Non-Tax Claims), Class 5 (Retained Employee Claims), and Class 6 (PTO Claims) are Unimpaired under the Plan. Thus, the requirement of section 1123(a)(2) of the Bankruptcy Code is satisfied.

40. **Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)).** Article III of the Plan designates each of Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), Class 8 (General Unsecured Claims), Class 9 (Subordinated Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) as Impaired and specifies the treatment of Claims and Equity Interests in such Classes. Thus, the requirement of section 1123(a)(3) of the Bankruptcy Code is satisfied.

41. **No Discrimination (11 U.S.C. § 1123(a)(4)).** The Plan provides for the same treatment by the Plan proponent for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest. The Plan satisfies this requirement because Holders of Allowed Claims or Equity Interests in each Class will receive the same rights and treatment as other Holders of Allowed Claims or Equity Interests within such holder's respective class, subject only to the voluntary "opt out" options afforded to members of Class 7 and Class 8 in accordance with the terms of the Plan. Thus, the requirement of section 1123(a)(4) of the Bankruptcy Code is satisfied.

42. **Implementation of the Plan (11 U.S.C. § 1123(a)(5)).** Article IV of the Plan sets forth the means for implementation of the Plan which includes, but is not limited to, the establishment of: (i) the Claimant Trust; (ii) the Litigation Sub-Trust; (iii) the Reorganized Debtor; and (iv) New GP LLC, in the manner set forth in the Plan Documents, the forms of which are included in the Plan Supplements.

- a. **The Claimant Trust.** The Claimant Trust Agreement provides for the management of the Claimant Trust, as well as the Reorganized Debtor with the Claimant Trust serving as the managing member of New GP LLC (a wholly-owned subsidiary of the Claimant Trust that will manage the Reorganized Debtor as its general partner). The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will all be managed and overseen by the Claimant Trust Oversight Committee. Additionally, the Plan provides for the transfer to the Claimant Trust of all of the Debtor's rights, title, and interest in and to all of the Claimant Trust Assets in accordance with section 1141 of the Bankruptcy Code and for the Claimant Trust Assets to automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement. The Claimant Trust will administer the Claimant Trust Assets as provided under the Plan and the Claimant Trust Agreement contained in the Plan Supplements.
- b. **The Litigation Sub-Trust.** The Plan and the Litigation Sub-Trust Agreement provide for the transfer to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims (as transferred to the Claimant Trust by the Debtor) in accordance with section 1141 of the Bankruptcy Code and for the Estate Claims to automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and the Litigation Sub-Trust Expenses, as provided for in the Litigation Sub-Trust Agreement. The Litigation Trustee is charged with investigating, pursuing, and otherwise resolving any Estate Claims (including those with respect to which the Committee has standing to pursue prior to the Effective Date pursuant to the January 9 Order) pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, regardless of whether any litigation with respect to any Estate Claim was commenced by the Debtor or the Committee prior to the Effective Date.



- c. **The Reorganized Debtor.** The Reorganized Debtor will administer the Reorganized Debtor Assets, which includes managing the wind down of the Managed Funds.

The precise terms governing the execution of these restructuring transactions are set forth in greater detail in the applicable definitive documents included in the Plan Supplements, including the Claimant Trust Agreement, the Litigation Sub-Trust Agreement, and the Schedule of Retained Causes of Action. The Plan, together with the documents and forms of agreement included in the Plan Supplements, provides a detailed blueprint for the transactions contemplated by the Plan. The Plan's various mechanisms provide for the Debtor's continued management of its business as it seeks to liquidate the Debtor's assets, wind down its affairs, and pay the Claims of the Debtor's creditors. Upon full payment of Allowed Claims, plus interest as provided in the Plan, any residual value would then flow to the holders of Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests). Finally, Mr. Seery testified that the Debtor engaged in substantial and arm's length negotiations with the Committee regarding the Debtor's post-Effective Date corporate governance, as reflected in the Plan. Mr. Seery testified that he believes the selection of the Claimant Trustee, Litigation Trustee, and members of the Claimant Trust Oversight Board are in the best interests of the Debtor's economic constituents. Thus, the requirements of section 1123(a)(5) of the Bankruptcy Code are satisfied.

43. **Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)).** The Debtor is not a corporation and the charter documents filed in the Plan Supplements otherwise comply with section 1123(a)(6) of the Bankruptcy Code. Therefore, the requirement of section 1123(a)(6) of the Bankruptcy Code is satisfied.

44. **Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)).** Article IV of the Plan provides for the Claimant Trust to be governed and administered by the Claimant Trustee. The Claimant Trust, the management of the Reorganized Debtor, and the management and monetization of the Claimant Trust Assets and the Litigation Sub-Trust will be managed by the Claimant Trust Oversight Board. The Claimant Trust Oversight Board will consist of: (1) Eric Felton, as representative of the Redeemer Committee; (2) Joshua Terry, as representative of Acis; (3) Elizabeth Kozlowski, as representative of UBS; (4) Paul McVoy, as representative of Meta-E Discovery; and (5) David Pauker. Four of the members of the Claimant Trust Oversight Committee are the holders of several of the largest Claims against the Debtor and/or are current members of the Committee. Each of these creditors has actively participated in the Debtor's case, both through their fiduciary roles as Committee members and in their individual capacities as creditors. They are therefore intimately familiar with the Debtor, its business, and assets. The fifth member of the Claimant Trust Oversight Board, David Pauker, is a disinterested restructuring advisor and turnaround manager with more than 25 years of experience advising public and private companies and their investors, and he has substantial experience overseeing, advising or investigating troubled companies in the financial services industry and has advised or managed such companies on behalf of boards or directors, court-appointed trustees, examiners and special masters, government agencies, and private investor parties. The members of the Claimant Trust Oversight Board will serve without compensation, except for Mr. Pauker, who will receive payment of \$250,000 for his first year of service, and \$150,000 for subsequent years.

45. **Selection of Trustees.** The Plan Supplements disclose that Mr. Seery will serve as the Claimant Trustee and Marc Kirschner will serve as the Litigation Trustee. As noted above, Mr. Seery has served as an Independent Board member since January 2020, and as the Chief Executive Officer and Chief Restructuring Officer since July 2020, and he has extensive management and restructuring experience, as evidenced from his curriculum vitae which is part of the record. The evidence shows that Mr. Seery is intimately familiar with the Debtor's organizational structure, business, and assets, as well as how Claims will be treated under the Plan. Accordingly, it is reasonable and in the Estate's best interests to continue Mr. Seery's employment post-emergence as the Claimant Trustee. Mr. Seery, upon consultation with the Committee, testified that he intends to employ approximately 10 of the Debtor's employees to enable him to manage the Debtor's business until the Claimant Trust effectively monetizes its remaining assets, instead of hiring a sub-servicer to accomplish those tasks. Mr. Seery testified that he believes that the Debtor's post-confirmation business can most efficiently and cost-effectively be supported by a sub-set of the Debtor's current employees, who will be managed internally. Mr. Seery shall initially be paid \$150,000 per month for services rendered after the Effective Date as Claimant Trustee; however, Mr. Seery's long-term salary as Claimant Trustee and the terms of any bonuses and severance are subject to further negotiation by Mr. Seery and the Claimant Trust Oversight Board within forty-five (45) days after the Effective Date. The Bankruptcy Court has also reviewed Mr. Kirschner's curriculum vitae. Mr. Kirschner has been practicing law since 1967 and has substantial experience in bankruptcy litigation matters, particularly with respect to his prior experience as a litigation trustee for several litigation trusts, as set forth on the record of the

Confirmation Hearing and in the Confirmation Brief. Mr. Kirschner shall be paid \$40,000 per month for the first three months and \$20,000 per month thereafter, plus a success fee related to litigation recoveries. The Committee and the Debtor had arm's lengths negotiations regarding the post-Effective Date corporate governance structure of the Reorganized Debtor and believe that the selection of the Claimant Trustee, the Litigation Trustee, and the Claimant Trust Oversight Committee are in the best interests of the Debtor's economic stakeholders. Section 1123(a)(7) of the Bankruptcy Code is satisfied.

**46. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)).**

Pursuant to section 1129(a)(2) of the Bankruptcy Code, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including sections 1122, 1123, 1124, 1125, and 1126 of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order governing notice, disclosure, and solicitation in connection with the Plan, the Disclosure Statement, the Plan Supplements, and all other matters considered by the Bankruptcy Court in connection with this Chapter 11 Case.

**47. Debtor's Solicitation Complied with Bankruptcy Code and Disclosure**

**Statement Order.** Before the Debtor solicited votes on the Plan, the Bankruptcy Court entered the Disclosure Statement Order. In accordance with the Disclosure Statement Order and evidenced by the Affidavits of Service and Publication, the Debtor appropriately served (i) the Solicitation Packages (as defined in the Disclosure Statement Order) on the Holders of Claims in Classes 2, 7, 8 and 9 and Holders of Equity Interests in Classes 10 and 11 who were entitled to vote on the Plan; and (ii) the Notice of Nonvoting Status (as defined in the Disclosure Statement Order) and the

Confirmation Hearing Notice to the Holders of Claims in Classes 1, 3, 4, 5 and 6, who were not entitled to vote on the Plan pursuant to the Disclosure Statement Order. The Disclosure Statement Order approved the contents of the Solicitation Packages provided to Holders of Claims and Equity Interests entitled to vote on the Plan, the notices provided to parties not entitled to vote on the Plan, and the deadlines for voting on and objecting to the Plan. The Debtor and KCC each complied with the content and delivery requirements of the Disclosure Statement Order, thereby satisfying sections 1125(a) and (b) of the Bankruptcy Code, as evidenced by the Affidavits of Service and Publication. The Debtor also satisfied section 1125(c) of the Bankruptcy Code, which provides that the same disclosure statement must be transmitted to each holder of a claim or interest in a particular class. The Debtor caused the same Disclosure Statement to be transmitted to all holders of Claims and Equity Interests entitled to vote on the Plan. The Debtor has complied in all respects with the solicitation requirements of section 1125 of the Bankruptcy Code and the Disclosure Statement Order. The Bankruptcy Court rejects the arguments of the Mr. Dondero and certain Dondero Related Entities that the changes made to certain assumptions and projections from the Liquidation Analysis annexed as Exhibit C to the Disclosure Statement (the “Liquidation Analysis”) to the Amended Liquidation Analysis/Financial Projections require resolicitation of the Plan. The Bankruptcy Court heard credible testimony from Mr. Seery regarding the changes to the Liquidation Analysis as reflected in the Amended Liquidation Analysis/Financial Projections. Based on the record, including the testimony of Mr. Seery, the Bankruptcy Court finds that the changes between the Liquidation Analysis and the Amended Liquidation Analysis/Financial Projections do not constitute materially adverse change to the treatment of Claims or Equity



Interests. Instead, the changes served to update the projected distributions based on Claims that were settled after the approval of the Disclosure Statement and to otherwise incorporate more recent financial data. Such changes were entirely foreseeable given the large amount of unliquidated Claims at the time the Disclosure Statement was approved and the nature of the Debtor's assets. The Bankruptcy Court therefore finds that holders of Claims and Equity Interests were not misled or prejudiced by the Amended Liquidation Analysis/Financial Projections and the Plan does not need to be resolicited.

48. **Plan Proposed in Good Faith and Not by Means Forbidden by Law (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of this Chapter 11 Case, the Plan itself, and the extensive, unrebutted testimony of Mr. Seery in which he described the process leading to Plan's formulation. Based on the totality of the circumstances and Mr. Seery's testimony, the Bankruptcy Court finds that the Plan is the result of extensive arm's-length negotiations among the Debtor, the Committee, and key stakeholders, and promotes the objectives and purposes of the Bankruptcy Code. Specifically, the Debtor's good faith in proposing the Plan is supported by the following facts adduced by Mr. Seery:

- a. The Independent Board determined that it should consider all potential restructuring alternatives, including pursuit of a traditional restructuring and the continuation of the Debtor's business, a potential sale of the Debtor's assets in one or more transactions, an asset monetization plan similar to that described in the Plan, and a so-called "grand bargain" plan that would involve Mr. Dondero's sponsorship of a plan with a substantial equity infusion.

- b. The Debtor subsequently engaged in arm's-length, good faith negotiations with the Committee over an asset monetization Plan commencing in June 2020, which negotiations occurred over the next several months.
- c. Negotiations between the Debtor and the Committee were often contentious over disputes, including, but not limited to, the post-confirmation corporate governance structure and the scope of releases contemplated by the Plan.
- d. While negotiations with the Committee progressed, the Independent Board engaged in discussions with Mr. Dondero regarding a potential "grand bargain" plan which contemplated a significant equity infusion by Mr. Dondero, and which Mr. Seery personally spent hundreds of hours pursuing over many months.
- e. On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [Docket No. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation. As a result of this mediation, the Debtor negotiated the settlement of the claims of Acis and Mr. Terry, which the Bankruptcy Court approved on October 28, 2020 [Docket No. 1302].
- f. On August 12, 2020, the Debtor filed its *Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 944] (the "Initial Plan") and related disclosure statement (the "Initial Disclosure Statement") which were not supported by either the Committee or Mr. Dondero. The Independent Board filed the Initial Plan and Initial Disclosure Statement in order to act as a catalyst for continued discussions with the Committee while it simultaneously worked with Mr. Dondero on the "grand bargain" plan.
- g. The Bankruptcy Court conducted a contested hearing on the Initial Disclosure Statement on October 27, 2020. The Committee and other parties objected to approval of the Disclosure Statement at the Initial Disclosure Statement hearing, which was eventually continued to November 23, 2020.
- h. Following the Initial Disclosure Statement hearing, the Debtor continued to negotiate with the Committee and ultimately resolved the remaining material disputes and led to the Bankruptcy Court's approval of the Disclosure Statement on November 23, 2020.
- i. Even after obtaining the Bankruptcy Court's approval of the Disclosure Statement, the Debtor and the Committee continued to negotiate with Mr. Dondero and the Committee over a potential "pot plan" as an alternative to the Plan on file with the Bankruptcy Court, but such efforts were unsuccessful. This history conclusively demonstrates that the Plan is being proposed in good faith within the meaning of section 1129(a)(3).

49. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).**

Article II.B of the Plan provides that Professionals will file all final requests for payment of Professional Fee Claims no later than 60 days after the Effective Date, thereby providing an adequate period of time for interested parties to review such claims. The procedures set forth in the Plan for the Bankruptcy Court's approval of the fees, costs, and expenses to be paid in connection with this chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, satisfy the objectives of and are in compliance with section 1129(a)(4) of the Bankruptcy Code.

50. **Directors, Officers, and Insiders (11 U.S.C. § 1129(a)(5)).** Article IV.B of the Plan provides for the appointment of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee and the members thereto. For the reasons more fully explained in paragraphs 44-45 of this Confirmation Order with respect to the requirement of section 1123(a)(7) of the Bankruptcy Code, the Debtor has disclosed the nature of compensation of any insider to be employed or retained by the Reorganized Debtor, if applicable, and compensation for any such insider. The appointment of such individuals is consistent with the interests of Claims and Equity Interests and with public policy. Thus, the Plan satisfies section 1129(a)(5) of the Bankruptcy Code.

51. **No Rate Changes (11 U.S.C. § 1129(a)(6)).** The Plan does not provide for any rate change that requires regulatory approval. Section 1129(a)(6) of the Bankruptcy Code is thus not applicable.

52. **Best Interests of Creditors (11 U.S.C. § 1129(a)(7)).** The “best interests” test is satisfied as to all Impaired Classes under the Plan, as each Holder of a Claim or Equity Interest in such Impaired Classes will receive or retain property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. On October 15, 2020, the Debtor filed the Liquidation Analysis [Docket 1173], as prepared by the Debtor with the assistance of its advisors and which was attached as Exhibit C to the Disclosure Statement. On January 29, 2021, in advance of Mr. Seery’s deposition in connection with confirmation of the Plan, the Debtor provided an updated version of the Liquidation Analysis to the then-objectors of the Plan, including Mr. Dondero and the Dondero Related Entities. On February 1, 2021, the Debtor filed the Amended Liquidation Analysis/Financial Projections. The Amended Liquidation Analysis/Financial Projections included updates to the Debtor’s projected asset values, revenues, and expenses to reflect: (1) the acquisition of an interest in an entity known as “HCLOF” that the Debtor will acquire as part of its court-approved settlement with HarbourVest and that was valued at \$22.5 million; (2) an increase in the value of certain of the Debtor’s assets due to changes in market conditions and other factors; (3) expected revenues and expenses arising in connection with the Debtor’s continued management of the CLOs pursuant to management agreements that the Debtor decided to retain; (4) increases in projected expenses for headcount (in addition to adding two or three employees to assist in the management of the CLOs, the Debtor also increased modestly the projected headcount as a result of its decision not to engage a Sub-Servicer) and professional fees; and (5) an increase in projected recoveries on notes resulting from the

acceleration of term notes owed to the Debtor by the following Dondero Related Entities: NexPoint Advisors, L.P.; Highland Capital Management Services, Inc.; and HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Under the Plan, as of the Confirmation Date, (a) Class 7 General Unsecured Creditors are projected to receive 85% on account of their claims; and (b) Class 8 General Unsecured Creditors are projected to receive at least approximately 71% on account of their Claims. Under a hypothetical chapter 7 liquidation, all general unsecured creditors are projected to receive approximately 55% on account of their Claims. The Bankruptcy Court finds that the distributions that Class 7 and 8 General Unsecured Creditors are projected to receive under the Plan substantially exceeds that which they would receive under a chapter 7 liquidation based on Mr. Seery's testimony, including the following credible reasons he posited, among others:

- a. The nature of the Debtor's assets is complex. Certain assets relate to complicated real estate structures and private equity investments in operating businesses. Mr. Seery's extensive experience with the Debtor during the thirteen months since his appointment as an Independent Director and later Chief Executive Officer and Chief Restructuring Officer, provides him with a substantial learning curve in connection with the disposition of the Debtor's assets and are reasonably expected to result in him being able to realize tens of millions of dollars more value than would a chapter 7 trustee.
- b. Assuming that a hypothetical chapter 7 trustee could even operate the Debtor's business under chapter 7 of the Bankruptcy Code and hire the necessary personnel with the relevant knowledge and experience to assist him or her in selling the Debtor's assets, a chapter 7 trustee would likely seek to dispose of the Debtor's assets in a forced sale liquidation which would generate substantially less value for the Debtor's creditors than the asset monetization plan contemplated by the Plan.
- c. A chapter 7 trustee would be unlikely to retain the Debtor's existing professionals to assist in its efforts to monetize assets, resulting in delays, increased expenses, and reduced asset yields for the chapter 7 estate.



- d. The chapter 7 estate would be unlikely to maximize value as compared to the asset monetization process contemplated by the Plan because potential buyers are likely to perceive a chapter 7 trustee as engaging in a quick, forced “fire sale” of assets; and
- e. The Debtor’s employees, who are vital to its efforts to maximum value and recoveries for stakeholders, may be unwilling to provide services to a chapter 7 trustee.

Finally, there is no evidence to support the objectors’ argument that the Claimant Trust Agreement’s disclaimed liability for ordinary negligence by the Claimant Trustee compared to a chapter 7 trustee’s liability has any relevance to creditor recoveries in a hypothetical chapter 7 liquidation. Thus, section 1129(a)(7) of the Bankruptcy Code is satisfied.

53. **Acceptance by Certain Classes (11 U.S.C. § 1129(a)(8)).** Classes 1, 3, 4, 5 and 6 are Unimpaired under the Plan. Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 9 (Subordinated Claims) have each voted to accept the Plan in accordance with the Bankruptcy Code, thereby satisfying section 1129(a)(8) as to those Classes. However, Class 8 (General Unsecured Claims), Class 10 (Class B/C Limited Partnership Interests), and Class 11 (Class A Limited Partnership Interests) have not accepted the Plan. Accordingly, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. The Plan, however, is still confirmable because it satisfies the nonconsensual confirmation provisions of section 1129(b), as set forth below.

54. **Treatment of Administrative, Priority, Priority Tax Claims, and Professional Fee Claims (11 U.S.C. § 1129(a)(9)).** The treatment of Administrative Claims, Priority Claims, and Professional Fee Claims pursuant to Article III of the Plan, and as set forth below with respect to the resolution of the objections filed by the Internal Revenue Service and

certain Texas taxing authorities satisfies the requirements of sections 1129(a)(9) of the Bankruptcy Code.

55. **Acceptance by Impaired Class (11 U.S.C. § 1129(a)(10)).** Class 2 (Frontier Secured Claims) and Class 7 (Convenience Claims) are each Impaired Classes of Claims that voted to accept the Plan, determined without including any acceptance of the Plan by any insider. Therefore, the requirement of section 1129(a)(10) of the Bankruptcy Code is satisfied.

56. **Feasibility (11 U.S.C. § 1129(a)(11)).** Article IV of the Plan provides for the implementation of the Plan through the Claimant Trust, the Litigation Sub-Trust, and the Reorganized Debtor. The Plan provides that the Claimant Trust, among other things, will monetize and distribute the Debtor's remaining assets. The Disclosure Statement, the Amended Liquidation Analysis/Financial Projections, and the other evidence presented at the Confirmation Hearing provide a reasonable probability of success that the Debtor will be able to effectuate the provisions of the Plan. The Plan contemplates the establishment of the Claimant Trust upon the Effective Date, which will monetize the Estate's assets for the benefit of creditors. Mr. Seery testified that the Class 2 Frontier Secured Claim will be paid over time pursuant to the terms of the New Frontier Note and the Reorganized Debtor will have sufficient assets to satisfy its obligations under this note. The Claims of the Holders of Class 7 Claims (as well as those Class 8 creditors who validly opted to receive the treatment of Class 7 Claims) are expected to be satisfied shortly after the Effective Date. Holders of Class 8 Claims (including any holders of Class 7 Claims who opted to receive the treatment provided to Class 8 Claims) are not guaranteed any recovery and will

periodically receive pro rata distributions as assets are monetized pursuant to the Plan and the Claimant Trust Agreement. Thus, section 1129(a)(11) of the Bankruptcy Code is satisfied.

57. **Payment of Fees (11 U.S.C. § 1129(a)(12)).** All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Article XII.A of the Plan, thus satisfying the requirement of section 1129(a)(12) of the Bankruptcy Code. The Debtor has agreed that the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case.

58. **Retiree Benefits.** The Plan provides for the assumption of the Pension Plan (to the extent such Pension Plan provides “retiree benefits” and is governed by section 1114 of the Bankruptcy Code). Thus, the Plan complies with section 1129(a)(13) of the Bankruptcy Code, to the extent applicable.

59. **Miscellaneous Provisions (11 U.S.C. §§ 1129(a)(14)-(16)).** Sections 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) has no domestic support obligations (section 1129(a)(14)), (ii) is not an individual (section 1129(a)(15)), and (iii) is not a nonprofit corporation (section 1129(a)(16)).

60. **No Unfair Discrimination; Fair and Equitable Treatment (11 U.S.C. § 1129(b)).** The classification and treatment of Claims and Equity Interests in Classes 8, 10 and 11, which have not accepted the Plan, is proper pursuant to section 1122 of the Bankruptcy Code, does

not discriminate unfairly, and is fair and equitable pursuant to section 1129(b)(1) of the Bankruptcy Code.

- a. Class 8. The Plan is fair and equitable with respect to Class 8 General Unsecured Claims. While Equity Interests in Class 10 and Class 11 will receive a contingent interest in the Claimant Trust under the Plan (the “Contingent Interests”), the Contingent Interests will not vest unless and until holders of Class 8 General Unsecured Claims and Class 9 Subordinated Claims receive distributions equal to 100% of the amount of their Allowed Claims plus interest as provided under the Plan and Claimant Trust Agreement. Accordingly, as the holders of Equity Interests that are junior to the Claims in Class 8 and Class 9 will not receive or retain under the Plan on account of such junior claim interest any property unless and until the Claims in Class 8 and Class 9 are paid in full plus applicable interest, the Plan is fair and equitable with respect to holders of Class 8 General Unsecured Claims pursuant to section 1129(b)(2)(B) of the Bankruptcy Code and the reasoning of *In re Introgen Therapeutics* 429 B.R 570 (Bankr. W.D. Tex. 2010).
- b. Class 10 and Class 11. There are no Claims or Equity Interests junior to the Equity Interests in Class 10 and Class 11. Equity Interests in Class 10 and 11 will neither receive nor retain any property under the Plan unless Allowed Claims in Class 8 and Class 9 are paid in full plus applicable interest pursuant to the terms of the Plan and Claimant Trust Agreement. Thus, the Plan does not violate the absolute priority rule with respect to Classes 10 and 11 pursuant to Bankruptcy Code section 1129(b)(2)(C). The Plan does not discriminate unfairly as to Equity Interests. As noted above, separate classification of the Class B/C Partnership Interests from the Class A Partnerships Interests is appropriate because they constitute different classes of equity security interests in the Debtor, and each are appropriately separately classified and treated.

Accordingly, the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to each Class that has rejected the Plan. Thus, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to Classes 8, 10, and 11.

61. **Only One Plan (11 U.S.C. § 1129(c)).** The Plan is the only chapter 11 plan confirmed in this Chapter 11 Case, and the requirements of section 1129(c) of the Bankruptcy Code are therefore satisfied.

62. **Principal Purpose (11 U.S.C. § 1129(d)).** Mr. Seery testified that the principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. Accordingly, section 1129(d) of the Bankruptcy Code is inapplicable.

63. **Satisfaction of Confirmation Requirements.** Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code and should be confirmed.

64. **Good Faith Solicitation (11 U.S.C. § 1125(e)).** The Debtor, the Independent Directors, and the Debtor's employees, advisors, Professionals, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to the solicitation of acceptances of the Plan and their participation in the activities described in section 1125 of the Bankruptcy Code, and they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

65. **Discharge (11 U.S.C. § 1141(d)(3)).** The Debtor is entitled to a discharge of debts pursuant to section 1141(d)(3)(B) of the Bankruptcy Code. Under the Plan, the Claimant Trust or Reorganized Debtor, as applicable, will continue to manage funds and conduct business



in the same manner as the Debtor did prior to Plan confirmation, which includes the management of the CLOs, Multi-Strat, Restoration Capital, the Select Fund and the Korea Fund. Although the Plan projects that it will take approximately two years to monetize the Debtor's assets for fair value, Mr. Seery testified that while the Reorganized Debtor and Claimant Trust will be monetizing their assets, there is no specified time frame by which this process must conclude. Mr. Seery's credible testimony demonstrates that the Debtor will continue to engage in business after consummation of the Plan, within the meaning of Section 1141(d)(3)(b) and that the Debtor is entitled to a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

66. **Retention of Jurisdiction.** The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and/or section 1142 of the Bankruptcy Code to the maximum extent under applicable law.

67. **Additional Plan Provisions (11 U.S.C. § 1123(b)).** The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate, and consistent with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

68. **Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)).** The Debtor has exercised reasonable business judgment with respect to the rejection of the Executory Contracts and Unexpired Leases pursuant the terms of the Plan and this Confirmation Order, and such rejections are justified and appropriate in this Chapter 11 Case. The Debtor also filed the List of Assumed Contracts, which contain notices to the applicable counterparties to the contracts set forth on Exhibit "FF" to Plan Supplement filed on February 1, 2021 [Docket No. 1875] and which exhibit sets forth the list of executory contracts and unexpired leases to be

assumed by the Debtor pursuant to the Plan (collectively, the “Assumed Contracts”). With respect to the Assumed Contracts, only one party objected to the assumption of any of the Assumed Contracts, but that objection was withdrawn.<sup>8</sup> Any modifications, amendments, supplements, and restatements to the Assumed Contracts that may have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of any Assumed Contract pursuant to the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

69. **Compromises and Settlements Under and in Connection with the Plan (11 U.S.C. § 1123(b)(3)).** All of the settlements and compromises pursuant to and in connection with the Plan, comply with the requirements of section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019.

70. **Debtor Release, Exculpation and Injunctions (11 U.S.C. § 1123(b)).** The Debtor Release, Exculpation, and Injunction provisions provided in the Plan (i) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1334; (ii) are integral elements of the transactions incorporated into the Plan, and inextricably bound with the other provisions of the Plan; (iii) confer material benefit on, and are in the best interests of, the Debtor, its Estate, and its

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<sup>8</sup> See Notice of Withdrawal of James Dondero’s Objection Debtor’s Proposed Assumption of Contracts and Cure Amounts Proposed in Connection Therewith [Docket No. 1876]

creditors; (iv) are fair, equitable, and reasonable; (v) are given and made after due notice and opportunity for hearing; (vi) satisfy the requirements of Bankruptcy Rule 9019; and (vii) are consistent with the Bankruptcy Code and other applicable law, and as set forth below.

71. **Debtor Release.** Section IX.D of the Plan provides for the Debtor's release of the Debtor's and Estate's claims against the Released Parties. Releases by a debtor are discretionary and can be provided by a debtor to persons who have provided consideration to the Debtor and its estate pursuant to section 1123(b)(3)(A) of the Bankruptcy Code. Contrary to the objections raised by Mr. Dondero and certain of the Dondero Related Entities, the Debtor Release is appropriately limited to release claims held by the Debtor and does not purport to release the claims held by the Claimant Trust, Litigation Sub-Trust, or other third parties. The Plan does not purport to release any claims held by third parties and the Bankruptcy Court finds that the Debtor Release is not a "disguised" release of any third party claims as asserted by certain objecting parties. The limited scope of the Debtor Release in the Plan was extensively negotiated with the Committee, particularly with the respect to the Debtor's conditional release of claims against employees, as identified in the Plan, and the Plan's conditions and terms of such releases. The Plan does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual

fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. The Debtor Release also contains conditions to such releases as set forth in Article X.D of the Plan with respect to employees (the “Release Conditions”). Until the an employee satisfies the Release Conditions or the Release Conditions otherwise terminate, any claims against such employee will be tolled so that if the Release Conditions are not met the Litigation Trustee may pursue claims against an employee at a later date. The evidence before the Bankruptcy Court, including, but not limited to Mr. Seery’s testimony, demonstrates that the Debtor is not aware of any claims against any of the Released Parties, that the Released Parties have been instrumental in assisting the Debtor’s efforts toward confirmation of the Plan and that, therefore, the releases are a *quid pro quo* for the Released Parties’ significant contributions to a highly complex and contentious restructuring. The Committee, whose members hold approximately \$200 million in claims against the Estate, is highly sophisticated and is represented by highly sophisticated professionals, and has actively and vigorously negotiated the terms of the Debtor Release, which was the subject of significant controversy at the Initial Disclosure Statement hearing held by the Bankruptcy Court on October 27, 2020.

72. **Exculpation.** Section IX.C of the Plan provides for the exculpation of certain Exculpated Parties to the extent provided therein (the “Exculpation Provision”). As explained below, the Exculpation Provision is appropriate under the unique circumstances of this litigious Chapter 11 Case and consistent with applicable Fifth Circuit precedent. First, with respect to the Independent Directors, their agents, and their advisors, including any employees acting at

their direction, the Bankruptcy Court finds and concludes that it has already exculpated these parties for acts other than willful misconduct and gross negligence pursuant to the January 9 Order. The January 9 Order was specifically agreed to by Mr. Dondero, who was in control of the Debtor up until entry of the January 9 Order. The January 9 Order was not appealed. In addition to the appointment of the Independent Directors in an already contentious and litigious case, the January 9 Order set the standard of care for the Independent Directors and specifically exculpated them for negligence. Mr. Seery and Mr. Dubel each testified that they had input into the contents of the January 9 Order and would not have agreed to their appointment as Independent Directors if the January 9 Order did not include the protections set forth in paragraph 10 of the January 9 Order. Paragraph 10 of the January 9 Order (1) requires that parties wishing to sue the Independent Directors or their agents and advisors must first seek approval from the Bankruptcy Court before doing so; (2) sets the standard of care for the Independent Directors during the Chapter 11 Case and exculpated the Independent Directors for acts other than willful misconduct or gross negligence; (3) only permits suits against the Independent Directors to proceed for colorable claims of willful misconduct and gross negligence upon order of the Bankruptcy Court; and (4) does not expire by its terms.

73. **Existing Exculpation of Independent Directors.** The Bankruptcy Court also finds and concludes that it has already exculpated Mr. Seery acting in the capacity as Chief Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order. The Bankruptcy Court concludes its previous approval of the exculpation of the Independent Directors, their agents, advisors and employees working at their direction pursuant to the January 9 Order, and the Chief



Executive Officer and Chief Restructuring Officer pursuant to the July 16 Order constitutes the law of this case and are *res judicata* pursuant to *In re Republic Supply Co. v. Shoaf*, 815 F.2d 1046 (5th Cir.1987). The January 9 Order and July 16 Order cannot be collaterally attacked based on the objectors' objection to the exculpation of the Independent Directors, their agents, and advisors, including any employees acting at their direction, as well as the Chief Executive Officer and Chief Restructuring Officer, that the Bankruptcy Court already approved pursuant to the January 9 Order and the July 16 Order.

74. **The Exculpation Provision Complies with Applicable Law.** Separate and apart from the *res judicata* effect of the January 9 Order and the July 16 Order, the Bankruptcy Court also finds and concludes that the Exculpation Provision is consistent with applicable law, including *In re Pacific Lumber Co.*, 584 F.3d 229 (5th Cir. 2009), for several reasons:

- a. First, the statutory basis for *Pacific Lumber's* denial of exculpation for certain parties other than a creditors' committee and its members is that section 524(e) of the Bankruptcy Code "only releases the debtor, not co-liable third parties." *Pacific Lumber*, 253 F.3d. at 253. However, *Pacific Lumber* does not prohibit all exculpations under the Bankruptcy Code and the court in such case specifically approved the exculpations of a creditors' committee and its members on the grounds that "11 U.S.C. § 1103(c), which lists the creditors' committee's powers, implies committee members have qualified immunity for actions within the scope of their duties.... [I]f members of the committee can be sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case, it will be extremely difficult to find members to serve on an official committee." *Pacific Lumber*, 253 F.3d at 253 (quoting Lawrence P. King, et al, *Collier on Bankruptcy*, ¶ 1103.05[4][b] (15<sup>th</sup> Ed. 2008)). *Pacific Lumber's* rationale for permitted exculpation of creditors' committees and their members (which was clearly policy-based and based on a creditors' committee qualified immunity flowing from their duties under section 1103(c) of the Bankruptcy Code and their disinterestedness and importance in chapter 11 cases) does not preclude exculpation to other parties in a particular chapter 11 case that perform similar roles to a creditors' committee and its members. The Independent Directors, and by extension the Chief Executive Officer and Chief Restructuring Officer, were not

part of the Debtor's enterprise prior to their appointment by the Bankruptcy Court under the January 9 Order. The Bankruptcy Court appointed the Independent Directors in lieu of a chapter 11 trustee to address what the Bankruptcy Court perceived as serious conflicts of interest and fiduciary duty concerns with the then-existing management prior to January 9, 2020, as identified by the Committee. In addition, the Bankruptcy Court finds that the Independent Directors expected to be exculpated from claims of negligence, and would likely have been unwilling to serve in contentious cases absent exculpation. The uncontroverted testimony of Mr. Seery and Mr. Dubel demonstrates that the Independent Directors would not have agreed to accept their roles without the exculpation and gatekeeper provision in the January 9 Order. Mr. Dubel also testified as to the increasing important role that independent directors are playing in complex chapter 11 restructurings and that unless independent directors could be assured of exculpation for simple negligence in contentious bankruptcy cases they would be reluctant to accept appointment in chapter 11 cases which would adversely affect the chapter 11 restructuring process. The Bankruptcy Court concludes that the Independent Directors were appointed under the January 9 Order in order to avoid the appointment of a chapter 11 trustee and are analogous to a creditors' committee rather than an incumbent board of directors. The Bankruptcy Court also concludes that if independent directors cannot be assured of exculpation for simple negligence in contentious bankruptcy cases, they may not be willing to serve in that capacity. Based upon the foregoing, the Bankruptcy Court concludes that *Pacific Lumber's* policy of exculpating creditors' committees and their members from "being sued by persons unhappy with the committee's performance during the case or unhappy with the outcome of the case" is applicable to the Independent Directors in this Chapter 11 Case.<sup>9</sup>

- b. Second, the Bankruptcy Court also concludes that *Pacific Lumber* does not preclude the exculpation of parties if there is a showing that "costs [that] the released parties might incur defending against such suits alleging such negligence are likely to swamp either the Exculpated Parties or the reorganization." *Pacific Lumber*, 584 F.3d at 252. If ever there was a risk of that happening in a chapter 11 reorganization, it is this one. Mr. Seery credibly testified that Mr. Dondero stated outside the courtroom that if Mr. Dondero's pot plan does not get approved, that Mr. Dondero will "burn the place down." The Bankruptcy Court can easily expect that the proposed Exculpated Parties might expect to incur costs that could swamp them and the reorganization based on the prior litigious conduct of Mr. Dondero and his controlled entities that justify their inclusion in the Exculpation Provision.

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<sup>9</sup> The same reasoning applies to the inclusion of Strand in the Exculpation Provision because Strand is the general partner of the Debtor through which each of the Independent Board members act.

75. **Injunction.** Section IX.D of the Plan provides for a Plan injunction to implement and enforce the Plan's release, discharge and release provisions (the "Injunction Provision"). The Injunction Provision is necessary to implement the provisions in the Plan. Mr. Seery testified that the Claimant Trustee will monetize the Debtor's assets in order to maximize their value. In order to accomplish this goal, the Claimant Trustee needs to be able to pursue this objective without the interference and harassment of Mr. Dondero and his related entities, including the Dondero Related Entities. Mr. Seery also testified that if the Claimant Trust was subject to interference by Mr. Dondero, it would take additional time to monetize the Debtor's assets and those assets could be monetized for less money to the detriment of the Debtor's creditors. The Bankruptcy Court finds and concludes that the Injunction Provision is consistent with and permissible under Bankruptcy Code sections 1123(a), 1123(a)(6), 1141(a) and (c), and 1142. The Bankruptcy Court rejects assertions by certain objecting parties that the Injunction Provision constitutes a "third-party release." The Injunction Provision is appropriate under the circumstances of this Chapter 11 Case and complies with applicable bankruptcy law. The Bankruptcy Court also concludes that the terms "implementation" and "consummation" are neither vague nor ambiguous

76. **Gatekeeper Provision.** Section IX.F of the Plan contains a provision contained in paragraph AA of this Confirmation Order and which the Debtor has referred to as a gatekeeper provision (the "Gatekeeper Provision"). The Gatekeeper Provision requires that Enjoined Parties first seek approval of the Bankruptcy Court before they may commence an action against Protected Parties. Thereafter, if the Bankruptcy Court determines that the action is

colorable, the Bankruptcy Court may, if it has jurisdiction, adjudicate the action. The Bankruptcy Court finds that the inclusion of the Gatekeeper Provision is critical to the effective and efficient administration, implementation, and consummation of the Plan. The Bankruptcy Court also concludes that the Bankruptcy Court has the statutory authority as set forth below to approve the Gatekeeper Provision.

77. **Factual Support for Gatekeeper Provision.** The facts supporting the need for the Gatekeeper Provision are as follows. As discussed earlier in this Confirmation Order, prior to the commencement of the Debtor's bankruptcy case, and while under the direction of Mr. Dondero, the Debtor had been involved in a myriad of litigation, some of which had gone on for years and, in some cases, over a decade. Substantially all of the creditors in this case are either parties who were engaged in litigation with the Debtor, parties who represented the Debtor in connection with such litigation and had not been paid, or trade creditors who provided litigation-related services to the Debtor. During the last several months, Mr. Dondero and the Dondero Related Entities have harassed the Debtor, which has resulted in further substantial, costly, and time-consuming litigation for the Debtor. Such litigation includes: (i) entry of a temporary restraining order and preliminary injunction against Mr. Dondero [Adv. Proc. No. 20-03190 Docket No. 10 and 59] because of, among other things, his harassment of Mr. Seery and employees and interference with the Debtor's business operations; (ii) a contempt motion against Mr. Dondero for violation of the temporary restraining order, which motion is still pending before the Bankruptcy Court [Adv. Proc. No. 20-03190 Docket No. 48]; (iii) a motion by Mr. Dondero's controlled investors in certain CLOs managed by the Debtor that the Bankruptcy Court referred to

as frivolous and a waste of the Bankruptcy Court's time [Docket No. 1528] which was denied by the Court [Docket No. 1605]; (iv) multiple plan confirmation objections focused on ensuring the Dondero Related Entities be able to continue their litigation against the Debtor and its successors post-confirmation [Docket Nos. 1661, 1667, 1670, 1673, 1676, 1677 and 1868]; (v) objections to the approval of the Debtor's settlements with Acis and HarbourVest and subsequent appeals of the Bankruptcy Court's order approving each of those settlements [Docket Nos. 1347 and 1870]; and (vi) a complaint and injunction sought against Mr. Dondero's affiliated entities to prevent them from violating the January 9 Order and entry of a restraining order against those entities [Adv Proc. No. 21-03000 Docket No 1] (collectively, the "Dondero Post-Petition Litigation").

78. **Findings Regarding Dondero Post-Petition Litigation.** The Bankruptcy Court finds that the Dondero Post-Petition Litigation was a result of Mr. Dondero failing to obtain creditor support for his plan proposal and consistent with his comments, as set forth in Mr. Seery's credible testimony, that if Mr. Dondero's plan proposal was not accepted, he would "burn down the place." The Bankruptcy Court concludes that without appropriate protections in place, in the form of the Gatekeeper Provision, Mr. Dondero and his related entities will likely commence litigation against the Protected Parties after the Effective Date and do so in jurisdictions other than the Bankruptcy Court in an effort to obtain a forum which Mr. Dondero perceives will be more hospitable to his claims. The Bankruptcy Court also finds, based upon Mr. Seery's testimony, that the threat of continued litigation by Mr. Dondero and his related entities after the Effective Date will impede efforts by the Claimant Trust to monetize assets for the benefit of creditors and result



in lower distributions to creditors because of costs and distraction such litigation or the threats of such litigation would cause.

79. **Necessity of Gatekeeper Provision.** The Bankruptcy Court further finds that unless the Bankruptcy Court approves the Gatekeeper Provision, the Claimant Trustee and the Claimant Trust Oversight Board will not be able to obtain D&O insurance, the absence of which will present unacceptable risks to parties currently willing to serve in such roles. The Bankruptcy Court heard testimony from Mark Tauber, a Vice President with AON Financial Services, the Debtor's insurance broker ("AON"), regarding his efforts to obtain D&O insurance. Mr. Tauber credibly testified that of all the insurance carriers that AON approached to provide D&O insurance coverage after the Effective Date, the only one willing to do so without an exclusion for claims asserted by Mr. Dondero and his affiliates otherwise requires that this Order approve the Gatekeeper Provision. Based on the foregoing, the Bankruptcy Court finds that the Gatekeeper Provision is necessary and appropriate in light of the history of the continued litigiousness of Mr. Dondero and his related entities in this Chapter 11 Case and necessary to the effective and efficient administration, implementation and consummation of the Plan and is appropriate pursuant to *Carroll v. Abide (In re Carroll)* 850 F.3d 811 (5th Cir. 2017). Approval of the Gatekeeper Provision will prevent baseless litigation designed merely to harass the post-confirmation entities charged with monetizing the Debtor's assets for the benefit of its economic constituents, will avoid abuse of the court system and preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants. Any suit against a Protected Party would effectively be a suit against the Debtor, and the Debtor may be required to indemnify the Protected

Parties under the Limited Partnership Agreement, which will remain in effect through the Effective Date, or those certain *Indemnification and Guaranty Agreements*, dated January 9, 2020, between Strand, the Debtor, and each Independent Director, following the Confirmation Date as each such agreement will be assumed pursuant to 11 U.S.C. § 365 pursuant to the Plan.

80. **Statutory Authority to Approve Gatekeeper Provision.** The Bankruptcy Court finds it has the statutory authority to approve the Gatekeeper Provision under sections 1123(a)(5), 1123(b)(6), 1141, 1142(b), and 105(a). The Gatekeeper Provision is also within the spirit of the Supreme Court’s “Barton Doctrine.” *Barton v. Barbour*, 104 U.S. 126 (1881). The Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants, that has been approved by the Fifth Circuit in such cases as *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and *In re Carroll*, 850 F.3d 811 (5th Cir. 2017).

81. **Jurisdiction to Implement Gatekeeper Provision.** The Bankruptcy Court finds that it will have jurisdiction after the Effective Date to implement the Gatekeeper Provision as post-confirmation bankruptcy court jurisdiction has been interpreted by the Fifth Circuit under *United States Brass Corp. v. Travelers Ins. Group, Inc. (In re United States Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002) and *EOP-Colonnade of Dallas Ltd. P’Ship v. Faulkner (In re Stonebridge Techs., Inc.)*, 430 F.3d 260 (5th Cir. 2005). Based upon the rationale of the Fifth Circuit in *Villegas v. Schmidt*, 788 F.3d 156, 158-59 (5th Cir. 2015), the Bankruptcy Court’s jurisdiction to act as a gatekeeper does not violate *Stern v. Marshall*. The Bankruptcy Court’s determination of whether

a claim is colorable, which the Bankruptcy Court has jurisdiction to determine, is distinct from whether the Bankruptcy Court would have jurisdiction to adjudicate any claim it finds colorable.

82. **Resolution of Objections of Scott Ellington and Isaac Leventon.** Each of Scott Ellington (“Mr. Ellington”) and Isaac Leventon (“Mr. Leventon”) (each, a “Senior Employee Claimant”) has asserted certain claims for liquidated but unpaid bonus amounts for the following periods: 2016, 2017, and 2018, as set forth in Exhibit A to that certain *Senior Employees’ Limited Objection to Debtor’s Fifth Amended Plan of Reorganization* [Docket No. 1669] (the “Senior Employees’ Objection”) (for each of Mr. Ellington and Mr. Leventon, the “Liquidated Bonus Claims”).

- a. Mr. Ellington has asserted Liquidated Bonus Claims in the aggregate amount of \$1,367,197.00, and Mr. Leventon has asserted Liquidated Bonus Claims in the aggregate amount of \$598,198.00. Mr. Ellington received two Ballots<sup>10</sup> – a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Ellington completed and timely returned both of such Ballots, voted to reject the Plan, and elected to have his Class 8 Liquidated Bonus Claims treated under Class 7 of the Plan, subject to the objections and reservations of rights set forth in the Senior Employees’ Objection. If Mr. Ellington is permitted to elect Class 7 treatment for his Liquidated Bonus Claims, then the maximum amount of his Liquidated Bonus Claims will be \$1,000,000.
- b. Mr. Leventon received two Ballots—a Ballot for Class 7 of the Plan and a Ballot for Class 8 of the Plan. Mr. Leventon completed and timely returned both of such Ballots and voted each such Ballots to rejected the Plan.
- c. The Senior Employees’ Objection, among other things, objects to the Plan on the grounds that the Debtor improperly disputes the right of Mr. Ellington to elect Class 7 treatment for his Liquidated Bonus Claims and Mr. Leventon’s entitlement to receive Class 7 Convenience Class treatment for his Liquidated Bonus Claims. The Debtor contended that neither Mr. Ellington or Mr. Leventon were entitled to elect to receive Class 7 Convenience Class treatment on account of their Liquidated

<sup>10</sup> As defined in the Plan, “Ballot” means the forms(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

Bonus Claims under the terms of the Plan, the Disclosure Statement Order or applicable law.

- d. The Debtor and Mr. Ellington and Mr. Leventon negotiated at arms' length in an effort to resolve all issues raised in the Senior Employee's Objection, including whether or not Mr. Ellington and Mr. Leventon were entitled to Class 7 Convenience Class treatment of their Liquidated Bonus Claims. As a result of such negotiation, the Debtor, Mr. Ellington, and Mr. Leventon have agreed to the settlement described in paragraphs 82(e) through 82(k) below and approved and effectuated pursuant to decretal paragraphs RR through SS (the "Senior Employees' Settlement").
- e. Under the terms of the Senior Employees' Settlement, the Debtor has the right to elect one of two treatments of the Liquidated Bonus Claims for a Senior Employee Claimant. Under the first treatment option ("Option A"), the Liquidated Bonus Claims will be entitled to be treated in Class 7 of the Plan, and the Liquidated Bonus Claims will be entitled to receive payment in an amount equal to 70.125% of the Class 7 amount of the Liquidated Bonus Claims, subject to the Liquidated Bonus Claims becoming Allowed Claims under the terms of the Plan. Under this calculation, Mr. Ellington would be entitled to receive \$701,250.00 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan, and Mr. Leventon would be entitled to receive \$413,175.10 on account of his Class 7 Convenience Class Claim when and as Allowed under the Plan. If, however, any party in interest objects to the allowance of the Senior Employee Claimant's Liquidated Bonus Claims and does not prevail in such objection, then such Senior Employee Claimant will be entitled to a payment in an amount equal to 85% of his Allowed Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed on Class 7 Claims). In addition, under Option A, each of Mr. Ellington and Mr. Leventon would retain their respective rights to assert that the Liquidated Bonus Claims are entitled to be treated as Administrative Expense Claims, as defined in Article I.B.2. of the Plan, in which case the holder of such Liquidated Bonus Claims would be entitled to payment in full of the Allowed Liquidated Bonus Claims. Under Option A, parties in interest would retain the right to object to any motion seeking payment of the Liquidated Bonus Amounts as Administrative Expenses.
- f. Under the second treatment option ("Option B"), the Debtor would agree that the Senior Employee Claimant has Allowed Liquidated Bonus Claims, no longer subject to objection by any party in interest, in the amounts of the Liquidated Bonus Claims (subject, in the case of Mr. Ellington, to the cap imposed by Class 7). If the Debtor elects Option B as to a Senior Employee Claimant, then such Senior Employee Claimant would be entitled to a payment on account of his Allowed Liquidated Bonus Claims in an amount equal to 60% of the amount of the

Liquidated Bonus Claims (which, in Mr. Ellington's case, would be \$600,000 and in Mr. Leventon's case, would be \$358,918.80), and such payment would be the sole recovery on account of such Allowed Liquidated Bonus Claims.

- g. The Debtor may, with the consent of the Committee, elect Option B with respect to a Senior Employee Claimant at any time prior to the occurrence of the Effective Date. If the Debtor does not make an election, then Option A will apply.
- h. Under either Option A or Option B, Mr. Ellington and Mr. Leventon will retain all their rights with respect to all Claims other than the Liquidated Bonus Amounts, including, but not limited to, their Class 6 PTO Claims, other claims asserted as Class 8 General Unsecured Claims, the Senior Employees' claims for indemnification against the Debtor, and any other claims that they may assert constitute Administrative Expense Claims, and any other such Claims are subject to the rights of any party in interest to object to such Claims, and the Debtor reserves any all of its rights and defenses in connection therewith.
- i. Subject to entry of this Confirmation Order and as set forth and announced on the record at the hearing on confirmation of the Plan and no party objecting thereto, Mr. Ellington and Mr. Leventon agreed to change the votes in their respective Ballots from rejection to acceptance of the Plan and to withdraw the Senior Employees' Objection.
- j. The Senior Employees' Settlement represents a valid exercise of the Debtor's business judgment and satisfies the requirements for a compromise under Bankruptcy Rule 9019(a).
- k. For the avoidance of doubt, neither Mr. Leventon nor Mr. Ellington shall be a Released Party under the Plan regardless of how the Senior Employee Claimants' Claims are to be treated hereunder.

Based upon the foregoing findings, and upon the record made before the Bankruptcy Court at the Confirmation Hearing, and good and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

**A. Confirmation of the Plan.** The Plan is approved in its entirety and **CONFIRMED** under section 1129 of the Bankruptcy Code. The terms of the Plan, including the



Plan Supplements and Plan Modifications, are incorporated by reference into and are an integral part of this Confirmation Order.<sup>11</sup>

**B. Findings of Fact and Conclusions of Law.** The findings of fact and the conclusions of law set forth in this Confirmation Order and on the record of the Confirmation Hearing constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. All findings of fact and conclusion of law announced by the Bankruptcy Court at the Confirmation Hearing in relation to confirmation of the Plan are hereby incorporated into this Confirmation Order. To the extent that any of the following constitutes findings of fact or conclusions of law, they are adopted as such. To the extent any findings of fact or conclusions of law set forth in this Confirmation Order (including any findings of fact or conclusions of law announced by the Bankruptcy Court at the Confirmation Hearing and incorporated herein) constitutes an order of the Bankruptcy Court, and is adopted as such.

**C. Objections.** Any resolution or disposition of objections to confirmation of the Plan or otherwise ruled upon by the Bankruptcy Court on the record of the Confirmation Hearing is hereby incorporated by reference. All objections and all reservations of rights pertaining to confirmation of the Plan that have not been withdrawn, waived or settled are overruled on the merits, except as otherwise specifically provided in this Confirmation Order.

**D. Plan Supplements and Plan Modifications.** The filing with the Bankruptcy Court of the Plan Supplements and the Plan Modifications constitutes due and

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<sup>11</sup> The Plan is attached hereto as Exhibit A.

sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Plan Modifications and the Plan Supplements do not require additional disclosure under section 1125 of the Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that Holders of Claims or Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan Modifications and the Plan Supplements constitute the Plan pursuant to section 1127(a) of the Bankruptcy Code. Accordingly, the Plan, as modified, is properly before the Bankruptcy Court and all votes cast with respect to the Plan prior to such modification shall be binding and shall apply with respect to the Plan.

**E. Deemed Acceptance of Plan.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all Holders of Claims and Equity Interests who voted to accept the Plan (or whom are conclusively presumed to accept the Plan) are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

**F. Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan or this Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code, except with respect to such Liens, Claims, charges, and other encumbrances that are specifically preserved under the Plan upon the Effective Date. The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the

representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

**G. Effectiveness of All Actions.** All actions contemplated by the Plan, including all actions in connection with the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, are authorized to be taken on, prior to, or after the Effective Date, as applicable, under this Confirmation Order, without further application to or order of the Bankruptcy Court, or further action by the directors, managers, officers or partners of the Debtor or the Reorganized Debtor and with the effect that such actions had been taken by unanimous action of such parties.

**H. Restructuring Transactions.** The Debtor or Reorganized Debtor, as applicable, are authorized to enter into and effectuate the Restructuring provided under the Plan, including, without limitation, the entry into and consummation of the transactions contemplated by the Claimant Trust Agreement, the Senior Employee Stipulation, the New GP LLC Documents, the New Frontier Note, the Reorganized Limited Partnership Agreement, the Litigation Sub-Trust Agreement, and the other Plan Documents, and may take any actions as may be necessary or appropriate to effect a corporate restructuring of its business or a corporate restructuring of the overall corporate structure of the Reorganized Debtor, as and to the extent provided in the Plan. Any transfers of assets or equity interests effected or any obligations incurred through the Restructuring pursuant to the Plan are hereby approved and shall not constitute fraudulent conveyances or fraudulent transfers or otherwise be subject to avoidance.

**I. Preservation of Causes of Action.** Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, this Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor, the Litigation Sub-Trust, or the Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan, or this Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, this Confirmation Order). In addition, the right of the Reorganized Debtor, the Claimant Trust, or the Litigation Sub-Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**J. Independent Board of Directors of Strand.** The terms of the current Independent Directors shall expire on the Effective Date without the need for any further or other action by any of the Independent Directors. For avoidance of doubt, the Assumed Contracts

include the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and James Seery*; the *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and John Dubel* and *Indemnification and Guaranty Agreement between Highland Capital Management, Strand Advisors, Inc. and Russell Nelms* and shall each remain in full force and effect notwithstanding the expiration of the terms of any Independent Directors.

**K. Cancellation of Equity Interests and Issuance of New Partnership Interests.** On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be deemed cancelled, and all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, such Class A Limited Partnership Interests and Class B/C Limited Partnership Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement. As of the Effective Date and pursuant to the Plan, new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited



Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

**L. Transfer of Assets to Claimant Trust.** On or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax. Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement.

**M. Transfer of Estate Claims to Litigation Sub-Trust.** On or prior to the Effective Date, the Claimant Trust shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Litigation Sub-Trust all of the Claimant Trust's rights, title, and interest in and to all of the Estate Claims as successor in interest to the Debtor, and in accordance with section 1141 of the Bankruptcy Code, the Estate Claims shall automatically vest in the Litigation Sub-Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Litigation Sub-Trust Interests and Litigation Sub-Trust Expenses. The Litigation Trustee will

be authorized to investigate, pursue, and otherwise resolve the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan, including as successor in interest to the Debtor or Committee, as applicable, in any litigation commenced prior to the Effective Date in which Estate Claims are asserted.

**N. Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests, and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

**O. Objections to Claims.** The Claims Objection Deadline shall be the date that is 180 days after the Effective Date, *provided, however*, that the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee and as otherwise provided under the Plan.

**P. Assumption of Contracts and Leases.** Effective as of the date of this Confirmation Order, each of the Assumed Contracts shall be assumed by the Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, under section 365 of the Bankruptcy Code and the payment of Cures, if any, shall be paid in accordance with the Plan. Each Assumed Contract shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. Modifications, amendments, supplements, and restatements to any of the

Assumed Contracts that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of such Assumed Contracts or the validity, priority, or amount of any Claims that may arise in connection therewith. Assumption of the Assumed Contracts pursuant to Article V.A of the Plan and full payment of any applicable Cure pursuant to the Plan shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition, or other bankruptcy-related defaults, arising under any Assumed Contracts.

**Q. Rejection of Contracts and Leases.** Unless previously assumed during the pendency of the Chapter 11 Case or pursuant to the Plan, all other Executory Contracts and Unexpired Leases are rejected as of the date of the entry of this Confirmation Order and pursuant to the terms of the Plan. To the extent that any party asserts any damages resulting from the rejection of any Executory Contract or Unexpired Lease, such claim must be filed within **thirty (30) days** following entry of this Confirmation Order, or such claim will be forever barred and disallowed against the Reorganized Debtor.

**R. Assumption of Issuer Executory Contracts.** On the Confirmation Date, the Debtor will assume the agreements set forth on **Exhibit B** hereto (collectively, the “**Issuer Executory Contracts**”) pursuant to section 365 of the Bankruptcy Code and Article V of the Plan. In full and complete satisfaction of its obligation to cure outstanding defaults under section 365(b)(1) of the Bankruptcy Code, the Debtor or, as applicable, any successor manager under the

Issuer Executory Contracts (collectively, the “Portfolio Manager”) will pay to the Issuers<sup>12</sup> a cumulative amount of \$525,000 (the “Cure Amount”) as follows:

- a. \$200,000 in cash on the date that is five business days from the Effective Date, with such payment paid directly to Schulte Roth & Zabel LLP (“SRZ”) in the amount of \$85,714.29, Jones Walker LLP (“JW”) in the amount of \$72,380.95, and Maples Group (“Maples”) and collectively with SRZ and JW, the “Issuers’ Counsel”) in the amount of \$41,904.76 as reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case; and
- b. \$325,000 in four equal quarterly payments of \$81,250.00 (each, a “Payment”), which amounts shall be paid to SRZ in the amount of \$34,821.43, JW in the amount of \$29,404.76, and Maples in the amount of \$17,023.81 as additional reimbursement for the attorney’s fees and other legal expenses incurred by the Issuers in connection with the Debtor’s bankruptcy case (i) from any management fees actually paid to the Portfolio Manager under the Issuer Executory Contracts (the “Management Fees”), and (ii) on the date(s) Management Fees are required to be paid under the Issuer Executory Contracts (the “Payment Dates”), and such obligation shall be considered an irrevocable direction from the Debtor and the Bankruptcy Court to the relevant CLO Trustee to pay, on each Payment Date, the Payment to Issuers’ Counsel, allocated in the proportion set forth in such agreement; *provided, however*, that (x) if the Management Fees are insufficient to make any Payment in full on a Payment Date, such shortfall, in addition to any other amounts due hereunder, shall be paid out of the Management Fees owed on the following Payment Date, and (y) nothing herein shall limit either Debtor’s liability to pay the amounts set forth herein, nor the recourse of the Issuers or Issuers’ Counsel to the Debtor, in the event of any failure to make any Payment.

**S. Release of Issuer Claims.** Effective as of the Confirmation Date, and to the maximum extent permitted by law, each Issuer on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, successors, designees, and

<sup>12</sup> The “Issuers” are: Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd.

assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (i) the Debtor and (ii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, the Independent Directors, the CEO/CRO, and with respect to the Persons listed in this subsection (ii), such Person's Related Persons (collectively, the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Issuer Released Claims").

**T. Release of Debtor Claims against Issuer Released Parties.** Upon entry of this Order, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue [(i) each Issuer and (ii) Wendy Ebanks, (iii) Yun Zheng, (iv) Laura Chisholm, (v) Mora Goddard, (vi) Stacy Bodden, (vii) Suzan Merren (viii) Scott Dakers, (ix) Samit Ghosh, (x) Inderjit Singh, (xi) Ellen Christian, (xii) Andrew Dean, (xiii) Betsy Mortel, (xiv) David Hogan, (xv) Cleveland Stewart, (xvi) Rachael Rankin, (xvii) Otelia Scott, (xviii) Martin Couch, (xx) Feron Bartley-Davis, (xxi) Charlotte Cloete, (xxii) Christina McLean, (xxiii) Karen Ellerbe,



(xxiv) Gennie Kay Bigord, (xxv) Evert Brunekreef, (xxvii) Evan Charles Burton (collectively, the “Issuer Released Parties”),] for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney’s fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the “Debtor Released Claims”); *provided, however*, that notwithstanding anything herein to the contrary, the release contained herein will apply to the Issuer Released Parties set forth in subsection (ii) above only with respect to Debtor Released Claims arising from or relating to the Issuer Executory Contracts. Notwithstanding anything in this Order to the contrary, the releases set forth in paragraphs S and T hereof will not apply with respect to the duties, rights, or obligations of the Debtor or any Issuer hereunder.

**U. Authorization to Consummate.** The Debtor is authorized to consummate the Plan after the entry of this Confirmation Order subject to satisfaction or waiver of the conditions precedent to the Effective Date of the Plan set forth in Article VIII.A of the Plan. The Plan shall not become effective unless and until the conditions set forth in Article VIII.A of the Plan have been satisfied, or otherwise waived pursuant to Article VIII.B of the Plan.

**V. Professional Compensation.** All requests for payment of Professional Fee Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date

must be filed no **later than sixty (60) days after the Effective Date**. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and an opportunity for hearing in accordance with the procedures established by the Bankruptcy Code and the Bankruptcy Court. The Debtor shall fund the Professional Fee Reserve as provided under the Plan. The Reorganized Debtor shall pay Professional Fee Claims in Cash in the amounts the Bankruptcy Court allows. The Debtor is authorized to pay the pre-Effective Date fees and expenses of all ordinary course professionals in the ordinary course of business without the need for further Bankruptcy Court order or approval. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 (if applicable) of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor or Claimant Trustee, as applicable, may employ and pay any Professional or Entity employed in the ordinary course of the Debtor's business without any further notice to or action, order, or approval of the Bankruptcy Court.

**W. Release, Exculpation, Discharge, and Injunction Provisions.** The following release, exculpation, discharge, and injunction provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all parties and Entities to the extent provided therein.

**X. Discharge of Claims and Termination of Interests.** To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement,

discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**Y. Exculpation.** Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v);

*provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. The Plan's exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

**Z. Releases by the Debtor.** On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person. Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under

any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

**AA. Injunction.** Upon entry of this Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan. Except as expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner,



in any place whatsoever, that does not conform to or comply with the provisions of the Plan. The injunctions set forth in the Plan and this Confirmation Order shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property. Subject in all respects to Article XI.D of the Plan, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in

Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**BB. Duration of Injunction and Stays.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date, shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Bankruptcy Court will enter an equivalent order under Section 105.

**CC. Continuance of January 9 Order and July 16 Order.** Unless otherwise provided in the Plan, in this Confirmation Order, or in a Final Order of the Bankruptcy Court, each of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course, entered by the Bankruptcy Court on January 9, 2020* [Docket No. 339] and *Order Approving the Debtor's Motion Under Bankruptcy Code Sections 105(a) and 363(b) Authorizing Retention of James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer, and Foreign Representative Nunc Pro Tunc to March 15, 2020* [Docket No. 854] entered on July 16, 2020 shall remain in full force and effect from the Confirmation Date and following the Effective Date.

**DD. No Governmental Releases.** Nothing in this Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or

any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against any party or person, nor shall anything in this Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit, or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against such persons, nor shall anything in this Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state and local authority against any party or person.

**EE. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from the Debtor to the Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtor or the Reorganized Debtor; (b) the Restructuring transactions pursuant to the Plan; (c) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (d) the making, assignment, or recording of any lease or sublease; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan,

including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation of any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**FF. Cancellation of Notes, Certificates and Instruments.** Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan or as otherwise provided in this Confirmation Order, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the

Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

**GG. Documents, Mortgages, and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, including the Restructuring transactions contemplated under the Plan, and this Confirmation Order.

**HH. Post-Confirmation Modifications.** Subject section 1127(b) of the Bankruptcy Code and the Plan, the Debtor and the Reorganized Debtor expressly reserve their rights to revoke or withdraw, or to alter, amend, or modify materially the Plan, one or more times after Confirmation and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article XII.B of the Plan.

**II. Applicable Nonbankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**JJ. Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state,



federal, or other governmental authority with respect to the dissemination, implementation, or consummation of the Plan and the Disclosure Statement, any certifications, documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

**KK. Notice of Effective Date.** As soon as reasonably practicable after the Effective Date, the Reorganized Debtor shall file notice of the Effective Date and shall serve a copy of the same on all Holders of Claims and Equity Interests, and all parties who have filed with the Bankruptcy Court requests to receive notices in accordance with Bankruptcy Rules 2002 and 3020(c). Notwithstanding the above, no notice of Confirmation or Consummation or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtor mailed notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Entity, or is otherwise aware, of that Entity’s new address. The above-referenced notices are adequate under the particular circumstances of this Chapter 11 Case and no other or further notice is necessary.

**LL. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

**MM. Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Bankruptcy Court.

**NN. References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety, except as expressly modified herein, and incorporated herein by this reference.

**OO. Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

**PP. Effect of Conflict.** This Confirmation Order supersedes any Bankruptcy Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there is any inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control. If there is any inconsistency between the terms of this Confirmation Order and the terms of a final, executed Plan Supplement Document, the terms of the final, executed Plan Supplement Document will govern and control.

**QQ. Resolution of Objection of Texas Taxing Authorities.** Dallas County, Kaufman County, City of Allen, Allen ISD and City of Richardson (collectively, the “Tax Authorities”) assert that they are the holders of prepetition and administrative expense claims for 2019, 2020 and 2021 ad valorem real and business personal property taxes. The ad valorem property taxes for tax year 2020 shall be paid in accordance with and to the extent required under

applicable nonbankruptcy law. In the event the 2020 taxes are paid after February 1, 2021, the Tax Authorities may assert any rights and amounts they claim are owed with respect to penalties and interest that have accrued through the date of payment and the Debtor and Reorganized Debtor reserve any all rights and defenses in connection therewith.

- a. The Debtor/Reorganized Debtor shall pay all amounts owed to the Tax Authorities for tax year 2021 in accordance with and to the extent required under applicable nonbankruptcy law. The Tax Authorities shall not be required to file and serve an administrative expense claim and request for payment as a condition of allowance of their administrative expense claims pursuant to 11 U.S.C. Section 503(b)(1)(D). With regard to year 2019 ad valorem property taxes, the Tax Authorities will receive payment of their prepetition claims within 30 days of the Effective Date of the Plan. The payment will include interest from the Petition Date through the Effective Date and from the Effective Date through payment in full at the state statutory rate pursuant to 11 U.S.C. Sections 506(b), 511, and 1129, if applicable, subject to all of the Debtor's and Reorganized Debtor's rights and defenses in connection therewith. Notwithstanding any other provision in the Plan, the Tax Authorities shall (i) retain the liens that secure all prepetition and postpetition amounts ultimately owed to them, if any, as well as (ii) the state law priority of those liens until the claims are paid in full.
- b. The Tax Authorities' prepetition claims and their administrative expense claims shall not be discharged until such time as the amounts owed are paid in full. In the event of a default asserted by the Taxing Authorities, the Tax Authorities shall provide notice Debtor or Reorganized Debtor, as applicable, and may demand cure of any such asserted default. Subject to all of its rights and defenses, the Debtor or Reorganized Debtor shall have fifteen (15) days from the date of the notice to cure the default. If the alleged default is not cured, the Tax Authorities may exercise any of their respective rights under applicable law and pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court, subject in all respects to the Debtor's and Reorganized Debtor's applicable rights and defenses. The Debtor/Reorganized Debtor shall be entitled to any notices of default required under applicable nonbankruptcy law and each of the Taxing Authorities, the Debtor and the Reorganized Debtor reserve any and all of their respective rights and defenses in connection therewith. The Debtor's and Reorganized Debtor's rights and defenses under Texas Law and the Bankruptcy Code with respect to this provision of the Confirmation Order, including their right to dispute or object to the Tax Authorities' Claims and liens, are fully preserved.

**RR. Resolution of Objections of Scott Ellington and Isaac Leventon.**

Pursuant to Bankruptcy Rule 9019(a), the Senior Employees' Settlement is approved in all respects. The Debtor may, only with the consent of the Committee, elect Option B for a Senior Employee Claimant by written notice to such Senior Employee Claimant on or before the occurrence of the Effective Date. If the Debtor does not elect Option B, then Option A will govern the treatment of the Liquidated Bonus Claims.

- a. Notwithstanding any language in the Plan, the Disclosure Statement, or this Confirmation Order to the contrary, if Option A applies to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee Claimant will receive the treatment described in paragraph 82(e) hereof, and if the Debtor timely elects Option B with respect to the Liquidated Bonus Claims of a Senior Employee Claimant, then the Liquidated Bonus Claims of such Senior Employee will receive the treatment described in paragraph 82(f) hereof.
- b. The Senior Employees' Settlement is hereby approved, without prejudice to the respective rights of Mr. Ellington and Mr. Leventon to assert all their remaining Claims against the Debtor's estate, including, but not limited to, their Class 6 PTO Claims, their remaining Class 8 General Unsecured Claims, any indemnification claims, and any Administrative Expense Claims that they may assert and is without prejudice to the rights of any party in interest to object to any such Claims.
- c. Pursuant to Bankruptcy Rule 3018(a), Mr. Ellington and Mr. Leventon were permitted to change their votes on the Plan. Accordingly, Mr. Ellington's votes on his Ballots in Class 7 and Class 8 of the Plan were changed from a rejection of the Plan to acceptance of the Plan, and Mr. Leventon's votes on his Ballots in Class 7 and Class 8 of the Plan were, changed from rejections of the Plan to acceptances of the Plan.
- d. The Senior Employees' Objection is deemed withdrawn.

**SS. No Release of Claims Against Senior Employee Claimants.** For the avoidance of doubt, the Senior Employees' Settlement, as approved herein, shall not, and shall not be deemed to, release any Claims or Causes of Action held by the Debtor against either Senior

Employee Claimant nor shall either Senior Employee Claimant be, or be deemed to be, a “Released Party” under the Plan.

**TT. Resolution of Objection of Internal Revenue Service.** Notwithstanding any other provision or term of the Plan or Confirmation Order, the following Default Provision shall control as to the United States of America, Internal Revenue Service (“IRS”) and all of its claims, including any administrative claim (the “IRS Claim”):

(a) Notwithstanding any other provision in the Plan, if the Debtor, the Reorganized Debtor, or any successor in interest fails to pay when due any payment required to be made on federal taxes, the IRS Claim, or other payment required to be made to the IRS under the terms and provisions of this Plan, the Confirmation Order, or the Internal Revenue Code (26 U.S.C.), or fails to timely file any required federal tax return, or if any other event of default as set forth in the Plan occurs, the IRS shall be entitled to give the Debtor, the Reorganized Debtor and/or any successor in interest and their counsel of record, by United States Certified Mail, written notice of the failure and/or default with demand that it be cured, and if the failure and/or default is not cured within 14 days of the date of said notice and demand, then the following shall apply to the IRS:

(1) The administrative collection powers and the rights of the IRS shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of a notice of Federal tax lien and the powers of levy, seizure, and collection as provided under the Internal Revenue Code;

(2) The automatic stay of 11 U.S.C. § 362 and any injunction of the Plan or in the Confirmation Order shall, with regard to the IRS only, lift or terminate without further notice or hearing by the Bankruptcy Court, and the entire prepetition liability owed to the IRS, together with any unpaid postpetition tax liabilities, may become due and payable immediately; and

(3) The IRS shall have the right to proceed to collect from the Debtor, the Reorganized Debtor or any successor in interest any of the prepetition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed.

(b) If the IRS declares the Debtor, the Reorganized Debtor, or any successor-in-interest to be in default of the Debtor’s, the Reorganized Debtor’s and/ or any successor- in-interest’s obligations under the Plan, then entire prepetition liability of an IRS’ Allowed Claim, together with any unpaid postpetition tax liabilities shall become due and payable



immediately upon written demand to the Debtor, Reorganized Debtor and/or any successor-in-interest. Failure of the IRS to declare a failure and/or default does not constitute a waiver by the United States or its agency the IRS of the right to declare that the Debtor, Reorganized Debtor, and/or any successor in interest is in default.

(c) The IRS shall only be required to send two notices of failure and/or default, and upon the third event of a failure and/or default, the IRS shall be entitled to proceed as set out in paragraphs (1), (2), and/or (3) herein above without further notice to the Debtor, the Reorganized Debtor, or any successor in interest, or its counsel. The collection statute expiration date for all unpaid federal tax liabilities shall be extended pursuant to non-bankruptcy law.

(d) The Internal Revenue Service shall not be bound by any release provisions in the Plan that would release any liability of the responsible persons of the Debtor, the Reorganized Debtor, and/or any successor in interest to the IRS. The Internal Revenue Service may take such actions as it deems necessary to assess any liability that may be due and owing by the responsible persons of the Debtor, the Reorganized Debtor and/or any successor in interest to the Internal Revenue Service.

(e) Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims, causes of action, rights of setoff or recoupment, rights to appeal tax assessments, or other legal or equitable defenses that the Debtor or Reorganized Debtor have under non-bankruptcy law in connection with any claim, liability or cause of action of the United States and its agency the Internal Revenue Service.

(f) The term “any payment required to be made on federal taxes,” as used herein above, is defined as: any payment or deposit required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full. The term “any required tax return,” as used herein above, is defined as: any tax return or report required by the Internal Revenue Code to be made by the Debtor from and after the Confirmation Date, or the Reorganized Debtor and/or any successor in interest from and after the Effective Date, to the date the IRS Claim is together with interest paid in full.

**UU. IRS Proof of Claim.** Notwithstanding anything in the Plan or in this Confirmation Order, until all required tax returns are filed with and processed by the IRS, the IRS’s proof of claim will not be deemed fixed for purposes of Section 502 of the Bankruptcy Code and may be amended in order to reflect the IRS’ assessment of the Debtor’s unpaid priority and general unsecured taxes, penalties and interest.

**VV. CLO Holdco, Ltd. Settlement** Notwithstanding anything contained herein to the contrary, nothing in this Order is or is intended to supersede the rights and obligations of either the Debtor or CLO Holdco contained in that certain *Settlement Agreement between CLO Holdco, Ltd., and Highland Capital Management, L.P., dated January 25, 2021* [Docket No. 1838-1] (the “CLOH Settlement Agreement”). In the event of any conflict between the terms of this Order and the terms of the CLOH Settlement Agreement, the terms of the CLOH Settlement Agreement will govern.

**WW. Retention of Jurisdiction.** The Bankruptcy Court may properly, and upon the Effective Date shall, to the maximum extent permitted under applicable law, retain jurisdiction over all matters arising out of, and related to, this Chapter 11 Case, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code.

**XX. Payment of Statutory Fees; Filing of Quarterly Reports.** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. The Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust shall be jointly and severally liable for payment of quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for the Debtor or the dismissal or conversion of the Chapter 11 Case. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**YY. Dissolution of the Committee.** On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee’s Professionals will cease to have

any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). Notwithstanding the foregoing, any Committee member or Professional may serve following the Effective Date with respect to the Claimant Trust Oversight Board or Litigation Sub-Trust. The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan, the Claimant Trust Agreement, and/or Litigation Sub-Trust in connection with such representation.

**ZZ. Miscellaneous.** After the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have no obligation to file with the Bankruptcy Court or serve on any parties reports that the Debtor or Reorganized Debtor, as applicable, were obligated to file under the Bankruptcy Code or a court order, including monthly operating reports (even for those periods for which a monthly operating report was not filed before the Effective Date), ordinary course professional reports, reports to any parties otherwise required under the "first" and "second" day orders entered in this Chapter 11 Case (including any cash collateral financing orders entered in this Chapter 11 Case) and monthly or quarterly reports for Professionals; *provided, however*, that

the Debtor or Reorganized Debtor, as applicable, will comply with the U.S. Trustee's post confirmation reporting requirements.

**###END OF ORDER###**

**Exhibit A**

**Fifth Amended Plan (as Modified)**



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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)

) Case No. 19-34054-sgj11  
)  
)  
)

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P. (AS MODIFIED)**

**PACHULSKI STANG ZIEHL & JONES LLP**

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Counsel for the Debtor and Debtor-in-Possession

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

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## DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### ARTICLE I.

#### RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

##### A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns; (h) the rules of construction set

forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" of any Person means any Entity that, with respect to such Person, either (i) is an "affiliate" as defined in section 101(2) of the Bankruptcy Code, or (ii) is an "affiliate" as defined in Rule 405 of the Securities Act of 1933, or (iii) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For the purposes of this definition, the term "control" (including, without limitation, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction in any respect of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy

Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.



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24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests

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unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized

Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Enjoined Parties*” means (i) all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether or not proof of such Claims or Equity Interests has been filed and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan), (ii) James Dondero (“Dondero”), (iii) any Entity that has appeared and/or filed any motion, objection, or other pleading in this Chapter 11 Case regardless of the capacity in which such Entity appeared and any other party in interest, (iv) any Related Entity, and (v) the Related Persons of each of the foregoing.

57. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

58. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

59. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

60. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

61. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].



62. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

63. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

64. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

65. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

66. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

67. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

68. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.



69. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

70. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

71. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

72. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

73. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

74. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

75. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

76. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

77. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

78. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

79. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

80. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

81. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

82. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

83. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

84. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

85. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

86. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

87. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

88. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

89. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

90. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

91. “*Petition Date*” means October 16, 2019.

92. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices,

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and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

93. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

94. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

95. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

96. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

97. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

98. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

99. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

100. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

101. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

102. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

103. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

104. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

105. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

106. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

107. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

108. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder



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of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

109. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

110. “*Related Entity*” means, without duplication, (a) Dondero, (b) Mark Okada (“Okada”), (c) Grant Scott (“Scott”), (d) Hunter Covitz (“Covitz”), (e) any entity or person that was an insider of the Debtor on or before the Petition Date under Section 101(31) of the Bankruptcy Code, including, without limitation, any entity or person that was a non-statutory insider, (f) any entity that, after the Effective Date, is an insider or Affiliate of one or more of Dondero, Okada, Scott, Covitz, or any of their respective insiders or Affiliates, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries, and (i) Affiliates of the Debtor and any other Entities listed on the Related Entity List.

111. “*Related Entity List*” means that list of Entities filed with the Plan Supplement.

112. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present, future, or former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, subsidiaries, divisions, management companies, heirs, agents, and other representatives, in each case solely in their capacity as such.

113. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

114. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

115. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

116. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.



117. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

118. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

119. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

120. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the interest of the Debtor’s Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

121. “*Security*” or “*security*” means any security as such term is defined in section 101(49) of the Bankruptcy Code.

122. “*Senior Employees*” means the senior employees of the Debtor Filed in the Plan Supplement.

123. “*Senior Employee Stipulation*” means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

124. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

125. “*Statutory Fees*” means fees payable pursuant to 28 U.S.C. § 1930.

126. “*Strand*” means Strand Advisors, Inc., the Debtor’s general partner.

127. “*Sub-Servicer*” means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

128. “*Sub-Servicer Agreement*” means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

129. “*Subordinated Claim*” means any Claim that is subordinated to the Convenience Claims and General Unsecured Claims pursuant to an order entered by the Bankruptcy Court (including any other court having jurisdiction over the Chapter 11 Case) after notice and a hearing.

130. “*Subordinated Claimant Trust Interests*” means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

131. “*Trust Distribution*” means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

132. “*Trustees*” means, collectively, the Claimant Trustee and Litigation Trustee.

133. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

134. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

135. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

136. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

137. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on

or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

#### **B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

#### **C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount of a total value as of the Effective Date of the Plan equal to the amount of such Allowed

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Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, or (b) if paid over time, payment of such Allowed Priority Tax Claim in accordance with section 1129(a)(9)(C) of the Bankruptcy Code; or (c) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

Class	Claim	Status	Voting Rights
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests****1. Class 1 – Jefferies Secured Claim**

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until



full and final payment of such Allowed Class 1 Claim is made as provided herein.

- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6

Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

*Treatment:* On the Effective Date, Holders of Subordinated Claims shall receive either (i) their Pro Rata share of the Subordinated Claimant Trust Interests or, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee may agree upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

#### **I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Upon written notice and hearing, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to seek entry of an order by the Bankruptcy Court to re-classify or to subordinate any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

### **ARTICLE IV.**

#### **MEANS FOR IMPLEMENTATION OF THIS PLAN**

##### **A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited



partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expense (including, without limitation, any reserve for potential indemnification claims as authorized and provided under the Claimant Trust Agreement), and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;



(ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and

(iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer



of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and

no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

The Reorganized Limited Partnership Agreement does not provide for, and specifically disclaims, the indemnification obligations under the Limited Partnership Agreement, including any such indemnification obligations that accrued or arose or could have been brought prior to the Effective Date. Any indemnification Claims under the Limited Partnership Agreement that accrued, arose, or could have been filed prior to the Effective Date will be resolved through the Claims resolution process provided that a Claim is properly filed in accordance with the Bankruptcy Code, the Plan, or the Bar Date Order. Each of the Debtor, the Reorganized Debtor, the Claimant Trust, and the Litigation Sub-Trust reserve all rights with respect to any such indemnification Claims.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. Vesting of Assets in the Reorganized Debtor

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. Purpose of the Reorganized Debtor

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement,



the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

#### **D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.



**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to this Plan on or prior to the Confirmation Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan or the Plan Supplement, on the Confirmation Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Confirmation Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4),

as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Confirmation Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Confirmation Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Confirmation Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.



**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.



The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as "Unclaimed Property" under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest, request the Bankruptcy Court subordinate any Claims to Subordinated Claims, or any other appropriate motion or adversary proceeding with respect to the foregoing by the Claims Objection Deadline or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.



**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

**1. Allowance of Claims**

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

**2. Estimation**

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

**3. Disallowance of Claims**

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE,**



**ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have become a Final Order and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust

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Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Debtor shall have obtained applicable directors' and officers' insurance coverage that is acceptable to each of the Debtor, the Committee, the Claimant Trust Oversight Committee, the Claimant Trustee and the Litigation Trustee.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

#### **C. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on

the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

## **ARTICLE IX.**

### **EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

#### **A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

#### **B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

#### **C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(iv); *provided, however*, the foregoing

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will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation



Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,

- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

#### **E. Preservation of Rights of Action**

##### **1. Maintenance of Causes of Action**

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

##### **2. Preservation of All Causes of Action Not Expressly Settled or Released**

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including,



without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Enjoined Parties are and shall be permanently enjoined, on and after the Effective Date, with respect to any Claims and Equity Interests, from directly or indirectly (i) commencing, conducting, or continuing in any manner any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or the property of the Debtor, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering, enforcing, or attempting to recover or enforce, by any manner or means, any judgment, award, decree, or order against the Debtor or the property of the Debtor, (iii) creating, perfecting, or otherwise enforcing in any manner, any security interest, lien or encumbrance of any kind against the Debtor or the property of the Debtor, (iv) asserting any right of setoff, directly or indirectly, against any obligation due to the Debtor or against property or interests in property of the Debtor, except to the limited extent permitted under Sections 553 and 1141 of the Bankruptcy Code, and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to, and apply to any act of the type set forth in any of clauses (i)-(v) of the immediately preceding paragraph against any successors of the Debtor, including, but not limited to, the Reorganized Debtor, the Litigation Sub-Trust, and the Claimant Trust and their respective property and interests in property.

Subject in all respects to ARTICLE XII.D, no Enjoined Party may commence or pursue a claim or cause of action of any kind against any Protected Party that arose or arises from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust or the Litigation Sub-Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court

(i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Enjoined Party to bring such claim or cause of action against any such Protected Party; *provided, however*, the foregoing will not apply to a claim or cause of action against Strand or against any Employee other than with respect to actions taken, respectively, by Strand or by such Employee from the date of appointment of the Independent Directors through the Effective Date. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible and as provided for in ARTICLE XI, shall have jurisdiction to adjudicate the underlying colorable claim or cause of action.

**G. Duration of Injunctions and Stays**

ARTICLE II. Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, (i) all injunctions and stays entered during the Chapter 11 Case and in existence on the Confirmation Date shall remain in full force and effect in accordance with their terms; and (ii) the automatic stay arising under section 362 of the Bankruptcy Code shall remain in full force and effect subject to Section 362(c) of the Bankruptcy Code, and to the extent necessary if the Debtor does not receive a discharge, the Court will enter an equivalent order under Section 105.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, in the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan to the maximum extent legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;
- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;

- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;
- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;



- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## ARTICLE XII. MISCELLANEOUS PROVISIONS

### A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

### B. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

### C. Revocation of Plan

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.



**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700

Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to

evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

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Dated: January 22, 2021

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.

Chief Executive Officer and Chief Restructuring  
Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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*Counsel for the Debtor and Debtor-in-Possession*



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**Exhibit B**

**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

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**Schedule of CLO Management Agreements and Related Contracts to Be Assumed**

1. Servicing Agreement, dated December 20, 2007, by and among Greenbriar CLO, Ltd., and Highland Capital Management, L.P.
2. Investment Management Agreement, dated November 1, 2007, by and between Longhorn Credit Funding, LLC, and Highland Capital Management, L.P. (as amended)
3. Reference Portfolio Management Agreement, dated August 1, 2016, by and between Highland Capital Management, L.P., and Valhalla CLO, Ltd.
4. Collateral Servicing Agreement, dated December 20, 2006, by and among Highland Park CDO I, Ltd., and Highland Capital Management, L.P.
5. Portfolio Management Agreement, dated March 15, 2005, by and among Southfork CLO Ltd., and Highland Capital Management, L.P.
6. Amended and Restated Portfolio Management Agreement, dated November 30, 2005, by and among Jaspar CLO Ltd., and Highland Capital Management, L.P.
7. Servicing Agreement, dated May 31, 2007, by and among Westchester CLO, Ltd., and Highland Capital Management, L.P.
8. Servicing Agreement, dated May 10, 2006, by and among Rockwall CDO Ltd. and Highland Capital Management, L.P. (as amended)
9. Portfolio Management Agreement, dated December 8, 2005, by and between Liberty CLO, Ltd., and Highland Capital Management, L.P.
10. Servicing Agreement, dated March 27, 2008, by and among Aberdeen Loan Funding, Ltd., and Highland Capital Management, L.P.
11. Servicing Agreement, dated May 9, 2007, by and among Rockwall CDO II Ltd. and Highland Capital Management, L.P.
12. Collateral Management Agreement, by and between, Highland Loan Funding V Ltd. and Highland Capital Management, L.P., dated August 1, 2001.
13. Collateral Management Agreement, dated August 18, 1999, by and between Highland Legacy Limited and Highland Capital Management, L.P.
14. Servicing Agreement, dated November 30, 2006, by and among Grayson CLO Ltd., and Highland Capital Management, L.P. (as amended)
15. Servicing Agreement, dated October 25, 2007, by and among Stratford CLO Ltd., and Highland Capital Management, L.P.
16. Servicing Agreement, dated August 3, 2006, by and among Red River CLO Ltd., and Highland Capital Management, L.P. (as amended)
17. Servicing Agreement, dated December 21, 2006, by and among Brentwood CLO, Ltd., and Highland Capital Management, L.P.
18. Servicing Agreement, dated March 13, 2007, by and among Eastland CLO Ltd., and Highland Capital Management, L.P.

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19. Portfolio Management, Agreement, dated October 13, 2005, by and among Gleneagles CLO, Ltd., and Highland Capital Management, L.P.
20. Members' Agreement and Amendment, dated November 15, 2017, by and between Highland CLO Funding, Ltd. and Highland Capital Management, L.P.
21. Collateral Management Agreement, dated May 19, 1998, by and between Pam Capital Funding LP, Ranger Asset Mgt LP and Highland Capital Management, L.P.
22. Collateral Management Agreement, dated August 6, 1997, by and between Pamco Cayman Ltd., Ranger Asset Mgt LP and Highland Capital Management, L.P.
23. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Red River CLO Ltd. et al
24. Interim Collateral Management Agreement, June 15, 2005, between Highland Capital Management, L.P. and Rockwall CDO Ltd
25. Amendment No. 1 to Servicing Agreement, October 2, 2007, between Highland Capital Management, L.P. and Rockwall CDO Ltd
26. Collateral Servicing Agreement dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association
27. Representations and Warranties Agreement, dated December 20, 2006, between Highland Capital Management, L.P. and Highland Park CDO I, Ltd.
28. Collateral Administration Agreement, dated March 27, 2008, between Highland Capital Management, L.P. and Aberdeen Loan Funding, Ltd.; State Street Bank and Trust Company
29. Collateral Administration Agreement, dated December 20, 2007, between Highland Capital Management, L.P. and Greenbriar CLO, Ltd.; State Street Bank and Trust Company
30. Collateral Acquisition Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd
31. Collateral Administration Agreement, dated March 13, 2007, between Highland Capital Management, L.P. and Eastland CLO, Ltd. and Investors Bank and Trust Company
32. Collateral Administration Agreement, dated October 13, 2005, between Highland Capital Management, L.P. and Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association
33. Collateral Acquisition Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.
34. Collateral Administration Agreement, dated November 30, 2006, between Highland Capital Management, L.P. and Grayson CLO, Ltd.; Investors Bank & Trust Company
35. Collateral Acquisition Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.

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36. Collateral Administration Agreement, dated August 3, 2006, between Highland Capital Management, L.P. and Red River CLO, Ltd.; U.S. Bank National Association
37. Master Warehousing and Participation Agreement, dated April 19, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company
38. Master Warehousing and Participation Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
39. Master Warehousing and Participation Agreement (Amendment No. 2), dated May 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
40. Master Warehousing and Participation Agreement (Amendment No. 1), dated April 12, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
41. Master Warehousing and Participation Agreement (Amendment No. 3), dated June 22, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
42. Master Warehousing and Participation Agreement (Amendment No. 4), dated July 17, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.
43. Collateral Administration Agreement, dated February 2, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.
44. Collateral Administration Agreement, dated April 18, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association
45. Master Participation Agreement, dated June 5, 2006, between Highland Capital Management, L.P. and Red River CLO Ltd.; Grand Central Asset Trust
46. A&R Asset Acquisition Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.
47. A&R Master Participation Agreement, dated July 18, 2001, between Highland Capital Management, L.P. and Salomon Brothers Holding Company; Highland Loan Funding V Ltd.
48. Collateral Acquisition Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.
49. Collateral Administration Agreement, dated June 29, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd.; JPMorgan Chase Bank, National Association
50. Master Warehousing and Participation Agreement, dated March 24, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.

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51. Master Warehousing and Participation Agreement (Amendment No. 1), dated May 16, 2005, between Highland Capital Management, L.P. and Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.
52. Collateral Administration Agreement, dated December 8, 2005, between Highland Capital Management, L.P. and Liberty CLO Ltd.
53. Collateral Administration Agreement, dated May 10, 2006, between Highland Capital Management, L.P. and Rockwall CDO Ltd; JPMorgan Chase Bank, National Association
54. Collateral Administration Agreement, dated May 9, 2007, between Highland Capital Management, L.P. and Rockwall CDO II, Ltd.; Investors Bank & Trust Company
55. Collateral Administration Agreement, dated March 15, 2005, between Highland Capital Management, L.P. and Southfork CLO Ltd.; JPMorgan Chase Bank, National Association
56. Collateral Administration Agreement, dated October 25, 2007, between Highland Capital Management, L.P. and Stratford CLO Ltd.; State Street
57. Collateral Administration Agreement, dated August 18, 2004, between Highland Capital Management, L.P. and Valhalla CLO, Ltd.; JPMorgan Chase Bank
58. Collateral Acquisition Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.
59. Collateral Administration Agreement, dated May 31, 2007, between Highland Capital Management, L.P. and Westchester CLO, Ltd.; Investors Bank & Trust Company
60. Collateral Administration Agreement, dated December 21, 2006, between Highland Capital Management, L.P. and Brentwood CLO, Ltd.; Investors Bank & Trust Company



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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	Re: Docket No. 1439
	)	

**DEBTOR'S RESPONSE TO MR. JAMES DONDERO'S MOTION FOR ENTRY OF  
AN ORDER REQUIRING NOTICE AND HEARING FOR FUTURE ESTATE  
TRANSACTIONS OCCURRING OUTSIDE THE ORDINARY  
COURSE OF BUSINESS**

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

The above-captioned debtor and debtor in possession (the “Debtor”) hereby submits this response (the “Response”) to *James Dondero’s Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business* [Docket No. 1439] (the “Motion”).<sup>2</sup> In support of the Response, the Debtor respectfully states as follows:

### **PRELIMINARY STATEMENT**

1. Through the Motion, Mr. James Dondero seeks entry of an order requiring the Debtor to obtain court approval before engaging in transactions outside the ordinary course of its business. Essentially, the Motion argues that the Protocols, which were approved by the Court approximately eleven months ago with Mr. Dondero’s consent, permit the Debtor to engage in transactions that violate 11 U.S.C. § 363. The Motion reflects a profound misunderstanding of the Protocols and the types of transactions the Bankruptcy Code requires be brought to the Court for approval.

2. Given the Debtor’s business as an investment manager, the Debtor proactively sought Court approval at the beginning of the case to define which of the Debtor’s day-to-day activities were ordinary course and could be completed without Court oversight. After weeks of negotiations, the Debtor and the Committee agreed on the Protocols, which govern those ordinary course transactions. The Protocols provided the Committee with enhanced notice rights with respect to what would otherwise be ordinary course transactions and which would not require Court approval. The Debtor never intended the Protocols to apply to out of the ordinary course transactions for which separate approval would be required under section 363(b). In fact, the Debtor emphasized this point to the Court at the January 9, 2020, hearing at which the Court

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings given to them in the Motion.

approved the Protocols.

3. Regardless, the Motion's real argument is that certain transactions superficially identified in the Motion were outside of the ordinary course of business and required Court approval. The Motion, however, conflates the Debtor's obligation to seek Court approval for out of the ordinary course transactions involving the sale of the *Debtor's assets* with restrictions on the Debtor's ability to exercise its role as an investment manager and to sell assets of the Debtor's managed investment vehicles. There is no restriction on the Debtor fulfilling its role as an investment manager in the Bankruptcy Code.

4. On December 10, 2020, the Court entered the *Order Granting Debtor's Motion for a Temporary Restraining Order against James Dondero*, Adv. Proc. No. 20-03190-sgj [Adv. Docket No. 10] (the "TRO"). The TRO was necessitated by Mr. Dondero's unlawful interference in the Debtor's business operations and threats made by Mr. Dondero to Mr. Seery and the Debtor's employees. Faced with the impending confirmation of the Debtor's Plan and the rejection of Mr. Dondero's alternative plan, Mr. Dondero is again attempting to impede the Debtor's operations and the Debtor's efforts to maximize value. The Court should see through Mr. Dondero's pre-textual arguments for transparency and deny the Motion.<sup>3</sup>

## REPLY

### I. The Protocols Do Not Authorize Sales Outside of the Ordinary Course

5. In the Motion, Mr. Dondero contends that the Protocols allow the Debtor to sell assets outside of the ordinary course of business without having to satisfy the requirements of the Bankruptcy Code. That contention is false. The Protocols were instituted as part of a global

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<sup>3</sup> Mr. Dondero's Motion also seeks relief similar to that sought by Mr. Dondero's two other registered investment advisors (NexPoint Advisors, L.P., and Highland Capital Management Fund Advisors, L.P. (collectively, the "Advisors")) in the *Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* [Docket No. 1522] (the "CLO Motion"). In the CLO Motion, the Advisors seek a stay on the Debtor's ability to cause its managed CLOs to sell assets without the Advisors' consent.

settlement with the Committee and were intended to limit the Debtor's ability to transfer assets away from the estate and the reach of the Debtor's creditors. The Protocols were adopted because of the myriad and substantial allegations that the Debtor – then under the control of Mr. Dondero – had engaged in repeated fraudulent and impermissible transfers intended to frustrate creditor recoveries and hide assets. In negotiating the Protocols, the Debtor and the Committee intended the Protocols to apply only to (i) transactions within the “ordinary course of business” (*i.e.*, transactions that the Debtor could have completed without the need to come to this Court) or (ii) transactions occurring at non-Debtor entities that were otherwise arguably outside of this Court's jurisdiction and oversight. The Debtor was clear about this at the hearing approving the Protocols.<sup>4</sup>

6. The Protocols do not apply to transactions “outside of the ordinary course of business” because those transactions would *always* be subject to this Court's jurisdiction and require notice and a hearing. In other words, the Debtor and the Committee did not need to negotiate safeguards with respect to transactions outside the ordinary course. Those safeguards were already imposed by the Bankruptcy Code and have been honored by the Debtor (and the Committee) throughout this case. Further, the Protocols were approved by Mr. Dondero and have not been challenged by any party until now.

7. Again, the Protocols do not allow transactions outside the ordinary course of

<sup>4</sup> See Transcript, January 9, 2020 (14:16-25; 15: 1-10):

The third major aspect of the term sheet, Your Honor, was the agreement on operating protocols, and it really relates to the ground rules for the Debtor's operations going forward and when notice to the Committee is required of certain transactions that would otherwise be in the ordinary course of business.

Importantly, Your Honor, we are not trying to modify the Bankruptcy Code in any way. Any transactions out of the ordinary course of business would still be subject to Your Honor's approval.

However, in this case. . . whether or not something is ordinary is not straightforward in a case such as the Debtor's, given the nature of the Debtor's operations. So we thought it was important to establish ground rules up front, and establishing those ground rules was one of the things we did initially in the case. We had opposition from the Committee, and we've worked through the opposition and ultimately arrived at the operating protocols that are attached to the term sheet.

business in violation of 11 U.S.C. § 363(b), and, for the avoidance of doubt, the Debtor will seek this Court's approval prior to conducting any transaction that would be outside the ordinary course of the Debtor's business.

## **II. The Debtor Has *Not* Conducted Sales Outside of the Ordinary Course of Business**

8. Mr. Dondero also argues, without factual support or specificity, that the Debtor has conducted a number of substantial asset sales outside of the ordinary course of business and that the Debtor's non-debtor subsidiaries have also conducted significant asset sales without complying with the Bankruptcy Code. Both of these arguments fail.

### **The Asset Sales Mentioned in the Motion Did Not Involve Property of the Estate**

9. Mr. Dondero alleges that three sales violated 11 U.S.C. § 363: sales conducted by the Highland Multi Strategy Credit Fund, L.P. ("MSCF"), Highland Restoration Capital Partners, L.P. ("RCP"), and the sale of SSPI Holdings, Inc. ("SSPI").<sup>5</sup> These sales were subject to the Protocols (and consistent with the Protocols, each sale was approved by the Committee); however, they were not subject to 11 U.S.C. § 363(b).

10. Section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1) ("The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, *property of the estate*. . . .") (emphasis added). In the Motion, Mr. Dondero asserts – without support – that sales of assets owned by subsidiaries of the Debtor must comply with 11 U.S.C. § 363. However, the assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."); *see also Parkview-Gem, Inc.*, 516 F.2d 807, 809 (8th Cir. 1975)

<sup>5</sup> In the Motion, Mr. Dondero refers to SSP Holdings generically as a subsidiary of "Trussway." (Motion ¶13). The actual entity that was sold was SSPI.



(“Ownership of all of the outstanding stock of a corporation, however, is not the equivalent of ownership of the subsidiary’s property or assets. . . Even though the value of the subsidiary’s outstanding shares owned by the debtor may be directly affected by the subsidiary’s disputes with third parties,’ Congress did not give the bankruptcy court exclusive jurisdiction over all controversies that in some way affect the debtor’s estate.’”) (citing *In re Beck Indus., Inc.*, 479 F.2d 410 (2d Cir. 1973)).

11. Further, while the Debtor has certain control rights over RCP, MSCF, and SSPI, those rights do not make the assets of RCP, MSCF, and SSPI property of the Debtor’s estate. See *In re Thomas*, 2020 Bankr. LEXIS 1364 at \*31 (Bankr. W.D. Tenn. 2020) (a debtor’s membership interest in an LLC, including both its economic rights and governance rights, became property of the estate on the petition date, but the assets of the LLC remain separate and the debtor must manage them consistent with the terms of the operating agreement and applicable law); *In re Cardinal Indus.*, 105 B.R. 834, 849 (Bankr. S.D. Ohio 1989) (a debtor’s ownership interests and control rights in non-debtor partnerships were property of the estate; but those rights did not make the assets of the partnership property of the estate or implicate the automatic stay so as to prevent secured creditors of the non-debtor partnerships from foreclosing on properties of the partnerships).

12. None of RCP, MSCF, or SSPI is a wholly-owned subsidiary of the Debtor and each has meaningful third party investors. The assets of those entities – and by extension the interests of the third party investors – are not property of the estate and, therefore, are not subject to 11 U.S.C. § 363(b). The assets of these entities are only subject to this Court’s oversight because of the agreement the Debtor reached with the Committee to enter into and be bound by the Protocols.

**The Debtor Is Authorized to Sell Assets Pursuant to 11 U.S.C. § 363(c)(1)**

13. Further, in the Motion, Mr. Dondero focuses on 11 U.S.C. § 363(b), but ignores 11 U.S.C. § 363(c)(1), which grants the Debtor the authority to operate its business in the ordinary course without notice or hearing. Specifically, section 363(c)(1) provides:

[i]f the business of the debtor is authorized to be operated under section. . . 1108. . . of this title... the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). As such, a debtor may enter into post-petition transactions, including the sale or lease of its property, if the debtor is authorized to operate its business under section 1108 and such transactions are “in the ordinary course of business.”

14. An activity is “ordinary course” if it satisfies both the “horizontal test” and the “vertical test.” *See, e.g., Denton Cty. Elec. Coop. v. Eldorado Ranch, Ltd. (In re Denton Cty. Elec. Coop.)*, 281 B.R. 876, 882 n.12 (Bankr. N.D. Tex. 2002); *see also In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). The vertical test looks to “whether the transaction subjects a hypothetical creditor to a different economic risk than existed when the creditor originally extended credit.” *In re Patriot Place, Ltd.*, 486 B.R. 773, 793 (Bankr. W.D. Tex. 2013). The horizontal test considers “whether the transaction was of the sort commonly undertaken by companies in the industry.” *Id.* As such, even if the MSCF, RCP, and SSPI asset sales mentioned in the Motion were subject to this Court’s jurisdiction (and they were not), they are allowed by the Bankruptcy Code because they are within the ordinary course of the Debtor’s business.

15. First, the vertical test is satisfied with respect to such sales. As Mr. Dondero knows, the Debtor is an investment manager and its business *is* buying and selling assets on behalf of its managed investment vehicles. As such, any creditor of the Debtor (with the

potential exception of Mr. Dondero) would expect the Debtor to continue buying and selling assets; that is what the Debtor does. The MSCF, RCP, and SSPI sales are thus consistent with the expectations of the Debtor's creditors and the Debtor's obligations to MSCF, RCP, and SSPI.<sup>6</sup> *See Thomas*, 2020 Bankr. LEXIS 1364 at \*31. The MSCF, RCP, and SSPI sales are examples of the Debtor selling assets on behalf of a managed investment vehicles and include no different economic risk than existed prepetition. Because the Debtor is engaging in the same conduct post-petition as it did prepetition (which is what debtors-in-possession are intended and expected to do under 11 U.S.C. § 1107 of the Bankruptcy Code), the Debtor's creditors will incur no additional risk. This risk is further mitigated because any such sales will be authorized by the Debtor's new management, not Mr. Dondero.

16. Second, the horizontal test is satisfied. The Debtor, again, is an investment manager. Investment managers manage investment vehicles and by definition, buy and sell assets and distribute the proceeds of those assets to investors. The sales referenced in the Motion are consistent with that business as they are the sales of assets held by managed investment vehicles – some of which are currently in orderly liquidation. Selling assets *is* the Debtor's industry, and the sales referenced in the Motion are the sorts of sales commonly conducted in the industry. The Debtor is thus simply operating post-petition in the same manner it did prepetition, albeit under Court-mandated new management. Consequently, the horizontal test is also satisfied.

17. Regardless, if the Court believes the Debtor should be required to justify its conduct, the Debtor is ready to do so as it has acted, in all instances, in a commercially reasonable manner and in the best interests of the Debtor's estate and the stakeholders of MSCF,

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<sup>6</sup> In fact, creditors should support the asset sales and such sales were supported by the Committee. The sales liquidated assets at non-Debtor entities to which the Debtor's creditors had no recourse and the net proceeds of those sales were distributed, in part, to the Debtor, to which the Debtor's creditors have recourse.

RCP, and SSPL.<sup>7</sup>

### III. Mr. Dondero Has a *De Minimis* Interest in the Debtor

18. In the Motion, Mr. Dondero asserts he is a “creditor, indirect equity security holder, and party in interest” in the Debtor’s bankruptcy. While that claim is ostensibly true, it is tenuous. Mr. Dondero filed five proofs of claim in the Debtor’s bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [Docket No. 1460]. The other three are unliquidated, contingent claims, each of which said that Mr. Dondero would “update his claim in the next ninety days.” Ninety days has passed since those proofs of claim were filed and yet Mr. Dondero has not updated those claims to assert an actual claim against the Debtor’s estate.<sup>8</sup>

19. Mr. Dondero’s claim as an “indirect equity security holder” is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor’s Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero’s recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his “indirect” equity interest, the Debtor’s

<sup>7</sup> The Dugaboy Investment Trust (“Dugaboy”) – Mr. Dondero’s family trust and a limited partner in MSCF – filed a proof of claim [Claim No. 177] asserting that the Debtor mismanaged MSCF during the pendency of the bankruptcy by causing MSCF to sell certain of its assets [Docket No. 1154] (the “Dugaboy Claim”). The Debtor believes that the sales discussed in the Dugaboy Claim are the same MSCF sales alluded to in the Motion. The Debtor is currently negotiating a briefing and discovery schedule with respect to the Dugaboy Claim with Mr. Dondero’s counsel – which also represents Dugaboy. Consequently, even if the Motion is denied, the Debtor will still be required to account for its conduct with respect to the MSCF sales.

<sup>8</sup> Without knowing the what nature of the “updates” would have been, the Debtor does not concede that any “updates” would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero’s claims.

estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

20. Consequently, although in a purely technical sense Mr. Dondero may have standing as a “creditor” to object to asset sales, his standing is attenuated and his chances of recovery in this case are speculative. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had “pecuniary interest. . . directly affected by the bankruptcy proceeding”); *see also In re Flintkote Co.* 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff’d*. 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing).

21. Mr. Dondero’s minimal interest in the estate should not allow him to control the disposition of assets in the ordinary course of the Debtor’s business, especially when those asset sales have the blessing of the Debtor’s *actual* creditors and constituents. As the court said in *In re Lionel* (a case cited by Mr. Dondero), “a bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors. . . and . . . act to further the diverse interests of the debtor, creditors and equity holders, alike.” 722 F.2d 1063, 1071 (2d Cir. 1983). Mr. Dondero’s attempt to re-assert his lost control over the Debtor should be rejected and the Motion should be denied.

*[Remainder of Page Intentionally Blank]*



WHEREFORE, for the reasons set forth above, the Debtor respectfully requests that the Court deny the Motion.

Dated: December 11, 2020.

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002439

### BACKGROUND

1. On March 29, 2021, the Plaintiffs (“UBS”) filed a *Motion for Leave to File Adversary Complaint and Other Materials Under Seal* in the main bankruptcy case.<sup>2</sup> That same day, the Debtor filed a *Motion for Leave to File under Seal the Debtor’s Statement with Respect to UBS’s Motion for Leave to File Adversary Complaint and Other Materials Under Seal*.<sup>3</sup> Two days later, the Court granted UBS’ motion on March 31, 2021,<sup>4</sup> and UBS commenced this adversary proceeding that same day under seal. The next day, on April 1, 2021, the Court granted the Debtor’s motion and the Debtor filed its statement under seal.<sup>5</sup> On April 9, 2021, the Court entered a TRO in this adversary proceeding enjoining the Debtor from making payments to certain entities not named in this adversary proceeding.<sup>6</sup>

2. While the events above were unfolding, UBS sent a document preservation letter to the Movant dated March 30, 2021,<sup>7</sup> and the Debtor followed with a similar letter dated March 31, 2021.<sup>8</sup> The Debtor’s letter states that “UBS has recently commenced an adversary proceeding against [the Debtor]”<sup>9</sup> such that the Preservation Letters appear related to this suit.

<sup>2</sup> Main Case Docket No. 2128.

<sup>3</sup> Main Case Docket No. 2129.

<sup>4</sup> Main Case Docket No. 2140; Adversary Proceeding Docket No. 2.

<sup>5</sup> Main Case Docket Nos. 2146 & 2148.

<sup>6</sup> Adversary Proceeding Docket No. 21 (“Order Granting Plaintiffs’ Motion for a Temporary Restraining Order”) (“TRO”).

<sup>7</sup> Ex. 1.

<sup>8</sup> Ex. 2 (collectively, Ex. 1 and Ex. 2 are referred to as the “Preservation Letters”).

<sup>9</sup> Ex. 2, at 1.

3. On April 1, 2021, UBS' counsel issued two subpoenas addressed to the Movant and requested undersigned counsel to accept service.<sup>10,11</sup> The Subpoenas have not been served as of this time. The Subpoenas commanded: (a) production by April 9, 2021, at 9 a.m.; and (b) appearance at deposition on April 16, 2021.

#### SUMMARY OF ARGUMENTS

4. UBS seeks discovery on a schedule that it cannot get absent stipulation because: “[a] subpoena served on a third party . . . is subject to the same standards that govern discovery between the parties[.]” *Ortiz v. Follin*, No. 16-cv-02559-MSK-MEH, 2017 U.S. Dist. LEXIS 113143, at \*5 (D. Colo. July 20, 2017) (citing *Segura v. Allstate Fire & Cas. Ins. Co.*, No. 16-cv-00047-NYW, 2016 U.S. Dist. LEXIS 188003, 2016 WL 8737864, at \*5 (D. Colo. Oct. 11, 2016)), and “ . . . subpoenas . . . are subject to the same time constraints that apply to all of the other methods of formal discovery[.]” *Nicholas v. Wyndham Int’l, Inc.*, No. 2001/147-M/R, 2003 U.S. Dist. LEXIS 24085, at \*5-6, 2003 WL 23198847 (D.V.I. Oct. 1, 2003) (quoting *Dreyer v. GACS, Inc.*, 204 F.R.D. 120, 122 (N.D. Ind. 2001) (followed by *Williamson v. Horizon Lines, LLC*, 248 F.R.D. 79, 83 (D. Me. 2008)); *Dockery v. Horvath*, No. 3:11cv408-TSL-MTP, 2011 U.S. Dist. LEXIS 124997, at \*4 (S.D. Miss. Oct. 27, 2011). If a Rule 26(f) conference occurred between UBS and the Debtor during the first two days of this adversary proceeding, this apparently friendly-party litigation could be attempting to prejudice the rights of a nonparty in violation of established discovery rules.

<sup>10</sup> Ex. 3 (the “Production Subpoena”) and Ex. 4 (the “Deposition Subpoena”) (collectively, the “Subpoenas”).

<sup>11</sup> Counsel, at this point, is not authorized to accept service. However, out of an abundance of caution, this motion is being filed at this time to preserve all rights. In conjunction herewith, a separate but related motion to reconsider sealing is being filed by Movant.

5. If no Rule 26(f) conference occurred before UBS issued the Deposition Subpoena (and this adversary proceeding is not exempt under FED. R. CIV. P. (“Rule”) 26(a)(1)(B)),<sup>12</sup> Rule 30(a)(2)(A)(iii) required the Plaintiffs to obtain leave of court before issuing it. Rule 30(a)(2)(A)(iii) prohibits commanding a deposition “ . . . before the time specified in Rule 26(d) . . .” without having “ . . . the party certif[y] in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time[.]”; see Notice of Deposition at Ex. 5 (including no such certification or supporting facts). The Deposition Subpoena “is thus invalid.” *Burdick v. Union Sec. Ins. Co.*, 2008 U.S. Dist. LEXIS 99994, at \*12 (C.D. Cal. Dec. 3, 2008) (“Plaintiff issued a [Rule 30] deposition notice without leave of court, despite the requirement of [Rule 30(a)(2)]. The notice is **thus invalid**.”) (emphasis added) (citing *Ameristar v. Signal Composites*, 244 F.3d 189, 192 (1<sup>st</sup> Cir. 2001)). While a court must grant leave consistent with this rule when asked, the process is still required. *Id.*

6. Unlike the Deposition Subpoena, the Production Subpoena fails whether it was issued before, or after, a Rule 26(f) conference. It is “invalid[.]” *id.*, if issued prematurely because “[r]ule 26(d)(1) provides that ‘[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except ... when authorized ... by court order.’” *BKGTH*

<sup>12</sup> FED. R. CIV. P. 26(a)(1)(B) exempts the following types of proceedings:

- (i) an action for review on an administrative record;
- (ii) a forfeiture action in rem arising from a federal statute;
- (iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;
- (iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;
- (v) an action to enforce or quash an administrative summons or subpoena;
- (vi) an action by the United States to recover benefit payments;
- (vii) an action by the United States to collect on a student loan guaranteed by the United States;
- (viii) a proceeding ancillary to a proceeding in another court; and
- (ix) an action to enforce an arbitration award.

The Debtor’s Letter at Ex. 2 makes it unlikely that this adversary proceeding falls within the above list, but the Movant cannot access the sealed adversary complaint and is uncertain on this point.



*Prods., LLC v. Doe*, 2013 U.S. Dist. LEXIS 140924 (E.D. La. Sep. 30, 2013) (quoting *St. Louis Group, Inc. v. Metals and Additives Corp., Inc. et al.*, 275 F.R.D. 236, 239 (S.D. Tex. 2011)). And it is nevertheless improper if issued after a Rule 26(f) conference because UBS disregarded early Rule 34 requirements when issuing it.<sup>13</sup> Early Rule 34 Requests may be delivered to a party no earlier than 21 days after the summons and complaint have been served upon that party,<sup>14</sup> and Rule 34(c) applies this rule to nonparties via Rule 45. There is no language in Rule 45 shortening the Early Rule 34 Request provisions for nonparties.

7. Finally, if the Deposition Subpoena was issued after a Rule 26(f) conference, it could, arguably, be technically proper. But requiring a nonparty to sit for early deposition in friendly-party litigation – without allowing him to see the complaint and prepare for possible intervention of right – urges caution. *Texas v. United States*, 805 F.3d 653, 658 (5<sup>th</sup> Cir. 2015) (“ . . . our cases reveal that the [Rule 24(a)(2) intervention of right] inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way”).

#### RELIEF REQUESTED AND BASIS FOR RELIEF

8. Movant asks the Court to enter a protective order regarding the UBS Subpoenas for the reasons introduced above and further explained below.

##### A. The Production Subpoena is Not Authorized by, and Does Not Comply with, Rule 34

9. Regardless of whether a Rule 26(f) conference occurred, the Production Subpoena violates Rule 34. Early Rule 34 Requests may be delivered to a party no earlier than 21 days after

<sup>13</sup> See Rule 26(d)(2) (entitled “Early Rule 34 Requests”).

<sup>14</sup> *Id.*

the summons and complaint have been served upon that party,<sup>15</sup> and Rule 34(c) applies this rule to nonparties via Rule 45. Rule 45 does not shorten Early Rule 34 Request provisions for nonparties. “A subpoena served on a third party pursuant to [Rule 45] is subject to the same standards that govern discovery between the parties[.]” *Ortiz*, at \*5. “[S]ubpoenas . . . are subject to the same time constraints that apply to all of the other methods of formal discovery[.]” *Nicholas*, at \*5-6.<sup>16</sup>

**B. If Two Conditions (Unknown to the Movant) are Met, the Deposition Subpoena is Not Authorized by, and Does Not Comply with, Rule 30**

10. Unlike the Production Subpoena, the Deposition Subpoena is only “invalid”<sup>17</sup> if: (a) there was no Rule 26(f) conference before it was issued; and (b) this adversary proceeding is not exempt.<sup>18</sup> If these two conditions apply, UBS was required by Rule 30(a)(2)(A)(iii) to obtain leave of court beforehand, and although a Court must grant leave consistent with this rule when asked, the process is still required.<sup>19</sup> The requirement to obtain leave of court is not an empty one. “[C]ourts generally only permit expedited discovery before the Rule 26(f) conference upon a showing of good cause. Good cause exists ‘where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.’” *Vizio*, at \*7. Here, the prejudice to the Movant outweighs the need for expedited discovery. The parties to this adversary proceeding could be using “friendly-party litigation” to prejudice the

<sup>15</sup> *Id.*

<sup>16</sup>

<sup>17</sup> *Burdick*, at \*12 (“Plaintiff issued a [Rule 30] deposition notice without leave of court, despite the requirement of [Rule 30(a)(2)]. The notice is thus invalid”).

<sup>18</sup> See n.10, *supra* (listing 26(a)(1)(B) exemptions).

<sup>19</sup> Rule 30(a)(2)(A)(iii) prohibits commanding a deposition “ . . . before the time specified in Rule 26(d) . . .” without having “ . . . the party certifi[y] in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time[.]”; see Deposition Subpoena at Ex. 4 (including no such certification or supporting facts).

rights of a nonparty for as long as possible by: (a) making allegations against the Movant in the Preservation Letters; while (b) barring the Movant from seeing the complaint so they can prepare for possible intervention; and (c) moving quickly before possible intervention to get discovery while not being subject to discovery.

**C. The Discovery Seems Designed to Prejudice the Rights of a Nonparty**

11. The complaint was filed under seal; the parties immediately sent Preservation Letters with allegations against the Movant (such that he may need to intervene); and UBS seeks discovery from the Movant while perhaps delaying his ability to do the same. Intervention of right exists if the Movant “has a stake in the matter that goes beyond a generalized preference that the case come out a certain way” and “representation of the [Movant’s] interest by existing parties is or may be inadequate[.]” *Texas*, 805 F.3d, at 658 (quoted first in sentence); *Bhd. of R.R. Trainmen v. Balt & Ohio R.R.*, 331 U.S. 519, 525 (1947) (quoted second in sentence). Without seeing the adversary complaint, the Movant cannot determine whether he has more than “a generalized preference that [this adversary proceeding] come out a certain way[.]” but the parties’ Preservation Letters suggest that is the case.<sup>20</sup> If so, “representation of the [Movant’s] interest by existing parties is or may be inadequate.” *Trainmen*, 331 U.S. at 525.

**D. The Discovery Seeks Some Confidential and/or Privileged Information and is Unduly Burdensome and Harassing**

12. Preventing the Movant from seeing the adversary complaint and accompanying materials prevents the Movant from being able to raise certain objections, but the Court should enter a protective order to the extent that: (i) the Debtor’s discovery seeks to obtain documents and

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<sup>20</sup> Ex.’s 1 & 2.

communications that are confidential and privileged pursuant to Rule 408 and under the attorney-client privilege; and (ii) the Discovery Requests are unduly burdensome, overbroad, harassing, irrelevant, or unlikely to lead to admissible evidence.

13. For example, only Paragraphs III-8 and III-10 of the Production Subpoena specify time ranges, and Paragraph III-12 requests “[d]ocuments or [c]ommunications between Sentinel and any person concerning the [l]egal [a]ction.” Movant will make objections accordingly when the Subpoenas are either served or Movant can accept service, and after the Court, hopefully, orders a new discovery schedule that that is both reasonable and brings the Production Subpoena in line with Rule 34.

#### REQUEST FOR RELIEF

For the foregoing reasons, the Movant asks the Court to:

- i. enter a protective order which would, at a minimum, bring the Production Subpoena in line with Rule 34;
- ii. if the two conditions unknown to the Movant in paragraph 10, *supra*, exist, the Movant asks that the protective order bring the Deposition Subpoena in line with Rule 30 as well; and
- iii. delay one-sided discovery until possible intervention of right is addressed.

Dated: April 16, 2021

Respectfully submitted,

/s/ Clay M. Taylor

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**ATTORNEYS FOR MOVANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on April 16, 2021, true and correct copies of this Motion were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for Highland Capital Management, L.P, UBS Securities LLC, and UBS AG London Branch.

/s/ Clay Taylor  
Clay Taylor

**CERTIFICATE OF CONFERENCE**

I, the undersigned, hereby certify that, on April 16, 2021, I conferred with Plaintiffs' and Defendants' counsel, who did not agree to the relief requested in this motion.

/s/ Clay Taylor  
Clay Taylor





Relief;<sup>2</sup> (ii) the *Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction*;<sup>3</sup> (iii) the *Appendix of Exhibits to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction*,<sup>4</sup> and the *Plaintiffs' Memorandum of Law in Support of Motion for a Temporary Restraining Order and Preliminary Injunction*<sup>5</sup> (collectively the “Pleadings”) and in support states as follows:

1. The Pleadings should be unsealed for the limited purpose of review by Mr. Dondero because the Pleadings likely involve Mr. Dondero’s rights and interests. *See Texas v. United States*, 805 F.3d 653, 658 (5<sup>th</sup> Cir. 2015) (“ . . . our cases reveal that the [Rule 24(a)(2) intervention of right] inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way”); *see also* Ex. 1 (the “UBS Letter”); Ex. 2 (the “Debtor’s Letter”) (making allegations against Mr. Dondero suggesting that right to intervene may exist in this adversary proceeding).

#### BACKGROUND

2. On March 29, 2021, the Plaintiffs (“UBS”) filed their *Motion for Leave to File Adversary Complaint and Other Materials Under Seal* (“UBS’ Motion”).<sup>6</sup> The basis of UBS’ Motion was that the complaint and motion “rely on and contain protectable information and/or information pursuant” to an *Agreed Protective Order*<sup>7</sup> in the underlying bankruptcy.<sup>8</sup>

3. On March 31, 2021, this Court granted UBS’ Motion by entry of the Order.

<sup>2</sup> Adversary Proceeding Docket No. 3.

<sup>3</sup> Adversary Proceeding Docket No. 4.

<sup>4</sup> Adversary Proceeding Docket No. 5.

<sup>5</sup> Adversary Proceeding Docket No. 6.

<sup>6</sup> Main Case Docket No. 2128.

<sup>7</sup> Main Case Docket No. 382.

<sup>8</sup> UBS’s Motion, ¶ 13.

4. On the same day, UBS filed the Pleadings under seal initiating this adversary proceeding.

5. On March 30, 2021, UBS sent a preservation letter to Mr. Dondero.<sup>9</sup> In that letter, UBS informed Mr. Dondero that it would be commencing an adversary proceeding against Highland Management, L.P. (the “Debtor”) alleging that the “Debtor, acting through and at the direction of Mr. Dondero...fraudulently transferred hundreds of millions of dollars of assets.”<sup>10</sup>

6. On March 31, 2021, the Debtor sent a nearly identical preservation letter to Mr. Dondero repeating the UBS allegation verbatim.<sup>11</sup>

7. There is little doubt that Adversary Proceeding No. 21-03020-sgj is the adversary proceeding both UBS and the Debtor refer to in their preservation letters. However, Mr. Dondero cannot confirm this because the Pleadings are sealed from his view.

8. On April 1, 2021, Mr. Dondero attempted to resolve the hidden pleading issue with UBS and the Debtor. Mr. Dondero offered, and continues to offer, to abide by the provisions of the Protective Orders UBS referenced in UBS’ Motion and under which the asserted sealable information was originally provided to UBS. Mr. Dondero simply wishes to review the Pleadings to understand to what extent they may impair his interests. UBS and the Debtor denied Mr. Dondero’s request.

#### NEED FOR MODIFICATION

9. Federal Rule of Bankruptcy Procedure 9018 provides that, “[i]f an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order[.]” UBS’ Motion confirms that notice was not provided to Mr. Dondero, and states that

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<sup>9</sup> Ex. 1 (the “UBS Letter”).

<sup>10</sup> *Id.*

<sup>11</sup> Ex. 2 (the “Debtor’s Letter”); collectively, Ex. 1 & Ex. 2 are referred to as the “Preservation Letters.”

notice was only provided to Debtor, Debtor's counsel, and the U.S. Trustee.<sup>12</sup> The Preservation Letters suggest that the Pleadings concern Mr. Dondero's rights and interests.

10. Because intervention of right “. . . turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way[,]” *Texas*, at 658, Mr. Dondero should be afforded the opportunity to determine whether he has a right to intervene here.

11. Public policy disfavors sealed court pleadings. *See, e.g., Securities & Exchange Comm. v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993). It is UBS' burden to rebut the presumption that the Pleadings should not be made public record. *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. 429, 439-40, fn. 6 (Bankr. S.D. Tex. 2009). If this Court, unlike the District Court in *Van Waeyenburghe*, did properly balance competing interests justifying sealing from public view, the Order should still be modified to permit Mr. Dondero (subject to confidentiality provisos) to evaluate possible intervention of right.

12. The Court has the discretion to “make any order which justice requires” to protect trade secret or confidential information, but neither Federal Rule of Bankruptcy Procedure 9018 nor 11 U.S.C. § 107(b) dictate that the order should be to seal pleadings. *See* FED. R. BANKR. P. 9037 (providing for redaction). If the Court has properly decided that the Pleadings should be sealed from public view, the Court could allow the Pleadings to be reviewed *in camera*. *In re Meyrowitz*, No. 06-31660-bjh-11, 2006 Bankr. LEXIS 2931, at \*13 (Bankr. N.D. Tex. 2006).

13. The requested relief is limited only to unsealing the Pleadings for Mr. Dondero. Mr. Dondero is willing to review the Pleadings subject to the restrictions in the protective order,<sup>13</sup>

<sup>12</sup> UBS's Motion, ¶ 15.

<sup>13</sup> Main Case Docket No. 382.

the same restrictions under which UBS received the alleged confidential information from Debtor originally.

WHEREFORE, James Dondero respectfully requests that this Court enter an order granting this motion, and modify its *Order Granting Leave for UBS to File Adversary Complaint and Other Materials Under Seal*<sup>14</sup> to allow James Dondero to review the Pleadings.

Dated: April 16, 2021

Respectfully submitted,

/s/ Clay M. Taylor

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Texas Bar I.D. No. 12736500

John Y. Bonds, III

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**ATTORNEYS FOR MOVANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on April 16, 2021, true and correct copies of this Motion were electronically served by the Court's ECF system on parties entitled to notice thereof, including on counsel for Highland Capital Management, L.P, UBS Securities LLC, and UBS AG London Branch.

/s/ Clay Taylor

Clay Taylor

<sup>14</sup> Main Case Docket No. 2140; Adversary Proceeding Docket No. 2.



**CERTIFICATE OF CONFERENCE**

I, the undersigned, hereby certify that, on April 16, 2021, I conferred with Plaintiffs' and Defendant's counsel, who did not agree to the relief requested in this motion.

/s/ Clay Taylor  
Clay Taylor

CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS**ENTERED**THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed April 29, 2021

  
United States Bankruptcy Judge

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

<p>-----</p> <p>In re</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup></p> <p style="text-align: center;">Debtor.</p> <p>-----</p> <p>UBS SECURITIES LLC AND UBS AG LONDON BRANCH,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,</p> <p style="text-align: center;">Defendant.</p> <p>-----</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p> <p>Adversary Proceeding</p> <p>No. 21-03020</p>
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<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Dondero Ex. U

002454

**ORDER: (I) AUTHORIZING UBS TO EFFECT ALTERNATIVE SERVICE OF  
SUBPOENAS ON JAMES DONDERO, (II) DENYING DONDERO'S MOTION FOR A  
PROTECTIVE ORDER, AND (III) GRANTING IN PART DONDERO'S  
MOTION TO MODIFY ORDER GRANTING LEAVE TO FILE UNDER SEAL**

Upon consideration of: (i) *Plaintiffs' Motion for an Order Authorizing Alternative Service of Subpoenas* filed by UBS Securities LLC and UBS AG London Branch (together "UBS"), along with the Memorandum of Law, George Declaration, and Appendix filed in support of the Motion (Adv. Dkt. No. 28-30, collectively, the "UBS Motion"), (ii) *Nonparty Deponent James Dondero's Motion for a Protective Order* and accompanying exhibits (Adv. Dkt. No. 23, the "PO Motion"), and (iii) *James Dondero's Motion to Modify Order Granting Leave to File Under Seal* and accompanying exhibits (Adv. Dkt. No. 24, the "Seal Modification Motion," and with the UBS Motion and PO Motion, the "Motions"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this proceeding and the Motions is proper in this District pursuant to 28 U.S.C. §§ 1408-1409; and due, adequate, and sufficient notice of the Motions having been given; and after due deliberation and for the reasons stated on the record at the hearing conducted April 28, 2021, it is hereby **ORDERED**:

1. The UBS Motion is GRANTED;
2. UBS is authorized to effect alternative service of a *Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding* (the "Deposition Subpoena") and a *Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding* (the "Production Subpoena") upon James Dondero by (i) overnight mail to Mr. Dondero's current home address; and (ii) email to Mr. Dondero's counsel;
3. Mr. Dondero must produce documents in response to the Production Subpoena by May 6, 2021;

4. Mr. Dondero's deposition pursuant to the Deposition Subpoena is scheduled for May 10, 2021 at 9:30 am CT, unless otherwise agreed to by all parties;

5. The PO Motion is DENIED;

6. The Seal Modification Motion is GRANTED IN PART;

7. UBS will share the sealed *Original Complaint for Injunctive Relief* [Adv. Dkt. No. 3] (the "Complaint") with James Dondero and his counsel at Bonds Ellis Eppich Schafer Jones, LLP ("Bonds Ellis") upon the entry of this Order; and

8. James Dondero and his counsel at Bonds Ellis are restricted from sharing or discussing or conveying directly or indirectly the substance or nature of the contents of or allegations in the Complaint with anyone else, other than amongst themselves (*i.e.*, between James Dondero and his counsel at Bonds Ellis).

**### End of Order ###**

Order prepared by:

**LATHAM & WATKINS LLP**

By /s/ Andrew Clubok

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002458

**STIPULATION EXTENDING DEADLINE  
FOR DEBTOR TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

Highland Capital Management, L.P. (the “Debtor”), the debtor and debtor-in-possession in the above-captioned bankruptcy case and defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), and UBS Securities LLC and UBS AG London Branch (together, “UBS”, and collectively with the Debtor, the “Parties”), plaintiffs in the Adversary Proceeding, enter into this stipulation (the “Stipulation”) extending the deadline for the Debtor to answer or otherwise respond to UBS’s *Original Complaint for Injunctive Relief* [Docket No. 3] (as may be subsequently amended or supplemented, the “Complaint”) filed in the Adversary Proceeding.

**Recitals**

WHEREAS, on March 31, 2021, UBS filed the Complaint under seal commencing the Adversary Proceeding;

WHEREAS, on April 1, 2021, UBS served the Complaint and summons on the Debtor;

WHEREAS the original deadline for the Debtor to answer or otherwise respond to the Complaint was May 3, 2021 (the “Answer Deadline”); and

WHEREAS the Parties reached an agreement extending the Answer Deadline by which the Debtor must answer or otherwise respond to the Complaint.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval of this Stipulation by the Court, it shall be SO ORDERED:

1. The Answer Deadline by which the Debtor must answer or otherwise respond to the Complaint shall be extended through and including **Wednesday, June 2, 2021**.

Dated May 3, 2021.

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*Counsel for UBS Securities LLC and UBS AG  
London Branch*



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed May 5, 2021

*Henry H. C. Gannge*  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

UBS SECURITIES LLC and UBS AG LONDON  
BRANCH,

Plaintiffs,

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§ Adversary Proceeding No.  
§ 21-03020-sgj  
§  
§  
§  
§

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



**ORDER APPROVING STIPULATION EXTENDING DEADLINE  
FOR DEBTOR TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

Upon consideration of the *Stipulation Extending Deadline for Debtor to Answer or Otherwise Respond to Complaint* [Docket No. 52] (the “Stipulation”)<sup>2</sup> by and between Highland Capital Management, L.P. (the “Debtor”), the debtor and debtor-in-possession in the above-captioned bankruptcy case and defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), and UBS Securities LLC and UBS AG London Branch (together, “UBS”, and collectively with the Debtor, the “Parties”), plaintiffs in the Adversary Proceeding, it is **HEREBY ORDERED THAT:**

1. The Stipulation, a copy of which is attached hereto as **Exhibit A**, is **APPROVED**.
2. The Stipulation shall become effective immediately upon entry of this Order.
3. The Answer Deadline by which the Debtor must answer or otherwise respond to the Complaint shall be extended through and including **Wednesday, June 2, 2021**.
4. The Court shall retain jurisdiction over all disputes arising out of or otherwise concerning the interpretation and enforcement of the Stipulation and this Order.

### End of Order ###

<sup>2</sup> Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Stipulation.

**EXHIBIT A**

### *Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
UBS SECURITIES LLC and UBS AG LONDON	§	
BRANCH,	§	
	§	Adversary Proceeding No.
Plaintiffs,	§	
	§	21-03020-sgj
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	

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

Stipulation Extending Deadline for Debtor to Answer or Otherwise Respond to Complaint  
Page 1 of 4

**STIPULATION EXTENDING DEADLINE  
FOR DEBTOR TO ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

Highland Capital Management, L.P. (the “Debtor”), the debtor and debtor-in-possession in the above-captioned bankruptcy case and defendant in the above-captioned adversary proceeding (the “Adversary Proceeding”), and UBS Securities LLC and UBS AG London Branch (together, “UBS”, and collectively with the Debtor, the “Parties”), plaintiffs in the Adversary Proceeding, enter into this stipulation (the “Stipulation”) extending the deadline for the Debtor to answer or otherwise respond to UBS’s *Original Complaint for Injunctive Relief* [Docket No. 3] (as may be subsequently amended or supplemented, the “Complaint”) filed in the Adversary Proceeding.

**Recitals**

WHEREAS, on March 31, 2021, UBS filed the Complaint under seal commencing the Adversary Proceeding;

WHEREAS, on April 1, 2021, UBS served the Complaint and summons on the Debtor;

WHEREAS the original deadline for the Debtor to answer or otherwise respond to the Complaint was May 3, 2021 (the “Answer Deadline”); and

WHEREAS the Parties reached an agreement extending the Answer Deadline by which the Debtor must answer or otherwise respond to the Complaint.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval of this Stipulation by the Court, it shall be SO ORDERED:

1. The Answer Deadline by which the Debtor must answer or otherwise respond to the Complaint shall be extended through and including **Wednesday, June 2, 2021**.

Dated May 3, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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*Co-Counsel for Former Employees Mary Kathryn Lucas (née Irving), John Paul Sevilla, Scott Ellington, Isaac Leventon, and Matthew DiOrio*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 19-34054-sgj11

UBS SECURITIES LLC AND UBS AG  
LONDON BRANCH,

Plaintiffs,

Adversary Proceeding

No. 21-03020-sgj

vs.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

**MOTION OF FORMER EMPLOYEES TO  
QUASH SUBPOENAS AND BRIEF IN SUPPORT**

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

Dondero Ex. X
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# **TABLE OF AUTHORITIES**

## **Cases**

<i>John Doe #1 v. Veneman</i> , 380 F.3d 807 (5th Cir. 2004).	10, 15
<i>MetroPCS v. Thomas</i> , 327 F.R.D. 600 (N.D. Tex. 2018).	passim
<i>Scrum Alliance, Inc. v. Scrum, Inc.</i> , Civ. No. 4:20-cv-00227, 2020 U.S. Dist. LEXIS 209352 (E.D. Tex. Nov. 9, 2020).	14, 19
<i>Texas v. United States</i> , 805 F.3d 653 (5th Cir. 2015).	12
<i>Western Benefit Solutions, LLC v. Gustin</i> , Case No. 1:11-CV-00099-EJL-CWD, 2012 U.S. Dist. LEXIS 138860 (D. Idaho Sept. 24, 2012).	10
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## **Statutes**

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Mary Kathryn Lucas (née Irving), Jean Paul Sevilla, Scott Ellington, Isaac Leventon, and Matthew DiOrio (collectively, the nonparty “**Former Employees**”), former employees of the Defendant Highland Capital Management, L.P. (the “**Debtor**”), file this motion to quash the Subpoenas to Produce Documents (the “**Document Subpoenas**”) and Subpoenas to Testify at a Deposition (the “**Deposition Subpoenas**,” and together with the Document Subpoenas, the “**Subpoenas**”) served on them by Plaintiffs UBS Securities LLC and UBS AG London Branch (collectively, “**UBS**”), and in support, respectfully show as follows:

### I. INTRODUCTION

1. This motion is about discovery in search of a dispute. While UBS and the Debtor *had* hotly contested litigation, they have since settled their dispute with an explicit agreement to cooperate against future adversaries. But only the cooperators (the Debtor and UBS), and *no adversaries*, are present in this “adversary” proceeding. Although no controversy warranting discovery exists, UBS insists not only on proceeding with its discovery requests upon the Former Employees, but doing so on an “emergency” basis. There is neither a controversy nor an emergency.

2. Although the Debtor has settled its disputes with UBS and has made no indication that it is contesting the injunctive relief sought against it in this Adversary Proceeding, UBS still insists that it needs discovery from the Former Employees. Any additional discovery related to the Adversary Proceeding is now moot. So why is UBS so eager to proceed with the Subpoenas against nonparty witnesses?

3. The Subpoenas should be quashed on this basis alone. But should this Court find, contrary to the evidence, that a case or controversy exists and that the Court has jurisdiction over this matter, the nonparty Former Employees move to quash the Subpoenas because they:



(1) impose an undue burden on the Former Employees to appear and testify on the same irrelevant, cumulative, and overbroad topics; (2) are being used as a pretext for unauthorized pre-litigation discovery for other claims targeted at nonparties, including potentially against the Former Employees; and (3) in the specific case of Ms. Lucas, seek document production and testimony from a nonparty who is legally unavailable.

4. Not only do the Former Employees lack notice of much of the claims or relief sought in this Adversary Proceeding because all pleadings but the Complaint have been kept under seal (though served on counsel for the nonparty Official Committee of Unsecured Creditors), but the topics outlined in both the Document Subpoenas and the Deposition Subpoenas are facially overbroad and are an improper, thinly veiled attempt to conduct pre-litigation discovery for future, unrelated claims. These Subpoenas, which were specifically issued in connection with UBS's *uncontested* preliminary injunction request, cannot justifiably be used as pretext to discover information beyond the scope of the injunctive relief sought against the Debtor or otherwise to burden or prejudice the rights of nonparties to the Adversary Proceeding. The Subpoenas should therefore be quashed in their entirety. In the alternative, all discovery should be stayed pending approval of the Debtor's Settlement Agreement with UBS.

## II. FACTUAL BACKGROUND

5. During the hearing to confirm the Debtor's plan of reorganization, Debtor's counsel announced that the Debtor had reached a settlement with UBS. Confirmation Hr'g Tr. 15:5-22 (Feb. 2, 2021). As part of this settlement, among other things, the Debtor apparently agreed to cause Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) ("**Multi-Strat**"), which was the subject of fraudulent transfer claims by UBS, to make a cash payment of \$18.5 million to UBS and "use reasonable efforts to assist UBS" in collecting a

judgment against two of the Debtor's subsidiaries arising from litigation in the Supreme Court of New York against the Debtor and some of its foreign subsidiaries. *Id.* at 15:15-17; 159:8-14.

6. On March 29, 2021, UBS filed a *Motion for Leave to File Adversary Complaint and Other Materials Under Seal* [Bankr. Dkt. No. 2128] (the "**Motion to Seal**"), seeking leave from this Court to file its *Original Complaint for Injunctive Relief* (the "**Complaint**") and *Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction* and supporting documents (the "**Injunction Motion**") under seal.

7. On March 30, 2021, UBS sent preservation notices to each of the Former Employees, notifying them that UBS "will soon commence an adversary proceeding against the Debtor in connection with the Bankruptcy Case" and that UBS will apparently allege that the Debtor, at the direction of the Former Employees, caused nondebtor entities under the Debtor's control to fraudulently transfer certain assets to Sentinel Reinsurance, Ltd. ("**Sentinel**")<sup>2</sup> in anticipation of a judgment that UBS would obtain through litigation in New York. UBS demanded that the Former Employees retain a broad category of documents, including, but not limited to, the chapter 11 case, the impending adversary proceeding, UBS's litigation against the Debtor (and others) pending in the Supreme Court of New York, and "any future claims or actions that UBS may bring . . . relating to the subject matter of this Notice."

8. The next day, on March 31, 2021, although the Debtor was not copied on UBS's preservation notices to the Former Employees, the Debtor sent the Former Employees litigation-hold notices that were nearly identical to the preservation notices that UBS had sent the evening before. The Debtor's notices mention that UBS "has recently commenced an adversary

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<sup>2</sup> The asserted fraudulent transfer to Sentinel is not referenced anywhere in either of the two proofs of claim filed by UBS (claim #190 and claim #191), and it does not appear that UBS has taken any action to recover the alleged fraudulent transfers from the purported transferee, Sentinel.

proceeding” against the Debtor. The Debtor’s notices similarly seem to point blame at the Former Employees for the Debtor’s alleged transfer of certain assets to Sentinel.

9. Also on March 31, 2021, the Court granted UBS’s Motion to Seal, and UBS filed its Complaint, Injunction Motion, and all related documents entirely under seal with this Court. [Adv. Proc. Dkt Nos. 3-6]. Notably, although the Adversary Proceeding was supposed to be based on a fraudulent transfer claim, neither the transferors (funds managed by the Debtor) nor the transferee (Sentinel) is named as a party. Upon information and belief, UBS never sought post-judgment discovery from the transferors and has not even sought discovery from the alleged transferee Sentinel.

10. On April 1, 2021, the Debtor filed its *Statement with Respect to UBS’s Motion for Leave to File Adversary Complaint and Other Materials Under Seal*, confirming the Debtor’s support for the Motion to Seal and stating that the Debtor and its independent board “conducted a preliminary investigation into the matters underlying the Injunction Complaint by, *inter alia*, examining the Debtor’s books and records and making inquiries of the Debtor’s employees, including in-house counsel. The Debtor shared the results of that preliminary investigation with UBS.” [Bankr. Dkt. No. 2147].

11. Although UBS has served the sealed documents on counsel to the Official Committee of Unsecured Creditors [*See* Adv. Proc. Dkt. No. 19]—a nonparty from which UBS has not sought discovery in this Adversary Proceeding—UBS has yet to provide most of these documents to the Former Employees they seek to depose, who appear to be the potential targets of future claims or actions from UBS (and, potentially, the Debtor).

12. On April 9, 2021, the Court granted UBS’s Motion for Temporary Restraining Order, enjoining the Debtor from “making or allowing funds under its management or control

(including, but not limited to, Multi-Strat and CDO Fund) to make any payments or further transfers to Sentinel or any of its affiliates or any transferees of the Sentinel Entities consisting of, resulting from, or relating to the Transferred Assets until this Court's decision on UBS's requested preliminary injunction." [Adv. Proc. Dkt. No. 21, *Order Granting Plaintiffs' Motion for Temporary Restraining Order*] (the "TRO"). The Debtor did not oppose entry of the TRO and, in fact, agreed that the TRO could remain in place indefinitely until the Court reaches a decision on a preliminary injunction.

13. On April 15, 2021, the Debtor filed its *Motion for Entry of an Order Approving Settlement with UBS and Authorizing Actions Consistent Therewith* [Bankr. Dkt. No. 2199] (the "**Settlement Motion**"), confirming that "[t]he Debtor will use reasonable efforts to assist UBS in, among other things, collecting its judgment against the Funds and assets the Funds may own." Part of these collection efforts includes "cooperat[ing] with UBS and participat[ing] (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the [Former Employees] . . . believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel . . . ." Ex. 1 to the Settlement Motion, Settlement Agreement § 1(c)(iii). The Settlement Agreement even contemplates that the Debtor and UBS will work together as "co-plaintiff pursuing claims on behalf of or for UBS" against the Former Employees. *See* Settlement Agreement § 1(c)(x).

14. Thus, no case or controversy exists because the Debtor and UBS are cooperating regarding the subject of the Adversary Proceeding, namely in recovering the assets allegedly transferred from the Debtor-managed funds to Sentinel. In stark contrast to its litigation posture prior to the Settlement Motion, the Debtor has not opposed a single action or request for relief by

UBS in this matter. UBS appears to be using this Adversary Proceeding in support of its effort to bring separate claims unrelated to the Debtor's estate and against non-debtor parties, presumably against the transferors (the funds), the transferee (Sentinel), and the alleged persons who effectuated the transfers (including, as alleged by the Debtor and UBS, the Former Employees).

15. On April 16, 2021, Mr. Sevilla and Mr. DiOrio were formally served with a Document Subpoena and Deposition Subpoena.<sup>3</sup> On April 19, 2021, Mr. Leventon was formally served with a Document Subpoena and Deposition Subpoena, and service was accepted on behalf of Mr. Ellington and Ms. Lucas for the Document Subpoena and Deposition Subpoena addressed to each. Each Document Subpoena includes twelve broad categories, which are nearly identical for each Former Employee. UBS originally demanded production in two or fewer business days.

16. Counsel for the Former Employees reached out to counsel for UBS in an effort to understand why UBS was seeking discovery from the Former Employees on such an expedited basis and why UBS was refusing to provide the Former Employees with a copy of the Complaint. In a phone conference on April 27, 2021, counsel for UBS was unable to provide any basis for requiring an extremely expedited schedule for document production and depositions of the Former Employees. Indeed, any supposed emergency is belied by the fact that UBS and the Debtor have agreed to extend the Debtor's deadline to answer the Complaint to June 2, 2021. There simply is no emergency. Rather, UBS and the Debtor are merely working in concert to help the Debtor avoid stating publicly that it does not oppose the relief sought so they can continue to pretend there is an actual case or controversy entitling UBS to conduct discovery on the Former Employees.

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<sup>3</sup> On or around April 5 and 6, 2021, the Former Employees each received a Document Subpoena and a Deposition Subpoena, although these Subpoenas were not formally served at that time.



17. To that end, when asked whether the Debtor had taken a position on the relief sought in the Complaint, counsel for UBS misled counsel for the Former Employees by stating they did not know whether the Debtor opposed the relief but they thought it was unlikely the Debtor would oppose. At the time, UBS knew (but counsel for the Former Employees did not because they had not yet seen the Complaint) that the Debtor was *not* opposing UBS's request for injunctive relief. Contrary to what UBS's lawyers told counsel for the Former Employees on the phone, [REDACTED]

18. As a result of those discussions, counsel for UBS agreed to provide a copy of the Complaint to the Former Employees upon execution of a strict confidentiality agreement. Accordingly, counsel for UBS agreed to postpone the depositions originally noticed for April 20, 2021 until counsel for the Former Employees had an opportunity to review the Complaint following the execution of a confidentiality agreement.

19. In the evening of May 5, 2021 counsel for UBS emailed counsel for the Former Employees, promising to send the next day a draft of the proposed confidentiality agreement for the Former Employees to sign, and stating that deposition subpoenas would be re-issued for "the end of next week and the week of May 17." Late on Thursday evening, May 6, 2021, counsel for UBS sent a draft confidentiality agreement to counsel for the Former Employees. Among other things, the confidentiality agreement prohibits the Former Employees from discussing the Complaint with each other, even in the context of privileged communications with counsel.

20. In the evening on Friday May 7, 2021, less than 24 hours after delivering the draft confidentiality agreement, UBS filed newly issued subpoenas demanding production of documents by all five Former Employees no later than Tuesday May 11, 2021 at 9:00 a.m. and scheduling

depositions beginning on Thursday, May 13, 2021. Counsel for UBS served such subpoenas by email on counsel for the Former Employees in the afternoon of Saturday May 8, 2021.

21. Subsequently, counsel for the Former Employees asked Debtor's counsel if the Debtor opposed the preliminary injunction; Debtor's counsel never responded to that simple question. Absent such opposition, the Subpoenas would produce no evidence for use in support of any currently contemplated hearing or in opposition to any currently contemplated relief against any party. The Debtor is the *only* defendant to the Adversary Proceeding, and given that the only relief sought by UBS in the Complaint is to turn the unopposed TRO into a preliminary, and then a permanent, injunction, the Debtor appears to be unopposed to *all* the relief sought by UBS in the Complaint. This renders the entire proceeding moot.

22. In the afternoon of Tuesday May 11—less than 42 hours before UBS's unilaterally scheduled deposition of one of the Former Employees was set to begin—UBS finally provided counsel for the Former Employees a copy of the Complaint (subject to the confidentiality agreement). The following morning, before counsel for the Former Employees even had the opportunity to talk to their clients about the just-provided Complaint, counsel for UBS emailed counsel for the Former Employees threatening to file a motion to compel compliance with the Subpoenas.

### III. LEGAL STANDARD

23. A party may command a non-party to produce documents or testify at a deposition under Federal Rule of Civil Procedure 45. Fed. R. Civ. P. 45(a)(1)(A)(iii). However, this command is not without limits. The court for the district where compliance is required *must* quash or modify a subpoena that “(i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or

other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A) (emphasis added).

24. Additionally, a party issuing a subpoena under Federal Rule of Civil Procedure 45 “must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” The court “must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.” *MetroPCS v. Thomas*, 327 F.R.D. 600, 606 (N.D. Tex. 2018).

#### IV. ARGUMENT

##### A. **The Subpoenas must be quashed because they are invalid and premature.**

25. There is no live dispute between UBS and the Debtor. UBS and the Debtor were historically contentious but they have resolved their dispute via the Settlement Agreement. UBS and the Debtor have agreed to cooperate on the issues that are the subject of the instant litigation, including an expense-sharing agreement in pursuing the claims. *See supra* ¶ 13. In February 2021, the Debtor voluntarily provided UBS with information related to the subject of the Subpoenas, including an apparently privileged report that included interviews with the Debtor’s employees and in-house counsel. *See* Case No. 19-34054, Dkt. 2199 at ¶ 10.

26. With respect to relief in the Adversary Proceeding, UBS cannot seek any damages from the Debtor, [REDACTED] *See* Ex. 1 to the Settlement Motion, Settlement Agreement § 3(a). With respect to injunctive relief, while the Debtor’s failure to oppose the TRO, standing alone, would not be dispositive, the Debtor has indicated no opposition to the preliminary injunction or any permanent injunction on the same issues. In this Adversary Proceeding, the “defendant”: (i) has a formal cooperation agreement directly on topic with the “plaintiff”; (ii) cannot be liable for damages; (iii) has agreed to all

injunctive relief; and (iv) has not indicated any opposition to further injunctive relief. This goes beyond mere cooperation; this is friendly-party litigation.

27. That this is friendly-party litigation with no actual dispute between the two parties is evident from the fact that the Debtor and UBS reached a global settlement on March 30, 2021, and the very next day UBS filed the Complaint. The settlement included a covenant of cooperation, and UBS wasted no time at all invoking it.

28. The friendly-party nature of this litigation has two consequences. First, in the absence of an actual dispute, the Court has no jurisdiction. Second, it prejudices the rights of the alleged “non-parties” who are UBS’s—and potentially the Debtor’s—true targets.

29. As an initial matter, no actual controversy exists upon which this Court has jurisdiction to allow the Subpoenas. *See John Doe #1 v. Veneman*, 380 F.3d 807, 814 (5th Cir. 2004) (“Without an actual case or controversy, a federal court has no jurisdiction.”); *see also see Western Benefit Solutions, LLC v. Gustin*, Case No. 1:11-CV-00099-EJL-CWD, 2012 U.S. Dist. LEXIS 138860, at \*9 (D. Idaho Sept. 24, 2012) (“future compliance with the [third party subpoena] is moot given that this matter has settled.”).

30. Additionally, the Subpoenas are part of UBS’s litigation strategy designed to prejudice non-parties (including the Former Employees) and to circumvent the rules applicable to the normal litigation process.

31. First, *secrecy*: the majority of the pleadings are filed under seal, and the Former Employees only a few days ago obtained the Complaint, subject to a restrictive confidentiality agreement. The Former Employees have not even seen the remaining pleadings, including the Injunction Motion and attached exhibits that are the alleged basis for seeking discovery in support of a preliminary injunction.

32. Second, *urgency*: while the alleged reason for the discovery is to obtain evidence in support of a preliminary injunction, the requested discovery relates to the underlying transaction that occurred in 2017, and not any current activities of any party. Despite this, UBS seeks the Former Employees' discovery on shortened notice based on false urgency: the preliminary injunction appears to be unopposed, to be ruled on at a hearing the setting of which the plaintiff has yet to even request.

33. Third, *denial of procedural rights*: by positioning its actual adversaries as non-parties, UBS is able to engage in one-sided litigation, denying its adversaries the right to see all pleadings, to see the allegations against them (rather than just generally knowing the claims relate to a past transaction), to file motions to dismiss those allegations prior to discovery proceeding, to propound discovery of their own, and to see the documents and deposition testimony of other parties and non-parties. If the Former Employees were true non-parties, this would not matter. However: (i) the preservation notices; (ii) the express terms of the Settlement Agreement mentioning potential claims against the Former Employees, and (iii) the fact that [REDACTED]

[REDACTED]

[REDACTED] all indicate otherwise.

34. Without seeing the Injunction Motion or the supporting documents filed under seal in the Adversary Proceeding, the Former Employees may be prejudiced because there may be allegations in the Adversary Proceeding against the Former Employees, similar to those made in the preservation notices and Settlement Agreement, to which they would have a right to defend as parties. Without seeing the pleadings filed in the Adversary Proceeding, the Former Employees cannot: (i) adequately determine the relevance of the topics on which they are being compelled to testify or the documents they are being compelled to produce; (ii) adequately prepare for and



defend any deposition in which they are compelled to testify; or (iii) determine whether they have interests sufficient to support intervention in the Adversary Proceeding. *See Texas v. United States*, 805 F.3d 653, 658 (5th Cir. 2015) (discussing cases and noting “our cases reveal that the [Rule 24(a)(2) intervention of right] inquiry turns on whether the intervenor has a stake in the matter that goes beyond a generalized preference that the case come out a certain way.”).

**B. The Subpoenas must be quashed because they seek irrelevant information and impose an undue burden on the Former Employees.**

35. In addition, Federal Rule of Civil Procedure 45 provides that the Court “*must* quash or modify a subpoena that: . . . (iv) subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A)(iv) (emphasis added).

36. To determine whether the subpoena presents an undue burden, courts consider the following factors: “(1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed. Further, if the person to whom the document request is made is a non-party, the court may also consider the expense and inconvenience to the non-party.” *See Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). Moreover, “a subpoena presents an undue burden when the subpoena is facially overbroad.” *Id.*; *see also MetroPCS*, 327 F.R.D. at 610.

37. Here, the balancing of these factors favors quashing the Subpoenas.

38. *First*, there is a mismatch between the Subpoenas and the actual injunction claims before the Court. The Deposition Subpoena seeks information about historical, rather than current, transactions, while the requested injunction can only address current, on-going transactions. The deposition topics seek information about the formation, organization, and direction of Sentinel, when such formation presumably happened years ago. They further seek information related to a

2017 transfer of assets from certain Debtor-affiliated funds to Sentinel, including a 2018 memo related to the same. The subpoenas end with Topic 7 seeking, without time limitation, information on all assets transferred from the Debtor or certain of its affiliates to Sentinel. None of these topics, save perhaps No. 7, seeks information about *current* transfers that may be the subject of injunctive relief. Rather, they seek information related to *prior* transfers, which only can be solved by a claim against the transferors or transferees, none of whom are parties to this litigation (and also, notably, are not the Former Employees). On its face, the relevance of the topics listed in Attachment A to the Document Subpoenas to any preliminary injunction hearing is not apparent.

39. *Second*, assuming *arguendo*, that the Subpoenas seek information subject to current transfers which may be the subject of an injunction, the TRO only seeks to halt the *Debtor* from further transferring assets to Sentinel. Presumably, the preliminary injunction would do the same. It is undisputed that the Former Employees are unable to effectuate transfers from the Debtor to anyone at this time, so they cannot possibly be the subject of relevant discovery. Additionally, the preliminary injunction apparently is *uncontested*, leading to the query of why *any* discovery is required in this Adversary Proceeding.

40. *Third*, to the extent there are any current transactions, UBS can seek (and apparently has been receiving on a voluntary basis) this information directly from the Debtor without need for an adversary proceeding. Most, if not all, of the categories of documents identified in the Deposition Subpoenas and Document Subpoenas are actually in the Debtor's possession and not the proper subject of discovery from a nonparty. *See Scrum Alliance, Inc. v. Scrum, Inc.*, Civ. No. 4:20-cv-00227, 2020 U.S. Dist. LEXIS 209352, at \*7 (E.D. Tex. Nov. 9, 2020) ("Instead of burdening nonparties, Plaintiff should obtain the information directly from the source."). For example, upon termination by the Debtor, the Former Employees returned all Debtor property,

including any laptops or equipment, and thus have no possession, custody, or control over these documents (including documents identified in the topics listed in Attachment A to the Notices of Deposition). See *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 821 (5th Cir. 2004) (limiting document request to documents in an individual’s actual “possession, custody, or control” and barring the request for documents to which one has “access” by virtue of their position with an employer).

41. *Fourth*, because the Former Employees do not know the scope of the injunctive relief requested in the Adversary Proceeding, the Former Employees may not fully object to the relevance of the documents requested in the Document Subpoenas or the topics asserted in the Deposition Subpoenas, or defend themselves in any deposition. The Notice of Deposition attached to each of the Deposition Subpoenas notes that each Former Employee will be deposed *in connection with* the Injunction Motion against the Debtor *and* a number of additional topics set forth in Attachment A.<sup>4</sup> The Former Employees should be able to see the entire record to enable them to adequately assert their objections.

42. *Fifth*, whether a party’s discovery requests are relevant “turns on whether they are ‘reasonably calculated’ to lead to evidence admissible as to [its] claims” or defenses against its opponent *in the underlying case*. *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 449(N.D. Tex. 2015) (emphasis added). Here, the Debtor already has settled its disputes with UBS. There apparently will be no contested preliminary injunction hearing. Nonetheless, the document requests and topics attached to the Deposition Subpoenas cast a net far wider than that needed from nonparties for any uncontested preliminary injunction against the Debtor. Therefore, UBS’s

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<sup>4</sup> These topics are nearly identical to the document requests outlined in the Document Subpoenas and, as such, are addressed together in this Motion to Quash.

need for any documents or testimony from the Former Employees related to the underlying preliminary injunction is moot. *John Doe #1 v. Veneman*, 380 F.3d 807, 814 (5th Cir. 2004) (“Generally settlement of a dispute between two parties renders moot any case between them growing out of that dispute.” (quoting *ITT Rayonier Inc. v. United States*, 651 F.2d 343, 345 (5th Cir. 1981))).

43. *Sixth*, the Subpoenas violate the rule against pre-litigation discovery. The document requests and deposition topics appear to be aimed at gathering information to support UBS’s and the Debtor’s separate, future claims against numerous potential parties, including perhaps the Former Employees—as explicitly set out in the Settlement Agreement. As an example, the documents requested and topics listed in the Document Subpoenas include the formation and organizational structure of Sentinel, which is not a party to the Adversary Proceeding, as well as the purpose, terms, amendments, and communications relating to various documents created in 2017 and 2018. *See MetroPCS*, 327 F.R.D. at 610 (court retains discretion to deny subpoena when the request “exceeds the bounds of fair discovery”). This information is related to ***potential future claims or actions*** that UBS may bring against the Former Employees or other nonparties to the Adversary Proceeding, as noted in UBS’s preservation notices and the Settlement Agreement, not the underlying preliminary injunction.<sup>5</sup> These concerns are legitimate, particularly since this Court has acknowledged that “[t]here may be other lawsuits that mushroom” from what is alleged in the Complaint, but at this time, this Adversary Proceeding is solely against UBS and the Debtor. Hr’g Tr. on Mot. for Protective Order 36:2-4. Seeking documents and pre-litigation depositions from the Former Employees ***for potential future claims***—under the guise of discovery in connection

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<sup>5</sup> The claims asserted in the preservation notice and Settlement Agreement relate to alleged asset transfers from and to entities that are non-debtors and are not parties to the Adversary Proceeding. Any such claims would fall well outside this Court’s jurisdiction.

with a preliminary injunction hearing—is an abuse of the discovery process and otherwise reaches beyond the bounds of permissible discovery here. *See MetroPCS*, 327 F.R.D. at 627-28 (granting motion to quash non-party subpoena because the record did not support a determination that the deposition testimony would be relevant to support claims against the defendants in the instant action). Simply put, UBS cannot use these Subpoenas to get around the general bar against pre-litigation discovery, only permitted in limited circumstances under Federal Rule of Civil Procedure 27. *See, e.g., In re Ramirez*, 241 F.R.D. 595, 596 (W.D. Tex. 2006) (Rule 27 may not be used as a vehicle for discovery prior to filing a complaint; it is only available in special circumstances to preserve known testimony that could otherwise be lost).

44. *Seventh*, the burden imposed on the five Former Employees by producing documents and taking their depositions on the same topics outweighs UBS's need for all of these documents and depositions. UBS has the burden "not to make unreasonably cumulative or duplicative requests such that the burden or expense of complying with the requests outweighs their likely benefit." *See MetroPCS*, 327 F.R.D. at 614. Yet, the topics contained in the Deposition Subpoenas are almost identical among the five nonparty Former Employees, making no effort to tailor topics to each individual or avoid duplication. Further, many of these topics appear to be those better suited for a corporate representative of the Debtor and/or Sentinel. None of the Former Employees is a corporate representative of the Debtor or Sentinel, nor should the Former Employees be compelled to speak on these topics as if they are.

45. Considering: (i) the irrelevance of the Subpoenas to the relief sought in the preliminary injunction; (ii) the use of the Subpoenas as a pretext to obtain information related to other potential claims; (iii) the ability of UBS to seek the documents from the Debtor; and (iv) the



undue burden imposed on the Former Employees in producing documents and testifying on such broad topics without any reasonable notice, the Subpoenas must be quashed in their entirety.

**C. In the alternative, all discovery in the Adversary Proceeding should be stayed pending approval of the Settlement Agreement.**

46. It is clear that the entire Adversary Proceeding is a pretext to obtain pre-litigation discovery against the Former Employees. But if the Subpoenas are not quashed, then—at a minimum—all discovery should be stayed pending approval of the Settlement Agreement between the Debtor and UBS. Given the Debtor’s apparent consent to the relief requested in the Adversary Proceeding and its commitment under the Settlement Agreement to cooperate with UBS, the Debtor is almost certain to abide by the preliminary injunction. Because Federal Rule of Civil Procedure 1 aims to secure a “just, speedy, and *inexpensive* determination of every action,” the nonparty Former Employees should not be forced to bear the cost and potential prejudice of depositions that may soon be made irrelevant by approval of the Settlement Agreement. Fed. R. Civ. P. 1 (emphasis added). If for some reason the Settlement Agreement is not approved and the Debtor ends up challenging the injunctive relief sought in the Adversary Proceeding (which would then create a controversy that does not currently exist), the relevance and need for the Subpoenas can be reevaluated at that time.

**D. Due to her legal unavailability, the Subpoenas against Ms. Lucas should be quashed in their entirety.**

47. Finally, Ms. Lucas is legally unavailable under Federal Rule of Evidence 804(a)(4), as she is currently on disability and on maternity leave following her own hospital stay after recently welcoming twins, who required a stay in the newborn intensive care unit. *See* Fed. R. Evid. 804(a)(4) (providing that a witness is unavailable when they cannot be present to testify because of a then-existing physical illness). “[N]on-parties have greater protections from discovery,” and the “burdens on non-parties will impact the proportionality analysis.” *MetroPCS*,

327 F.R.D. at 610. In this case, the burden on Ms. Lucas will not only be impracticable, but impossible in light of her disability and leave. Although UBS has been asked to voluntarily withdraw its Subpoenas as to Ms. Lucas, it has refused to do so. Indeed, at a meet-and-confer regarding the Subpoenas on May 12, 2021, counsel for UBS questioned whether maternity leave constituted a “legitimate disability” and would only agree to look into relieving Ms. Lucas of any obligation to appear at a deposition if they conclude that being a recent mother of twins who had to be hospitalized in the NICU qualifies in their view as a “legitimate disability.” As such, Ms. Lucas seeks the protections of this Court when her disability prevents her from reviewing documents in response to the Document Subpoena, let alone preparing for and attending a deposition as sought in the Deposition Subpoena.

48. Given that the information sought from Ms. Lucas is more readily available from the Debtor, UBS has other options for obtaining such information. Instead of burdening Ms. Lucas, UBS may obtain the information from the Debtor. *See Scrum Alliance*, Civ. No. 4:20-cv-00227, 2 at \*7.

## V. CONCLUSION AND PRAYER

49. The Former Employees respectfully request that this Court grant this Motion to Quash UBS’s Subpoenas to Produce Documents and Subpoenas to Testify at a Deposition that command the testimony of the Former Employees in their entirety. In the alternative, the Former Employees respectfully request that discovery be stayed pending approval of the Settlement Agreement.

Dated: May 15, 2021

Respectfully submitted,

/s/ Frances A. Smith

**ROSS & SMITH, PC**

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#### **CERTIFICATE OF CONFERENCE**

In compliance with L.B.R. 7007-1(b), I certify that a meet-and-confer was conducted with UBS counsel on May 12, 2021 regarding the subpoenas. At that conference, counsel for the Former Employees informed counsel for UBS that a decision on whether to file the motion to quash would be made and conveyed to them by the end of the day on May 15, 2021. To that end, counsel for the Former Employees emailed counsel for UBS before filing the motion to quash, informing them that the motion was being filed. Counsel for the Former Employees understands that UBS opposes the motion.

/s/ Frances A. Smith

Frances A. Smith

#### **CERTIFICATE OF SERVICE**

I certify that on this 15th day of May 2021, a true and correct copy of the foregoing was served via ECF-Electronic Notice on all parties receiving ECF-Notice in this case.

/s/ Frances A. Smith

Frances A. Smith

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 10**

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein



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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit



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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073



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### *Counsel for the Debtor and Debtor-in-Possession*

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

) ) ) ) ) ) )

## Chapter 11

Case No. 19-34054-sgj11

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**DEBTOR'S WITNESS AND EXHIBIT LIST WITH RESPECT  
TO EVIDENTIARY HEARING TO BE HELD ON MAY 21, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following witness and exhibit list with respect to *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith*

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

[Docket No. 2199], which the Court has set for hearing at 9:00 a.m. (Central Time) on May 21, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

**A. Witnesses:**

1. James P. Seery, Jr.;
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

**B. Exhibits:**

Letter	Exhibit	Offered	Admitted
1.	Bar Date Order [Docket No. 488]		
2.	Proof of Claim No. 190 filed by UBS Securities LLC [Docket No. 1184-1]		
3.	Proof of Claim No. 191 filed by UBS AG, London Branch [Docket No. 1346-2]		
4.	UBS’s Omnibus Response to Objections to the UBS Proofs of Claim [Docket No. 1250] <b>(FILED UNDER SEAL)</b>		
5.	Declaration of Elissa A. Wagner in Support of Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch [Docket No. 1185]		
6.	March 14, 2008 Engagement Letter [Docket Nos. 644-3, 1237-5]		
7.	March 14, 2008 Cash Warehouse Agreement [Docket Nos. 644-4, 1189-19, 1237-4]		
8.	March 14, 2008 Synthetic Warehouse Agreement [Docket Nos. 644-5, 1189-21, 1237-6].		
9.	March 20, 2009 Termination, Settlement and Release Agreement [Docket Nos. 1189-25, 1237-10]. <b>(FILED UNDER SEAL)</b>		
10.	January 27, 2009 Letter from Highland Financial Partners, L.P. to Investors [Docket No. 1346-9] <b>(FILED UNDER SEAL)</b>		

Letter	Exhibit	Offered	Admitted
11.	March 16, 2009 Board Minutes of Highland Financial Partners, L.P. [Docket No. 1346-9] <b>(FILED UNDER SEAL)</b>		
12.	June 2015 email chain between counsel for UBS, counsel for Highland Crusader Offshore Partners, L.P., and counsel for Highland Crusader Holding Corporation [Docket No. 1254]. <b>(FILED UNDER SEAL)</b>		
13.	June 2015 Settlement Agreement between UBS, Highland Crusader Offshore Partners, L.P., and Highland Crusader Holding Corporation [Docket Nos. 723, 1251] <b>(FILED UNDER SEAL)</b>		
14.	June 2015 email chain between counsel for UBS and counsel for Highland Credit Strategies Master Fund, L.P. [Docket No. 1184-14] <b>(FILED UNDER SEAL)</b>		
15.	June 2015 Settlement Agreement between UBS and Highland Credit Strategies Master Fund, L.P. [Docket Nos. 723 and 1252] <b>(FILED UNDER SEAL)</b>		
16.	<i>UBS v. Highland Capital Mgmt., L.P.</i> , 2010 NY Slip Op 1436 (N.Y. App. Div.) [Docket No. 688-1]		
17.	<i>UBS v. Highland Capital Mgmt., L.P.</i> , 86 A.D.3d 469 (N.Y. App. Div. 2011) [Docket No. 688-2]		
18.	<i>UBS v. Highland Capital Mgmt., L.P.</i> , 93 A.D.3d 489 (N.Y. App. Div. 2012) [Docket No. 688-3]		
19.	<i>UBS v. Highland Capital Mgmt., L.P.</i> , 159 A.D.3d 512 (N.Y. App. Div. 2018) [Docket No. 1184-9]		
20.	NY D.I. 84: Judgment entered on February 22, 2010 in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 1184-5]		
21.	NY D.I. 242: May 11, 2011 Second Amended Complaint Against Non-Debtor Defendants in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 723] <b>(FILED UNDER SEAL)</b>		
22.	Excerpt from transcript of August 30, 2012 deposition of Clifford Stoops taken by UBS in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 1403]		

Letter	Exhibit	Offered	Admitted
23.	Excerpt from March 8, 2013 report of a UBS designated expert witness (L. Dudney) in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 1255]. <b>(FILED UNDER SEAL)</b>		
24.	NY D.I. 315: UBS's Memorandum of Law in Support of Order to Show Cause and Temporary Restraining Order (Excerpt Only) in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 723] <b>(FILED UNDER SEAL)</b>		
25.	NY D.I. 320: Note of Issue filed on September 3, 2013 filed by UBS in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 688-10]		
26.	NY D.I. 411: March 13, 2017 Decision in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 688-4]		
27.	Excerpt from <i>Defendants' Memorandum of Law in Opposition to Plaintiffs' Omnibus Motion in Limine</i> filed on June 13, 2017 in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 1184-13]		
28.	NY D.I. 472: UBS's Pre-Trial Brief in Support of Bifurcation in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 688-6]		
29.	NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) [Docket No. 688-5]		
30.	June 28, 2010 Complaint, <i>UBS v. Highland Capital Management, L.P.</i> , Index No. 650752/2010 (N.Y. Sup. Ct.) [Docket Nos. 644-7, 723, 1184-10] <b>(REDACTED)</b>		
31.	March 22, 2020 New York Administrative Order AO/78/20 [Docket No. 688-11]		
32.	Order Denying UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action [Docket No. 765]		
33.	Shira A. Scheindlin, U.S.D.J. (Ret.), <i>Why Not Arbitrate? Breaking the Backlog in State and Federal Courts</i> , 263 N.Y. L.J. 94 (May 15, 2020) [Docket No. 688-7]		



Letter	Exhibit	Offered	Admitted
34.	Law360 Article Excerpt, <i>Coronavirus: The Latest Court Closures and Restrictions</i> (May 26, 2020) [Docket No. 688-12]		
35.	December 2, 2019 Email from Debtor's Pre-Petition Counsel to Counsel for UBS [Docket No. 688-8]		
36.	March 6, 2020 Email Chain Between the Debtor's Bankruptcy Counsel and Counsel for UBS [Docket No. 688-9]		
37.	Excerpts from transcript of October 6, 2020 status conference in the Bankruptcy Case [Docket Nos. 1184-19, 1403]		
38.	October 2, 2020 Email Chain between R. Feinstein and A. Clubok [Docket No. 1345-10]		
39.	October 8, 2020 Responses and Objections to UBS's First Requests for Production [Docket No. 1413-1]		
40.	October 30, 2020 Email Chain between G. Demo and S. Tomkowiak [Docket No. 1345-10]		
41.	Declaration of John A. Morris in Support of Debtor's Objection to Patrick Hagaman Daugherty's Rule 3018 Motion [Docket Nos. 1350, 1423-1]		
42.	HERA Amended and Restated Limited Liability Company Agreement [Docket No. 1423-2]		
43.	HERA Second Amended and Restated Limited Liability Company Agreement [Docket No. 1423-3]		
44.	1 <sup>st</sup> Amendment to HERA Second Amended and Restated Limited Liability Company Agreement [Docket No. 1423-4]		
45.	2 <sup>nd</sup> Amendment to HERA Second Amended and Restated Limited Liability Company Agreement [Docket No. 1423-5]		
46.	3 <sup>rd</sup> Amendment to HERA Second Amended and Restated Limited Liability Company Agreement [Docket No. 1423-6]		
47.	Board Resolutions Approving Transfer and 3 <sup>rd</sup> Amendment to HERA Second Amended and Restated Limited Liability Company Agreement [Docket No. 1423-7]		
48.	HERA Member Consents Approving Transfer and 3 <sup>rd</sup> Amendment to HERA Second Amended and Restated Limited Liability Company Agreement [Docket No. 1423-8]		



Letter	Exhibit	Offered	Admitted
49.	Highland Capital Management, L.P. 2004 K-1 [Docket No. 1423-9]		
50.	Highland Capital Management, L.P. 2005 K-1 [Docket No. 1423-10]		
51.	Highland Capital Management, L.P. 2006 K-1 [Docket No. 1423-11]		
52.	Highland Capital Management, L.P. 2007 K-1 [Docket No. 1423-12]		
53.	Highland Capital Management, L.P. 2008 K-1 [Docket No. 1423-13]		
54.	Highland Capital Management, L.P. 2009 K-1 [Docket No. 1423-14]		
55.	Highland Capital Management, L.P. 2010 K-1 [Docket No. 1423-15]		
56.	Highland Capital Management, L.P. 2011 K-1 [Docket No. 1423-16]		
57.	Transcript of Deposition Patrick H. Daugherty (June 14, 2013) [Docket No. 1423-17]		
58.	Verified Complaint ( <i>Daugherty v. HCMLP, et al.</i> , C.A. No.: 2017-0488-SG, Court of Chancery, Delaware) [Docket No. 1423-18]		
59.	Motion to Dismiss Verified Complaint ( <i>Daugherty v. HCMLP, et al.</i> , C.A. No.: 2017-0488-SG, Court of Chancery, Delaware) [Docket No. 1423-19]		
60.	Opening Brief in Support of Motion to Dismiss Verified Complaint [Docket No. 1423-20]		
61.	Patrick Daugherty's Answering Brief in Opposition to Defendants' Motion to Dismiss [Docket No. 1423-21]		
62.	Order Granting, in Part, and Denying, in Part, Defendants' Motion to Dismiss [Docket No. 1423-22]		
63.	Secretary's Certificate dated August 4, 2009 [Docket No. 1423-23]		
64.	Signed lists of officers of Strand Advisors Inc. for years 2006-2011 [Docket No. 1423-24]		

Letter	Exhibit	Offered	Admitted
65.	Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P., dated November 2014 [Docket No. 2308-1] (UBSDUG000155 - UBSDUG000229)		
66.	Confidential Private Offering Memorandum of Highland Multi Strategy Credit Fund, Ltd., dated November 2014 [Docket No. 2308-2] (UBSDUG000230 - UBSDUG000277)		
67.	Supplement to Confidential Private Offering Memorandum of Highland Multi Strategy Credit Fund, Ltd. (UBSDUG000153 - UBSDUG000154)		
68.	Multi-Strat Organizational Chart [Docket No. 2308-3]		
69.	Third Amended and Restated Investment Management Agreement, by and among Highland Multi Strategy Credit Fund, Ltd., Highland Multi Strategy Credit Fund, L.P., and Highland Capital Management, L.P., dated November 1, 2013 [Docket No. 2308-4] (UBSDUG000088 - UBSDUG000098)		
70.	Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy Credit Fund, L.P., dated November 1, 2014 [Docket No. 2308-5] (UBSDUG000099 - UBSDUG000152)		
71.	Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, Ltd., as adopted on 1 November 2014 [Docket No. 2308-6] (UBSDUG000001 - UBSDUG000042)		
72.	Dugaboy Subscription Agreement [Docket No. 2308-7] (UBSDUG000426 - UBSDUG000461) (REDACTED)		
73.	May 20, 2020 Settlement Agreement [Docket No. 2308-8] (UBSDUG000395 - UBSDUG000425) (REDACTED)		
74.	Any document entered or filed in the Bankruptcy Case, including any exhibits thereto		
75.	All exhibits necessary for impeachment and/or rebuttal purposes		
76.	All exhibits identified by or offered by any other party at the Hearing		

Dated: May 18, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 2405397)  
Gregory V. Demo (NY Bar 5371992)  
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-and-

**HAYWARD PLLC**

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*Counsel for Highland Capital Management, L.P.*

## **EXHIBIT 1**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed March 2, 2020

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

) Re: Docket No. 421

**ORDER (I) ESTABLISHING BAR DATES FOR FILING  
CLAIMS AND (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF**

This matter coming before the Court on the *Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims and (ii) Approving the Form and Manner of Notice Thereof* (the "Motion"),<sup>2</sup> filed by the above-captioned debtor (the "Debtor"); the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing, if any, before the Court (the "Hearing"); the Court finding that (i) the Court has

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

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.



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jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (iii) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. As used herein, (a) the term “claim” has the meaning given to it in section 101(5) of the Bankruptcy Code, (b) the term “entity” has the meaning given to it in section 101(15) of the Bankruptcy Code, and (c) the term “governmental units” has the meaning given to it in section 101(27) of the Bankruptcy Code.
3. The forms of the Bar Date Notice, the Publication Notice, the Proof of Claim Form, and the manner of providing notice of the Bar Dates proposed in the Motion, are approved in all respects. The form and manner of notice of the Bar Dates approved herein satisfy the notice requirements of the Bankruptcy Code and the Bankruptcy Rules. As such, the Debtor is authorized to serve the Bar Dates Notice Package in the manner described below.
4. The General Bar Date. Except as described below, all entities holding claims against the Debtor that arose before October 16, 2019 (the “Petition Date”) shall file proofs of claim by the General Bar Date of **April 8, 2020 at 5:00 p.m. Central Time**. The General Bar Date applies to **all types of claims** against the Debtor that **arose prior to the Petition Date**, regardless of whether the claim would be legally classified as administrative, secured, priority (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4), or 507(a)(5) of the Bankruptcy Code), or unsecured nonpriority claims.

5. The Fund Investor Bar Date. Except as described below, all investors in funds managed by the Debtor (the “Fund Investors”) holding claims against the Debtor that arose before Petition Date shall file proofs of claim by the General Bar Date of **April 23, 2020 at 5:00 p.m. Central Time**. The Fund Investor Bar Date applies to **all types of claims** held by Fund Investors against the Debtor that **arose prior to the Petition Date**, regardless of whether the claim would be legally classified as administrative, secured, priority (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4), or 507(a)(5) of the Bankruptcy Code), or unsecured nonpriority claims.

6. The Governmental Bar Date. Pursuant to section 502(b)(9) of the Bankruptcy Code, except as described below, all governmental units holding claims (whether secured, priority, or unsecured nonpriority) against the Debtor that arose before the Petition Date shall file proofs of claim by the Governmental Bar Date of April 13, 2020 at 5:00 p.m. Central Time.

7. The Rejection Bar Date. Any entity whose claims arise out of the Court-approved rejection of an executory contract or unexpired lease in accordance with section 365 of the Bankruptcy Code or any other order of the Court in this case, the Rejection Bar Date for such a claim will be the later of (a) the General Bar Date; (b) for executory contracts and unexpired leases rejected pursuant to a rejection motion or notice, twenty-one (21) days after the later of (i) the date of the rejection motion or notice, (ii) the date of the surrender of the leased property to the affected lessor, and (iii) any alternative date provided in the rejection motion or notice; or (c) any other date set by an order of the Court. The later of these dates is referred to in this order as the “Rejection Bar Date.”

8. The Amended Schedules Bar Date. If the Debtor amends or supplements the Schedules (such Schedules, the “Amended Schedules”) after the Service Date, the Debtor shall

give notice pursuant to Local Rule 1009-1(b) of any Amended Schedules to the holders of claims affected thereby, including notice of the Amended Schedules Bar Date to file proofs of claim in response to the amendment or supplement to the Schedules. If the Debtor amends or supplements its Schedules to reduce the undisputed, non-contingent, and liquidated amount, to change the nature, classification, or characterization of a claim against the Debtor, or to add a new claim in the Amended Schedules, any affected entities that dispute such changes must, by the Amended Schedules Bar Date, file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim in accordance with the procedures described herein. The Amended Schedules Bar Date shall be the later of: (a) the General Bar Date; and (b) 30 days after the date that the notice of the Amended Schedules is served on the entity. The later of these dates is referred to in this order as the “Amended Schedules Bar Date.”

9. Subject to the terms described in paragraphs 4, 5, 6, and 7 for holders of claims subject to the General Bar Date, Fund Investor Bar Date, Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities must file proofs of claim on or before the General Bar Date:

- a. any entity (i) whose prepetition claim against the Debtor is not listed in the Debtor’s Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any distribution in any of this case; and
- b. any entity whose prepetition claim against the Debtor is included within the Debtor’s Schedules but believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount different from the classification or amount identified in the Schedules.

10. The following entities, whose claims otherwise would be subject to the General Bar Date, the Fund Investor Bar Date or the Governmental Bar Date, need not file proofs of claim in this case:

- a. any entity that already has filed a signed proof of claim against the Debtor in a form substantially similar to Official Bankruptcy Form No. 410 with: (i) the Clerk of the Bankruptcy Court for the District of Delaware and/or the Clerk of the Bankruptcy Court for the Northern District of Texas (Dallas) (ii) the Debtor's claims and noticing agent, Kurtzman Carson Consultants LLC (the "Claims Agent");
- b. any entity (i) whose claim against the Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification, and amount of its claim as identified in the Schedules or Amended Schedules; and
- c. any entity whose claim against the Debtor previously has been allowed by, or paid pursuant to, an order of the Court.

11. Parties asserting claims against the Debtor that accrued before the Petition Date shall use either (a) the modified proof of claim form provided by the Debtor, as described in the Motion, (b) Official Bankruptcy Form No. 410, or (c) a form substantially similar to Official Bankruptcy Form No. 410 (each a "Proof of Claim Form").

12. The filing of a Proof of Claim Form shall be deemed to satisfy the procedural requirements for the assertion of administrative priority claims under section 503(b)(9) of the Bankruptcy Code.

13. The following procedures for the filing of a Proof of Claim Form (the "Form") shall apply:

- a. Entities shall file each Proof of Claim Form so they are received on or before the applicable Bar Dates either
  1. electronically with the Claims Agent via the interface available at [www.kccllc.net/HCMLP](http://www.kccllc.net/HCMLP);
  - or
  2. via U.S. mail or other hand delivery method to the following address:  
HCMLP Claims Processing Center  
c/o KCC

222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

- b. Forms will be deemed filed when actually received by the Debtor's Claims Agent. Forms may not be delivered via facsimile or electronic mail transmission.
- c. Forms will be collected, docketed, and maintained by the Claims Agent.
- d. All Forms shall be signed by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The Form shall be written in English and be denominated in United States currency. Claimants should attach to the completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

14. Any entity holding an interest in the Debtor (an "Interest Holder"), which interest is based exclusively upon the ownership of: (a) common or preferred stock in the Debtor; or (b) warrants or rights to purchase, sell, or subscribe to such a security or interest of the Debtor (any such security or interest being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtor that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance, or distribution of the Interest, shall file a claim by the applicable Bar Dates, unless another exception identified in this order applies.

15. The Debtor shall retain the right to: (a) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification, or otherwise; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (c) otherwise amend or supplement the Schedules. If the Debtor subsequently amends or supplements the Schedules, the Debtor shall give notice of any Amended Schedules to the holders of claims affected thereby, including notice of the Amended Schedules



Bar Date to file proofs of claim in response to the Amended Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtor from objecting to any claim, whether scheduled or filed, on any grounds.

16. Any entity that is required to file a Proof of Claim Form but fails to so properly by the applicable Bar Date, shall not be treated as a creditor with respect to such claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in this case.

17. No later than three (3) business days after the entry of this Order, the Debtor shall serve the Bar Dates Notice Package, including a copy of the Bar Date Notice attached hereto as **Exhibit 1**, and a Proof of Claim Form, either (1) by first-class mail, postage prepaid (unless specified otherwise herein) means on:

- a. all known holders of claims or potential claims, including all entities listed in the Schedules as potentially holding claims;
- b. Fund Investors by electronic means through fund administrators; provided further that the Bar Dates Notice Package to Fund Investors shall also include a cover letter in the form attached hereto as **Exhibit 2**.
- c. the Office of the United States Trustee for the Northern District of Texas (Dallas);
- d. counsel to the Committee of Unsecured Creditors;
- e. all parties that have requested notice in this case pursuant to Bankruptcy Rule 2002 as of the date of the entry of the Bar Dates Order;
- f. all counterparties to executory contracts and unexpired leases of the Debtor;
- g. all parties to litigation with the Debtor;
- h. the District Director of Internal Revenue for the Northern District of Texas (Dallas) and all other taxing authorities for the jurisdictions in which the Debtor conducts business;
- i. all relevant state attorneys general;
- j. all holders of record of any Interests in any of the Debtor as of the date of the Bar Date Order (although copies of the Proof of Claim Form will not be provided to them); and

k. such additional persons and entities as deemed appropriate by the Debtor.

18. The Proof of Claim Form mailed to such entities will indicate how the Debtor has scheduled the creditor's claim in the Schedules, including: (a) the identity of the Debtor against which the entity's claim is scheduled; (b) the amount of the claim, if any; (c) whether the claim is listed as disputed, contingent, or unliquidated; and (d) whether the claim is listed as a secured, unsecured non-priority, or unsecured priority claim. The Proof of Claim Form will also include a section for 503(b)(9) claims. Any entity that relies on the information in the Schedules will bear responsibility for determining that its claim is accurately listed therein.

19. Pursuant to Bankruptcy Rules 2002(l) and 9008, as soon as practicable after the Service Date, the Debtor shall publish notice of the Bar Dates substantially in the form attached to the Motion as Exhibit B (the "Publication Notice") two (2) times each in (a) the national edition of either *The New York Times* or *The Wall Street Journal* and (b) *The Dallas Morning News* as a means to provide notice of the Bar Dates to such unknown potential claimants.

20. The Debtor and the Claims Agent are authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this order.

21. The entry of this order is without prejudice to the right of the Debtor to seek a further order of this Court fixing a date by which holders of claims or interests not subject to the Bar Dates established herein shall file proofs of claim or interest.

22. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this order.

**### END OF ORDER ###**

## **EXHIBIT 1**

**[Bar Date Notice]**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)

**NOTICE OF BAR DATES FOR FILING CLAIMS**

**A HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTOR SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.**

**TO ALL KNOWN CREDITORS OF THE ABOVE-CAPTIONED ENTITY (THE “DEBTOR”):**

On [\_\_\_\_], 2020, the United States Bankruptcy Court for the Northern District of Texas (Dallas) (the “Court”) entered an order (the “Bar Date Order”) in the above-captioned chapter 11 case establishing certain claims bar dates.

Pursuant to the Bar Date Order, the Court has established April 8, 2020 at 5:00 p.m., Central Time as the general bar date (the “General Bar Date”) for filing claims in the Debtor’s chapter 11 case.

As used in this Notice, the term “entity” has the meaning given to it in section 101(15) of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), and includes all persons, estates, trusts, governmental units, and the United States Trustee. In addition, the terms “persons” and “governmental units” are defined as set forth in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.

As used in this notice, the term “claim” means, as to or against the Debtor and in accordance with section 101(5) of the Bankruptcy Code: (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

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

### THE BAR DATES

The Bar Date Order established the following bar dates for filing proofs of claim in this case (collectively, the “Bar Dates”):

- a. The General Bar Date. Pursuant to the Bar Date Order, except as described below, all entities holding claims, whether administrative, secured, priority (including, without limitation, claims entitled to priority under sections 503(b)(9), 507(a)(4), or 507(a)(5) of the Bankruptcy Code), or unsecured nonpriority claims against the Debtor that arose before October 16, 2019 (the “Petition Date”) must file proofs of claim by the General Bar Date of **April 8, 2020 at 5:00 p.m. Central Time.**
- b. The Fund Investor Bar Date. Pursuant to the Bar Date Order, all investors in funds managed by the Debtor (the “Fund Investors”) holding claims (whether secured, unsecured, priority, or unsecured nonpriority) against the Debtor that arose before the Petition Date shall file proofs of claim by the Fund Investor Bar Date of **April 23, 2020 at 5:00 p.m. Central Time.**
- c. The Governmental Bar Date. Pursuant to the Bar Date Order, except as described below, all governmental units holding claims (whether secured, unsecured, priority, or unsecured nonpriority) against the Debtor that arose before the Petition Date must file proofs of claim by the Governmental Bar Date of **[\_\_\_\_], 2020 at 5:00 p.m. Central Time.**
- d. The Rejection Bar Date. Any entity whose claims arise out of the Court-approved rejection of an executory contract or unexpired lease, or as authorized by any order of the Court in this case, the Rejection Bar Date for such a claim will be the later of (a) the General Bar Date; (b) for executory contracts and unexpired leases rejected pursuant to a rejection motion, twenty-one (21) days after the later of (i) the date of the rejection motion, (ii) the date of the surrender of the leased property to the affected lessor, and (iii) any alternative date provided in the rejection motion; and (c) any other date set by an order of the Court. The later of these dates is referred to in this notice as the “Rejection Bar Date.”
- e. The Amended Schedules Bar Date. If, subsequent to the mailing date of this notice, the Debtor amends or supplements its Schedules of Assets and Liabilities (the “Schedules”) to reduce the undisputed, non-contingent, and liquidated amount or to change the nature, classification, or characterization of a claim against the Debtor reflected therein, any affected entities that dispute such amendments or supplements to the Schedules (such Schedules, the “Amended Schedules”) are required to file a proof of claim or amend any previously filed proof of claim in respect of the Amended Schedules claim on or before the later of: (a) the General Bar Date; and (b) 30 days after the date that notice of the applicable Amended Schedules is served on the claimant. The later of these dates is referred to in this notice as the “Amended Schedules Bar Date.”



## **FILING CLAIMS**

### **1. WHO MUST FILE**

Subject to the terms described above for holders of claims subject to the General Bar Date, the Fund Investor Bar Date, Governmental Bar Date, Rejection Bar Date, and the Amended Schedules Bar Date, the following entities must file proofs of claim on or before the General Bar Date:

- a. any entity (i) whose prepetition claim against the Debtor is not listed in the Debtor's Schedules or is listed as any of disputed, contingent, or unliquidated and (ii) that desires to share in any distribution in any of this case; and
- b. any entity whose prepetition claim against the Debtor is included within the Debtor's Schedules but believes that its prepetition claim is improperly classified in the Schedules or is listed in an incorrect amount and that desires to have its claim allowed in a classification or amount different from the classification or amount identified in the Schedules.

### **2. WHAT TO FILE**

The Debtor is enclosing a proof of claim form for use in this case, or you may use another proof of claim form that conforms substantially to Official Bankruptcy Form No. 410. If your claim is scheduled by the Debtor, the attached proof of claim form also sets forth: (i) the amount of your claim (if any) as scheduled; (ii) the Debtor against which the claim is scheduled; (iii) whether your claim is scheduled as disputed, contingent, or unliquidated; and (iv) whether your claim is listed as a secured, unsecured priority, or unsecured nonpriority claim. You will receive a different proof of claim form for each claim scheduled in your name by the Debtor. You may utilize the proof of claim form(s) provided by the Debtor to file your claim. Additional proof of claim forms may be obtained at the following websites: [www.kccllc.net/HCMLP](http://www.kccllc.net/HCMLP) (the "Claim Agent Website") or <http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0>.

### **3. WHEN AND WHERE TO FILE**

Entities must file each Proof of Claim Form so they are received on or before the applicable Bar Dates either (a) electronically with Kurtzman Carson Consultants LLC (the "Claims Agent") via the interface available at [www.kccllc.net/HCMLP](http://www.kccllc.net/HCMLP) or (b) via U.S. mail or other hand delivery method to the following address:

HCMLP Claims Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

Proof of Claim Forms will be deemed filed when **actually received** by the Claims Agent on or before the applicable Bar Date. **Proof of Claim Forms may not be delivered via facsimile or electronic mail transmission.**

Proof of Claim Forms will be collected, docketed, and maintained by the Claims Agent. If you want to receive acknowledgement of the Claims Agent's receipt of a Proof of Claim Form, you must submit by the applicable Bar Date, and concurrently with submitting your original Proof of Claim Form, (i) a copy of the original Proof of Claim Form and (ii) a self-addressed, postage prepaid return envelope.

All forms must be **signed** by the claimant or, if the claimant is not an individual, by an authorized agent of the claimant. The form must be written in English and be denominated in United States currency. You should attach to your completed form any documents on which the claim is based (or, if such documents are voluminous, attach a summary) or an explanation as to why the documents are not available.

#### **4. ENTITIES NOT REQUIRED TO FILE A CLAIM**

The Bar Date Order further provides that the following entities, whose claims otherwise would be subject to the General Bar Date, the Fund Investor Bar Date or the Governmental Bar Date, need not file claims in this case:

- a. any entity that already has filed a signed proof of claim against the Debtor in a form substantially similar to Official Bankruptcy Form No. 410 with: (i) the Clerk of the Bankruptcy Court for the District of Delaware and/or Clerk of the Bankruptcy Court for the Northern District of Texas (Dallas) (ii) the Debtor's Claims Agent;
- b. any entity (i) whose claim against the Debtor is not listed as "disputed", "contingent", or "unliquidated" in the Schedules or Amended Schedules and (ii) agrees with the nature, classification and amount of its claim as identified in the Schedules or Amended Schedules; and
- c. any entity whose claim against the Debtor previously has been allowed by, or paid pursuant to, an order of the Court.

#### **NO REQUIREMENT FOR STOCKHOLDERS TO FILE PROOFS OF INTEREST**

Any entity holding an interest in the Debtor (an "Interest Holder"), which interest is based exclusively upon the ownership of: (i) common or preferred stock in the Debtor; or (ii) warrants or rights to purchase, sell, or subscribe to such a security or interest of the Debtor (any such security or interest being referred to herein as an "Interest"), need not file a proof of claim or proof of interest on or before the General Bar Date on account of such Interest; provided, however, Interest Holders who want to assert claims against the Debtor that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance, or distribution of the Interest, must file a claim by the applicable Bar Dates, unless another exception identified in the Motion applies.

### **CONSEQUENCES OF FAILURE TO FILE A CLAIM**

Any entity that is required to file a Proof of Claim Form but fails to do so properly by the applicable Bar Date shall not be treated as a creditor with respect to such claim for purposes of voting upon, or receiving distributions under, any chapter 11 plan in this case.

### **RESERVATION OF RIGHTS**

The Debtor retains the right to: (i) dispute, or assert offsets or defenses against, any filed proofs of claim, or any claim listed or reflected in the Schedules, as to nature, amount, liability, classification, or otherwise; (ii) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; and (iii) otherwise amend or supplement the Schedules. Notwithstanding the foregoing, nothing contained herein shall preclude the Debtor from objecting to any claim, whether scheduled or filed, on any grounds.

### **ADDITIONAL INFORMATION**

If you require additional information regarding the filing of a claim, you may contact the Claims Agent at 877-573-3984 (310-751-1829 for international calls) or by submitting an inquiry at [www.kccllc.net/HCMLP](http://www.kccllc.net/HCMLP). Copies of the Bar Date Order and other information regarding the Debtor's chapter 11 case are available for inspection free of charge on the Claims Agent's website at: [www.kccllc.net/HCMLP](http://www.kccllc.net/HCMLP).

The Claims Agent cannot advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter.

*[Remainder of Page Intentionally Left Blank]*

Dated: February \_\_, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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*Counsel and Proposed Counsel for the Debtor and  
Debtor-in-Possession*

## **EXHIBIT 2**

**[Cover Letter]**



HIGHLAND CAPITAL  
MANAGEMENT

February \_\_, 2020

**ATTENTION CUSTODIANS: THIS CORRESPONDENCE CONTAINS CLAIM DEADLINE INFORMATION. PLEASE FORWARD THIS LETTER, THE ATTACHED NOTICE AND CLAIM FORM TO YOUR CLIENTS WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT.**

To Investors in funds managed by Highland Capital Management, L.P.

On October 16, 2019, Highland Capital Management, L.P. (the "Company") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Company's bankruptcy case is pending in the United States Bankruptcy Court for the Northern District of Texas Dallas Division (the "Bankruptcy Court") at Case No. 19-34054-sgj11.

On February \_\_, 2020, the Bankruptcy Court entered an order (the "Bar Date Order") establishing certain deadlines for filing claims against the Company. Included with this letter is a Notice of Bar Dates for Filing Claims (the "Notice"). Please review the Notice carefully.

The Notice provides additional information about how to file a claim. A Proof of Claim form is also included.

The Bankruptcy Court set **April 8, 2020** as the **General Bar Date** and **April 23, 2020** as the bar date for investors in funds managed by the Company ("**Fund Investor Bar Date**"). These are the deadlines to file claims against the Company that arose before October 16, 2020. Please take note that the claim bar dates are applicable to claims you may have against Highland Capital Management, L.P. and not against any other party. It is not necessary to file a claim based exclusively on your ownership interest in funds unless you believe you have a claim against Highland Capital Management, L.P.

HIGHLAND CAPITAL  
MANAGEMENT

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If you require additional information regarding the filing of a claim, you may contact the Claims Agent at 877-573-3984 (310-751-1829 for international calls) or by submitting an inquiry at [www.kccllc.net/HCMPLP](http://www.kccllc.net/HCMPLP). Copies of the Bar Date Order and other information regarding the Debtor's chapter 11 case are available for inspection free of charge on the Claims Agent's website at: [www.kccllc.net/HCMPLP](http://www.kccllc.net/HCMPLP).

The Claims Agent cannot advise you how to file, or whether you should file, a claim. You may wish to consult an attorney regarding this matter.

Investor Relations

## **EXHIBIT 2**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Files must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

## Part 1: Identify the Claim

1.	<b>Who is the current creditor?</b>	UBS Securities LLC Name of the current creditor (the person or entity to be paid for this claim) _____  Other names the creditor used with the debtor _____	
2.	<b>Has this claim been acquired from someone else?</b>  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3.	<b>Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  UBS Securities LLC Attn: Suzanne Forster 1285 Avenue of the Americas New York, New York 10019	<b>Where should payments to the creditor be sent? (if different)</b>     Contact phone <u>2127133432</u> Contact phone _____ Contact email <u>suzanne.forster@ubs.com</u> Contact email _____  <b>(see summary page for notice party information)</b> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
4.	<b>Does this claim amend one already filed?</b>  <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	Filed on _____ MM / DD / YYYY	
5.	<b>Do you know if anyone else has filed a proof of claim for this claim?</b>  <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Who made the earlier filing? <u>UBS AG, London Branch</u> - this is a joint litigation claim.		



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim? \$ 1,039,957,799.40	Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>Litigation - See attached addendum</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.  Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  Amount necessary to cure any default as of the date of the petition: \$ _____  Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

### Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 06/26/2020  
MM / DD / YYYY

/s/Asif Attarwala  
Signature

Print the name of the person who is completing and signing this claim:

Name Asif Attarwala

First name

Middle name

Last name

Title Associate

Company Latham and Watkins LLP

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 330 North Wabash Ave., Suite 2800, Chicago, IL, 60611

Contact phone 3128767667

Email asif.attarwala@lw.com

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> UBS Securities LLC Attn: Suzanne Forster 1285 Avenue of the Americas  New York, New York, 10019  <b>Phone:</b> 2127133432 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> suzanne.forster@ubs.com		<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>  <b>Has Related Claim:</b> Yes <b>Related Claim Filed By:</b> UBS AG, London Branch - this is a joint litigation claim. See attached addendum  <b>Filing Party:</b> Authorized agent
<b>Disbursement/Notice Parties:</b> Latham and Watkins LLP Andrew Clubok 555 Eleventh Street, NW  Washington, D.C., 2004-1304  <b>Phone:</b> 2026373323 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> andrew.clubok@lw.com		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> Litigation - See attached addendum		<b>Last 4 Digits:</b> No <b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 1,039,957,799.40		<b>Includes Interest or Charges:</b> Yes
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Asif Attarwala on 26-Jun-2020 5:10:38 p.m. Eastern Time <b>Title:</b> Associate <b>Company:</b> Latham and Watkins LLP		

**Optional Signature Address:**

Asif Attarwala  
330 North Wabash Ave.  
Suite 2800  
Chicago, IL, 60611

**Telephone Number:**

3128767667

**Email:**

asif.attarwala@lw.com

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11 (SGJ)  
)  
)  
)  
)

ADDENDUM TO PROOF OF CLAIM FILED BY  
UBS AG, LONDON BRANCH

1. UBS Securities LLC hereby submits this addendum to its proof of claim (together, the “**Proof of Claim**”) against Highland Capital Management, L.P. (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”).

2. UBS Securities LLC and UBS AG, London Branch (together, the “**Claimant**” or “**UBS**”) each have claims against the Debtor and each is filing a proof of claim in this Chapter 11 Case. Because their claims arise from the same set of factual events, including the same failed transaction, misconduct involving the Debtor and its affiliates, and subsequent litigation, the UBS claims overlap and their proof of claim forms and addendums are substantially the same.

3. This addendum is attached to, incorporated into, and constitutes an integral part of Claimant’s Proof of Claim against the Debtor. Claimant files this Proof of Claim under compulsion of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], as extended by the *Joint Stipulation and Order Extending Bar Date* [Docket No. 547] and modified by the *Order Denying UBS’s Motion for Relief*

<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*from the Automatic Stay to Proceed with State Court Action* [Docket No. 765], solely for the purpose of asserting Claimant's claims against the Debtor, as more particularly described and subject to any limitations set forth below.

### **Factual Background**

#### **A. The Knox Transaction**

2. Claimant's claims arise out of a failed transaction dating back thirteen years ago and the state court action (the "**State Court Action**") that followed between Claimant, the Debtor, Highland CDO Opportunity Master Fund, L.P. ("**CDO Fund**") and Highland Special Opportunities Holding Company ("**SOHC**") (together with CDO Fund, the "**Fund Counterparties**," and the Fund Parties and the Debtor collectively, "**Highland**"), among other parties.<sup>2</sup>

3. In early 2007, Claimant and Highland agreed to pursue a complex form of securitization transaction known as a "CLO Squared" (the "**Knox Transaction**"). (Ex. B, Decision at 2.) The purpose of the Knox Transaction was to acquire and securitize a series of collateralized loan obligation ("**CLO**") securities and credit default swap ("**CDS**") assets (the "**Knox Assets**"). To that end, the Debtor agreed to be the "Servicer" of the Knox Transaction, and as such was responsible for identifying the specific CLO and CDS assets to be securitized. Claimant agreed to finance the acquisition of the CLO and CDS assets identified by Highland. Claimant would then hold, or "warehouse," the assets until the securitization was completed (the "**Knox Warehouse**"). Under this arrangement, Claimant financed the acquisition of \$818 million in Knox Assets. (*Id.*)

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<sup>2</sup> The procedural history of the State Court Action is incorporated by reference, but is voluminous. The operative Second Amended Complaint and Phase I Decision and Order are attached as **Exhibit A** and **Exhibit B**, respectively. Additional pleadings and orders can be found on the State Court docket for Index No. 650097/2009 or by contacting Claimant's counsel. Claimant reserves the right to file a copy of additional pleadings or orders with this Court.



4. The parties' first attempt at the Knox Transaction was not completed successfully and the relevant agreements expired in August 2007 without the contemplated securitization having occurred. (*Id.* at 3.) Rather than end their relationship, however, Highland and Claimant continued to consider the possibility of pursuing the contemplated securitization in 2008 under restructured versions of the prior agreements. Highland and Claimant always understood that—if the securitization were not successful—the Fund Counterparties would be obligated to pay Claimant for 100% of the losses on any CLO or CDS assets that been acquired and warehoused for the securitization. In order to convince Claimant to agree to enter restructured versions of those agreements and to finance the acquisition of the CLO and CDS assets, Highland assured Claimant that the Fund Counterparties had sufficient assets to cover any losses. It did so by providing Claimant with false, incomplete, and otherwise misleading information concerning the Fund Counterparties' finances and assets. (Ex. A, Compl. ¶¶ 47-61.)

5. In addition, Claimant specifically conditioned its agreement to enter the restructured agreements on the Fund Counterparties' ability to post an additional \$70 million in cash and securities as collateral (the "**Initial Restructuring Collateral**"), in which Claimant would hold a security interest. (*Id.* ¶¶ 56-59; Ex. B, Decision at 3.) Highland assembled \$70 million in such Initial Restructuring Collateral. But what Highland did not tell Claimant—and what is now clear was omitted on purpose—was that the Fund Counterparties did not own all of the Initial Restructuring Collateral they were expected to post. Instead, to meet this obligation, the Debtor exercised its control over other Highland affiliates, transferring and redirecting assets from such other entities that it controlled to assemble the Initial Restructuring Collateral. (Ex. A, Compl. ¶¶ 56-59.)

6. Similarly, while negotiating the restructured transaction, Highland provided Claimant with financial reports and statements that contained materially false and misleading information and omissions concerning the financial condition of the Fund Counterparties. (*Id.* ¶¶ 47-52.) The Debtor itself had prepared these financial statements and knew they contained material misstatements. (*Id.* ¶¶ 48-50, 54.) Among other things, Highland misrepresented the amount of cash held by CDO Fund. (*Id.* ¶ 52.) Highland also failed to disclose that many of the assets on the Fund Counterparties' financial statements already had been encumbered. (*Id.* ¶¶ 51, 53.) These misrepresentations not only evince a specific intent by Highland to induce Claimant into entering the restructured agreements, but a longstanding willingness to prevent Claimant from ever recovering the amounts owed under the parties' proposed agreements in the event the Knox Assets suffered any losses. In addition, these events show the Debtor's singular control over—and ability to move—assets from one Highland affiliate to another at will.

7. Based on Highland's material misstatements and omissions, Claimant agreed to pursue the restructured transaction and once more attempt the securitization, and the parties executed three new written agreements: an Engagement Letter, a Cash Warehouse Agreement, and a Synthetic Warehouse Agreement (collectively, the "**Warehouse Agreements**"). (*See* Ex. B, Decision at 3.) The Engagement Letter was executed by Claimant and the Debtor; the Fund Counterparties were not parties to the Engagement Letter. (Ex. A, Compl. ¶ 62.) The Cash Warehouse and Synthetic Warehouse Agreements were executed by Claimant and the Debtor, along with the Fund Counterparties. (*Id.* ¶¶ 64-65.)

8. As described above, Claimant agreed to finance the acquisition of the CLO and CDS assets that the parties planned to securitize. In so doing, the key risk Claimant faced was the possibility that the Knox Assets would lose value while securitization was pending. To address

this risk, Claimant and the Debtor agreed in the Engagement Letter that the Fund Counterparties would bear this risk. Notably, at the time, the Debtor was the Investment Manager to the Fund Counterparties under agreements that gave the Debtor total control over those entities. (Ex. A, Compl. ¶¶ 24, 26.)

9. The Warehouse Agreements reiterated that the Fund Counterparties (as controlled by the Debtor) would bear the risk, specifying that if the Knox Assets lost value while securitization was pending, the Fund Counterparties “will in aggregate bear 100% of the risk” for the Knox Assets—with CDO Fund bearing 51% of any losses and SOHC bearing the remaining 49%.

10. To further protect Claimant in the event that the Knox Assets lost value, the Warehouse Agreements provided for recurring measurements of mark-to-market losses on all assets in the Knox Warehouse and required the Fund Counterparties to post collateral in the event the Knox Assets lost a set amount of value. Specifically, the parties agreed that the Fund Counterparties would post an additional \$10 million in collateral for each \$100 million in losses to the overall value of the Knox Assets. (Ex. B, Decision at 4.)

11. In September and October 2008, amid the global economic recession, the value of the Knox Assets dropped by \$100 million, twice. Thus, Claimant twice exercised its contractual right to demand additional collateral. And twice Highland posted the required collateral. (*Id.*) Although the Warehouse Agreements specified that it was the Fund Counterparties who would post collateral, the Debtor moved assets around from other entities it controlled to make the first two collateral calls (without disclosing this practice to Claimant). (Ex. A, Compl. ¶ 79.) On or about November 7, 2008, Claimant issued a third margin call, because the value of the Knox Assets suffered additional losses of \$200 million (bringing the aggregate losses to over \$400 million).

(Ex. B, Decision at 4.) This time, Highland refused to provide the additional collateral required under the Warehouse Agreements.

12. Highland's default on Claimant's third margin call triggered a termination event under the Warehouse Agreements. (*Id.*) On December 5, 2008, Claimant gave Highland formal notice of default and demanded the Fund Counterparties pay Claimant for 100% of the losses incurred on the Knox Assets—which had, by then, grown to over \$520 million.

13. There is no question that the Debtor knew the Fund Counterparties were liable for the losses under the Warehouse Agreements. Indeed, the Highland officer who executed the Warehouse Agreements admitted under oath that, “as of the end of the year 2008,” Highland knew that the Fund Counterparties owed Claimant “hundreds of millions of dollars in connection with the Knox Warehouse Agreements.” (Travers Dep. at 261:8-20.) But rather than paying Claimant what it was owed, the Debtor, with Mr. Dondero at the helm, “devised a strategy to delay the resolution of that obligation [to pay Claimant] for as long as possible.” (*Id.*) To that end, Highland devised and subsequently deployed a multifaceted strategy—one that would last for many years thereafter—to intentionally frustrate and prevent Claimant from recovering any of the amounts that both the Debtor and the Fund Counterparties knew were rightfully owed to Claimant under the Warehouse Agreements.

14. First, the Debtor directed the Fund Counterparties to withhold any payment to Claimant—a position that the Fund Counterparties maintained (again, under the specific direction of the Debtor) for more than a decade. (*See id.*) The Debtor did so not only with the specific knowledge that the Fund Counterparties owed hundreds of millions of dollars to Claimant for the losses on the Knox Assets, but with the knowledge that Claimant would come seeking payment

for such losses and, in particular, to look toward any and all collateral owned by the Fund Counterparties as one source of payment. As one of Highland's officers stated in an internal email to Mr. Dondero in an internal email dated January 16, 2009: "[UBS] is going to be calling [] today asking for all additional collateral that cdo and sohc have left to cover the obligation left by the knox transaction." But rather than turning over the collateral in question to Claimant or, at the very least, securing such assets so that they could be used to pay Claimant, the Debtor directed the Fund Counterparties to withhold such assets and payments from Claimant: "[T]hey can see us in court for their additional collateral." True to that promise, even after Claimant filed suit and laid out the amounts due under the contracts, the Debtor forced the Fund Counterparties to launch an affirmative, multi-year campaign—one which would consume much of the cash and assets belonging to the Fund Counterparties themselves—to stave off any payment from the Fund Counterparties to force Claimant to try to recover such claims through litigation and, once in litigation, devising knowingly baseless defenses and arguments for the Fund Counterparties to assert in such litigation.

15. On top of directing the Fund Counterparties to withhold payment and force Claimant to litigate for amounts the Debtor already knew they rightfully owed to Claimant, the Debtor undertook a litany of other actions to ensure that, even if Claimant were successful in the litigation it had been forced to initiate against the Fund Counterparties, it would not be able to collect any judgment arising out of the litigation. Such actions included, but were not limited to, a series of fraudulent transfers out of, and away from, an alter ego of SOHC, Highland Financial Partners, L.P. ("HFP"). (Ex. A, Compl. ¶ 109.) These internal transfers of funds—all overseen by James Dondero, the Debtor's founder and president—were designed to prevent Claimant from ever collecting the millions of dollars it was owed under the Warehouse Agreements.



16. In addition to such fraudulent transfers, the Debtor also took steps after the lawsuit was filed to ensure that no additional value would be transferred *to* the Fund Counterparties—deliberately taking steps to keep both SOHC and CDO Fund undercapitalized. Not only did the Debtor prevent additional value from being transferred to the Fund Counterparties, it is clear that the Debtor also failed to ensure that the Fund Counterparties retained assets that could be used to pay any such judgment. Quite to the contrary, it is now clear that any and all assets of any value that once belonged to the Fund Counterparties have, in one way or another, been transferred away, drained, or otherwise wasted by the Fund Counterparties, the Debtor itself, or the Debtor’s affiliates—all at the Debtor’s direction. Indeed, in a recent filing before this Court, the Debtor recently disclosed that both of the Fund Counterparties are completely “insolvent.” (Docket No. 687 at 1.) This means that—separate and apart from the transfers of assets out of, and away from, HFP that occurred in 2009—the Debtor has directed, or otherwise permitted, the Fund Counterparties to engage in acts that have left these once marque investment funds with literally *no* assets that can be used to pay Claimant. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate Claimant’s ability to recover the amounts owed under the Warehouse Agreements, or a wanton and reckless disregard of Claimant’s rights to those amounts. Such actions and omissions constitute breaches of the Debtor’s duty of good faith and fair dealing under the Warehouse Agreements.

**B. The State Court Action and the Debtor’s Efforts to Avoid Paying Claimant**

17. On February 24, 2009, Claimant filed a complaint in the Supreme Court of the State of New York (the “State Court”) against the Debtor and the Fund Counterparties. With knowledge of Claimant’s lawsuit, the Debtor exercised its control over the Fund Counterparties to ensure they would not meet their obligations and to impede Claimant’s ability to recover the

amounts owed by those entities. (*Id.* ¶¶ 112, 114.) Rather than paying Claimant what it was owed, and as discussed above, the Debtor orchestrated an extensive multi-part strategy to delay resolution of Claimant's claims for as long as possible. As a result, the Debtor further interfered with Claimant's contractual rights, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements. (*Id.*)

18. By this time, the Fund Counterparties and SOHC's alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant's ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the "**Affiliated Transferee Defendants**"), among others, thereby further reducing Highland's abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, *i.e.*, solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the

process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

19. As Claimant learned about Highland's conduct through discovery, Claimant amended its complaint to assert additional claims and name additional Highland entities, including HFP, the Affiliated Transferee Defendants, and Strand Advisors, Inc. As amended and stated in its Second Amended Complaint (attached hereto as Exhibit A) in the State Court Action, filed on May 11, 2011, Claimant's claims include breach of contract claims directly against the Fund Counterparties, as well as claims for fraudulent inducement, breach of the duty of good faith and fair dealing, fraudulent conveyance, tortious interference, and declaratory judgments for alter ego liability against HFP and general partner liability against Strand Advisors, Inc. The Debtor subsequently brought counterclaims against Claimant for breach of contract and unjust enrichment. (*See* Ex. B, Decision at 35-37.)

20. The procedural history of the State Court Action is complex. The Debtor and its affiliates and Claimant filed, and the State Court ruled on, four sets of motions to dismiss. The Debtor and its affiliates then filed two sets of summary judgment motions, which led to a series of complex rulings by the State Court in 2017. The parties filed various interlocutory appeals of the State Court's rulings on the motions to dismiss and for summary judgment. Those appeals were heard by the Appellate Division for the First Judicial Department in the County of New York, with the Appellate Division issuing five decisions over this suit's protracted history (some of which are still subject to further appellate rights).

21. Also included in the Appellate Division's decisions was an order arising from an appeal of the State Court's ruling on Claimant's motion to restrain Defendants Highland Credit

Strategies Master Fund, L.P. and Highland Crusader Partners, L.P. from disposing of property received through the fraudulent transfers orchestrated by the Debtor. Claimant showed it had a likelihood of success on the merits of its fraudulent transfer claims, and the Appellate Division enjoined both Highland entities from disposing of their assets. Ultimately, these injunctions resulted in partial settlements between Claimant and Highland Credit Strategies Master Fund, L.P. and Highland Crusader Partners, L.P.

22. By early 2018, more than nine years after Claimant first filed suit, the parties were finally ready to proceed to trial. Due to a jury waiver clause in the Warehouse Agreements, however, and after related pre-trial briefing, the State Court bifurcated Claimant's claims into two distinct phases for trial: Phase I, consisting of a bench trial on Claimant's claims against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements, as well as the Debtor's counterclaims; and Phase II, consisting of a jury trial on Claimant's remaining claims against all remaining Highland entities, including the Debtor.<sup>3</sup> (Ex. B, Decision at 2 n.1, 38.)

23. The State Court presided over a thirteen-day bench trial for Phase I from July 9 through July 27, 2018. (*Id.* at 1.) On November 14, 2019, the State Court entered a Decision and Order on Phase I (attached hereto as Exhibit B), ruling in favor of Claimant on almost every issue presented in Phase I. In particular, the court found the Fund Counterparties liable to Claimant for breach of the Cash Warehouse and Synthetic Warehouse Agreements, found no liability on the part of Claimant for either of the Debtor's counterclaims, and rejected almost every one of the Debtor's offset arguments with the only remaining issue (affecting approximately \$70,500,000) to

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<sup>3</sup> Remaining claims are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining issues.

be determined after Phase II. (*Id.* at 39.) An Entry of Judgment on Phase I was entered on February 10, 2020. Under that Phase I final judgment, Claimant is entitled to \$1,039,957,799.44, consisting of \$519,374,149.00 in damages and \$520,583,650.44 in pre-judgment interest as of January 22, 2020, with additional interest of \$128,065 having accrued daily until the Entry of Judgment.

24. The next step in the State Court Action is Phase II of the trial, where Claimant's remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non-Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final \$1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor's various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys' fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

25. Currently, Phase II of the State Court Action is stayed against the Debtor by the automatic stay imposed pursuant to section 362 of the Bankruptcy Code when the Debtor commenced this Chapter 11 Case.



26. Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys' fees that may be awarded by any court at the conclusion of Phase II.

**Reservation of Rights**

27. Claimant does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor, the Fund Counterparties, Strand Advisors, Inc., other non-Debtor Highland Defendants, or any other Debtor affiliate, subsidiary, person, or entity.

28. Claimant expressly reserves all of its rights to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery. Claimant further reserves all rights to amend, modify, supplement, reclassify, or otherwise revise its Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert additional grounds for any of the claims, to seek reconsideration under section 502(j) of the Bankruptcy Code or otherwise of any disallowance of any amounts claimed hereunder, or to reflect any and all additional claims of whatever kind or nature that Claimant has or may have against the Debtor.

29. To the extent any payment to Claimant based on this Proof of Claim, or any portion thereof, is clawed back from Claimant, avoided, or set aside, for any reason whatsoever, or Claimant is required to disgorge any such payment, or any portion thereof, Claimant hereby reserves its rights to amend this Proof of Claim accordingly.

30. The execution and filing of this Proof of Claim is not intended as, nor should it be construed as or deemed to be any of the following: (i) a waiver of the right to seek withdrawal of the reference, or to otherwise challenge the jurisdiction of this Court, with respect to the subject matter of the claims asserted herein, any objection or other proceeding commenced with respect thereto, or any other action or proceeding commenced in this Chapter 11 Case against or otherwise involving Claimant; (ii) an admission that any matter is a core matter for purposes of 28 U.S.C. § 157(b) or is a matter as to which this Court can enter a final order or judgment consistent with Article III of the United States Constitution; (iii) a waiver of the right to *de novo* review by the district court of any order or judgment for which this Court, absent Claimant's consent, lacks authority to enter a final order or judgment; (iv) a consent to the entry by this Court of a final order or judgment with respect to the claims asserted herein or any other matter; (v) a waiver of Claimant's right to a jury trial against the Debtor, as applicable, or waiver of Claimant's right to a jury trial against any of the non-Debtor Defendants; (vi) a waiver or release of the claims or rights of Claimant against any other entity or person that may be liable for all or any part of the claims or any matters related to the claims asserted herein; (vii) a waiver of any rights and remedies Claimant has or may have under the Cash Warehouse and Synthetic Warehouse Agreements, Engagement Letter, or any other contract, whether mentioned in this Proof of Claim or not; (viii) a waiver of Claimant's contractual right to seek to have these or any other claims settled by binding arbitration; (ix) a waiver of any right related to the confirmation of any plan of reorganization proposed in this

Chapter 11 Case, or any other insolvency-related proceeding that may be commenced, either in the United States or abroad, by or against the Debtor, or any non-Debtor affiliate; (x) a waiver or agreement granting any party relief; or (xi) an election of remedies.

31. Neither this Proof of Claim nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of Claimant. Claimant specifically reserves all of its defenses and rights, procedural and substantive, including, without limitation, its rights with respect to any claim that may be asserted against Claimant by the Debtor, the Fund Counterparties, or any affiliate of the Debtor, and its rights to enforce the Cash Warehouse or Synthetic Warehouse Agreements, Engagement Letter, or any other contract.

#### **Right of Setoff and Recoupment**

32. Claimant reserves all rights of setoff and recoupment that it may have. To the extent the Debtor or any non-Debtor affiliate asserts any claim against Claimant, Claimant shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code or right of recoupment against such claim with respect to the claims asserted herein and any amendments thereto.

#### **Notice**

33. Copies of all notices and communications concerning this Proof of Claim should be sent to:

UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Suzanne Forster  
Telephone: (212) 713-3432  
Email: suzanne.forster@ubs.com

With a copy to:

John Lantz  
UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 713-1371  
Email: john.lantz@ubs.com

Andrew Clubok  
Sarah Tomkowiak  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, District of Columbia 20004  
Telephone: (202) 637-2200  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

Jeffrey E. Bjork  
Kimberly A. Posin  
LATHAM & WATKINS LLP  
355 South Grand Avenue, Ste. 100  
Los Angeles, California 90071  
Telephone: (213) 485-1234  
Email: jeff.bjork@lw.com  
kim.posin@lw.com

Asif Attarwala  
LATHAM & WATKINS LLP  
330 N. Wabash Avenue, Ste. 2800  
Chicago, Illinois 60611  
Telephone: (312) 876-7700  
Email: asif.attarwala@lw.com

## **Exhibit A**

# **Second Amended Complaint**



**CONFIDENTIAL MATERIAL SUBJECT TO THE STIPULATION  
AND ORDER FOR THE PRODUCTION AND EXCHANGE  
OF CONFIDENTIAL INFORMATION HAS BEEN REDACTED**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND  
SPECIAL OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND  
CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., and STRAND  
ADVISORS, INC.,

Defendants.

Index No. 650097/2009  
(I.A.S. Part 60, Fried, J.)

**SECOND AMENDED  
COMPLAINT**

Plaintiffs, UBS Securities LLC (“UBSS”) and UBS AG, London Branch (“UBS AG”) (collectively, “UBS”), for their Second Amended Complaint allege against defendants Highland Special Opportunities Holding Company (“SOHC”), Highland CDO Opportunity Master Fund, L.P. (“CDO Fund,” and together with SOHC, the “Fund Counterparties”), Highland Financial Partners, L.P. (“Highland Financial”), Highland Credit Strategies Master Fund, L.P. (“Credit Strategies”), Highland Crusader Offshore Partners, L.P. (the “Crusader Fund”), Highland Credit Opportunities CDO, L.P. (the “Credit Opp. Fund”), and Strand Advisors, Inc. (“Strand”), as follows:


**NATURE OF THE ACTION**

1. UBS brings this action to recover damages in excess of \$686 million resulting from the wrongful conduct of defendants, based on causes of action for fraudulent inducement, breach of contract, fraudulent conveyances, and declaratory judgment.

002541

2. Counterclaim-plaintiff Highland Capital Management, L.P. (“Highland Capital”) is a defendant in the action commenced by UBS (the “Highland Capital Action”) concurrently with the filing of the First Amended Complaint in this action. The Highland Capital Action was consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the “Consolidated Action”). Together with Highland Capital, the Fund Counterparties fraudulently induced UBS to restructure a transaction to avoid Highland Capital’s and the Fund Counterparties’ contractual obligation to pay UBS over \$86 million. Once Highland Capital and the Fund Counterparties succeeded in misleading UBS into restructuring the original transaction, Highland Capital and its affiliates made it impossible for the Fund Counterparties to meet their obligations to UBS by stripping the Fund Counterparties of their valuable assets through fraudulent conveyances and otherwise dealing in bad faith with their contractual obligations to UBS.

3. When UBS finally terminated the restructured transaction and demanded payment from Highland Capital and the Fund Counterparties, it was owed in excess of \$686 million that the Fund Counterparties could not pay because of the misappropriations and improper transfers of assets directed by Highland Capital and the Fund Counterparties. Even after UBS demanded payment, Highland Capital and defendants engaged in further unlawful conduct that harmed UBS by



### **SUMMARY OF THE ACTION**

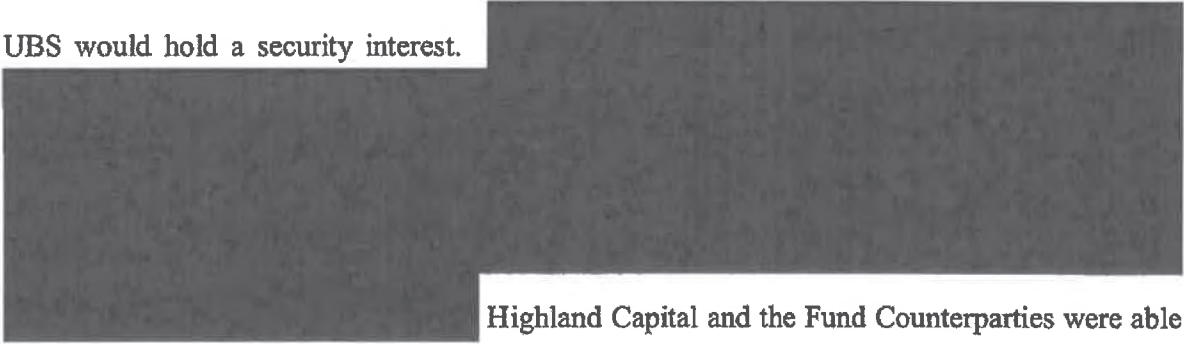
4. This action arises out of Highland Capital's efforts in the Spring of 2007 to sponsor a collateralized debt obligation ("CDO") securitization (the "Original Engagement"). In connection with the Original Engagement, UBS agreed to finance the purchase of various collateralized loan obligation ("CLO") securities, as well as credit default swap obligations that referenced similar CLO securities. UBS agreed to hold or "warehouse" the CLO securities and credit default swaps (collectively, the "Warehouse Assets" or "Warehouse Facility") for Highland Capital's benefit.

5. On or about August 15, 2007, the Original Engagement terminated by its terms without the contemplated securitization having occurred. As a result of the termination, Highland Capital and two of its affiliates, the Fund Counterparties, owed UBS in excess of \$86 million related to the decline in the value of the Warehouse Assets.

6. Instead of paying UBS what it was owed, Highland Capital and the Fund Counterparties fraudulently induced UBS to restructure the Original Engagement by providing UBS with false, incomplete and otherwise misleading information concerning the Fund Counterparties' finances and assets. Using both affirmative material misrepresentations and omissions (material facts or information needed to be disclosed to make the statements actually made not misleading, and which were not disclosed, are referred to hereinafter as "Omissions"), Highland Capital, its principals and the Fund Counterparties misled UBS regarding the financial health of the Fund Counterparties and their creditworthiness, thereby causing UBS to forego recovering its losses from Highland Capital in favor of agreeing to restructure the terms of the parties' prior agreements (the "Restructured Transaction").


7. For example, the strength of the Fund Counterparties' financial statements, and their purported ability to use the hundreds of millions of dollars worth of assets

reflected therein to satisfy future obligations to UBS under the Warehouse Agreements were material to UBS's decision to agree to the restructuring. Consequently, in connection with negotiating the Restructured Transaction, UBS conditioned any restructuring on the Fund Counterparties' ability to post \$70 million in cash and securities as collateral (the "Initial Restructuring Collateral") with State Street Bank and Trust Company ("State Street"), in which UBS would hold a security interest.



Highland Capital and the Fund Counterparties were able to conceal important information about the Fund Counterparties' financial weakness that was both quantitatively and qualitatively material to UBS, and which would have caused UBS not to enter the Restructured Transaction.

8. Similarly, while negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties provided UBS with financial reports and statements for the Fund Counterparties. The financial information that Highland Capital and the Fund Counterparties provided to UBS contained materially false and misleading information and Omissions concerning the financial condition of the Fund Counterparties. Among other things,



9. In reliance on material misstatements and Omissions made by Highland Capital and the Fund Counterparties, UBS agreed to restructure the Original Engagement, and

thereby were fraudulently induced to give up contractual rights under the terms of the Original Engagement. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe that Highland Capital and its affiliates would provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets, as they in fact did.

10. Had UBS known that the Fund Counterparties could not [REDACTED]  
[REDACTED], it would not have gone forward with the Restructured Transaction. UBS never would have agreed to the Restructured Transaction had it known prior to entering the Restructured Transaction the true status of the Fund Counterparties' financial condition and the true fair market value of the Fund Counterparties' holdings that would have been available to satisfy their then-existing and future obligations to UBS. UBS's losses described herein were directly and proximately caused by the conduct of Highland Capital and the defendants as described herein.

11. Almost immediately after UBS agreed to the Restructured Transaction, Highland Capital began the process of making it impossible for the Fund Counterparties to ever repay UBS what they owed. In particular, exercising its control over the Fund Counterparties, Highland Capital caused the Fund Counterparties to transfer cash for the benefit of Highland Capital and its principals, and, separately, in violation of UBS's rights, [REDACTED]  
[REDACTED], all during a time when the Fund Counterparties owed UBS hundreds of millions of dollars.




12. For example, in or around May 2008, Highland Capital caused the dissipation of approximately \$100 million in cash that CDO Fund held after it sold a long position in a company called SunCom Wireless. Highland Capital drained CDO Fund's cash resources despite CDO Fund's ever-increasing obligations to UBS. Highland Capital's bad faith conduct caused injury to UBS by making it impossible for the Fund Counterparties to satisfy their contractual obligations to UBS.

13. In September 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Because Highland Capital had routinely taken cash out of the Fund Counterparties, the Fund Counterparties were undercapitalized and lacked assets and liquidity to meet UBS's demands for additional collateral.

14. Highland Capital and its principals, including its president and founder, James D. Dondero, knew that if the Fund Counterparties defaulted on their obligations to UBS (or any other creditor), Highland Capital's ability to conduct business in the financial community and to keep or solicit investors would be harmed. Investors in Highland Capital's hedge fund family would withdraw their investments. In addition, creditors would take actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights. Highland Capital and its principals were concerned that upon the disclosure of the true state of their affairs, their business would collapse.

15. To avoid that result, Highland Capital and its principals resorted to

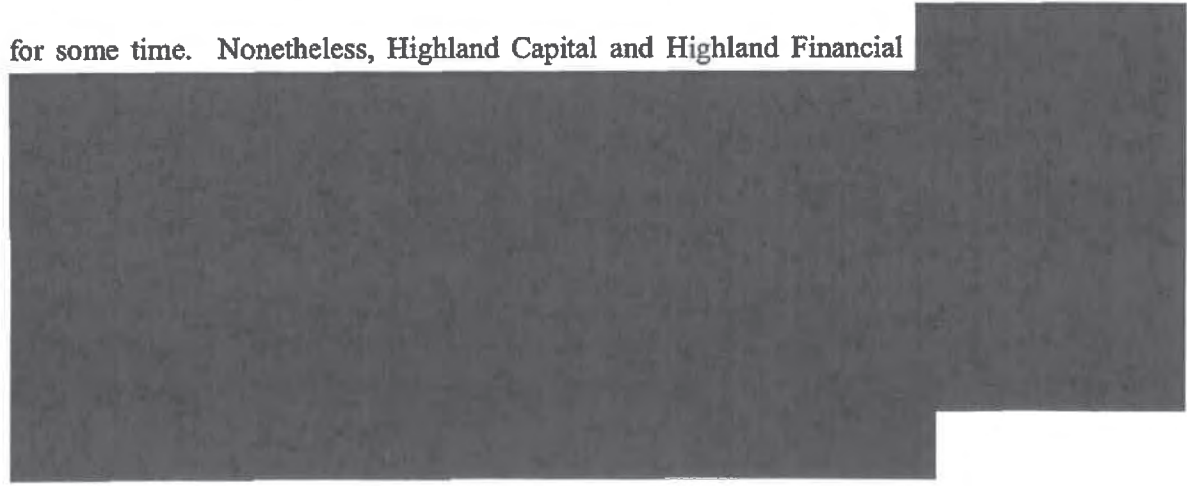




16. Highland Capital's and its principals' belated attempt to protect their reputation by continuing to fraudulently portray the Fund Counterparties as viable independent entities was ultimately unsuccessful. By late October 2008, Highland Capital could no longer continue to prop up the Fund Counterparties.

17. On or about November 11, 2008, UBS demanded additional collateral from the Fund Counterparties. The Fund Counterparties defaulted. On December 3, 2008, UBS terminated the Restructured Transaction. As a result of UBS's termination of the Restructured Transaction, the Fund Counterparties were contractually obligated to pay UBS in excess of \$686 million.

18. On or about February 24, 2009, UBS filed the original complaint in this Court against the Fund Counterparties for breach of the Warehouse Agreements that had been entered in connection with the Restructured Transaction. By that time, the Fund Counterparties and SOHC's alter ego, Highland Financial, had been insolvent and unable to pay their creditors for some time. Nonetheless, Highland Capital and Highland Financial



19. In sum, after fraudulently inducing UBS to agree to the Restructured Transaction, Highland Capital and its principals exercised their domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties for their own personal gain, i.e., solely and improperly to protect and enhance the value of Highland Capital and its principals by wrongful and improper means. In the process, they made it impossible for the Fund Counterparties to pay UBS the losses they had agreed to pay on the Warehouse Facility.

### **THE PARTIES**

#### **A. The Plaintiffs**

20. Plaintiff UBS AG, London Branch, is a banking corporation organized under the laws of Switzerland with its principal place of business at Finsbury Avenue, London, United Kingdom.

21. Plaintiff UBSS is a limited liability company organized under the laws of Delaware with its principal places of business at 677 Washington Blvd., Stamford, Connecticut, and 299 Park Avenue, New York, New York.

#### **B. Highland Capital**

22. Highland Capital Management, L.P. ("Highland Capital") is a limited partnership organized under the laws of Delaware, with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240, and an office at 9 West 57th Street, New York, New York. Highland Capital is registered to do business in New York. Highland Capital describes itself as a 100% employee-owned partnership. Highland Capital is an investment adviser that manages a large number of investment entities that operate as hedge funds for Highland Capital's principals and affiliates, as well as unaffiliated investors. Highland Capital currently manages

over \$25 billion in various assets, including structured financial products. Highland Capital also holds direct and indirect equity and ownership interests in the entities that it manages, including in Highland Financial, the Fund Counterparties and the Affiliated Transferee Defendants. James D. Dondero is the President of Highland Capital, as well as one of its founders. Concurrently with filing the First Amended Complaint in this Action, UBS commenced a separate action against Highland Capital (the “Highland Capital Action”). The Highland Capital Action was later consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the “Consolidated Action”).

**C. The Defendants**

**1. Defendant Strand**

23. Defendant Strand Advisors, Inc. (“Strand”) is Highland Capital’s general partner. Strand is a Delaware corporation principally engaged in the business of serving as the general partner of Highland Capital. As Highland Capital’s general partner, Strand is responsible for Highland Capital’s liabilities and obligations and regularly conducts business in New York, or causes its affiliates to conduct business in New York.

**2. Defendants Highland Financial and SOHC**

24. Highland Special Opportunities Holding Company (“SOHC”) is a company organized under the laws of the Cayman Islands, with its offices at Walker House, PO Box 908GT, Mary Street, George Town, Grand Cayman, Cayman Islands. SOHC is a wholly-owned subsidiary of defendant Highland Financial Partners, L.P. (a Delaware limited partnership) (“Highland Financial”). SOHC has six sister subsidiaries, all of which are owned in whole or in part by Highland Financial. Highland Capital serves as investment manager to defendant Highland Financial, SOHC and its sister subsidiaries.

25. Highland Financial is SOHC's alter ego.



For all purposes relevant to this action, Highland Financial and SOHC should be treated as a single entity and as alter egos of one another.

**3. Defendant CDO Fund**

26. Defendant Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") is a Bermuda exempted limited partnership, with its principal place of business at 52 Reid Street, Hamilton, Bermuda. Highland Capital controls CDO Fund's investment decisions through an investment management agreement. Between January 31, 2007 and August 31, 2008, Highland Capital's and its affiliates' aggregate ownership interest in CDO Fund ranged between 43.36% and 56.44%. Highland CDO Opportunity Fund, L.P. and Highland CDO Opportunity Fund, Ltd. serve as so-called "feeder funds" for defendant CDO Fund.



**4. The Affiliated Transferee Defendants** [REDACTED]

27. Defendant Highland Credit Strategies Master Fund, L.P. (“Credit Strategies”) is a Bermuda limited partnership organized with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. Credit Strategies transacts business within New York, and derives substantial revenue from interstate and international commerce.

28. Defendant Highland Crusader Offshore Partners, L.P. (the “Crusader Fund”) is a Bermuda limited partnership with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The Crusader Fund also has an office located at 13455 Noel Road, Suite 800, Dallas, Texas 75240. The Crusader Fund transacts business within New York, and derives substantial revenue from interstate and international commerce.

29. Defendant Highland Credit Opportunities CDO, L.P. (the “Credit Opp. Fund”) is a Delaware limited partnership with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240.

30. Credit Strategies, the Crusader Fund and the Credit Opp. Fund are referred to herein collectively as the “Affiliated Transferee Defendants” [REDACTED]

**D. Non-Parties Affiliated With Highland Capital In Which The Fund Counterparties Invested**

31. The Fund Counterparties held investments in several Highland Capital-affiliated funds, including Highland Credit Opportunities CDO, L.P., Highland Legacy, Highland Loan Funding V, Highland Park CDO I, Ltd., Highlander Euro CDO B.V. and Highlander Euro

CDO III B.V. Highland Capital served as the investment manager for these affiliated funds, and received valuable fees derived from the valuations of these funds' assets, which it managed.

### **JURISDICTION AND VENUE**

32. Venue in this Court is proper under CPLR 503 because plaintiff UBSS has a principal place of business in New York County.

33. Venue is also proper under CPLR 501, and this Court may exercise jurisdiction over the Fund Counterparties because UBS, Highland Capital and the Fund Counterparties all agreed in writing, before this action was commenced, to submit to such jurisdiction and venue, in connection with any dispute that may arise out of, in connection with, or related to, the Agreements (defined below), or any of the matters contemplated thereby. This Court also may exercise jurisdiction over Highland Financial because it is the alter ego of SOHC.

34. This Court also may exercise jurisdiction over all defendants pursuant to CPLR 301 and 302(a)(1) and (3), because defendants regularly transact and solicit business in New York, committed tortious acts causing injury in New York, should reasonably have expected that their tortious acts would have consequences in New York, the effect of their wrongful conduct was felt in New York, and/or derive substantial revenue from interstate or international commerce. Additionally, Highland Capital has an office in New York and is a foreign limited partnership registered to do business in New York.

### **FACTUAL BACKGROUND**

#### **A. The Original Engagement**

35. In or around April 2007, Highland Capital approached UBS for short-term financing in connection with a securitization that Highland Capital wanted to sponsor. UBS agreed to do so (the "Original Engagement").

36. On or about April 20, 2007, UBSS and Highland Capital entered into an engagement letter (the “Original Engagement Letter”), which contemplated that UBSS would act as the exclusive financial arranger and placement agent for a type of collateralized debt obligation transaction (“CDO”), known as a collateralized loan obligation (“CLO”) squared or “CLO Squared” transaction. (A copy of the Original Engagement Letter is annexed hereto as Exhibit A.)

37. CLOs are a form of securitization where interest and principal payments on corporate loans made to multiple mid-sized and large businesses are pooled together by a lender or the owner of the loans, and then passed on through a securitization structure to investors. CLOs typically involve multi-million dollar loans known as syndicated loans, or leveraged loans made to new businesses or existing businesses, often to acquire other companies. The loan originators are able to spread risk through the CLO securitization, and simultaneously free up capital to make new loans to other businesses. The Original Engagement contemplated the securitization of CLO securities. Thus, the securitization contemplated by Highland Capital would have been a “CLO Squared” transaction.

38. On or about May 22, 2007, as contemplated by the Original Engagement Letter, UBSS and Highland Capital entered into a warehouse agreement (the “Original Cash Warehouse Agreement”). (A copy of the Original Cash Warehouse Agreement is annexed hereto as Exhibit B.) In accordance with the terms of the Original Engagement Letter and the Original Cash Warehouse Agreement, UBSS agreed to acquire securities as directed by Highland Capital. Highland Capital instructed UBS to acquire various CLO securities issued in connection with prior CLO transactions involving other sponsors and issuers (the “Cash Portfolio”).

39. In a separate but related synthetic warehouse agreement (the “Original Synthetic Warehouse Agreement,” and together with the “Original Cash Warehouse

Agreement,” the “Original Warehouse Agreements”), UBS AG agreed to enter into credit default swaps (the “CDS Portfolio,” and together with the Cash Portfolio, the “Warehouse Assets”), pursuant to which UBS AG sold credit protection to various third parties. (A copy of the Original Synthetic Warehouse Agreement is annexed hereto as Exhibit C.)

40. For Highland Capital’s benefit, UBS held the Warehouse Assets on its balance sheet (the “Warehouse Facility”). UBS was expected to hold the Warehouse Assets until such time as the parties could arrange for the assets to be securitized as part of the contemplated securitization. In particular, if the parties believed that a securitization was economically feasible, they would create a special purpose entity that would acquire the Warehouse Assets from UBS using the proceeds from the sale of securities to investors. The special purpose entity’s debt securities would be secured by those Warehouse Assets.

41. Under the Original Warehouse Agreements, if the Original Engagement terminated without a securitization, Highland Capital and the Fund Counterparties were obligated to pay UBS for losses on the Warehouse Assets. In particular, under the terms of the Original Cash Warehouse Agreement, Highland Capital was directly responsible for the first \$50 million in losses in the Cash Portfolio, and under the terms of the Original Synthetic Warehouse Agreement, the Fund Counterparties were obligated to pay UBS for any and all losses suffered on the CDS Portfolio.

42. The Original Engagement Letter expired by its terms on August 15, 2007 without a securitization occurring. The Original Warehouse Agreements expired on the same date in accordance with their respective terms.

43. As of August 15, 2007, the Warehouse Assets in the Warehouse Facility had lost in excess of \$86 million in value. Although they had sufficient capital to do so,

Highland Capital and the Fund Counterparties failed and refused to pay UBS what it was owed under the Original Warehouse Agreements.

44. As a result of extensive negotiations as well as representations and warranties made by Highland Capital on its own behalf, and on behalf of the Fund Counterparties as their investment manager, UBS agreed to restructure the terms of the Original Engagement.

**B. Highland Capital And The Fund Counterparties Resort To Fraud To Avoid Highland Capital's Obligations To UBS**

45. As alleged above, as a result of the termination of the Original Engagement, Highland Capital was directly liable to UBS under the Original Warehouse Agreement for in excess of \$86 million.

46. Between August 2007 and March 14, 2008, UBS, Highland Capital and the Fund Counterparties had discussions and negotiations concerning a restructuring of the terms of the Original Engagement. Those negotiations resulted in agreements to restructure the Original Engagement (the "Restructured Transaction"), including a release by UBS of its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement. (The terms of the Restructured Transaction are set forth in the Engagement Letter and Warehouse Agreements described below (collectively, the "Agreements"), which are annexed hereto as Exhibits D, E and F, respectively.)

47. During the course of negotiations and before March 14, 2008, Highland Capital and Fund Counterparties made several material misrepresentations to UBS concerning the creditworthiness of the Fund Counterparties. Dondero, Highland Capital and the Fund Counterparties also failed to disclose to UBS information which would have been material to UBS's decision to enter the Restructured Transaction ("Omissions," as defined above). As



Highland Capital and the Fund Counterparties knew, UBS reasonably relied upon those material misrepresentations and, due to the Omissions, a misstated assessment of the Fund Counterparties, all to its detriment in deciding whether to enter the Restructured Transaction. UBS reasonably and justifiably relied on these misrepresentations and Omissions of facts and information that were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS reasonably believed that Highland Capital and the Fund Counterparties would not provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets as it in fact did.

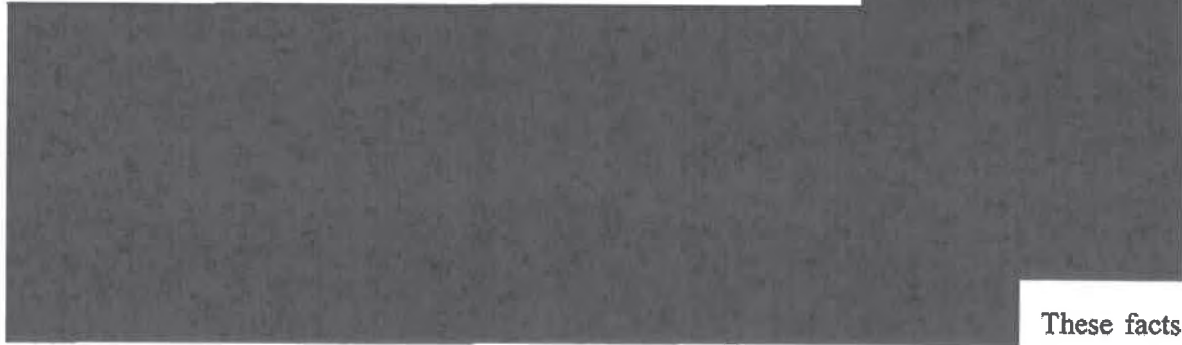
48. For example, on or about December 28, 2007, to induce UBS to enter the Restructured Transaction and related Agreements, Gibran Mahmud of Highland Capital sent SOHC financial statements to UBS. On or about January 29, 2008, UBS requested additional financial information related to SOHC. Later that same day, to induce UBS to enter the Restructured Transaction and related Agreements, Phil Braner of Highland Capital emailed UBS a copy of SOHC's Statement of Financial Condition, dated December 31, 2007.

49. As described with more particularity below, the SOHC financial information that Highland Capital and the Fund Counterparties provided to UBS, which Highland Capital was responsible for preparing, was materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon SOHC's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

50. On or about February 4, 2008, Matt Killebrew of Highland Capital provided UBS with financial reports via email that reflected financial summaries, and aggregate

valuations for CDO Fund's assets as of December 31, 2007. On or about March 4, 2008, Mr. Killebrew sent UBS similar reports for the period ended January 31, 2008. As described with more particularity below, these financial reports, which Highland Capital prepared, also were materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon CDO Fund's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

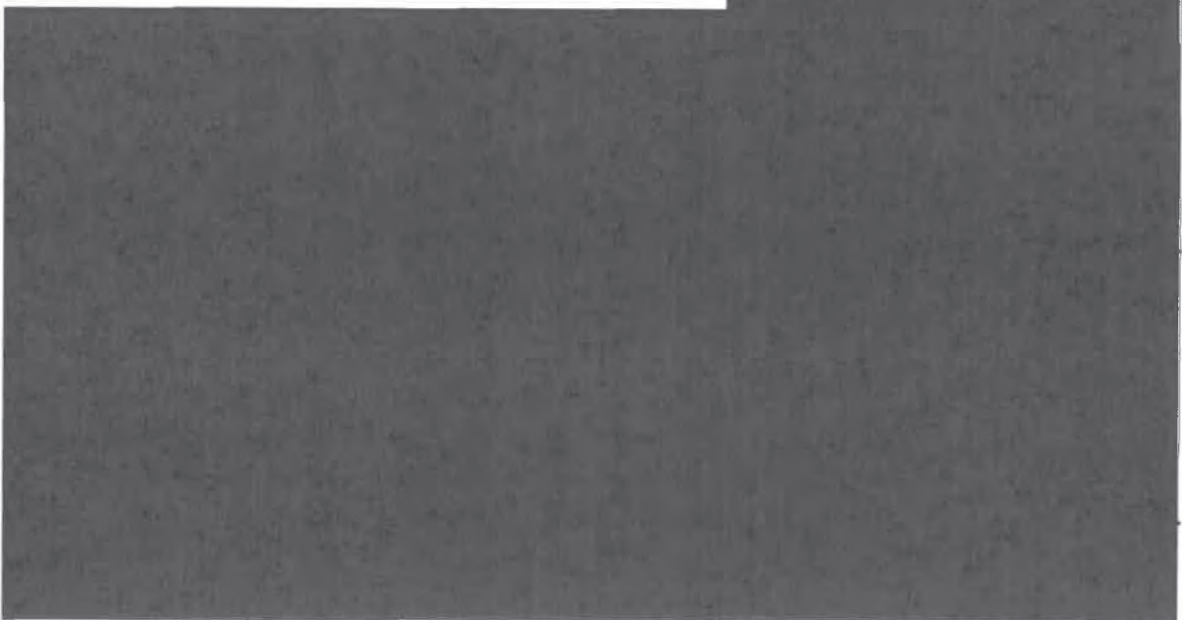
51. The Fund Counterparties' financial statements



These facts

and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties.

52. CDO Fund's financial statements



[REDACTED]

53. Similarly, Highland Capital and the Fund Counterparties concealed from UBS the fact that the Fund Counterparties

[REDACTED]

54. In addition, the Fund Counterparties' financial statements that Highland Capital and the Fund Counterparties provided to UBS in advance of the Restructured Transaction contained

[REDACTED]

[REDACTED]

55. During the course of negotiations concerning the restructuring, UBS also insisted that the Fund Counterparties have the ability to post \$70 million in cash and securities as collateral, which would be held at State Street Bank (the "Initial Restructured Transaction Collateral"), and in which UBS would hold a security interest. The Fund Counterparties' ability to do so using their own assets was qualitatively and quantitatively material to UBS. Among other things, it demonstrated the strength of their balance sheets, and by extension, their ability to satisfy future obligations to UBS.

56. Highland Capital and the Fund Counterparties agreed that the Fund Counterparties would post \$70 million in Initial Restructuring Collateral.

[REDACTED]

57. [REDACTED]

[REDACTED]

58.

As the Fund Counterparties' investment manager, Highland Capital maintained the Fund Counterparties' accounting records, and knew

Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe, and reasonably did not believe, that Highland Capital would provide it with false, incomplete or otherwise misleading information about

59. If UBS had known that the Fund Counterparties



[REDACTED] It also  
would have drawn into question the Fund Counterparties' liquidity.  
[REDACTED]

60. But for Dondero's, Highland Capital's and the Fund Counterparties' false and misleading statements and Omissions concerning the Fund Counterparties' finances and assets, and [REDACTED] UBS would not have entered into the Restructured Transaction or the Agreements that memorialized its terms. Given the Fund Counterparties' weak credit quality, additional adverse information about their collective or individual creditworthiness would have deterred UBS from going forward with the Restructured Transaction and putting more assets at risk. These misrepresentations and Omissions proximately caused harm to UBS.

61. UBS would not have entered into a transaction with parties that made misrepresentations as Highland Capital and the Fund Counterparties did. UBS also would not have agreed to release its valuable claims arising out of the Original Engagement under such circumstances. Because of, and in reliance on, the false and misleading information about the Fund Counterparties provided by Dondero, Highland Capital and the Fund Counterparties, UBS entered into the Restructured Transaction memorialized in the Agreements. Because each of the misrepresentations and Omissions identified above disguised the Fund Counterparties' inability to satisfy their obligations to UBS, the misrepresentations and Omissions proximately caused harm to UBS.

**C. The Restructured Transaction Agreements**

**1. The Engagement Letter**

62. On or about March 14, 2008, the parties reached agreement on the terms of a restructured engagement, which were memorialized in a new engagement letter (the “Engagement Letter,” annexed hereto as Exhibit D). Pursuant to the Engagement Letter, Highland Capital re-engaged UBSS to act as placement agent in the event that market conditions improved, and the parties could go forward with securitizing the Warehouse Assets already held by UBS in the Warehouse Facility. UBS agreed to continue holding the Warehouse Assets in the Warehouse Facility, which had a notional value of approximately \$818 million.

63. Under the terms of the Engagement Letter, UBS released claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

**2. The Restructured Warehouse Agreements**

64. On March 14, 2008, UBSS, the Fund Counterparties and Highland Capital also entered into a cash warehouse agreement (the “Cash Warehouse Agreement”), pursuant to which UBSS agreed to continue to hold the Cash Portfolio. (A true and correct copy of the Cash Warehouse Agreement is annexed hereto as Exhibit E.)

65. UBS AG, the Fund Counterparties and Highland Capital also entered into a synthetic warehouse agreement, dated as of March 14, 2008 (the “Synthetic Warehouse Agreement,” and together with the Cash Warehouse Agreement, the “Warehouse Agreements”), pursuant to which UBS AG agreed to continue warehousing credit protection that it sold, *i.e.*, the CDS Portfolio. (A true and correct copy of the Synthetic Warehouse Agreement is annexed hereto as Exhibit F.)

66. Section 13(B) of the Cash Warehouse Agreement and § 11(B) of the Synthetic Warehouse Agreement make Highland Capital liable for losses, including losses in the

Warehouse Facility, by reason of acts or omissions constituting bad faith, willful misconduct, or gross negligence.

67. Under § 12 of the Synthetic Warehouse Agreement, the Fund Counterparties agreed to transfer to State Street the Initial Restructuring Collateral to partially secure their respective obligations to UBS under the Warehouse Agreements. Annex C to the Synthetic Warehouse Agreement identified the six assets that the Fund Counterparties purportedly transferred to State Street to satisfy their Initial Restructuring Collateral obligations, along with \$20 million in cash.

68. The Warehouse Agreements also contained releases whereby UBS agreed to release claims it had against Highland Capital and the Fund Counterparties for losses arising out of the Original Engagement.

**D. Highland Capital Uses Its Control Over The Fund Counterparties To Dissipate Their Assets Without Regard For The Fund Counterparties' Growing Obligations To UBS**

69. Almost immediately after the Restructured Transaction Agreements were executed, Highland Capital and the Fund Counterparties knowingly began to dissipate the Fund Counterparties' assets and make it impossible for the Fund Counterparties to ever repay UBS what they owed. Highland Capital and the Fund Counterparties did so at various times when the Fund Counterparties owed UBS hundreds of millions of dollars.

70. For example, on or about March 26, 2008, just days after entering the Restructured Transaction, Highland Capital caused certain SOHC assets to be encumbered by entering into a transaction with Barclays Bank, plc. ("Barclays"). At or around the same time, CDO Fund was negotiating financing arrangements with Morgan Stanley & Co. International Ltd. and Highland Capital IV SPC, whereby it granted a security interest in its assets to those entities. By granting a security interest in the Fund Counterparties' assets to other creditors,

Highland Capital unfairly and improperly reduced the assets available to satisfy the Fund Counterparties' obligations to UBS in bad faith and in violation of UBS's rights.

71. Similarly, on or about April 2, 2008, Highland Capital advised UBS that defendant CDO Fund had recently monetized a \$129 million long position in SunCom Wireless. When Highland Capital and CDO Fund subsequently provided UBS with additional financial information about CDO Fund, however, UBS discovered that Highland Capital had caused CDO Fund to transfer approximately \$100 million of the cash proceeds from the SunCom Wireless sale out of CDO Fund.

72. By improperly removing such a substantial amount of cash from CDO Fund, Highland Capital interfered in bad faith with CDO Fund's ability to satisfy its steadily increasing financial obligations to UBS. In particular, in or around May 2008, when the cash proceeds from the SunCom Wireless position were siphoned off, the Fund Counterparties owed UBS in excess of \$166 million related to losses in the Warehouse Facility, approximately 50% of which CDO Fund was obligated to pay.

73. Highland Capital also repeatedly caused SOHC's cash to be transferred by defendant Highland Financial. In particular, during the first five months of 2008, SOHC's cash position was reduced by over \$10 million at a time when its obligations to UBS were increasing substantially.

**E. In the Fall of 2008, Losses Mount And The Fund Counterparties Face Collateral Calls From Creditors Including UBS That They Cannot Meet Despite Highland Capital's Belated Efforts To Do So** [REDACTED]

74. Under the terms of the Warehouse Agreements, the Fund Counterparties were required to post additional collateral with UBS if the combined market value of (a) the

Warehouse Assets and (b) the Initial Restructured Transaction Collateral, declined below a certain amount.


75. By September 2008, losses in the Warehouse Facility had increased significantly. At the same time, the value of the Initial Restructuring Collateral had declined substantially, as had the value of the assets held by the Fund Counterparties.

76. Highland Capital was desperate to avoid a default by any of its affiliates, including the Fund Counterparties. If a Highland Capital affiliate defaulted on its obligations to a creditor, Highland Capital's reputation in the investment community would be damaged, and there was a risk that Highland Capital's business would collapse. Highland Capital feared that a public default would lead investors in Highland Capital's hedge fund family to withdraw their capital, and lead creditors to take aggressive actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights.

**1. The First Margin Call**

77. On or about September 16, 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Specifically, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties were each required to post \$10 million in cash or equivalent securities (the "First Margin Call").

78. Because Highland Capital had routinely drained cash from the Fund Counterparties, the Fund Counterparties lacked the liquidity to meet UBS's demands using their own assets.

79. On or about September 19, 2008, the Fund Counterparties satisfied the First Margin Call by together posting \$20 million in cash as additional collateral. 



**2. UBS Is Harmed By Highland Capital's Response To The Fund Counterparties' Liquidity Crisis**

80. In the wake of the First Margin Call, the Fund Counterparties remained starved for liquidity. Still desperate to avoid defaults to creditors and the consequences described above, Highland Capital resorted to

81. Highland Capital and the individuals that directed the Fund Counterparties knew that they had caused the Fund Counterparties to become incapable of satisfying their obligations to all of their respective creditors when they came due, and that they were insolvent or, at the very least, within the zone of insolvency.

82. For example, on or about September 26, 2008, Dondero and Highland Capital improperly

83.



84.

85.

[REDACTED]

86.

[REDACTED]

Highland Capital executed this plan at UBS's expense to protect their substantial personal stake in Highland Financial and prevent negative publicity associated with defaulting [REDACTED]. Implementing this plan, however, caused SOHC (and its alter ego, Highland Financial) to improperly and in bad faith breach duties and obligations to UBS.

87.

[REDACTED]

SOHC's expected obligations to UBS were well in excess of \$250 million, which were due and owing to UBS no later than March 14, 2009. Thus, by [REDACTED], Highland Capital and the Fund Counterparties made a fraudulent conveyance and interfered in bad faith with the Fund Counterparties' ability to meet their contractual obligations to UBS.

88. Given the state of the financial markets at the time, Highland Capital, Highland Financial and SOHC had no expectation that SOHC would be able to satisfy its

obligations to UBS when they came due.



89.



### **3. The Second Margin Call**

90. On or about October 21, 2008, UBS notified Highland Capital that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties each owed another \$10 million (the “Second Margin Call”).


91. In response to the Second Margin Call, Highland Capital offered UBS numerous assets as collateral. UBS rejected those offers for various business-related reasons. As UBS would later learn, however, at the time Highland Capital was offering the assets to UBS, the Fund Counterparties did not own them.

92. On or about October 24, 2008, the Fund Counterparties satisfied the Second Margin Call by together posting assets with a notional value of \$49.97 million (but a market value of approximately \$20 million), with the understanding that UBS would authorize State Street to return the securities if and when the Fund Counterparties were able to replace

those securities with \$20 million in cash. As UBS would later learn,



93. Moreover, at the same time that Highland Capital was telling UBS that the Fund Counterparties did not have sufficient cash assets to meet the Second Margin call,



#### **4. The Third Margin Call**

94. On or about November 7, 2008, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties had an obligation to post another \$10 million as collateral (the “Third Margin Call”).

95. On or about November 11, 2008, Highland Capital and the Fund Counterparties offered to post various securities to satisfy the Third Margin Call. In response to the Third Margin Call, Phil Braner of Highland Capital emailed UBS a list of proposed collateral including eight securities with a purported market value of approximately \$20 million (i.e., twice the amount of cash due to satisfy the Third Margin Call).

96. Pursuant to the Warehouse Agreements, UBS was authorized to reject proposed collateral. UBS determined that the proposed additional collateral offered by Highland Capital and the Fund Counterparties was unacceptable. On or after November 13, 2008, UBS formally rejected the offered securities, and requested that the Fund Counterparties provide cash



or cash equivalent collateral to satisfy their obligations under § 12(C) of the Synthetic Warehouse Agreement.

97. UBS would later learn that



98. When UBS confronted Highland Capital about this issue Mr. Braner of Highland Capital explained that



**F. Termination Of The Agreements And Demand For Payment Of Losses**

99. As of December 3, 2008, the Fund Counterparties still had not met the Third Margin Call in accordance with § 12(C) of the Synthetic Warehouse Agreement. This failure resulted in UBS's declaration of a termination date ("Termination Date") under the Agreements.

100. On December 3, 2008, UBS delivered a letter (the "Termination Date Letter") to Highland Capital and the Fund Counterparties notifying them of such failure and the

occurrence of a Termination Date under each Agreement. (A true and correct copy of the Termination Date Letter is annexed hereto as Exhibit G.)

101. Sections 5 and 7 of the Cash Warehouse Agreement provided that if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, UBSS could, in its sole discretion, retain any of the securities in the Warehouse Facility or sell such securities to one of UBSS's affiliates or an unaffiliated party.

102. Pursuant to the terms of the Agreements, if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, each of the Fund Counterparties was obligated to pay to UBS its pro rata share of any market value losses on the Warehouse Assets, which UBS determined it had experienced and so notified Highland Capital and the Fund Counterparties.

103. On December 19, 2008, UBSS delivered a letter (the "Cash Warehouse Demand Letter") to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Cash Warehouse Demand Letter is annexed hereto as Exhibit H.) UBSS demanded that Highland Capital and the Fund Counterparties wire that required amount to UBSS no later than 5:00 pm on December 24, 2008 (i.e., the third business day after the date of the Cash Warehouse Demand Letter) (the "Final Payment Date"). Highland Capital and the Fund Counterparties failed to make the required payment to UBSS.

104. The Synthetic Warehouse Agreement provided that in the event the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, the Fund Counterparties would be collectively responsible for 100% of the aggregate amount of losses on the CDS Portfolio and each of the Fund Counterparties would pay, after notice of such amount due from UBS, its pro rata share of such amount to UBS within three business days.

105. On December 19, 2008, UBS AG delivered a letter (the “Synthetic Warehouse Demand Letter”) to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Synthetic Warehouse Demand Letter is annexed hereto as Exhibit I.) UBS AG demanded that the Highland Capital and the Fund Counterparties wire the required amount to UBS AG no later than 5:00 PM on the Final Payment Date (i.e., December 24, 2008 — the third business day after the date of the Synthetic Warehouse Demand Letter). Highland Capital and the Fund Counterparties failed to make the required payment to UBS AG.

**G. Notice Of Failure to Pay, Auction And Final Accounting Letter**

106. On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to make the requisite payments when due pursuant to the Agreements and the applicable demand letters. On or about January 16, 2009, in connection with unwinding the Warehouse Facility, UBS conducted the auction contemplated by the Warehouse Agreements.

107. On or about March 19, 2009, UBS delivered a letter to Highland Capital and the Fund Counterparties concerning a final accounting concerning the auction and the losses in the Warehouse Facility. UBS determined that Highland Capital and the Fund Counterparties owed it \$686,853,290.26.

**H. Highland Capital**

108.

109. In December 2008, immediately after UBS terminated the Restructured Transaction, Dondero and Highland Capital



110. On or about February 24, 2009, UBS commenced this action against Highland Capital and the Fund Counterparties. At the time, SOHC and Highland Financial, as its alter ego, owed UBS approximately \$345 million.

111. Undeterred, on or about March 17, 2009, Dondero and Highland Capital



- 

•

[REDACTED]

•

[REDACTED]

112. As a result, Highland Capital (a) further interfered in bad faith with UBS's contractual rights and the Fund Counterparties' contractual obligations under the Warehouse Agreements, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements; and (b)

[REDACTED]

[REDACTED]

113.

[REDACTED]

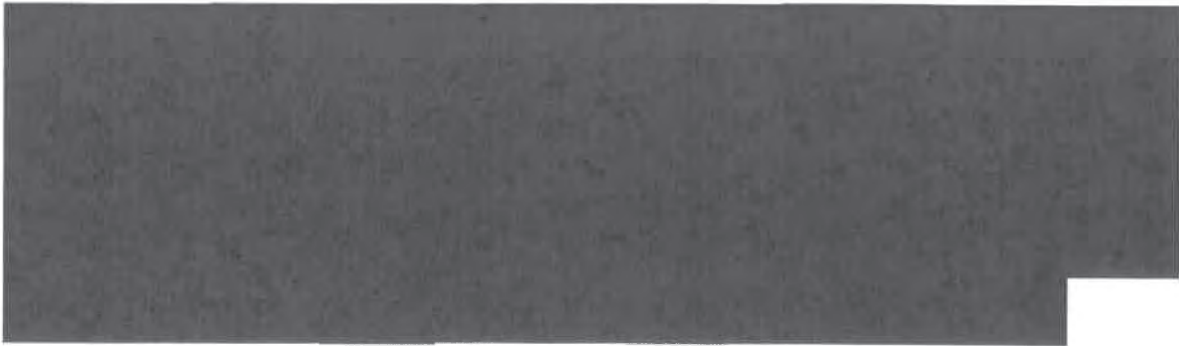
The full extent of UBS's

injury should be determined at trial.

114.

[REDACTED]








**FIRST CAUSE OF ACTION**  
**(Fraud Against The Fund Counterparties)**

115. UBS repeats and realleges the allegations set forth in paragraphs 1 through 114 of this Second Amended Complaint as if fully set forth herein.

116. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

117. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

118. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties as well as information about their finances and assets, including, but not limited to, information regarding the following:

- (a) 
- (b) 
- (c) 

119. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

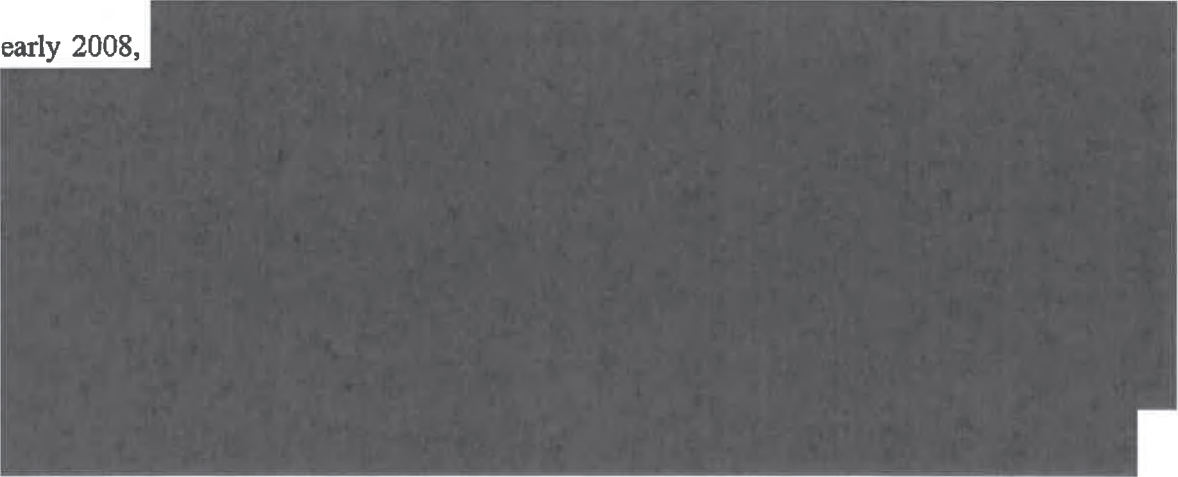
120. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances and assets when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

121. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

122. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances and assets. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Fund Counterparties to complete or clarify the information that it provided to UBS concerning

the Fund Counterparties' finances and assets. Consequently, Highland Capital's and the Fund Counterparties' concealment of the Fund Counterparties' finances and assets was fraudulent.

123. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund Counterparties' financial condition and assets. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances and assets. UBS also had no reason to believe that the financial information that Highland Capital provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008,



124. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

125. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

126. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of \$686 million in losses that the Fund Counterparties cannot pay to UBS.

127. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Fraud Against The Fund Counterparties)**  
**(Pled Solely To Preserve For Appeal)**

128. UBS repeats and realleges the allegations set forth in paragraphs 1 through 127 of this Second Amended Complaint as if fully set forth herein.

129. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

130. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

131. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties and information about their finances, assets and business practices, including, but not limited to, information regarding the following:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]



(g)

132. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

133. These Omissions rendered the Fund Counterparties' representations, statements and financial statements materially misleading. Because Highland Capital and the Fund Counterparties concealed this information from UBS, UBS could not properly evaluate SOHC's ability to satisfy its obligations to UBS. For instance, UBS received financial reports from Highland Capital for the Fund Counterparties that suggested that the Fund Counterparties held hundreds of millions of dollars worth of assets that could be used to satisfy their obligations to UBS. However, a substantial portion of the assets that UBS reasonably believed would be available, were, in fact, not going to be available to pay UBS because they were going to be encumbered as a result of other transactions. In other words, because Highland Capital concealed its intentions, the financial reports that it provided to UBS were misleading as they provided UBS with false and illusory comfort regarding the Fund Counterparties' capacity to fulfill their contractual obligations to UBS. As the Fund Counterparties' investment manager, Highland Capital would have led the negotiations related to the other financing arrangements.

134. Similarly, during negotiations concerning the Initial Restructuring Collateral, Highland Capital and SOHC made an additional Omission by not disclosing to UBS

the fact that SOHC had a serious liquidity problem. SOHC had to borrow cash from Highland Capital to satisfy the cash portion of its Initial Restructuring Collateral obligation. On or about December 18, 2007, while the parties were negotiating the restructuring, Highland Capital loaned \$30 million to SOHC, which Highland Capital and SOHC's alter ego, Highland Financial, earmarked for SOHC to use as collateral in connection with negotiating extensions of warehouse facilities, including the one with UBS. As Highland Financial's and SOHC's investment manager, Highland Capital knew about SOHC's liquidity problems since they were discussed openly at Highland Financial board meetings attended by Highland Capital. The failure to fully disclose SOHC's liquidity problem, and its inability to meet the Initial Restructuring Collateral obligation using its own cash assets was an Omission, because it was indicative of the strength of SOHC's finances and assets, and SOHC's ability to satisfy obligations to UBS.

135. Highland Capital and Fund Counterparties also concealed from UBS that Highland Capital had to commingle assets among its various affiliates and disregard corporate formalities to satisfy the Fund Counterparties' liquidity needs. Facts and information concerning these business practices, including Highland Capital's commingling of assets and disregard of corporate formalities was information solely and peculiarly within the knowledge of Highland Capital and its affiliates. As the investment manager to Highland Financial, SOHC and CDO Fund (as well as the Affiliated Transferee Defendants), Highland Capital knowingly arranged and caused the asset transfers between and among the various affiliates in disregard of corporate formalities.

136. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and

qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances, assets and business practices when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

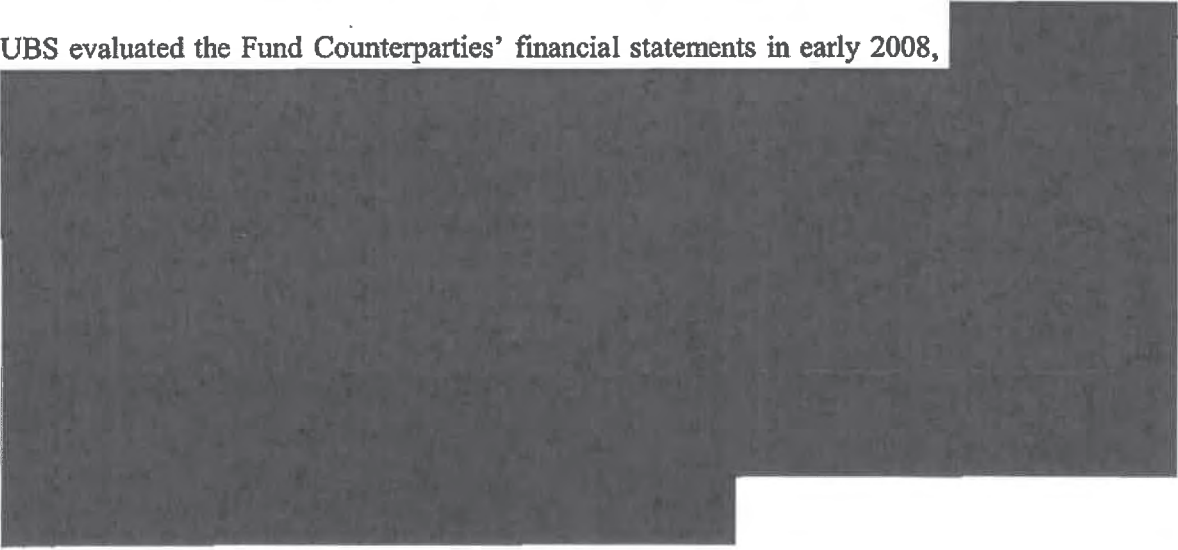
137. In addition, if UBS had known that Highland Capital and the Fund Counterparties ignored corporate formalities or that Highland Capital freely transferred assets among its controlled entities, UBS would not have entered the Restructured Transaction. These misrepresentations and Omissions proximately caused harm to UBS.

138. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital and the Fund Counterparties provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

139. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances, assets and business practices. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Highland Entities to complete or clarify the information that it provided to UBS concerning the Fund Counterparties' finances, assets and business practices. Consequently, Highland Capital's and the Fund Counterparties' concealment about the Fund Counterparties' finances, assets and business practices was fraudulent.

140. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund

Counterparties' financial condition, assets and business practices. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances, assets and business practices. UBS also had no reason to believe that the financial information that Highland Capital and the Fund Counterparties provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008,



141. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

142. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole

for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

143. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of \$686 million in losses that the Fund Counterparties cannot pay to UBS.

144. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(Breach of Contract Under the Cash Warehouse Agreement Against The Fund Counterparties)**

145. Plaintiff UBSS repeats and realleges the allegations set forth in paragraphs 1 through 144 of this Second Amended Complaint as if fully set forth herein.

146. The Cash Warehouse Agreement is a valid and binding contract.

147. UBSS has performed all of its obligations under the Cash Warehouse Agreement.



148. Pursuant to the Cash Warehouse Agreement, each of the Fund Counterparties was required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the required transfer. The Fund Counterparties' failure to make such transfer is a breach under the Cash Warehouse Agreement, and resulted in a Termination Date under the Cash Warehouse Agreement.

149. In accordance with the terms of the Cash Warehouse Agreement, UBSS demanded that each of the Fund Counterparties pay to UBS their respective pro rata shares of the amount of losses on the Cash Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Cash Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBSS. The failure to pay these amounts to UBSS when due under the Cash Warehouse Agreement constituted a further breach under the Cash Warehouse Agreement.

150. By reason of the foregoing, UBSS has suffered and will continue to suffer damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(Breach of Contract Under the Synthetic Warehouse Agreement Against The Fund Counterparties)**

151. Plaintiff UBS AG, repeats and realleges the allegations set forth in paragraphs 1 through 150 of this Second Amended Complaint as if fully set forth herein.

152. The Synthetic Warehouse Agreement is a valid and binding contract.

153. UBS AG has performed all of its obligations under the Synthetic Warehouse Agreement.

154. Pursuant to the Synthetic Warehouse Agreement, each of the Fund Counterparties were required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the requisite transfer. The failure to make such transfer resulted in a breach and a Termination Date under the Synthetic Warehouse Agreement.

155. UBS AG demanded that each of the Fund Counterparties pay to UBS AG their pro rata share of losses on the CDS Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Synthetic Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBS. The failure to pay these amounts when due under the Agreements was a further breach under the Synthetic Warehouse Agreement.

156. By reason of the foregoing, UBS AG has suffered and will continue to suffer damages in an amount to be determined at trial.

157. Paragraphs 157 to 166 have been intentionally left blank.

**FIFTH CAUSE OF ACTION**  
**(Fraudulent Conveyances Against All Defendants)**

167. UBS repeats and realleges the allegations set forth in paragraphs 1 through 166 of this Second Amended Complaint as if fully set forth herein.

168. Between March 14, 2008 and December 3, 2008, as losses in the Warehouse Facility grew, Highland Capital exercised its control over the Fund Counterparties and caused the Fund Counterparties to transfer valuable cash and assets out of the Fund Counterparties, thereby impairing their ability to bear losses in the Warehouse Facility, and otherwise satisfy their obligations to creditors, including UBS. [REDACTED]

169.



170.



171.



172.



173.





174.



175.

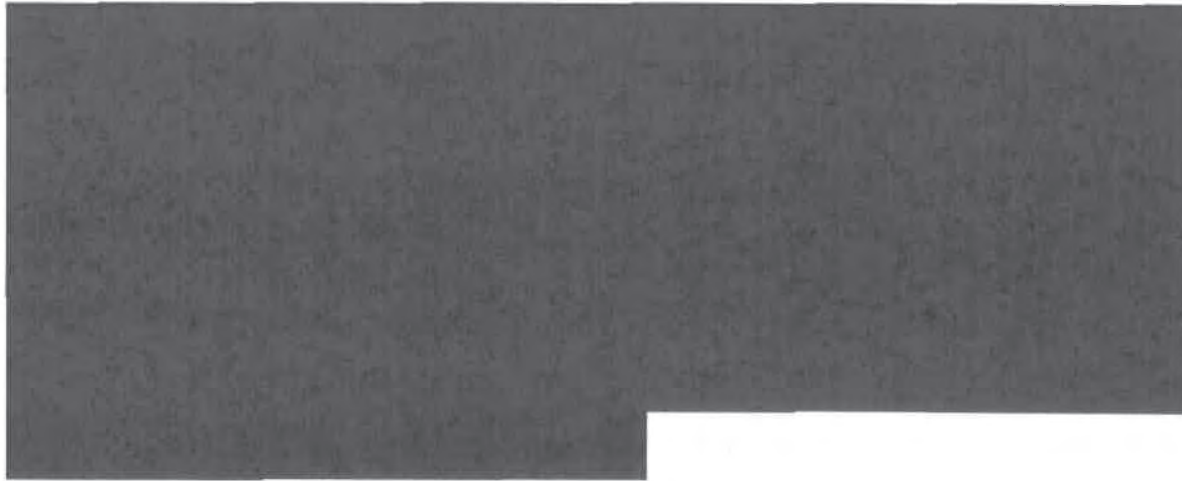




176.

177.

178.



179. As a result of the foregoing fraudulent conveyances, the Fund Counterparties were unable to satisfy their obligations to UBS. As a result of the foregoing fraudulent conveyances, UBS has been harmed in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION**  
**(Tortious Interference With Contractual Relations**  
**Against The Affiliated Transferee Defendants)**  
**(Pled Solely To Preserve For Appeal)**

180. UBS repeats and realleges the allegations set forth in paragraphs 1 through 179 of this Second Amended Complaint as if fully set forth herein.

181. The Agreements are valid and binding contracts.


182. The parties agreed that UBS would not bear the risk of any losses in connection with the Restructured Transaction. As a direct result of the Fund Counterparties' breach of the Warehouse Agreements, UBS suffered no less than \$686,853,290.26 in damages. Under the terms of the Warehouse Agreements, the Fund Counterparties' obligation to pay UBS for losses in the Warehouse Facility expressly survived the termination of the Agreements.

183. Highland Capital knew of the Agreements, and were familiar with their terms, including the Fund Counterparties' obligations to UBS thereunder. The Affiliated

Transferee Defendants, also knew of the Agreements, and their terms, including the Fund Counterparties' obligations to UBS thereunder.

184. Highland Capital and the Affiliated Transferee Defendants intentionally and improperly caused and ensured a breach of the Warehouse Agreements by the Fund Counterparties, thereby tortiously interfering with UBS's rights under the Agreements.

185. Specifically, in 2008 and 2009 Highland Capital wrongfully caused the improper and fraudulent asset transfers, payments, distributions and dividends described above, and thereby tortiously interfered with UBS's contractual relationship with the Fund Counterparties by knowingly impairing UBS's contractual right under the Warehouse Agreements to be reimbursed by the Fund Counterparties for the losses on the Warehouse Assets. For example, Highland Capital wrongfully caused the March 2009 Fraudulent Conveyance for which there was no legitimate purpose. The Affiliated Transferee Defendants



186. Highland Capital and the Affiliated Transferee Defendants



187. Highland Capital and the Affiliated Transferee Defendants engaged in the foregoing unlawful and improper conduct, and tortiously interfered with UBS's contractual rights under the Warehouse Agreements, for their own improper personal gain by knowingly violating UBS's rights and making it impossible for the Fund Counterparties to perform under the Warehouse Agreements. In particular, the foregoing conduct constitutes independent torts

and predatory acts directed at UBS for Highland Capital's and the Affiliated Transferee Defendants' own personal gain.

188. As a direct and proximate result of Highland Capital's and the Affiliated Transferee Defendants' tortious interference with UBS's contractual rights under the Agreements, UBS has suffered damages in an amount to be determined at trial. Had Highland Capital and the Affiliated Transferee Defendants not tortiously interfered with UBS's contractual rights, the Fund Counterparties would have been able to make payments to UBS of the amount they owed to UBS under the Warehouse Agreements.

**SEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment For General**  
**Partner Liability Against Strand)**

189. UBS repeats and realleges the allegations set forth in paragraphs 1 through 188 of this Second Amended Complaint as if fully set forth herein.

190. A limited partnership's general partner is personally liable for the partnership obligations of the limited partnership.

191. Highland Capital is a Delaware limited partnership. Defendant Strand is Highland Capital's general partner. As such, Strand is personally liable for the liability, debts and obligations of Highland Capital, including but not limited to Highland Capital's liabilities to UBS arising out of the Consolidated Action.

192. A justiciable controversy exists as to whether Strand is liable to UBS for the injuries caused by Highland Capital complained of in the Consolidated Action as a result of Strand being Highland Capital's general partner.

**EIGHTH CAUSE OF ACTION**  
**(Declaratory Judgment For Alter Ego Liability**  
**Against Highland Financial)**

193. UBS repeats and realleges the allegations set forth in paragraphs 1 through 192 of this Second Amended Complaint as if fully set forth herein.

194. As alleged above, SOHC breached the Warehouse Agreements and otherwise harmed UBS by engaging in fraudulent misconduct. Highland Financial is SOHC's alter ego and should be held responsible and liable for SOHC's breach of the Warehouse Agreements and fraudulent misconduct.

195. SOHC is a mere instrumentality of Highland Financial. SOHC had no independence and could not exercise any business discretion whatsoever. [REDACTED]

[REDACTED] SOHC did not have its own offices, officers or employees. Rather, it shared common officers, directors and employees, as well as common office space, with Highland Financial.

196. As alleged in detail above, Highland Financial completely dominated the day-to-day operations of SOHC as well as SOHC's sister-affiliates. In particular, Highland Financial operated Highland Financial and its subsidiaries, including SOHC, as a single entity, [REDACTED]



[REDACTED]

197. A justiciable controversy exists as to whether Highland Financial is liable to UBS as SOHC's alter ego for the losses and harm that UBS suffered that were caused by SOHC's breach of the Warehouse Agreements, and the fraudulent and tortious conduct complained of herein.

**RELIEF DEMANDED**

WHEREFORE, plaintiffs UBSS and UBS AG demand judgment:

(a) On the first cause of action, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than \$686,853,290.26;

(b) On the second cause of action, which is pled solely to preserve UBS's appellate rights, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than \$686,853,290.26;

(c) On the third cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Cash Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(d) On the fourth cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Synthetic Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(e) On the fifth cause of action, as against all defendants, (i) declaring that the dispositions of the Fund Counterparties' and Highland Financial's assets, as directed by Highland Capital, constituted fraudulent conveyances; (ii) appointing a receiver over defendants; (iii) directing that a full accounting be had of defendants' affairs and finances; (iv) imposing a constructive trust over defendants' assets until such an accounting is completed; and/or (v) awarding UBS damages in an amount to be determined at trial, but no less than the value of the assets fraudulently and improperly transferred, or, alternatively, directing that defendants and their partners, members or shareholders return to the Fund Counterparties any assets or consideration received from Highland Financial or the Fund Counterparties, directly or indirectly, as distributions, dividends, consideration, compensation, fees, interest, principal or otherwise, between March 14, 2008 and the present.

(f) On the sixth cause of action, as against the Affiliated Transferee Defendants, which is pled solely to preserve UBS's appellate rights, declaring that each of those defendants is liable for tortiously interfering with UBS's contractual rights under the Warehouse Agreements, and awarding UBS an amount to be determined at trial;

(g) On the seventh cause of action, as against defendant Strand, declaring that Strand is responsible for Highland Capital's liability and obligations arising out of the Consolidated Action;

(h) On the eighth cause of action, as against defendant Highland Financial, declaring that Highland Financial is SOHC's alter ego, and that as such, Highland Financial is responsible for SOHC's liability and obligations to UBS arising out of this action;

(i) Awarding UBS punitive damages in an amount to be determined at trial;

(j) Granting UBS its costs and disbursements, including reasonable attorneys' fees and expenses of this action;

(k) Granting UBS pre-judgment interest; and

(l) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 11, 2011

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Gregory A. Markel

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*Attorneys for Plaintiffs UBS Securities LLC and  
UBS AG, London Branch*

# **Exhibit B**

## **Phase I Decision and Order**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

-----X  
UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

INDEX NO. 650097/2009

Plaintiff,

- v -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND  
SPECIAL OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND  
CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., STRAND ADVISORS,  
INC.,

DECISION AND ORDER AFTER  
TRIAL

Defendant.  
-----X

This action arises out of a failed restructured transaction between plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively, UBS) and defendants Highland CDO Opportunity Master Fund, L.P. (CDO Fund) and Highland Special Opportunities Holding Company (SOHC) (together, the Fund Counterparties), and defendant Highland Capital Management, L.P. (Highland Capital) (together with the Fund Counterparties, Highland), for the securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs).

The court conducted a bench trial from July 9 through July 27, 2018 on plaintiffs' third and fourth causes of action in the second amended complaint for breach of contract, and on defendant Highland Capital's first and second counterclaims against plaintiff UBS Securities



LLC for breach of contract and unjust enrichment, respectively.<sup>1</sup> Based on the credible evidence at trial, the court now makes the following determination as to the breach of contract causes of action and counterclaims.<sup>2</sup>

In April and May 2007, the parties agreed to pursue a collateralized debt obligations transaction governed by an Engagement Letter, a Synthetic Warehouse Agreement for CDSs, and a Warehouse Agreement for CLOs (Original Agreements). (DX 4, DX 5, DX 6.)<sup>3</sup> It is undisputed that UBS acted as the “financial arranger” for the transaction and was responsible for financing the acquisition of assets, which would then be held in portfolios, which the parties refer to as the Cash Warehouse and the Synthetic Warehouse or collectively as the Knox Warehouse. (Ps.’s Findings, ¶ 4; Ds.’s Findings, ¶ 5.)<sup>4</sup> Highland Capital acted as the “Servicer” and was responsible for identifying the specific CLOs to be securitized and the Reference Obligations for the CDSs to be securitized. (Ps.’s Findings, ¶¶ 3, 4; Ds.’s Findings, ¶¶ 6, 8.)

In furtherance of the transaction, UBS acquired assets with a notional value of \$818 million. (Ps.’s Findings, ¶ 6; Ds.’s Findings, ¶ 5.) There were 33 CLO tranches in the Cash Warehouse, with a notional value of \$174 million. UBS paid \$170 or \$170.5 million to acquire the CLOs because the bonds were purchased at a slight discount on their par value. (Ds.’ Findings, ¶ 6; Ps.’s Findings, ¶ 6.) The Synthetic Warehouse contained 87 credit default swaps,

<sup>1</sup> By decision on the record on May 1, 2018 (NYSCEF Doc. No. 494), the court bifurcated the trial. The decision held that the breach of contract claims, which were to be heard by the court, would be determined prior to claims, including fraudulent conveyance claims, which were to be heard by a jury.

<sup>2</sup> At the trial, the parties agreed to the submission of extensive evidence, subject to standing objections. This decision is not based on such evidence, unless the decision expressly states otherwise.

<sup>3</sup> Defendants’ and plaintiffs’ trial exhibits will be referred to as DX \_ and PX \_ , respectively. The parties’ demonstrative exhibits will be referred to as DX Demo. \_ and PX Demo. \_

<sup>4</sup> The Fund Counterparties’ and Highland Capital Management, L.P.’s Proposed Findings of Fact and Conclusions of Law will be referred to as Ds.’s Findings. Plaintiffs’ Proposed Findings of Fact and Conclusions of Law will be referred to as Ps.’s Findings. Defendants’ Findings are all identified by paragraph number. Plaintiffs’ Findings of Fact are identified by paragraph number, while their Findings of Law are identified only by page number.

with a notional value of \$644 million. (Ds.'s Findings, ¶ 7; Ps.'s Findings, ¶ 6.) UBS served as the protection seller on all of the CDSs. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 8.) For five of the CDSs, with a notional value of \$45 million, Lehman Brothers Special Financing, Inc. (Lehman) acted as the protection buyer (Lehman Swaps). (Ps.'s Findings, ¶ 8; Ds.'s Findings, ¶ 9; PX 755<sup>5</sup>, at 1.) For 20 of the CDSs, with a notional value of \$124 million, UBS acted as both protection seller and protection buyer (the Internal Swaps). (Ds.'s Findings, ¶ 10; Ps.'s Findings, ¶ 9; PX 755, at 4-5.)

The Original Agreements expired by their terms on August 15, 2007. (PX 1, at 1.) The parties agreed to restructure the transaction, signing a new Engagement Letter, the 2008 Cash Warehouse Agreement (CWA), and the 2008 Synthetic Warehouse Agreement (SWA), as of March 14, 2008. (See PX 1, PX 2, PX 3.) As of March 14, 2008, the Knox assets had lost significant value and the parties agreed that, given the market conditions existing as of the date of the restructured transaction, it was not then feasible to sell the securities and close the transaction. (Ps.'s Findings, ¶ 20; 2008 Engagement Letter [PX 1, at 8].)

As discussed further below, the Synthetic Warehouse Agreement provided for the roll-over of the Existing Credit Default Swaps and the Existing Collateral Portfolio into the warehouses created under the 2008 restructured transaction. (See SWA, Whereas Clause 5.) Section 12 of the Synthetic Warehouse Agreement provided that the Fund Counterparties would transfer additional cash and securities "to secure its obligations to UBS" under the SWA and the CWA. In particular, this Section required the Fund Counterparties to make an Initial Deposit of \$20 million in cash and approximately \$54 million in Eligible Securities on the date of the

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<sup>5</sup> PX 755 is a document that that was jointly prepared by plaintiffs' and defendants' counsel so that specific information regarding the Knox Warehouse assets could be found in one place. (Trial Tr. at 858.)

execution of the SWA. (Id., § 12 [A].) The SWA contained a collateral call provision under which UBS was required to track its CDS and Cash Exposure to losses, as defined under the Agreement, on a semi-monthly basis, and the Fund Counterparties were required to deposit an additional \$10 million in collateral (cash and/or Eligible Securities) for every \$100 million increase in the defined Deposit Threshold Exposure Amount. (Id., §§ 12 [B], [C].)

It is undisputed that, pursuant to Section 12 (C) of the SWA, UBS made a first collateral call for \$10 million on September 17, 2008 (PX 4), and a second collateral call for \$10 million on October 21, 2008 (PX 5), both of which were satisfied by the Fund Counterparties. (Testimony of Keith Grimaldi, Former Head of UBS's CDO Secondary Trading Desk, Trial Transcript (Tr.) at 81, 112, 119.)

On November 7, 2008, UBS issued the third, and final, collateral call to the Fund Counterparties for an additional \$10 million. (PX 6.) It is undisputed that the Fund Counterparties did not meet this collateral call. (Ds.'s Findings, ¶ 17; Ps.'s Findings, ¶¶ 43-47).<sup>6</sup>

On December 3, 2008, UBS sent a notice to Highland stating that, to date, no deposits have been made in response to the November collateral call, and that "a Termination Date has occurred under the Warehouse Agreements and a termination date has occurred under the Engagement Letter." (PX 7; PX 9.) The notice further stated that "UBS is forbearing from exercising its remedies [under the Agreements] for a period of two Business Days from the date hereof in order to permit [the Fund Counterparties] to pay the Additional Deposits by 5 pm New York time on December 5, 2008." (Id.) On December 5, 2008, UBS sent an additional notice to

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<sup>6</sup> It is undisputed that the Fund Counterparties offered to post CLO assets to satisfy the third collateral call and that UBS did not accept that collateral. UBS's Keith Grimaldi testified that UBS rejected the CLOs because "at that time the marketplace was declining and declining rapidly. We thought there would be more declines, so we collectively made a decision that we wanted cash or government securities ... that would be easily liquid and reflect better value." (Trial Tr. at 122.) Defendants stipulated that UBS had the right to insist on cash. (See Statement of Andrew Cruciani [Ds.'s Atty.], Trial Tr. at 1736.)

Highland stating that the Additional Deposit has not been made, and that “[c]onsequently, UBS will proceed to exercise the rights and remedies available to it under the Warehouse Agreements, the Engagement Letter, at law and otherwise.” (PX 8.)

### THIRD COLLATERAL CALL

As a threshold matter, the parties dispute whether the third collateral call was proper. Highland argues that UBS should not have included the 20 Internal Swaps in calculating the Deposit Threshold Exposure Amount “because the Intradesk [i.e., Internal] Swaps were not Existing Credit Default Swaps under the SWA . . . .” (Ds.’s Findings, ¶ 28.) Highland also claims that the Lehman Swaps were not properly included in the calculation because they had been terminated prior to the third collateral call. (See *id.*, ¶ 27.)

More particularly, Highland claims that the Internal Swaps were not Existing Credit Default Swaps because they were not documented, as allegedly required by Section 3 of the SWA, in the form of an ISDA Master Agreement and ISDA Confirmation. (Ds.’s Findings, ¶¶ 28, 30-31.) UBS does not dispute that the Internal Swaps were not documented by the ISDA Master Agreement and Confirmation, but argues that Section 3 does not require such documentation for the Internal Swaps. (Ps.’s Findings, at 24-25.)<sup>7</sup>

Resolution of this dispute involves an issue of contract interpretation. It is well settled that the determination of whether a contract is ambiguous is one of law to be resolved by the court. (*Matter of Wallace v 600 Partners Co.*, 86 NY2d 543, 548 [1995]; *W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 [1990].) Written agreements are to be construed in accordance with the parties’ intent, and “the best evidence of what parties to a written agreement

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<sup>7</sup> It is undisputed that the Internal Swaps were documented by electronic trading tickets but not by ISDA Master Agreements or ISDA trade confirmations. (Ds.’s Findings, ¶ 10; Ps.’s Findings, ¶¶ 16-17; PX 29 [electronic trading tickets].)

intend is what they say in their writing.” (Schron v Troutman Sanders LLP, 20 NY3d 430, 436 [2013] [internal quotation marks, brackets, and citation omitted].) The court should determine from contractual language, without regard to extrinsic evidence, whether there is any ambiguity. (Chimart Assocs. v Paul, 66 NY2d 570, 573 [1986].) Extrinsic or parol evidence “may not be considered when the intent of the parties can be gleaned from the face of the instrument.” (Id. at 572-573.) “Extrinsic evidence of the parties’ intent may be considered only if the agreement is ambiguous. . . .” (Greenfield v Philles Records, Inc., 98 NY2d 562, 569 [2002].) “Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties’ intent, or where its terms are subject to more than one reasonable interpretation.” (Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa., 25 NY3d 675, 680 [2015] [internal quotation marks and citation omitted].)

It is also well settled that a court should “construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose.” (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007] [internal quotation marks and citations omitted]; National Conversion Corp. v Cedar Bldg. Corp., 23 NY2d 621, 625 [1969] [holding that “[a]ll parts of an agreement are to be reconciled, if possible, in order to avoid inconsistency”].)

Applying these precepts, the court holds that the SWA is not ambiguous with respect to the requirements for documentation of CDSs, that Section 3 of the SWA only applies to CDSs in which a third party is the protection buyer, and that this Section does not require ISDA documentation for the Internal Swaps.



The SWA defines “Existing Credit Default Swap[s]” as the CDSs “that were the subject of the Original Synthetic Warehouse Agreement.” (SWA, Whereas Clause 5.) Section 3 of the SWA provides, in pertinent part:

“Form of Documentation. Each Existing Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, has been documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) an ISDA published confirmation. . . . Each Additional Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) the Confirmation attached [to the SWA] . . . .”

As the Agreement that governs the securitization of Existing and Additional Credit Default Swaps, the SWA contains numerous detailed provisions regarding the accumulation and disposition of these financial instruments. Section 3, which pertains to documentation of the swaps, is the only provision in the SWA that is limited to CDSs in which UBS is the Seller and a counterparty is the Buyer. All of the other provisions of the SWA refer to CDSs without such limitation.

Moreover, like SWA Section 3, the Original SWA provided: “Each Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the counterparty, which documents are confidential between UBS and each counterparty and (ii) the Confirmation attached hereto. . . .” (Original SWA, § 3 [NYSCEF Doc. No. 626].) It is undisputed, however, that the Internal Swaps were included in the Original SWA portfolio but were not documented by the ISDA Master Agreement or Confirmation. It is also undisputed that the Internal Swaps were nevertheless again included in the Initial Net Exposure Amount in the SWA for the restructured transaction. (Testimony of Peter Vinella [Highland’s expert in

structured financial products], Trial Tr. at 1097, 1124-1125 [acknowledging that the Internal Swaps were included in the Initial Net Exposure Amount].)

Initial Net Exposure Amount is defined in the SWA<sup>8</sup> as “111,767,486.88, being the amount by which the Aggregate Net Exposure Amount as of the date hereof [i.e., the March 14, 2008 “as of” date of the SWA] exceeds the Initial Deposit.” As defined in SWA Section 12 (A), the Initial Deposit is the deposit of approximately \$74,000,000 in cash and Eligible Securities made on the date of execution of the SWA. Aggregate Net Exposure Amount is defined as the amount by which CDS Exposure and Cash Exposure, as of the date of the collateral calculation, exceed the balance on deposit in the Deposit Account plus Positive Carry with respect to each Collateral Obligation.<sup>9</sup> As discussed above, Section 12 (C) of the SWA requires a deposit of \$10 million in additional collateral when the Deposit Threshold Exposure Amount is greater than or equal to \$100 million. The Deposit Threshold Exposure Amount is defined in the SWA as “the amount, if any, by which (i) the Aggregate Net Exposure Amount as of [the date of the collateral calculation] exceeds (ii) the Initial Net Exposure Amount.” The Initial Net Exposure Amount, which includes the Internal Swaps, is thus integral to the calculation of the Deposit Threshold Exposure Amount.

Based on this reading of the SWA as a whole, the court concludes that the Internal Swaps were Existing Credit Default Swaps within the meaning of the SWA. The lack of ISDA documentation was therefore not a bar to their inclusion in the collateral call calculation.

The court rejects Highland’s further contention that the Internal Swaps should not have been included because there was “no economic consequence” to UBS from these swaps. (Ds.’s

<sup>8</sup> Definitions are found in the Definitions section of the SWA (SWA, Ex. A), unless the term is defined in a particular provision of the SWA, in which case the provision will be cited.

<sup>9</sup> Positive Carry is defined in the CWA. As explained by Adam Warren, Highland’s damages expert, carry includes interest payments from the CLOs. (Warren Testimony, Trial Tr. at 1299.)

Findings, ¶ 33.) The complex formula set forth in Section 12 for calculating the exposure of UBS on the assets in the warehouse that would trigger a collateral call does not contain any requirement that UBS include in the calculation only assets for which it was at risk of sustaining actual losses.<sup>10</sup>

The court further holds that, although the Internal Swaps were properly included in the third collateral call calculation, the Lehman Swaps were not. The parties do not dispute that the Lehman Swaps had been terminated based on the Event of Default that occurred upon Lehman's filing for bankruptcy on September 15, 2008. (DX 87 [UBS Default Notice].) Highland asserts, and UBS does not persuasively counter, that the Lehman Swaps should not have been included in the third collateral call. Indeed, UBS's Grimaldi forthrightly acknowledged that, given the termination, there should not have been "markdowns" on the Lehman Swaps. (Grimaldi Testimony, Trial Tr. at 297-298.)

Highland contends, based on the inclusion of the Lehman Swaps and Internal Swaps in the third collateral call calculation, that UBS "committed a prior material breach by failing to

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<sup>10</sup> In view of this holding that the Internal Swaps were properly included in the collateral call calculation pursuant to the unambiguous terms of the SWA, the court has not considered parol evidence on the issue.

The court thus rejects Highland's request for a finding that UBS admitted that the SWA required ISDA documentation of the Internal Swaps. (See Ds.'s Findings, ¶¶ 30-31.) This request is based on testimony of UBS's Keith Grimaldi who, when shown Section 3 during cross-examination and asked if every CDS was required to have ISDA documentation, responded: "According to the language, yes." (Grimaldi Testimony, Trial Tr. at 262-264.) Even if this evidence were properly considered, Highland's reliance on this answer ignores that Mr. Grimaldi further testified that ISDA documentation would not be "filled out" until the assets were transferred in the securitization. (*Id.* at 267-270.)

The court further notes that Highland requests a finding, arguably in support of its claim that the CDSs were not Existing Credit Default Swaps, that a CDS "cannot be created with the same legal entity on both sides of the transaction. . . ." (Ds.'s Findings, ¶ 29.) Even if parol evidence were properly considered, there was substantial evidence in the record that internal swaps were common in securitizations of synthetic assets. (LeRoux Testimony, Trial Tr. at 1673-1676; Vinella Testimony, Trial Tr. at 1158-1162 [denying that intracompany swaps are "economic transactions" but acknowledging their use in CLO securitizations].)

properly calculate the collateral call[.]” (Ds.’s Findings, ¶¶ 23, 27-28.) In support of this contention, Highland relies on the testimony of its expert Peter Vinella. According to Mr. Vinella’s own analysis, however, if the Lehman swaps are excluded from the calculation for the third collateral call, but the Internal Swaps are included, the total increase in the Deposit Threshold Exposure Amount as of November 4, 2008 is \$328.62 million—an amount greater than the \$300 million required to authorize the third collateral call pursuant to Section 12 of the SWA. (Vinella Testimony, Trial Tr. at 1122-1139; DX Demo. 8.) Louis Dudney, UBS’s expert in forensic accounting and damages (Trial Tr. at 824), analyzed Mr. Vinella’s testimony and confirmed, using the same numbers as Mr. Vinella, that the Deposit Threshold Exposure Amount still exceeded \$300 million on November 4, 2008, after excluding the Lehman Swaps but including the Internal Swaps. (PX Demo. 20 [accepted without objection in lieu of Dudney rebuttal testimony, Trial Tr. at 1870-1871].)

Based on this credible testimony that the threshold for the collateral call was met without the Lehman Swaps, the court holds that the third collateral call did not constitute a material breach of the contract, notwithstanding UBS’s improper inclusion of the Lehman Swaps in the calculation.<sup>11</sup> (See generally Awards.Com v Kinko’s, Inc., 42 AD3d 178, 187 [1st Dept 2007], affd 14 NY3d 791, 793 [2010]; Frank Felix Assocs., Ltd. v Austin Drugs, Inc., 111 F3d 284, 289 [2d Cir 1997] [under New York law, for a breach to be material, “it must go to the root of the agreement between the parties”] [internal quotation marks and citations omitted].)

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<sup>11</sup> In view of this holding that the Deposit Threshold Exposure Amount exceeded \$300 million as of November 7, 2008, the court need not reach UBS’s contention that the collateral call was proper because the Deposit Threshold Exposure Amount exceeded \$300 million as of December 2, 2008, prior to the termination of the transaction. (Ps.’s Findings, at 15 n 10.)

As discussed above, there is no dispute that the Fund Counterparties failed to meet the third collateral call. The court accordingly finds that the Fund Counterparties breached the SWA and turns to the issue of damages.

## DAMAGES

### Designation of Ineligible Securities

A critical issue in determining UBS's damages is whether UBS may recover damages for CDSs that UBS retained after its termination of the 2008 transaction, under these circumstances in which UBS did not designate the underlying reference obligations for any of the CDSs as "Ineligible Securities." Resolution of this issue requires interpretation of the SWA. Highland and UBS both contend that the SWA is unambiguous as to whether Ineligible Securities must be designated, but assert fundamentally inconsistent readings of the Agreement. (Ds.'s Findings, ¶¶ 44-49; see Ps.'s Findings, at 29 n 21.)

As held above, the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace, 86 NY2d at 548.) Ambiguity will be found to arise where the terms of a contract are "subject to more than one reasonable interpretation." (Universal Am. Corp., 25 NY3d at 680 [internal quotation marks and citation omitted].) As also held above, a court should construe a contract so as to give full meaning and effect to its material provisions, and should read the contract as a whole and so as not to render any portion meaningless, if possible. (See Beal Sav. Bank, 8 NY3d at 324-25.)

Sections 5 (A), 5 (B), and 6 of the SWA are relevant to the calculation of CDS damages: Section 5 (A) provides for the calculation of losses with respect to CDSs removed from the warehouse during the term of the Agreement or "otherwise pursuant to Section 6"; Section 5 (B) (2) governs the calculation of losses upon a closing; and Section 6 governs this calculation in the event of a failure to close, incorporating terms from Sections 5 (A) and 5 (B).



Section 6 provides in pertinent part:

- “(A) If the Closing Date fails to occur on or prior to the Termination Date, then UBS may, with the consent of the related counterparty, either (at the election of the Servicer; provided that notice of such election is received on or prior to the Termination Date) (i) terminate each Credit Default Swap or (ii) novate each Credit Default Swap to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer), in each case, on the Termination Date.
- ....
- (C) To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.”

CDS Losses are in turn defined in Section 5 (B) (2), the closing provision, as:

“(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, plus (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, plus (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the ‘CDS Losses’) . . . .”

Relying on the requirement in the definition of CDS Losses that Reference Obligations be designated as Ineligible Securities, Highland argues that “[t]he term ‘CDS Losses’

unambiguously limits UBS's recovery for unrealized (mark-to-market) losses to securities designated as 'Ineligible Securities,' and the Court is bound to enforce the agreement pursuant to its unambiguous terms." (Ds.'s Findings, ¶ 46.) Put another way, Highland argues that UBS may recover mark-to-market losses only on CDSs that have been designated Ineligible Securities. (*Id.*, ¶ 53.)<sup>12</sup> UBS asserts, among other things, that under Section 6, UBS may terminate, novate, or retain CDSs regardless of eligibility, that ineligibility designations are not relevant absent a closing, and that Highland's reading renders meaningless other provisions of the SWA. (Ps.'s Findings, at 29 n 21.)

Upon close reading of the SWA, the court concludes that the SWA is not ambiguous with respect to ineligibility designations and that, under Section 6, upon the failure to close UBS is entitled to retain CDSs and to recover losses for the retained CDSs, without first designating the underlying Reference Obligations as Ineligible Securities. Section 6 (A) expressly provides for UBS to terminate or novate the CDSs, and does not require UBS to first make such designation. Although Section 6 (A) does not also, by its terms, provide for UBS to retain CDSs, a reading of the contract as a whole leaves no question that UBS was not only entitled to retain the CDSs upon the failure to close, but also that it was entitled to recover losses on the retained CDSs without first designating the underlying Reference Obligations as Ineligible.<sup>13</sup>

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<sup>12</sup> Highland's damages expert, Adam Warren, testified that realized losses are losses sustained where a transaction has been closed out and an actual cash payment has been made. (Warren Testimony, Trial Tr. at 1249, 1253.) He also testified that, in his opinion, there were no unrealized losses in the Synthetic Warehouse because no assets had been designated as ineligible. (*Id.* at 1257 ["[O]ur computation is that there are no unrealized losses in the Synthetic Warehouse because of the need to . . . create a designation of ineligible. And we saw no evidence of any Synthetic Warehouse asset being designated ineligible"].)

<sup>13</sup> In its decision of defendants' motion for summary judgment, this court held that it could not determine on the record of that motion whether the SWA was ambiguous with respect to UBS's entitlement to recover losses on retained CDSs, pursuant to Section 6, without a prior designation of such assets as Ineligible Securities. (2017 NY Slip Op. 30546[U], 2017 WL 1103879, \* 4-7 [Sup Ct, NY County Mar. 13 2017], *aff'd* 159 AD3d 512, *lv dismissed* 32 NY3d 1080.) With the benefit of the parties' extensive trial briefing on this issue, the court now concludes, for the reasons discussed further in the text, that the agreement is not ambiguous.

As the above-quoted definition of CDS Losses in Section 5 (B) (2) shows, this definition relates to Credit Default Swaps which, upon a closing, have been “terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security . . . .” After setting forth the definition of CDS Losses (and CDS Gains) in the context of a closing, Section 5 (B) (2) further provides: “To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.”

Significantly, while Section 6 (C) incorporates the defined term CDS Losses, the term CDS Losses also incorporates both the definition of Ineligible Security and the term Replacement Losses from Section 5 (A). These incorporated terms modify the definition of CDS Losses where a closing does not occur.

The definition of Ineligible Security pertains to securities that are ineligible for securitization upon a closing. The SWA thus defines Ineligible Security, in pertinent part, as “any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination . . . .” (SWA, Exhibit A-2 [emphasis added].)

Section 5 (A), which defines the term Replacement Losses, distinguishes between such Losses sustained during the term of the Agreement and those sustained upon termination in the event of a failure to close pursuant to Section 6. Section 5 (A) primarily addresses the removal of CDSs from the warehouse “during the term of this [the SWA] Agreement” where “a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria” that must be met for securitization. This section provides that “UBS shall be entitled in

good faith to designate any Reference Obligation (and the related Credit Default Swap) as an Ineligible Security and (ii) in its sole discretion to remove any such Reference Obligation (and the related Credit Default Swap) from the CDS Portfolio.” Section 5 (A), however, continues:

“To the extent any such Credit Default Swaps are terminated or novated, or at UBS’s discretion, such exposure is retained following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6, UBS shall determine the Replacement Gain or Replacement Loss relating to such Credit Default Swaps [according to the formula that follows].”

(emphasis added). Section 5 (A) then sets forth a formula for calculating Replacement Gain and Replacement Loss, which specifically provides for such calculation not only upon termination or novation but also upon UBS’s retention of the CDSs. (SWA § 5 {A} [1] – [3].)

Section 5 (A) thus clearly contemplates that UBS may novate, terminate, or retain CDSs both during the term of the Agreement and in the event of a failure to close. The Section affords UBS the discretion to terminate, novate, or retain CDSs “pursuant to Section 6,” as distinct from its discretion to do so upon a designation of the underlying Reference Obligation as Ineligible during the term of the Agreement. Any other reading would render meaningless the Section 5 (A) provision “or otherwise pursuant to Section 6.”

Moreover, in order to reconcile all of the provisions of the SWA, the Section 5 (B) (2) definition of CDS Losses, when used in Section 6, cannot be construed as requiring a designation of Ineligible Securities. As discussed above, Ineligible Securities are defined as securities ineligible for sale at a closing. Section 5 (B) (2), which governs the calculation of losses where a closing will occur, requires the designation of Ineligible Securities to facilitate the parties’ calculation of losses on assets deemed ineligible for inclusion in the securitization that will occur upon the closing. When a closing will not occur, none of the CDSs or other assets will be securitized, and there is no need to distinguish between eligible and ineligible assets. While the

definition of CDS Losses with the Ineligible Security designation requirement serves the purposes of Section 5 (B) (2) in the event of a closing, it is inconsistent with the CDS Loss calculation required in Section 6 where the closing does not occur.

Contrary to Highland's apparent contention (Ds.'s Findings, ¶ 46), a reading of the CDS Loss provision in Section 6 to permit calculation of losses on retained assets without an Ineligible Security designation does not violate the fundamental precept that a defined term in a contract must be given effect. (See generally Mionis v Bank Julius Baer & Co., 301 AD2d 104, 109 [1st Dept 2002].) Rather, the CDS Loss definition, as used in Section 6, is modified by the contractual provisions discussed above.

Although inartfully drafted, the SWA is not ambiguous. If the contract is read as a whole, and all of the provisions are given meaning, it is reasonably susceptible to only one meaning—namely, that CDS Losses for retained assets may be recovered without a designation of the underlying Reference Obligations as Ineligible Securities where, as here, the contract has been terminated before the closing.<sup>14</sup> The court accordingly holds that UBS is entitled to recover damages for the retained CDSs in the Synthetic Warehouse.<sup>15</sup>

#### Calculation of Damages

As discussed above, UBS terminated the transaction based on the Fund Counterparties'

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<sup>14</sup> The court notes that the SWA and the Cash Warehouse Agreement (CWA) both contain provisions which state that the two agreements "set forth the entire understanding of the parties hereto relating to the subject matter hereof . . . ." (SWA, § 18; CWA, § 18.) Assuming, without deciding, that these agreements should be read together in construing the SWA, the court finds that, although the assets at issue in the SWA and the CWA have markedly different attributes, the CWA is consistent with the SWA to the extent that the CWA permits UBS, in the event a closing does not occur, to retain and recover for losses on the CLOs that are the subject of the CWA, without a designation of the CLOs as Ineligible Securities. (See CWA, §§ 5 [A], 7 [A].)

<sup>15</sup> In view of this holding that the SWA is not ambiguous as to whether CDS losses may be recovered without designation of the underlying Reference Obligations as Ineligible Securities, the court has not considered any parol evidence, either documentary or testimonial, in construing the SWA in this regard. Without limiting the foregoing, the court has not considered prior drafts of the SWA, which Highland offered in the event parol evidence were to be admitted. (See Ds.'s Findings, ¶ 53.)



failure to meet the third collateral call. UBS sent Highland a notice, dated December 3, 2008, stating that a Termination Date had occurred under the Warehouse Agreements but that it would forbear from exercising its remedies for two days to permit the Fund Counterparties to meet this collateral call. (PX 7.) UBS then sent a further notice to Highland, dated December 5, 2008, stating that it would exercise its remedies as the call had not been met. (PX 8.) UBS held a public auction of the assets in the Knox Warehouse on December 16, 2008. By notice dated December 19, 2008, UBS demanded payment for its claimed losses based on the results of the auction—\$157,949,885.47 for the assets in the Cash Warehouse (PX 10) and \$587,357,060.59 for the assets in the Synthetic Warehouse. (PX 11.) UBS also notified Highland that it elected to retain the Collateral Obligations in the Cash Warehouse. (PX 10.)

#### CDS Damages

Highland argues that even if the recovery of damages for the CDSs is not barred by UBS's failure to designate the Reference Obligations for the CDSs as Ineligible Securities (a claim this court has rejected above), UBS has not proved damages for these CDSs. Specifically, Highland contends that UBS did not comply with the contractual requirements for calculation of losses because its post-termination auction was untimely and otherwise improper. (Ds.'s Findings, ¶¶ 57-59.) Highland also contends that UBS's marks do not otherwise "establish a reasonable connection between the asset value and UBS's alleged damages." (Id., ¶¶ 60-65.) UBS disputes these assertions. (Ps.'s Findings, at 29-31.)

Sections 6 (C), 5 (B) (2), and 5 (A) (3) are the provisions of the SWA that govern the calculation of CDS Losses upon termination. Section 6 (C) provides in full:

"To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such

amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.”

As discussed above, the definition of CDS Losses in Section 5 (B) (2) includes Replacement Loss, the calculation of which is governed by Section 5 (A). With respect to Replacement Loss relating to CDSs that are retained, Section 5 (A) (3) provides in full:

“To the extent UBS retains such exposure, the Replacement Gain and Replacement Loss will be imputed based on the arithmetic average of at least three bids (or, if UBS is unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized derivatives dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates; provided that any such bid must be provided in good faith) to assume UBS’s position under such Credit Default Swap.”

The SWA, by its terms, thus contemplated that payment would be made within three days after the Termination Date, subject to notice from UBS. As the SWA provided for an auction to calculate the amount of the losses, it also contemplated that an auction could or would occur within that three day period.

By the terms of UBS’s notices to Highland, although a Termination Date had occurred as of December 3, UBS extended the Fund Counterparties’ time to meet the third collateral call until December 5. The court thus finds that the Fund Counterparties’ breach of the Agreements for failure to meet the third collateral call occurred on December 5. UBS did not conduct the auction to calculate the CDS Losses until December 16.

UBS’s delay of approximately 11 days in conducting the auction, while seemingly de minimis, in fact had momentous financial consequences, given that the delay occurred in the wake of the September 15, 2008 Lehman bankruptcy filing and at the height of the financial crisis. With the market spiraling downward, the CDS losses ascertained through the auction process were approximately \$117 million more than the losses calculated by using UBS’s marks

on either December 3 or December 5. (PX Demo. 21; DX Demo. 12 [showing UBS and Highland marks as of December 3 and 5; PX Demo. 28 at 60 [Ps.'s Closing Statement Demonstrative Exhibit, acknowledging that CDS damages, as calculated based on the auction, exceeded the losses calculated using UBS's marks on December 3 and 5 by over \$117 million].)<sup>16</sup>

UBS contends that the three day payment period was for its benefit and that it "could exercise its right to get paid after three business days without waiver." (Ps.'s Findings, at 28.) The court agrees that UBS's delay in demanding payment or holding the auction did not result in a waiver of its right to seek payment of its damages resulting from the Fund Counterparties' breach. (See SWA § 20 ["Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver hereof. . . ."].) Highland correctly contends, however, that the delayed auction could not serve as a basis for calculating UBS's damages because the results of the auction did not reflect market conditions as of the date of termination or breach. (See Ds.'s Findings, ¶ 57.)

As explained by the Court of Appeals:

"It has long been recognized that the theory underlying damages is to make good or replace the loss caused by the breach of contract. Damages are intended to return the parties to the point at which the breach arose and to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach."

(Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256, 261

[1998] [internal citations omitted].)

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<sup>16</sup> At the trial, the parties stipulated to dispense with rebuttal testimony from plaintiffs' damages expert, Louis Dudney and, in lieu of such testimony, to the admission into evidence of plaintiffs' Demonstrative Exhibits 20 and 21, and defendants' Demonstrative Exhibit 12. (Trial Tr. at 1868, 1870 [Stipulation].) PX Demo. 21 and DX Demo. 12, which were prepared by Mr. Dudney, calculated damages using plaintiffs' and defendants' marks, respectively, on December 3 and 5, 2008. (Trial Tr. at 1870-1877.)

It is further settled that damages need not be proven with mathematical certainty. It is sufficient that a reasonable basis for the calculation of damages be shown. (See generally J.R. Loftus, Inc. v White, 85 NY2d 874, 877 [1995] ["While a plaintiff may recover damages when the measure of damages is unavoidably uncertain or difficult to ascertain, a reasonable connection between a plaintiff's proof and a [] determination of damages is nevertheless necessary"]; CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, \*2 [US Dist Ct SD NY, Sept. 29, 2011] ["The law of New York is clear that once the fact of damage has been established, the non-breaching party need only provide a stable foundation for a reasonable estimate [of damages]" [internal quotation marks and citations omitted, brackets in original].)

UBS's December 16, 2008 auction cannot satisfy either of these standards because, as held above, the auction did not provide a reliable basis for determining UBS's losses at, or even shortly after, the breach, due to the exceptional circumstances presented by the financial crisis.<sup>17</sup> The court accordingly turns to the alternative basis advanced by UBS for the calculation of damages—its marks on December 5, 2008. (Ps.'s Findings, at 29.)

It is well settled that "where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages." (Sharma v Skaarup Ship Mgt. Corp., 916 F2d 820, 825 [2d Cir 1990], cert denied 499 US 907 [1991] [applying New York law and citing Simon v Electrospace

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<sup>17</sup> There is authority that "in accordance with the objective that a party seeking recovery for breach of contract is entitled 'to be made whole' as of the time of the breach, the [factfinder] should be able to make its valuation determination on all relevant elements of the case, whether dated prebreach, on the date of breach, or 'some short time period thereafter.'" (Credit Suisse First Boston v Utrecht-America Fin. Co., 84 AD3d 579, 580 [1st Dept 2011] [quoting Boyce v Soundview Tech. Group, Inc., 464 F3d 376, 389 [2d Cir 2006] [other internal quotation marks and citations omitted].) Although the auction was held shortly after the breach, this authority does not support calculation of damages based on the auction results, as the auction did not provide a reliable basis for assessing the losses.

Corp., 28 NY2d 136, 145-146 [1971], motion to amend remittitur and clarify denied 28

NY2d 809].) In accordance with the objective that the injured party be made whole,

“damages for breach of contract are ordinarily ascertained as of the date of the breach.”

(Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.)

UBS offered credible testimony that its December 5, 2008 marks reasonably reflected the market value of the CDSs as of the December 5 breach date. In particular, Timothy LeRoux, who at the time of the transaction was second in command to Mr. Grimaldi on the UBS trading desk (LeRoux Testimony, Trial Tr. at 1640), gave credible testimony that, in the regular course of business, the trading desk “marked to market” hundreds of CLO assets, and every week or two was required to assign values on every one of the assets, both cash and synthetic, in the Knox Warehouse. (Id. at 1724.) Mr. LeRoux also described the marking process and identified information, including public information as to offers and bids on CDSs in the marketplace, that UBS considered in developing “objective” prices. (Id. at 1727, 1745-1750.) Mr. Grimaldi also testified that, although the trading desk performed the mark-to-market valuation of the assets in the Knox Warehouse, the UBS valuation group established oversight due to the volatility of the market and “would look at other market observations and make sure that those [the trading desk marks] were in line with the marketplace.” (Grimaldi Testimony, Trial Tr. at 207-208.)

Highland does not dispute that the mark-to-market process is a methodology for determining loss in market value of retained assets. (See e.g. Testimony of Adam Warren [Highland’s damages expert], Trial Tr. at 1268-1269; Testimony of Philip Braner [Highland former executive], Trial Tr. at 469-472; Testimony of UBS’s Timothy LeRoux, Trial Tr. at 1640, 1727-1729.)

Rather, in claiming that UBS’s marks are not competent evidence on which to award damages, Highland suggests that the setting of marks by the trading group involved a conflict of



interest, because the trading group's bonuses were based on the performance of the mark-to-mark assets and the group had the incentive to inflate the value of the assets. (Ds.' Findings, ¶¶ 61-62.) Highland makes no showing that UBS inflated the value of the CDSs or that trading groups do not routinely develop marks. Moreover, Highland's assertion that "UBS's trading group alone set the marks for the Knox Warehouse assets" (Ds.'s Findings, ¶ 62) ignores UBS's credible testimony, discussed above, that the valuation group exercised oversight in connection with the development of the marks.

Highland's further assertion that its own marks are more reliable (Ds.'s Findings, ¶ 65) is unsupported by persuasive evidence. Philip Braner, who ultimately became Chief Operating Officer of the Highland Capital Management CLO Group and COO of Highland Financial Partners (Braner Testimony, Trial Tr. at 397), testified that Highland was itself tracking marks on the assets in the Knox Warehouse (*id.* at 615) and had an "internal valuation team that was responsible for accumulating marks" in a process in which portfolio managers of the Highland funds participated. (See *id.* at 467.) While Highland appears to assert that its marks are more reliable than UBS's because they were set by a valuation team, Highland fails to show that the role of its valuation team differed in any material respect from that of the UBS valuation group that performed oversight on its trading group in the marking process.

Notably, Highland fails to explain how its methodology in setting marks was more reliable than UBS's. Adam Warren, Highland's damages expert, forthrightly testified that he was not opining on the reasonableness of any marks in this case (Warren Testimony, Trial Tr. at 1247-1248), and he did not in fact give any testimony on whether UBS's or Highland's marks were more reliable.

The evidence at trial also demonstrated that Highland, like UBS, set marks on the CDSs on an asset by asset basis from March 2008 through October 2008. While there were differences

between Highland's and UBS's marks during this period, the Highland and UBS marks in the month of October were substantially similar. The difference in the marks did not escalate substantially until November 2008. (PX Demo. 9, at 4.) Mr. Dudney gave testimony, which was not disputed, that although Highland, like UBS, had been setting marks on an asset by asset basis, Highland stopped doing so as of October 2008 and, in a November 30, 2008 calculation of damages, attributed the same mark (37) to each asset. (Dudney Testimony, Trial Tr. at 883-884, 905-909, DX 116.) Highland offered no explanation for this change in methodology. Mr. Dudney, in contrast, gave plausible testimony that this use of the same mark did not make sense given the deterioration of the market. (*Id.* at 908.)

In sum, based on the credible evidence at the trial, the court holds that UBS has met its burden of demonstrating that its December 5, 2008 marks provide a reasonable basis, under the circumstances, for the calculation of damages at the time of the breach. In so holding, the court rejects Highland's not fully articulated contention that only an auction, and not a mark-to-market methodology, is a reliable method for calculating damages. (See *Ds.'s Findings*, ¶ 59.) Highland's reliance on the testimony of its damages expert, Adam Warren, in support of this contention (*see id.*) is misplaced. While Mr. Warren testified that CDSs are "bespoke contracts," he did not give any testimony that an auction was required to ascertain their value.

Further, as held above, the auction did not provide a reliable basis for determining UBS's damages due to the volatility of the market at the time of the auction. It bears emphasis that, although the market was also volatile at the time the December 5, 2008 marks were accumulated, Highland has not advanced an alternative, other than the non-viable auction, to the mark-to-market valuation methodology. Nor has Highland made any showing that the market value of

the CDSs was not reasonably determinable as of the date of breach using the mark-to-market valuation methodology.<sup>18</sup>

The court further holds that UBS has met its burden of demonstrating the reasonableness of its calculation of damages using those marks. UBS's and Highland's experts both provided the court with calculations of damages using UBS's and Highland's marks, respectively, as of December 5, 2008. Mr. Warren confirmed that his main differences with Mr. Dudney regarding the calculation of damages for the Synthetic Warehouse were that Mr. Dudney considered it appropriate, and he did not, to include damages for unrealized CDS losses and for the 20 Internal Swaps in which UBS was both the protection seller and the protection buyer. (Warren Testimony, Trial Tr. at 1298; DX Demo. 12; PX Demo. 21; see also Dudney Testimony, Trial Tr. at 1004.)

Mr. Warren excluded from his damages calculation unrealized CDS losses for all CDSs as to which a designation of ineligibility had not been made. He testified that his basis for doing so was his understanding of the contract—i.e., his understanding that the SWA required such designation—and not industry custom. (Warren Testimony, Trial Tr. at 1281-1282.) For the reasons discussed above, this court has rejected Highland's position that the SWA should be

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<sup>18</sup> In its post-trial briefing, Highland sought a finding that if UBS is held to be entitled to recover damages for CDS losses, Highland's marks are more reliable than UBS's for determining those damages. (Ds.'s Findings, ¶ 65.) Highland did not argue that the market value of the losses could not reasonably be determined by using marks. In contrast, in support of its claim that it is entitled to an offset against CDS damages for post-breach termination payments received by UBS on the CDSs, Highland questioned the accuracy of the market valuation at the time of the breach. Highland thus asserted in a footnote: "Given the scant market pricing data available at the time of the breach, post-termination payments and asset dispositions are relevant for the additional reason that they provide a more accurate measurement of the actual value of the Knox assets." (Ds.'s Post-Trial Memo., at 8 n. 5.) This assertion is unsupported by any citation to trial testimony. More important, at the trial Highland did not offer any expert testimony that the mark-to-market methodology was not a reliable basis for calculating the CDS damages. For the additional reasons set forth in the section of this decision on Highland's requested Offset for Post-Breach Appreciation In CDS Asset Value, the court finds that offset of post-breach payments received by UBS on the CDSs would be inconsistent with calculation of UBS's damages based on their market value at the time of the breach.

construed as requiring ineligibility designations as a condition of the inclusion of unrealized losses on the CDSs in the calculation of damages. Also for the reasons discussed above, the court has rejected Highland's position that the losses on the Internal Swaps should not be included in this calculation.

Review of the experts' calculations shows, moreover, that when such losses are included in the calculations, the difference between Highland's and UBS's totals is substantially reduced. As previously noted, the parties stipulated to the introduction into evidence of charts prepared by Mr. Dudney comparing his and Mr. Warren's calculations of CDS damages using UBS's and Highland's marks as of December 5, 2008. Using Highland's marks, Mr. Dudney calculated CDS mark-to-market losses of \$388,284,750, compared to Mr. Warren's calculation of \$26,952,895—a difference of \$361,331,855. (DX Demo. 12.) Using UBS's marks, Mr. Dudney calculated losses of \$470,113,605, compared to Mr. Warren's calculation of \$26,952,895—a difference of \$443,160,710. (PX Demo. 21.)

The difference in the totals is largely due to Mr. Warren's exclusion from his calculation of all unrealized CDS losses and all losses for the Internal Swaps. (Warren Testimony, Trial Tr. at 1296-1299.) His calculation of \$26,952,895 for CDS losses includes only realized CDS losses. (*Id.* at 1250.) According to Mr. Warren, the Internal Swaps account for \$93,952,173 of the CDS damages using UBS's marks, or \$68,801,027 using Highland's marks. (*Id.* at 1269.) Although Mr. Warren disputed UBS's entitlement to unrealized CDS losses, he performed a calculation including such losses. Using UBS's marks as of December 5, 2008, these losses totaled \$355,487,606. (DX Demo. 10, at 14.) Using Highland's marks as of that date, these losses totaled \$299,118,973. (Warren Testimony, Trial Tr. at 1269; DX Demo. 10, at 14.) Mr. Warren's total, using UBS's marks, for the Internal Swaps (\$93,952,173) and the unrealized CDS losses (\$355,487,606) was \$449,439,779. (DX Demo. 10, at 14.) As stated above, Mr. Dudney's

calculation of total Synthetic Warehouse losses, using UBS's December 5, 2008 marks, was \$470,113,605. Given the magnitude of the damages, this disparity is not material.

The court accordingly holds that UBS incurred losses in the Synthetic Warehouse of \$470,113,605 as of December 5, 2008, the date of the breach, subject to the adjustments discussed below:

#### CLO Damages

Highland does not dispute that unrealized losses are recoverable for the CLO assets. (Warren Testimony, Trial Tr. at 1293.) Moreover, UBS's (Mr. Dudney's) and Highland's (Mr. Warren's) calculations of the CLO losses as of December 5, 2008 are the same: Using Highland's marks, these losses were \$106,157,101. (DX Demo. 12, at 2.) Using UBS's marks, the losses were \$128,848,101. (PX Demo. 21.) Having concluded that UBS's damages were properly calculated based on UBS's marks as of December 5, 2008, the date of the breach, the court holds that UBS incurred losses in the Cash Warehouse of \$128,848,101, subject to the adjustments discussed below.

#### Adjustments to Damages Calculation

In calculating the Synthetic and Cash Warehouse losses, Mr. Dudney and Mr. Warren made adjustments for the same items: carry (premiums and interest), collateral value, financing fees, and financing savings. Mr. Dudney's adjustment of \$79,587,557 and Mr. Warren's adjustment of \$76,632,634 did not differ materially. (PX Demo. 21.) According to Mr. Warren, the difference of approximately \$3 million is due to Mr. Warren's exclusion of the Internal Swaps in calculating the carry. (Warren Testimony, Trial Tr. at 1298-1299.) As the court has held that the Internal Swaps were properly included in the damages calculation, Mr. Dudney's adjustments will be accepted.

Reducing UBS's damages by the adjustments, the court holds that UBS sustained total



damages of \$519,374,149 (Cash Warehouse Losses of \$128,848,101 plus Synthetic Warehouse Losses of \$470,113,605 minus \$79,587,557).

## OFFSETS

### Offset for Post-Breach Appreciation In CDS Asset Value

A central issue in this action is whether Highland is entitled to an offset against UBS's damages for appreciation in the value of the CDSs after the breach. The parties stipulated that UBS received post-breach termination payments net of carry on the CDSs, including the Internal Swaps, in the amount of \$202,223,059. (DX 491.) It is undisputed that these payments were received months and, for many of the CDSs, years after the termination of the transaction. (Ds.'s Post-Trial Memo., at 10 [acknowledging that UBS "liquidated the assets years later"]; PX 335 [spreadsheet showing termination dates for CDSs through 2011].)

Highland argues that, at the time the transaction was terminated, "frozen credit markets had created a severe mismatch between the assets' alleged market value and their actual value based on their cash flows." (Ds.'s Post-Trial Memo., at 10.) Highland further argues that UBS was able to sell these assets for hundreds of millions of dollars more than their December 2008 marks and that, while UBS is entitled to retain the sale proceeds, "it cannot ignore these monies in calculating the harm it actually suffered." (*Id.* at 11.) According to Highland, if disposition of the assets after the termination is not considered, UBS will receive "an enormous windfall." (*Id.*) UBS acknowledges that if a non-breaching party obtains a benefit "because of the breach," the benefit must be offset against the non-breaching party's damages. (Ps.'s Post-Trial Memo., at 6 [emphasis UBS's].) UBS argues, however, that the Fund Counterparties' breach was not a but for cause of the post-breach payments UBS received for the CDSs. (*Id.* at 7.) Rather, subsequent gains that resulted from UBS's disposition of the assets were "the result of UBS's contractual rights [to retain the assets] in the event of any termination and of its subsequent

investment strategy.” (*Id.* at 14.) According to UBS, the Fund Counterparties’ proposed offset would deprive UBS of the benefit of the bargain and result in a windfall for the Fund Counterparties. (*Id.*)

As discussed above, contract damages are intended to make “good or replace the loss” caused to a party by the breach of contract and “to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach.” (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.) Further, “where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages.” (Sharma, 916 F2d at 825 [applying New York law and citing Simon, 28 NY2d at 145-146].)

The calculation of damages is also subject to the fundamental precept that where a non-breaching party acquires a “benefit or opportunity for benefit . . . because of the breach, a balance must be struck between benefit and loss” and the benefit must be offset against the non-breaching party’s damages. (Indu Craft, Inc. v Bank of Baroda, 47 F3d 490, 495 [2d Cir 1995] [applying New York law]; accord Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, 289 [SD NY 2010] [“[I]f a victim derives a benefit from the breaching party’s breach of contract, the breaching party only is responsible for the victim’s net loss”], reconsideration denied 2010 WL 3431132; Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, 84 [1987], rearg denied 70 NY2d 694 [holding, in a “cover” action governed by the Uniform Commercial Code, that “[g]ains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable, unless such gains could not have been made, had there been no breach”] [quoting 5 Corbin, Contracts § 1041].)

Here, although UBS and Highland agree that any benefit derived by UBS because of the breach must be offset against its losses, neither party has cited, and the court's own research has not located, any case in which a court has considered how to apply this precept to a non-breaching party's retention of assets upon a failed securitization transaction and realization of subsequent gains. There is, however, a substantial body of law involving a breaching party's failure to deliver or purchase assets subject to fluctuations in value, in which the courts have assessed damages based on the market value of the assets at the time of breach and have declined to consider any subsequent increases or decreases in value of the assets. As discussed further below, the court concludes that these cases are inconsistent with the offset sought by Highland.

As the Second Circuit has explained in reviewing this body of law, New York courts reject damage awards "based on what 'the actual economic conditions and performance' were in light of hindsight." (Sharma, 916 F2d at 826, quoting Aroneck v Atkin, 90 AD2d 966, 967 [4th Dept 1982], lv denied 59 NY2d 601 [1983].) "They have explicitly rejected the use of subsequent changes in value or profits where they would increase an award, and where they would decrease the award." (Sharma, 916 F2d at 826 [internal citations omitted].)

In the securities context, courts have repeatedly held that the damages for failure to deliver or purchase shares of stock should be based on their market value at the time of breach, and not on any subsequent increase or decrease in their value. (Simon, 28 NY2d at 145-146 [where the seller breached a contract to deliver shares, holding: "The proper measure of damages for breach of contract is determined by the loss sustained or gain prevented at the time and place of breach. The rule is precisely the same when the breach of contract is nondelivery of shares of stock"] [internal citations omitted]; Aroneck, 90 AD2d at 967 [where the buyer breached a contract to purchase shares, holding that

damages should be based on market value at the time of breach, and rejecting the buyer's theory that the "value should be based on the actual economic conditions and performance" of the company post-breach]; Emposimato v CIFIC Acquisition Corp., 89 AD3d 418, 421 [1st Dept 2011] [quoting Aroneck and citing Simon in holding that "[i]n the case of a breach of contract to sell securities, expectation damages are calculated as 'the difference between the agreed price of the shares and the fair market value at the time of the breach'"]; Oscar Gruss & Son, Inc. v Hollander, 337 F3d 186, 197 [2d Cir 2003] [following Simon and Aroneck in a case involving the defendant's breach of a contract to deliver warrants]; see also Kaminsky v Herrick Feinstein LLP, 59 AD3d 1, 11-12 [1st Dept 2008], lv denied 12 NY3d 715 [2009] [holding that damages for breach of contract to deliver shares prior to an initial public offering (IPO) should be awarded based on the value of the shares at time of the breach, not their higher value post-IPO].)

The court holds that these cases involve transactions that are analogous to (although far less complex than) the transaction at issue, and apply the same measure of damages that this court has adopted above—namely, the measure of damages based on the market value of the assets on the date of the breach. These cases accordingly govern the calculation of damages here. The court notes, moreover, that sound reasons support the application of this measure of damages without consideration of post-breach fluctuations in the value of the assets.

As the Second Circuit reasoned, a contrary rule that would permit calculation of damages at the time of trial "would be a two-edged sword, because courts would have to diminish damage awards where the value of the item decreased or where losses were encountered subsequent to the breach as well as enhance them where conditions improve. However, New York courts have expressly refused to adopt this 'wait and see' theory of

damages.” (Sharma, 916 F2d at 826.) In addition, although the court does not adjust for changes in the value of the shares when calculating damages according to the date of breach measure, the parties themselves can protect against changes in value by hedging or acquiring shares in the market. As the Second Circuit further reasoned: “To be sure, uncertainties about the future and lack of perfect information may cause an asset to be under- or over-valued at any particular time. At that time, however, either party has an opportunity to hedge according to his or her judgment about the future stream of income.” (Sharma, 916 F2d at 826; see also Simon, 28 NY2d at 146 [where the seller breached a contract to deliver shares, reasoning that “[i]f plaintiff were anxious to own the shares rather than obtain their value, he was free to purchase them in the market. His cause of action should not and may not be converted into carrying a market ‘call’ or ‘warrant’ to acquire the stock on demand if the price rose above its value as reflected in his cause of action”].)

The court further holds that application of the date of breach measure of damages, without adjustments for fluctuations in the value of the assets, will serve the objective of putting UBS in the position it would have been in had the contract been performed. If the securitization had closed, UBS would have been entitled, under the express terms of the SWA, to novate to the Issuer its positions as protection seller on all of the eligible Knox CDSs. (SWA § 5 [B] [1].) As a result of the breach, UBS was forced to assume a substantial risk of loss under the CDSs that would have been novated to the Issuer had the closing occurred. As discussed above, the loss in market value of the retained CDSs as of the date of breach was determined using the mark-to-market methodology. More specifically, as confirmed by both UBS’s and Highland’s experts, the mark-to-market losses calculated as of the date of breach represent the cost to UBS to exit the CDSs—



that is, the payments to be made to third-parties so that they would take on, and UBS could extricate itself from, the risk. (Warren Testimony, Trial Tr. at 1304-1306; Dudley Testimony, Trial Tr. at 894-895.) A damage award for these mark-to-market losses will therefore compensate UBS for the exposure to risk that it would not have faced had the contract been performed.

To the extent that Highland contends that a damage award is not appropriate for these mark-to-market losses because the losses were not realized, the court rejects that contention. The damage award is appropriate, notwithstanding that the losses were not realized, because, as held above, the contract affords UBS the right of recovery for such losses. (See CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, \* 2 [US Dist Ct SD NY, Sept. 29, 2011] [reasoning that, where the contractual definition of loss for the purpose of calculating damages did not require the CDS protection buyer to sustain “actual loss,” “[t]he absence of an actual loss on a Reference Obligation transaction, thus, is not a barrier to [the protection buyer’s] recovery. . .”] [emphasis in original].)

The court further holds that the record does not support Highland’s contention that UBS’s post-breach gains were realized because of the breach, and that this case therefore falls under the line of authority that requires an offset for such gains. Highland in effect contends that because UBS retained the CDSs as a result of the breach, it also realized the post-breach gains because of the breach.<sup>19</sup> That conclusion does not follow. As held

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<sup>19</sup> In so holding, the court rejects UBS’s contention that it would have been entitled to retain the CDS assets, regardless of the Fund Counterparties’ breach, because the Agreements would have terminated in any event as of March 14, 2009, at which point UBS would have had the contractual right to retain the assets. (Ps.’s Post-Trial Memo., at 8.) This assertion is not only speculative but ignores that UBS did in fact acquire the right to retain the assets upon the Fund Counterparties’ breach of the Agreements as a result of their failure to meet the third collateral call. For the reasons discussed in the text, however, the court cannot accept Highland’s further contention that UBS realized gains on the retained CDSs because of the breach.

above, UBS had a contractual right to retain the CDSs upon the termination of the transaction based on the Fund Counterparties' breach of the SWA by failing to meet the collateral call. The SWA does not contain any provision that limited UBS's discretion as to when to dispose of the assets after termination. Rather, as UBS persuasively argues, the gains realized as a result of the post-breach disposition of assets were attributable not to the breach itself but to UBS's assumption of the risk of loss on the CDSs and its investment strategy as to when to dispose of them based on its assessment of the market. (See G & R Corp. v American Sec. Trust Co., 523 F.2d 1164, 1175 [DC Cir 1975] [holding that while the transfer of property to the plaintiffs was caused by the defendant's breach, the profit realized by the plaintiffs from a post-breach sale was not "caused by the breach" but was "attributable to the [plaintiffs'] decision to hold [the property] until [its] condition and the market were favorable for sale"].)

Nor does Highland successfully argue that the gains realized by UBS on the post-breach disposition of the assets must be offset under general principles which require a party who suffers damages as a result of another's breach to take reasonable steps to mitigate its damages. (See Ds.'s Post-Trial Memo., at 5-9.) Highland cites cases requiring mitigation in connection with the purchase and sale of securities and transactions in other markets. (See e.g. Drummond v Morgan Stanley & Co., Inc., No. 95 Civ. 2011 [DC], 1996 WL 631723, \* 2-3 [US Dist Ct SD NY, Oct. 31, 1996] [holding that where the buyer breached a contract to purchase securities, the seller must take steps to mitigate its damages by selling the securities within "a reasonable period of time"]; Saboundjian v Bank Audi (USA), 157 AD2d 278, 284-285 [1st Dept 1990] [holding that where a broker failed to execute a customer's speculative currency exchange order, the customer was required to direct execution of the trade "within a reasonable time after he learned that it had not been effected earlier"].)

These cases are inapposite, as the SWA affords UBS the contractual right to retain the securities upon the Fund Counterparties' breach. Ironically, although purporting to rely on these cases, which in fact require that the non-breaching party mitigate within a reasonable period of time, Highland argues not that UBS was required to dispose of the CDSs within a reasonable period of time after the breach but that it was required to hold them for months and, indeed, years, until the market improved. Highland thus asserts that UBS reasonably mitigated by "holding (as opposed to fire selling) fully performing interest and premium-bearing assets in the face of a dysfunctional market: . . .," and that "UBS's mitigation was not only reasonable, but required by law." (Ds.'s Post-Trial Memo., at 7.) Put another way, Highland does not identify a specific date or dates by which UBS was required to mitigate. To the contrary, without citation to any legal authority, Highland argues that UBS was required to hold the assets for an indefinite period, until the market improved, to minimize its losses.

The mitigation cases provide no support for Highland's assertion that UBS's disposition, months and years after the breach, of assets that it had a contractual right to retain, constitutes mitigation.<sup>20</sup> Rather, in claiming that it is entitled to "offsets" for the post-breach gains realized by UBS, Highland appears in effect to advance a measure of damages that is patently inconsistent with the fundamental tenet of the date of breach measure of damages—namely, that a non-breaching party's damages for assets with a determinable market value must be calculated

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<sup>20</sup> Nor does Highland cite any other authority that supports its claim that it is entitled to offsets for post-breach gains realized by UBS. Cases in which a party has a duty to cover (see e.g. Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, supra) are inapposite, given UBS's contractual right to retain the CDSs upon the breach. Cases in which a party is on both sides of a securities transaction are factually dissimilar. (See Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, supra [where the plaintiff company breached a contract affording the defendant bondholders the right to convert their bonds to the company's stock, and the bondholders held open existing short positions in the company's stock on which they realized post-breach gains, the company was entitled to an offset]; see also Minpeco, S.A. v Conticommodity Servs., Inc., 676 F Supp 486, 490 [SD NY 1987] [holding that the plaintiff's losses on short futures positions on silver as a result of the defendants' manipulation of the market were required to be offset by the plaintiff's profits on physical silver positions also then held by the plaintiff].)

at the date of breach, not based on hindsight, and that neither party can select the date on which the damages calculation will be most favorable to it. Thus, a non-breaching buyer cannot select the date on which the assets “had their highest value or a period of time that was profitable but that excludes periods when losses occurred.” (See Sharma, 916 F2d at 826.) Similarly, a breaching buyer cannot avoid or reduce the damages caused by its breach by invoking post-breach decreases in the value of the assets. (See id.)

The court accordingly holds that Highland’s request for an offset for UBS’s post-breach gains from the disposition of the CDSs must be denied.

Offset for Right of First Refusal Counterclaim

Highland Capital Management, L.P. (Highland Capital) seeks judgment on its first counterclaim against plaintiff UBS Securities LLC for breach of the Cash Warehouse Agreement provision affording it the right to purchase CLO assets in the event UBS elected to retain such assets upon the termination of the Agreement. Section 5 (A) of the CWA provides that in event of failure to close, “UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures.” The Liquidation Procedures set forth in section 7 (A) of the CWA provide in pertinent part:

“If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS’s Affiliates in which event, for purposes of determining Net Collateral Gain and Net Collateral Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to its Market Value. To the extent that UBS in its sole discretion elects to retain such Collateral Obligation, the Servicer will have the right to purchase such Collateral Obligation at its Market Value.”

Section 7 (A) further provides that if UBS elects to sell CLOs upon termination, “the Servicer will have the right to bid for and purchase such Collateral Obligation at a purchase price equal to

the highest third party bid received by UBS for the purchase of such Collateral Obligation.”

It is undisputed that Highland Capital notified UBS that it sought to purchase six of the CLOs with a bid price of \$1.9 million and a notional value of \$44 million, but that it sought to provide the funds for the purchase, and to settle the trades, in the name of one of its affiliates, CLO Value Fund. (Ds.’s Findings, ¶ 21.) UBS declined to agree to the sale to the Highland Capital affiliate. (Id.; DX 72; PX 292.)

The court is unpersuaded that a Highland Capital affiliate had the right, under the CWA, to purchase the CLOs. Section 7 (A), which governs the disposition of the CLO assets upon termination, expressly affords one UBS Affiliate the right to purchase CLOs. In contrast, this Section affords the right to purchase only to the Servicer, and not to any other Highland entity. The Servicer is defined as Highland Capital Management, L.P. (CWA, First Paragraph.) Reading the CWA as a whole, the court further finds that no other provision modifies or is inconsistent with this limitation. On the contrary, where the acts of Highland Capital’s Affiliates were implicated, the CWA expressly referred to the Affiliates. (CWA, § 13 [B] [limiting the liability of the “Servicer” “for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders [and others] under or in connection with this Agreement, or for any decrease in the value of the Collateral Portfolio . . . .”].)<sup>21</sup> The court accordingly holds that the CWA unambiguously provides that the right to purchase retained CLOs is limited, among the Highland entities, to Highland Capital.

In view of this holding that the CWA is not ambiguous with respect to Highland’s post-

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<sup>21</sup> The parties to the transaction knew how to afford rights to purchase assets to Affiliates of the Servicer. The SWA provides that if the closing fails to occur, UBS may, with the consent of the related counterparty, novate CDSs “to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer). . . .” (SWA § 6 [A].) The omission from the CWA of authorization to Affiliate(s) of the Servicer to purchase CLOs is therefore notable. Moreover, Highland Capital does not claim that the concerns—regulatory and other—that are implicated in novating CDSs are comparable to those in selling CLOs.



termination right to purchase CLOs, the court rejects Highland's contention that the court should consider evidence allegedly showing that UBS and Highland Capital had a prior course of conduct in which UBS permitted Highland Capital to settle trades "at its fund level." (Ds.'s Findings, ¶¶ 80-81.) Parol evidence of course of conduct is not admissible to construe an unambiguous contract. (See e.g. Sigismondi v Queens Transit Corp., 38 AD2d 71, 73 [2d Dept 1971], affd no opinion 32 NY2d 745 [1973]; Evans v Famous Music Corp., 1 NY3d 452, 459 [2004].)

The court further notes that even if Highland Capital could recover on its counterclaim, the damages it seeks are not recoverable. Highland Capital seeks a finding that because the CLOs continued to perform until maturity, "it would have profited \$46 million" if it had been permitted to exercise its right of first refusal to purchase the CLOs. (Ds.'s Findings, ¶ 82; DX Demo. 9.) As Highland Capital acknowledges, however, the market value of the CLOs at the time of breach was \$1,934,214. (DX Demo. 9.) The measure of damages, as explained above in connection with Highland Capital's claim for offsets against UBS's damages, is the market value of the assets as of the date of breach, not the increase in their value in the indefinite future.

#### Offset for Unjust Enrichment

Highland Capital also seeks judgment on its second counterclaim alleging that UBS was unjustly enriched by its failure to permit Highland Capital, through its affiliate CLO Value Fund, to purchase the Collateral Obligations upon termination. This claim for unjust enrichment is not maintainable as the right to purchase is governed by contract—the CWA. (See generally Pappas v Tzolis, 20 NY3d 228, 234 [2012], rearg denied 20 NY3d 1075 [2013]; Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388-389 [1987].)

#### Offset for Settlements with Highland Affiliates

Highland also requests an offset for settlements with three Highland Affiliates—Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Offshore), and Highland Crusader Holding Corporation (Crusader Holding) (collectively, the Settling Highland Affiliates). Credit Strategies and Crusader Offshore were defendants in this action. UBS asserted its fraudulent conveyance cause of action against them as well as all of the other defendants. (Second Am Compl., Fifth Cause of Action.) Crusader Holding was a defendant in a separate complaint, which asserted a fraudulent conveyance cause of action against it. (UBS Secs. LLC v Highland Crusader Holding Corp., Sup Ct, NY County, Index No. 652646/11, Compl., First Cause of Action; Ps.'s Letters, dated July 21, 2015 [NYSCEF Doc. No. 397]; Jan. 7, 2016 [NYSCEF Doc. No. 398].) This court bifurcated the trial of this action, directing that it would first hold a bench trial on the breach of contract claims, which were triable by the court and are the subject of this decision, and that the fraudulent conveyance and other claims, which are triable by a jury, would be heard subsequently. (May 1, 2018 Decision on the Record [NYSCEF Doc. No. 494].)

The parties dispute whether the confidential settlements (DX 76 id and DX 77 id) may be considered in this action. They also dispute whether the settlements may be offset, pursuant to statute or case law, against the damages awarded by this decision to UBS against the Fund Counterparties on the breach of contract causes of action. (See Ps.'s Post-Trial Memo., at 14-21; Ds.'s Post-Trial Memo., at 15-19, 21-24.)

Even assuming, without deciding, that the damages may be subject to offset by the settlements, the determination of whether or to what extent the offset should be allowed must await determination of the jury trial. Where an offset for a settlement is sought, "the damages against which the settlement is sought to be applied should be determined so a proper comparison can be made between them and the damages covered by the settlement." (Carter v.

State of New York, 139 Misc 2d 423, 429 [Ct Cl, 1988], affd 154 AD2d 642 [2d Dept 1989];  
accord Moller v North Shore Univ. Hosp., 12 F3d 13, 16 [2d Cir 1993] [applying New York  
law].)

Here, Highland argues that the causes of action against the settling defendants are  
“wholly derivative of its breach-of-contract claims against the Fund counterparties.” (Ds.’s Post-  
Trial Memo., at 16.) UBS persuasively argues, in opposition, that the fraudulent conveyance  
causes of action seek relief in addition to compensatory damages, including imposition of a  
constructive trust and punitive damages. (Ps.’s Post-Trial Memo, at 22-24; Second Am. Compl.,  
at 57-58.) Moreover, the damages, if any, that will be awarded against the Fund Counterparties  
and Highland Capital on the fraudulent conveyance cause of action remain to be determined at  
the jury trial. On this record the court accordingly cannot compare the settlements with the  
fraudulent conveyance damages. Nor is there any basis for the court to determine the extent to  
which the settlements cover the same damages, or damages that overlap with, the breach of  
contract damages awarded to UBS against the Fund Counterparties by this decision. The  
determination of the offset issue will therefore be deferred pending the jury trial. As it appears,  
however, that Highland may be entitled to an offset for some or all of the settlement amounts, the  
court will stay enforcement, to the extent of the settlement amount (\$70.5 million), of the  
judgment to be awarded to UBS against the Fund Counterparties for the damages for breach of  
contract.

#### Conclusion

UBS is entitled to damages for \$519,374,149 on the third and fourth causes of action  
against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse  
Agreements. Enforcement of the judgment for this amount will be stayed up to \$70.5 million,  
the amount of the settlements with the Settling Highland Affiliates.

ORDER

It is hereby ORDERED that the parties shall meet and confer with a view to reaching agreement on the form of the judgment, including but not limited to the Allocation Percentages of CDO Fund and SOHC, and the award of interest. If the parties are unable to reach such agreement, they shall promptly settle judgment; and it is further

ORDERED that this decision shall be filed under seal for ten business days from the date hereof to afford the parties the opportunity to confer and to advise the court as to whether there is any information in the decision which is claimed by any party to be confidential. The parties shall, within five business days of the date hereof, submit a joint letter of no more than three pages, advising the court of their positions on this issue. The letter should be accompanied by a joint copy of the decision, highlighting the portion(s) of the decision which each party claims is confidential and should be redacted in the decision that will be publicly filed; and it is further

ORDERED that the parties shall telephone the court on a conference call within five business days of the date hereof (at a specific date and time to be arranged with the Clerk of Part 60) to discuss the above confidentiality issue as well as the jury trial phase of this action. The parties should be prepared to address whether, or to what extent, the jury trial may proceed in light of Highland Capital's filing of a bankruptcy petition.<sup>22</sup>

This constitutes the decision and order of the court.

Dated: New York, New York  
November 14, 2019

  
MARCY FRIEDMAN, J.S.C.

<sup>22</sup> By letter dated October 17, 2019 (NYSCEF Doc. No. 640), counsel (Reid Collins & Tsai LLP) for Highland Capital, the Fund Counterparties and other Highland defendants, advised the court of Highland Capital's bankruptcy filing, and represented that the automatic stay does not preclude decision of the causes of action against the Fund Counterparties or the counterclaim by Highland Capital. This letter sought to reserve defendants' position on the effect of the bankruptcy filing on subsequent proceedings in this action.

## **EXHIBIT 3**

002640



Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

## Official Form 410

### Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

#### Part 1: Identify the Claim

1. Who is the current creditor?	<u>UBS AG, London Branch</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)		
	Contact phone <u>212-713-3432</u> Contact email <u>suzanne.forster@ubs.com</u>	Contact phone _____ Contact email _____
	(see summary page for notice party information)	
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ <div style="text-align: right;">MM / DD / YYYY</div>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Who made the earlier filing? <u>UBS Securities LLC - this is a joint litigation claim, see</u>	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>1,039,957,799.40</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>Litigation - See attached addendum</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 06/26/2020  
MM / DD / YYYY

/s/Asif Attarwala  
Signature

Print the name of the person who is completing and signing this claim:

Name Asif Attarwala  
First name Middle name Last name

Title Associate

Company Latham and Watkins LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 330 North Wabash Ave., Suite 2800, Chicago, IL, 60611

Contact phone 312-876-7667 Email asif.attarwala@lw.com

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> UBS AG, London Branch UBS Securities LLC, Attn: Suzanne Forster 1285 Avenue of the Americas  New York, New York, 10019  <b>Phone:</b> 212-713-3432 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> suzanne.forster@ubs.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> Yes <b>Related Claim Filed By:</b> UBS Securities LLC - this is a joint litigation claim, see attached addendum	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> Latham and Watkins LLP Andrew Clubok 555 Eleventh Street, NW  Washington, D.C., 2004-1304  <b>Phone:</b> 2026373323 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> andrew.clubok@lw.com		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Litigation - See attached addendum	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 1,039,957,799.40	<b>Includes Interest or Charges:</b> Yes	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Asif Attarwala on 26-Jun-2020 5:17:47 p.m. Eastern Time <b>Title:</b> Associate <b>Company:</b> Latham and Watkins LLP		

**Optional Signature Address:**

Asif Attarwala  
330 North Wabash Ave.  
Suite 2800  
Chicago, IL, 60611

**Telephone Number:**

312-876-7667

**Email:**

asif.attarwala@lw.com



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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11 (SGJ)  
)  
)  
)

**ADDENDUM TO PROOF OF CLAIM FILED BY  
UBS AG, LONDON BRANCH**

1. UBS AG, London Branch hereby submits this addendum to its proof of claim (together, the “**Proof of Claim**”) against Highland Capital Management, L.P. (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”).

2. UBS AG, London Branch and UBS Securities LLC (together, the “**Claimant**” or “**UBS**”) each have claims against the Debtor and each is filing a proof of claim in this Chapter 11 Case. Because their claims arise from the same set of factual events, including the same failed transaction, misconduct involving the Debtor and its affiliates, and subsequent litigation, the UBS claims overlap and their proof of claim forms and addendums are substantially the same.

3. This addendum is attached to, incorporated into, and constitutes an integral part of Claimant’s Proof of Claim against the Debtor. Claimant files this Proof of Claim under compulsion of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488], as extended by the *Joint Stipulation and Order Extending Bar Date* [Docket No. 547] and modified by the *Order Denying UBS’s Motion for Relief*

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<sup>1</sup> The Debtor’s last four digits of its taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

*from the Automatic Stay to Proceed with State Court Action* [Docket No. 765], solely for the purpose of asserting Claimant's claims against the Debtor, as more particularly described and subject to any limitations set forth below.

### **Factual Background**

#### **A. The Knox Transaction**

2. Claimant's claims arise out of a failed transaction dating back thirteen years ago and the state court action (the "**State Court Action**") that followed between Claimant, the Debtor, Highland CDO Opportunity Master Fund, L.P. ("**CDO Fund**") and Highland Special Opportunities Holding Company ("**SOHC**") (together with CDO Fund, the "**Fund Counterparties**," and the Fund Parties and the Debtor collectively, "**Highland**"), among other parties.<sup>2</sup>

3. In early 2007, Claimant and Highland agreed to pursue a complex form of securitization transaction known as a "CLO Squared" (the "**Knox Transaction**"). (Ex. B, Decision at 2.) The purpose of the Knox Transaction was to acquire and securitize a series of collateralized loan obligation ("**CLO**") securities and credit default swap ("**CDS**") assets (the "**Knox Assets**"). To that end, the Debtor agreed to be the "Servicer" of the Knox Transaction, and as such was responsible for identifying the specific CLO and CDS assets to be securitized. Claimant agreed to finance the acquisition of the CLO and CDS assets identified by Highland. Claimant would then hold, or "warehouse," the assets until the securitization was completed (the "**Knox Warehouse**"). Under this arrangement, Claimant financed the acquisition of \$818 million in Knox Assets. (*Id.*)

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<sup>2</sup> The procedural history of the State Court Action is incorporated by reference, but is voluminous. The operative Second Amended Complaint and Phase I Decision and Order are attached as **Exhibit A** and **Exhibit B**, respectively. Additional pleadings and orders can be found on the State Court docket for Index No. 650097/2009 or by contacting Claimant's counsel. Claimant reserves the right to file a copy of additional pleadings or orders with this Court.

4. The parties' first attempt at the Knox Transaction was not completed successfully and the relevant agreements expired in August 2007 without the contemplated securitization having occurred. (*Id.* at 3.) Rather than end their relationship, however, Highland and Claimant continued to consider the possibility of pursuing the contemplated securitization in 2008 under restructured versions of the prior agreements. Highland and Claimant always understood that—if the securitization were not successful—the Fund Counterparties would be obligated to pay Claimant for 100% of the losses on any CLO or CDS assets that been acquired and warehoused for the securitization. In order to convince Claimant to agree to enter restructured versions of those agreements and to finance the acquisition of the CLO and CDS assets, Highland assured Claimant that the Fund Counterparties had sufficient assets to cover any losses. It did so by providing Claimant with false, incomplete, and otherwise misleading information concerning the Fund Counterparties' finances and assets. (Ex. A, Compl. ¶¶ 47-61.)

5. In addition, Claimant specifically conditioned its agreement to enter the restructured agreements on the Fund Counterparties' ability to post an additional \$70 million in cash and securities as collateral (the "Initial Restructuring Collateral"), in which Claimant would hold a security interest. (*Id.* ¶¶ 56-59; Ex. B, Decision at 3.) Highland assembled \$70 million in such Initial Restructuring Collateral. But what Highland did not tell Claimant—and what is now clear was omitted on purpose—was that the Fund Counterparties did not own all of the Initial Restructuring Collateral they were expected to post. Instead, to meet this obligation, the Debtor exercised its control over other Highland affiliates, transferring and redirecting assets from such other entities that it controlled to assemble the Initial Restructuring Collateral. (Ex. A, Compl. ¶¶ 56-59.)

6. Similarly, while negotiating the restructured transaction, Highland provided Claimant with financial reports and statements that contained materially false and misleading information and omissions concerning the financial condition of the Fund Counterparties. (*Id.* ¶¶ 47-52.) The Debtor itself had prepared these financial statements and knew they contained material misstatements. (*Id.* ¶¶ 48-50, 54.) Among other things, Highland misrepresented the amount of cash held by CDO Fund. (*Id.* ¶ 52.) Highland also failed to disclose that many of the assets on the Fund Counterparties' financial statements already had been encumbered. (*Id.* ¶¶ 51, 53.) These misrepresentations not only evince a specific intent by Highland to induce Claimant into entering the restructured agreements, but a longstanding willingness to prevent Claimant from ever recovering the amounts owed under the parties' proposed agreements in the event the Knox Assets suffered any losses. In addition, these events show the Debtor's singular control over—and ability to move—assets from one Highland affiliate to another at will.

7. Based on Highland's material misstatements and omissions, Claimant agreed to pursue the restructured transaction and once more attempt the securitization, and the parties executed three new written agreements: an Engagement Letter, a Cash Warehouse Agreement, and a Synthetic Warehouse Agreement (collectively, the "**Warehouse Agreements**"). (*See* Ex. B, Decision at 3.) The Engagement Letter was executed by Claimant and the Debtor; the Fund Counterparties were not parties to the Engagement Letter. (Ex. A, Compl. ¶ 62.) The Cash Warehouse and Synthetic Warehouse Agreements were executed by Claimant and the Debtor, along with the Fund Counterparties. (*Id.* ¶¶ 64-65.)

8. As described above, Claimant agreed to finance the acquisition of the CLO and CDS assets that the parties planned to securitize. In so doing, the key risk Claimant faced was the possibility that the Knox Assets would lose value while securitization was pending. To address

this risk, Claimant and the Debtor agreed in the Engagement Letter that the Fund Counterparties would bear this risk. Notably, at the time, the Debtor was the Investment Manager to the Fund Counterparties under agreements that gave the Debtor total control over those entities. (Ex. A, Compl. ¶¶ 24, 26.)

9. The Warehouse Agreements reiterated that the Fund Counterparties (as controlled by the Debtor) would bear the risk, specifying that if the Knox Assets lost value while securitization was pending, the Fund Counterparties “will in aggregate bear 100% of the risk” for the Knox Assets—with CDO Fund bearing 51% of any losses and SOHC bearing the remaining 49%.

10. To further protect Claimant in the event that the Knox Assets lost value, the Warehouse Agreements provided for recurring measurements of mark-to-market losses on all assets in the Knox Warehouse and required the Fund Counterparties to post collateral in the event the Knox Assets lost a set amount of value. Specifically, the parties agreed that the Fund Counterparties would post an additional \$10 million in collateral for each \$100 million in losses to the overall value of the Knox Assets. (Ex. B, Decision at 4.)

11. In September and October 2008, amid the global economic recession, the value of the Knox Assets dropped by \$100 million, twice. Thus, Claimant twice exercised its contractual right to demand additional collateral. And twice Highland posted the required collateral. (*Id.*) Although the Warehouse Agreements specified that it was the Fund Counterparties who would post collateral, the Debtor moved assets around from other entities it controlled to make the first two collateral calls (without disclosing this practice to Claimant). (Ex. A, Compl. ¶ 79.) On or about November 7, 2008, Claimant issued a third margin call, because the value of the Knox Assets suffered additional losses of \$200 million (bringing the aggregate losses to over \$400 million).



(Ex. B, Decision at 4.) This time, Highland refused to provide the additional collateral required under the Warehouse Agreements.

12. Highland's default on Claimant's third margin call triggered a termination event under the Warehouse Agreements. (*Id.*) On December 5, 2008, Claimant gave Highland formal notice of default and demanded the Fund Counterparties pay Claimant for 100% of the losses incurred on the Knox Assets—which had, by then, grown to over \$520 million.

13. There is no question that the Debtor knew the Fund Counterparties were liable for the losses under the Warehouse Agreements. Indeed, the Highland officer who executed the Warehouse Agreements admitted under oath that, “as of the end of the year 2008,” Highland knew that the Fund Counterparties owed Claimant “hundreds of millions of dollars in connection with the Knox Warehouse Agreements.” (Travers Dep. at 261:8-20.) But rather than paying Claimant what it was owed, the Debtor, with Mr. Dondero at the helm, “devised a strategy to delay the resolution of that obligation [to pay Claimant] for as long as possible.” (*Id.*) To that end, Highland devised and subsequently deployed a multifaceted strategy—one that would last for many years thereafter—to intentionally frustrate and prevent Claimant from recovering any of the amounts that both the Debtor and the Fund Counterparties knew were rightfully owed to Claimant under the Warehouse Agreements.

14. First, the Debtor directed the Fund Counterparties to withhold any payment to Claimant—a position that the Fund Counterparties maintained (again, under the specific direction of the Debtor) for more than a decade. (*See id.*) The Debtor did so not only with the specific knowledge that the Fund Counterparties owed hundreds of millions of dollars to Claimant for the losses on the Knox Assets, but with the knowledge that Claimant would come seeking payment

for such losses and, in particular, to look toward any and all collateral owned by the Fund Counterparties as one source of payment. As one of Highland's officers stated an internal email to Mr. Dondero in an internal email dated January 16, 2009: "[UBS] is going to be calling [] today asking for all additional collateral that cdo and sohc have left to cover the obligation left by the knox transaction." But rather than turning over the collateral in question to Claimant or, at the very least, securing such assets so that they could be used to pay Claimant, the Debtor directed the Fund Counterparties to withhold such assets and payments from Claimant: "[T]hey can see us in court for their additional collateral." True to that promise, even after Claimant filed suit and laid out the amounts due under the contracts, the Debtor forced the Fund Counterparties to launch an affirmative, multi-year campaign—one which would consume much of the cash and assets belonging to the Fund Counterparties themselves—to stave off any payment from the Fund Counterparties to force Claimant to try to recover such claims through litigation and, once in litigation, devising knowingly baseless defenses and arguments for the Fund Counterparties to assert in such litigation.

15. On top of directing the Fund Counterparties to withhold payment and force Claimant to litigate for amounts the Debtor already knew they rightfully owed to Claimant, the Debtor undertook a litany of other actions to ensure that, even if Claimant were successful in the litigation it had been forced to initiate against the Fund Counterparties, it would not be able to collect any judgment arising out of the litigation. Such actions included, but were not limited to, a series of fraudulent transfers out of, and away from, an alter ego of SOHC, Highland Financial Partners, L.P. ("**HFP**"). (Ex. A, Compl. ¶ 109.) These internal transfers of funds—all overseen by James Dondero, the Debtor's founder and president—were designed to prevent Claimant from ever collecting the millions of dollars it was owed under the Warehouse Agreements.

16. In addition to such fraudulent transfers, the Debtor also took steps after the lawsuit was filed to ensure that no additional value would be transferred *to* the Fund Counterparties—deliberately taking steps to keep both SOHC and CDO Fund undercapitalized. Not only did the Debtor prevent additional value from being transferred to the Fund Counterparties, it is clear that the Debtor also failed to ensure that the Fund Counterparties retained assets that could be used to pay any such judgment. Quite to the contrary, it is now clear that any and all assets of any value that once belonged to the Fund Counterparties have, in one way or another, been transferred away, drained, or otherwise wasted by the Fund Counterparties, the Debtor itself, or the Debtor’s affiliates—all at the Debtor’s direction. Indeed, in a recent filing before this Court, the Debtor recently disclosed that both of the Fund Counterparties are completely “insolvent.” (Docket No. 687 at 1.) This means that—separate and apart from the transfers of assets out of, and away from, HFP that occurred in 2009—the Debtor has directed, or otherwise permitted, the Fund Counterparties to engage in acts that have left these once marque investment funds with literally *no* assets that can be used to pay Claimant. All such actions and omissions by the Debtor were performed with either the specific intent to prevent or frustrate Claimant’s ability to recover the amounts owed under the Warehouse Agreements, or a wanton and reckless disregard of Claimant’s rights to those amounts. Such actions and omissions constitute breaches of the Debtor’s duty of good faith and fair dealing under the Warehouse Agreements.

**B. The State Court Action and the Debtor’s Efforts to Avoid Paying Claimant**

17. On February 24, 2009, Claimant filed a complaint in the Supreme Court of the State of New York (the “State Court”) against the Debtor and the Fund Counterparties. With knowledge of Claimant’s lawsuit, the Debtor exercised its control over the Fund Counterparties to ensure they would not meet their obligations and to impede Claimant’s ability to recover the

amounts owed by those entities. (*Id.* ¶¶ 112, 114.) Rather than paying Claimant what it was owed, and as discussed above, the Debtor orchestrated an extensive multi-part strategy to delay resolution of Claimant's claims for as long as possible. As a result, the Debtor further interfered with Claimant's contractual rights, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements. (*Id.*)

18. By this time, the Fund Counterparties and SOHC's alter ego, HFP, had become insolvent, although they still owned significant assets. (*Id.* ¶ 108.) Nonetheless, the Debtor failed to act in good faith to cause HFP to satisfy the debts, as much as possible, then owed to Claimant. Instead, the Debtor caused HFP to make additional improper and fraudulent asset transfers, deliberately kept the Fund Counterparties undercapitalized, and allowed all assets of any value to be drained from the Fund Counterparties—acts which not only impaired Claimant's ability to recover anything from the Fund Counterparties, but precluded it altogether. (*Id.* ¶ 111.) In March 2009, conscious that Claimant had commenced an action against Highland a few weeks earlier, and in breach of their continuing duty of good faith and fair dealing, and with actual fraudulent intent, the Debtor and HFP caused asset transfers of millions of dollars of assets to the Debtor, Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., and Highland Credit Opportunities CDO, L.P. (now Highland Multi Strategy Credit Fund, L.P.) (collectively, the "**Affiliated Transferee Defendants**"), among others, thereby further reducing Highland's abilities to meet their obligations to Claimant. (*Id.* ¶¶ 111, 113.) The Debtor and its principals exercised domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties and HFP for their own personal gain, *i.e.*, solely and improperly to protect and enhance the value of the Debtor and its principals by wrongful and improper means. In the

process, the Debtor and its principals made it impossible for the Fund Counterparties to pay Claimant the losses that they and the Debtor had agreed they would pay under the Warehouse Agreements. (*Id.* ¶¶ 112-114.)

19. As Claimant learned about Highland's conduct through discovery, Claimant amended its complaint to assert additional claims and name additional Highland entities, including HFP, the Affiliated Transferee Defendants, and Strand Advisors, Inc. As amended and stated in its Second Amended Complaint (attached hereto as Exhibit A) in the State Court Action, filed on May 11, 2011, Claimant's claims include breach of contract claims directly against the Fund Counterparties, as well as claims for fraudulent inducement, breach of the duty of good faith and fair dealing, fraudulent conveyance, tortious interference, and declaratory judgments for alter ego liability against HFP and general partner liability against Strand Advisors, Inc. The Debtor subsequently brought counterclaims against Claimant for breach of contract and unjust enrichment. (*See* Ex. B, Decision at 35-37.)

20. The procedural history of the State Court Action is complex. The Debtor and its affiliates and Claimant filed, and the State Court ruled on, four sets of motions to dismiss. The Debtor and its affiliates then filed two sets of summary judgment motions, which led to a series of complex rulings by the State Court in 2017. The parties filed various interlocutory appeals of the State Court's rulings on the motions to dismiss and for summary judgment. Those appeals were heard by the Appellate Division for the First Judicial Department in the County of New York, with the Appellate Division issuing five decisions over this suit's protracted history (some of which are still subject to further appellate rights).

21. Also included in the Appellate Division's decisions was an order arising from an appeal of the State Court's ruling on Claimant's motion to restrain Defendants Highland Credit



Strategies Master Fund, L.P. and Highland Crusader Partners, L.P. from disposing of property received through the fraudulent transfers orchestrated by the Debtor. Claimant showed it had a likelihood of success on the merits of its fraudulent transfer claims, and the Appellate Division enjoined both Highland entities from disposing of their assets. Ultimately, these injunctions resulted in partial settlements between Claimant and Highland Credit Strategies Master Fund, L.P. and Highland Crusader Partners, L.P.

22. By early 2018, more than nine years after Claimant first filed suit, the parties were finally ready to proceed to trial. Due to a jury waiver clause in the Warehouse Agreements, however, and after related pre-trial briefing, the State Court bifurcated Claimant's claims into two distinct phases for trial: Phase I, consisting of a bench trial on Claimant's claims against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse Agreements, as well as the Debtor's counterclaims; and Phase II, consisting of a jury trial on Claimant's remaining claims against all remaining Highland entities, including the Debtor.<sup>3</sup> (Ex. B, Decision at 2 n.1, 38.)

23. The State Court presided over a thirteen-day bench trial for Phase I from July 9 through July 27, 2018. (*Id.* at 1.) On November 14, 2019, the State Court entered a Decision and Order on Phase I (attached hereto as Exhibit B), ruling in favor of Claimant on almost every issue presented in Phase I. In particular, the court found the Fund Counterparties liable to Claimant for breach of the Cash Warehouse and Synthetic Warehouse Agreements, found no liability on the part of Claimant for either of the Debtor's counterclaims, and rejected almost every one of the Debtor's offset arguments with the only remaining issue (affecting approximately \$70,500,000) to

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<sup>3</sup> Remaining claims are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining issues.

be determined after Phase II. (*Id.* at 39.) An Entry of Judgment on Phase I was entered on February 10, 2020. Under that Phase I final judgment, Claimant is entitled to \$1,039,957,799.44, consisting of \$519,374,149.00 in damages and \$520,583,650.44 in pre-judgment interest as of January 22, 2020, with additional interest of \$128,065 having accrued daily until the Entry of Judgment.

24. The next step in the State Court Action is Phase II of the trial, where Claimant's remaining claims against not only the Debtor, but also against other Highland affiliates are to be tried to a jury, with the court deciding liability as to the breach of the implied covenant of good faith and fair dealing claim and the jury deciding all remaining claims. (*Id.* at 2 n.1, 38.) The claims to be tried in Phase II include claims for breach of the implied covenant of good faith and fair dealing, fraudulent conveyances, and alter-ego liability. The specific amounts the two non-Debtor affiliates owe to Claimant for their breach of the Warehouse Agreements are now set forth and embodied in the final \$1 billion judgment from Phase I. And Claimant has stated claims against the Debtor—which was also a party to the same contract and exercised complete control over the two liable affiliates—under which Claimant is entitled to damages that are at least as much as the Phase I judgment amount. Claimant will seek damages for the Debtor's various breaches of the implied covenant as well as its specific role in the fraudulent transfer scheme, and pre-judgment interest and attorneys' fees where available. In addition, Claimant will seek punitive damages against the Debtor for its role in orchestrating the extended efforts to prevent Claimant from collecting the amounts owed under the Warehouse Agreements.

25. Currently, Phase II of the State Court Action is stayed against the Debtor by the automatic stay imposed pursuant to section 362 of the Bankruptcy Code when the Debtor commenced this Chapter 11 Case.

26. Claimant hereby asserts a claim, pending litigation of Phase II, for damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP, additional interest, further damages (including punitive damages), and attorneys' fees that may be awarded by any court at the conclusion of Phase II.

#### **Reservation of Rights**

27. Claimant does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor, the Fund Counterparties, Strand Advisors, Inc., other non-Debtor Highland Defendants, or any other Debtor affiliate, subsidiary, person, or entity.

28. Claimant expressly reserves all of its rights to assert any additional claims, defenses, remedies, and causes of action, including without limitation, claims for fraudulent inducement, breach of contract, tortious interference with contractual relations, fraudulent conveyances, or alter ego recovery. Claimant further reserves all rights to amend, modify, supplement, reclassify, or otherwise revise its Proof of Claim at any time and in any respect, including, without limitation, as necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the claims set forth herein, to assert additional grounds for any of the claims, to seek reconsideration under section 502(j) of the Bankruptcy Code or otherwise of any disallowance of any amounts claimed hereunder, or to reflect any and all additional claims of whatever kind or nature that Claimant has or may have against the Debtor.

29. To the extent any payment to Claimant based on this Proof of Claim, or any portion thereof, is clawed back from Claimant, avoided, or set aside, for any reason whatsoever, or Claimant is required to disgorge any such payment, or any portion thereof, Claimant hereby reserves its rights to amend this Proof of Claim accordingly.

30. The execution and filing of this Proof of Claim is not intended as, nor should it be construed as or deemed to be any of the following: (i) a waiver of the right to seek withdrawal of the reference, or to otherwise challenge the jurisdiction of this Court, with respect to the subject matter of the claims asserted herein, any objection or other proceeding commenced with respect thereto, or any other action or proceeding commenced in this Chapter 11 Case against or otherwise involving Claimant; (ii) an admission that any matter is a core matter for purposes of 28 U.S.C. § 157(b) or is a matter as to which this Court can enter a final order or judgment consistent with Article III of the United States Constitution; (iii) a waiver of the right to *de novo* review by the district court of any order or judgment for which this Court, absent Claimant's consent, lacks authority to enter a final order or judgment; (iv) a consent to the entry by this Court of a final order or judgment with respect to the claims asserted herein or any other matter; (v) a waiver of Claimant's right to a jury trial against the Debtor, as applicable, or waiver of Claimant's right to a jury trial against any of the non-Debtor Defendants; (vi) a waiver or release of the claims or rights of Claimant against any other entity or person that may be liable for all or any part of the claims or any matters related to the claims asserted herein; (vii) a waiver of any rights and remedies Claimant has or may have under the Cash Warehouse and Synthetic Warehouse Agreements, Engagement Letter, or any other contract, whether mentioned in this Proof of Claim or not; (viii) a waiver of Claimant's contractual right to seek to have these or any other claims settled by binding arbitration; (ix) a waiver of any right related to the confirmation of any plan of reorganization proposed in this

Chapter 11 Case, or any other insolvency-related proceeding that may be commenced, either in the United States or abroad, by or against the Debtor, or any non-Debtor affiliate; (x) a waiver or agreement granting any party relief; or (xi) an election of remedies.

31. Neither this Proof of Claim nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of Claimant. Claimant specifically reserves all of its defenses and rights, procedural and substantive, including, without limitation, its rights with respect to any claim that may be asserted against Claimant by the Debtor, the Fund Counterparties, or any affiliate of the Debtor, and its rights to enforce the Cash Warehouse or Synthetic Warehouse Agreements, Engagement Letter, or any other contract.

**Right of Setoff and Recoupment**

32. Claimant reserves all rights of setoff and recoupment that it may have. To the extent the Debtor or any non-Debtor affiliate asserts any claim against Claimant, Claimant shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code or right of recoupment against such claim with respect to the claims asserted herein and any amendments thereto.

**Notice**

33. Copies of all notices and communications concerning this Proof of Claim should be sent to:

UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Attn: Suzanne Forster  
Telephone: (212) 713-3432  
Email: [suzanne.forster@ubs.com](mailto:suzanne.forster@ubs.com)

With a copy to:



John Lantz  
UBS Securities LLC  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone: (212) 713-1371  
Email: john.lantz@ubs.com

Andrew Clubok  
Sarah Tomkowiak  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, District of Columbia 20004  
Telephone: (202) 637-2200  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

Jeffrey E. Bjork  
Kimberly A. Posin  
LATHAM & WATKINS LLP  
355 South Grand Avenue, Ste. 100  
Los Angeles, California 90071  
Telephone: (213) 485-1234  
Email: jeff.bjork@lw.com  
kim.posin@lw.com

Asif Attarwala  
LATHAM & WATKINS LLP  
330 N. Wabash Avenue, Ste. 2800  
Chicago, Illinois 60611  
Telephone: (312) 876-7700  
Email: asif.attarwala@lw.com

**Exhibit A**  
**Second Amended Complaint**

002662

**CONFIDENTIAL MATERIAL SUBJECT TO THE STIPULATION  
AND ORDER FOR THE PRODUCTION AND EXCHANGE  
OF CONFIDENTIAL INFORMATION HAS BEEN REDACTED**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND  
SPECIAL OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND  
CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., and STRAND  
ADVISORS, INC.,

Defendants.

Index No. 650097/2009  
(I.A.S. Part 60, Fried, J.)

**SECOND AMENDED  
COMPLAINT**

Plaintiffs, UBS Securities LLC ("UBSS") and UBS AG, London Branch ("UBS AG") (collectively, "UBS"), for their Second Amended Complaint allege against defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P. ("Highland Financial"), Highland Credit Strategies Master Fund, L.P. ("Credit Strategies"), Highland Crusader Offshore Partners, L.P. (the "Crusader Fund"), Highland Credit Opportunities CDO, L.P. (the "Credit Opp. Fund"), and Strand Advisors, Inc. ("Strand"), as follows:

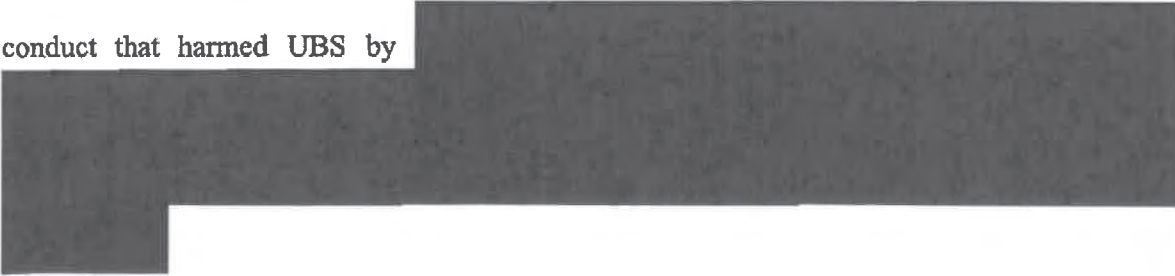
**NATURE OF THE ACTION**

1. UBS brings this action to recover damages in excess of \$686 million resulting from the wrongful conduct of defendants, based on causes of action for fraudulent inducement, breach of contract, fraudulent conveyances, and declaratory judgment.

002663

2. Counterclaim-plaintiff Highland Capital Management, L.P. (“Highland Capital”) is a defendant in the action commenced by UBS (the “Highland Capital Action”) concurrently with the filing of the First Amended Complaint in this action. The Highland Capital Action was consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the “Consolidated Action”). Together with Highland Capital, the Fund Counterparties fraudulently induced UBS to restructure a transaction to avoid Highland Capital’s and the Fund Counterparties’ contractual obligation to pay UBS over \$86 million. Once Highland Capital and the Fund Counterparties succeeded in misleading UBS into restructuring the original transaction, Highland Capital and its affiliates made it impossible for the Fund Counterparties to meet their obligations to UBS by stripping the Fund Counterparties of their valuable assets through fraudulent conveyances and otherwise dealing in bad faith with their contractual obligations to UBS.

3. When UBS finally terminated the restructured transaction and demanded payment from Highland Capital and the Fund Counterparties, it was owed in excess of \$686 million that the Fund Counterparties could not pay because of the misappropriations and improper transfers of assets directed by Highland Capital and the Fund Counterparties. Even after UBS demanded payment, Highland Capital and defendants engaged in further unlawful conduct that harmed UBS by



### SUMMARY OF THE ACTION

4. This action arises out of Highland Capital's efforts in the Spring of 2007 to sponsor a collateralized debt obligation ("CDO") securitization (the "Original Engagement"). In connection with the Original Engagement, UBS agreed to finance the purchase of various collateralized loan obligation ("CLO") securities, as well as credit default swap obligations that referenced similar CLO securities. UBS agreed to hold or "warehouse" the CLO securities and credit default swaps (collectively, the "Warehouse Assets" or "Warehouse Facility") for Highland Capital's benefit.

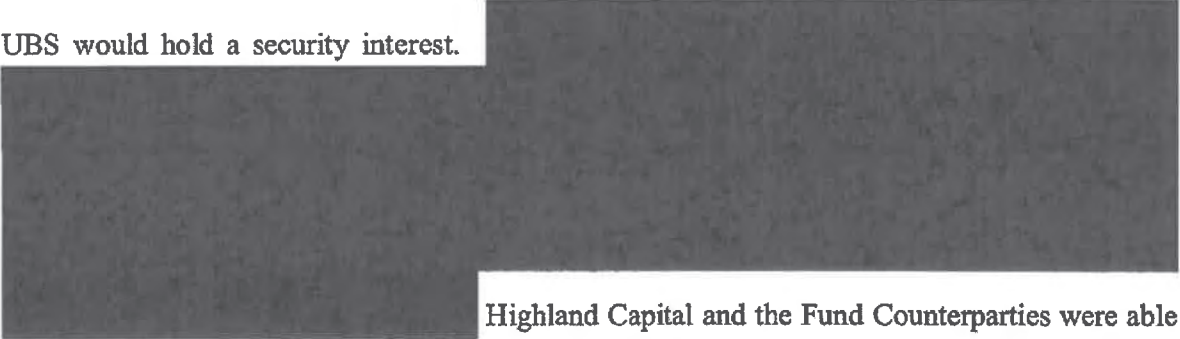
5. On or about August 15, 2007, the Original Engagement terminated by its terms without the contemplated securitization having occurred. As a result of the termination, Highland Capital and two of its affiliates, the Fund Counterparties, owed UBS in excess of \$86 million related to the decline in the value of the Warehouse Assets.

6. Instead of paying UBS what it was owed, Highland Capital and the Fund Counterparties fraudulently induced UBS to restructure the Original Engagement by providing UBS with false, incomplete and otherwise misleading information concerning the Fund Counterparties' finances and assets. Using both affirmative material misrepresentations and omissions (material facts or information needed to be disclosed to make the statements actually made not misleading, and which were not disclosed, are referred to hereinafter as "Omissions"), Highland Capital, its principals and the Fund Counterparties misled UBS regarding the financial health of the Fund Counterparties and their creditworthiness, thereby causing UBS to forego recovering its losses from Highland Capital in favor of agreeing to restructure the terms of the parties' prior agreements (the "Restructured Transaction").

7. For example, the strength of the Fund Counterparties' financial statements, and their purported ability to use the hundreds of millions of dollars worth of assets

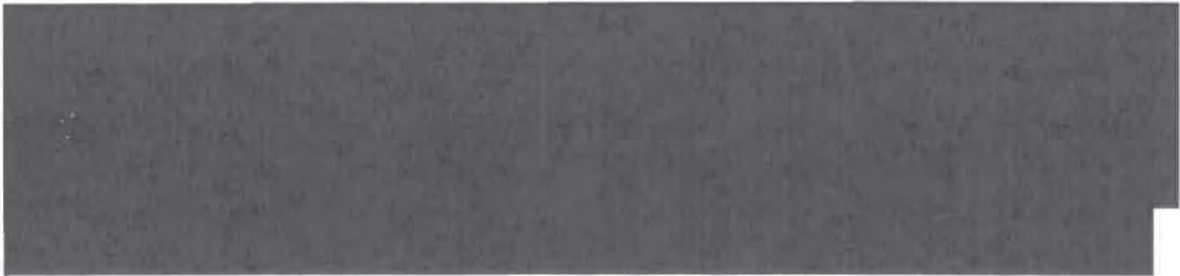


reflected therein to satisfy future obligations to UBS under the Warehouse Agreements were material to UBS's decision to agree to the restructuring. Consequently, in connection with negotiating the Restructured Transaction, UBS conditioned any restructuring on the Fund Counterparties' ability to post \$70 million in cash and securities as collateral (the "Initial Restructuring Collateral") with State Street Bank and Trust Company ("State Street"), in which UBS would hold a security interest.



Highland Capital and the Fund Counterparties were able to conceal important information about the Fund Counterparties' financial weakness that was both quantitatively and qualitatively material to UBS, and which would have caused UBS not to enter the Restructured Transaction.

8. Similarly, while negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties provided UBS with financial reports and statements for the Fund Counterparties. The financial information that Highland Capital and the Fund Counterparties provided to UBS contained materially false and misleading information and Omissions concerning the financial condition of the Fund Counterparties. Among other things,



9. In reliance on material misstatements and Omissions made by Highland Capital and the Fund Counterparties, UBS agreed to restructure the Original Engagement, and

thereby were fraudulently induced to give up contractual rights under the terms of the Original Engagement. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe that Highland Capital and its affiliates would provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets, as they in fact did.

10. Had UBS known that the Fund Counterparties could not [REDACTED]  
[REDACTED], it would not have gone forward with the Restructured Transaction. UBS never would have agreed to the Restructured Transaction had it known prior to entering the Restructured Transaction the true status of the Fund Counterparties' financial condition and the true fair market value of the Fund Counterparties' holdings that would have been available to satisfy their then-existing and future obligations to UBS. UBS's losses described herein were directly and proximately caused by the conduct of Highland Capital and the defendants as described herein.

11. Almost immediately after UBS agreed to the Restructured Transaction, Highland Capital began the process of making it impossible for the Fund Counterparties to ever repay UBS what they owed. In particular, exercising its control over the Fund Counterparties, Highland Capital caused the Fund Counterparties to transfer cash for the benefit of Highland Capital and its principals, and, separately, in violation of UBS's rights, [REDACTED]  
[REDACTED], all during a time when the Fund Counterparties owed UBS hundreds of millions of dollars.


12. For example, in or around May 2008, Highland Capital caused the dissipation of approximately \$100 million in cash that CDO Fund held after it sold a long position in a company called SunCom Wireless. Highland Capital drained CDO Fund's cash resources despite CDO Fund's ever-increasing obligations to UBS. Highland Capital's bad faith conduct caused injury to UBS by making it impossible for the Fund Counterparties to satisfy their contractual obligations to UBS.

13. In September 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Because Highland Capital had routinely taken cash out of the Fund Counterparties, the Fund Counterparties were undercapitalized and lacked assets and liquidity to meet UBS's demands for additional collateral.

14. Highland Capital and its principals, including its president and founder, James D. Dondero, knew that if the Fund Counterparties defaulted on their obligations to UBS (or any other creditor), Highland Capital's ability to conduct business in the financial community and to keep or solicit investors would be harmed. Investors in Highland Capital's hedge fund family would withdraw their investments. In addition, creditors would take actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights. Highland Capital and its principals were concerned that upon the disclosure of the true state of their affairs, their business would collapse.

15. To avoid that result, Highland Capital and its principals resorted to

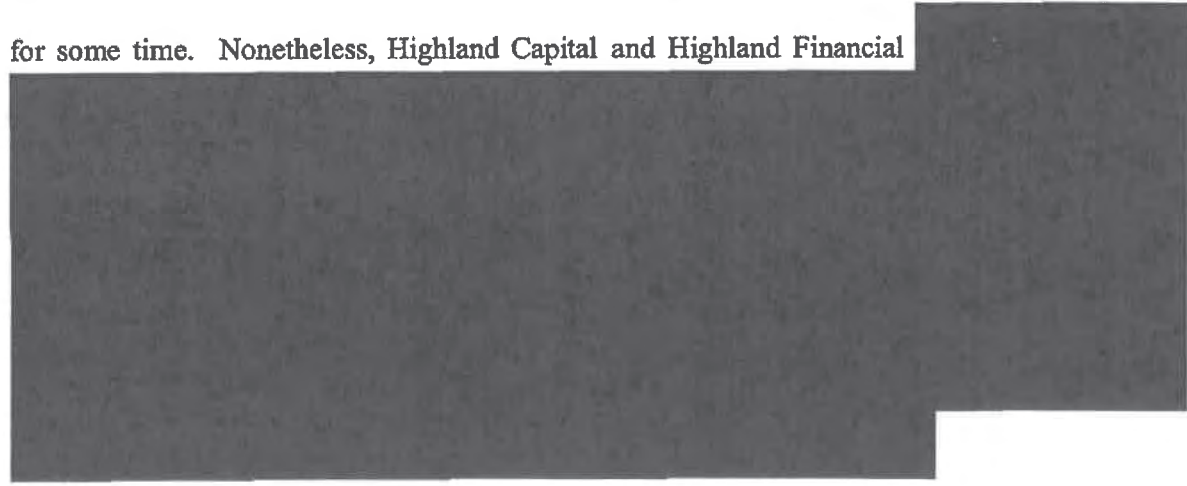




16. Highland Capital's and its principals' belated attempt to protect their reputation by continuing to fraudulently portray the Fund Counterparties as viable independent entities was ultimately unsuccessful. By late October 2008, Highland Capital could no longer continue to prop up the Fund Counterparties.

17. On or about November 11, 2008, UBS demanded additional collateral from the Fund Counterparties. The Fund Counterparties defaulted. On December 3, 2008, UBS terminated the Restructured Transaction. As a result of UBS's termination of the Restructured Transaction, the Fund Counterparties were contractually obligated to pay UBS in excess of \$686 million.

18. On or about February 24, 2009, UBS filed the original complaint in this Court against the Fund Counterparties for breach of the Warehouse Agreements that had been entered in connection with the Restructured Transaction. By that time, the Fund Counterparties and SOHC's alter ego, Highland Financial, had been insolvent and unable to pay their creditors for some time. Nonetheless, Highland Capital and Highland Financial



19. In sum, after fraudulently inducing UBS to agree to the Restructured Transaction, Highland Capital and its principals exercised their domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties for their own personal gain, i.e., solely and improperly to protect and enhance the value of Highland Capital and its principals by wrongful and improper means. In the process, they made it impossible for the Fund Counterparties to pay UBS the losses they had agreed to pay on the Warehouse Facility.

### **THE PARTIES**

#### **A. The Plaintiffs**

20. Plaintiff UBS AG, London Branch, is a banking corporation organized under the laws of Switzerland with its principal place of business at Finsbury Avenue, London, United Kingdom.

21. Plaintiff UBSS is a limited liability company organized under the laws of Delaware with its principal places of business at 677 Washington Blvd., Stamford, Connecticut, and 299 Park Avenue, New York, New York.

#### **B. Highland Capital**

22. Highland Capital Management, L.P. ("Highland Capital") is a limited partnership organized under the laws of Delaware, with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240, and an office at 9 West 57th Street, New York, New York. Highland Capital is registered to do business in New York. Highland Capital describes itself as a 100% employee-owned partnership. Highland Capital is an investment adviser that manages a large number of investment entities that operate as hedge funds for Highland Capital's principals and affiliates, as well as unaffiliated investors. Highland Capital currently manages



over \$25 billion in various assets, including structured financial products. Highland Capital also holds direct and indirect equity and ownership interests in the entities that it manages, including in Highland Financial, the Fund Counterparties and the Affiliated Transferee Defendants. James D. Dondero is the President of Highland Capital, as well as one of its founders. Concurrently with filing the First Amended Complaint in this Action, UBS commenced a separate action against Highland Capital (the “Highland Capital Action”). The Highland Capital Action was later consolidated with this action by a Decision and Order, entered by this Court on October 7, 2010 (this action and the Highland Capital Action are referred to herein as the “Consolidated Action”).

**C. The Defendants**

**1. Defendant Strand**

23. Defendant Strand Advisors, Inc. (“Strand”) is Highland Capital’s general partner. Strand is a Delaware corporation principally engaged in the business of serving as the general partner of Highland Capital. As Highland Capital’s general partner, Strand is responsible for Highland Capital’s liabilities and obligations and regularly conducts business in New York, or causes its affiliates to conduct business in New York.

**2. Defendants Highland Financial and SOHC**

24. Highland Special Opportunities Holding Company (“SOHC”) is a company organized under the laws of the Cayman Islands, with its offices at Walker House, PO Box 908GT, Mary Street, George Town, Grand Cayman, Cayman Islands. SOHC is a wholly-owned subsidiary of defendant Highland Financial Partners, L.P. (a Delaware limited partnership) (“Highland Financial”). SOHC has six sister subsidiaries, all of which are owned in whole or in part by Highland Financial. Highland Capital serves as investment manager to defendant Highland Financial, SOHC and its sister subsidiaries.

25. Highland Financial is SOHC's alter ego.



For all purposes relevant to this action, Highland Financial and SOHC should be treated as a single entity and as alter egos of one another.

**3. Defendant CDO Fund**

26. Defendant Highland CDO Opportunity Master Fund, L.P. ("CDO Fund") is a Bermuda exempted limited partnership, with its principal place of business at 52 Reid Street, Hamilton, Bermuda. Highland Capital controls CDO Fund's investment decisions through an investment management agreement. Between January 31, 2007 and August 31, 2008, Highland Capital's and its affiliates' aggregate ownership interest in CDO Fund ranged between 43.36% and 56.44%. Highland CDO Opportunity Fund, L.P. and Highland CDO Opportunity Fund, Ltd. serve as so-called "feeder funds" for defendant CDO Fund.

**4. The Affiliated Transferee Defendants** [REDACTED]

27. Defendant Highland Credit Strategies Master Fund, L.P. (“Credit Strategies”) is a Bermuda limited partnership organized with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. Credit Strategies transacts business within New York, and derives substantial revenue from interstate and international commerce.

28. Defendant Highland Crusader Offshore Partners, L.P. (the “Crusader Fund”) is a Bermuda limited partnership with its principal place of business at Victoria Place, 31 Victoria Street, Hamilton HM10, Bermuda. The Crusader Fund also has an office located at 13455 Noel Road, Suite 800, Dallas, Texas 75240. The Crusader Fund transacts business within New York, and derives substantial revenue from interstate and international commerce.

29. Defendant Highland Credit Opportunities CDO, L.P. (the “Credit Opp. Fund”) is a Delaware limited partnership with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240.

30. Credit Strategies, the Crusader Fund and the Credit Opp. Fund are referred to herein collectively as the “Affiliated Transferee Defendants” [REDACTED]

**D. Non-Parties Affiliated With Highland Capital In Which The Fund Counterparties Invested**

31. The Fund Counterparties held investments in several Highland Capital-affiliated funds, including Highland Credit Opportunities CDO, L.P., Highland Legacy, Highland Loan Funding V, Highland Park CDO I, Ltd., Highlander Euro CDO B.V. and Highlander Euro

CDO III B.V. Highland Capital served as the investment manager for these affiliated funds, and received valuable fees derived from the valuations of these funds' assets, which it managed.

### **JURISDICTION AND VENUE**

32. Venue in this Court is proper under CPLR 503 because plaintiff UBSS has a principal place of business in New York County.

33. Venue is also proper under CPLR 501, and this Court may exercise jurisdiction over the Fund Counterparties because UBS, Highland Capital and the Fund Counterparties all agreed in writing, before this action was commenced, to submit to such jurisdiction and venue, in connection with any dispute that may arise out of, in connection with, or related to, the Agreements (defined below), or any of the matters contemplated thereby. This Court also may exercise jurisdiction over Highland Financial because it is the alter ego of SOHC.

34. This Court also may exercise jurisdiction over all defendants pursuant to CPLR 301 and 302(a)(1) and (3), because defendants regularly transact and solicit business in New York, committed tortious acts causing injury in New York, should reasonably have expected that their tortious acts would have consequences in New York, the effect of their wrongful conduct was felt in New York, and/or derive substantial revenue from interstate or international commerce. Additionally, Highland Capital has an office in New York and is a foreign limited partnership registered to do business in New York.

### **FACTUAL BACKGROUND**

#### **A. The Original Engagement**

35. In or around April 2007, Highland Capital approached UBS for short-term financing in connection with a securitization that Highland Capital wanted to sponsor. UBS agreed to do so (the "Original Engagement").

36. On or about April 20, 2007, UBSS and Highland Capital entered into an engagement letter (the “Original Engagement Letter”), which contemplated that UBSS would act as the exclusive financial arranger and placement agent for a type of collateralized debt obligation transaction (“CDO”), known as a collateralized loan obligation (“CLO”) squared or “CLO Squared” transaction. (A copy of the Original Engagement Letter is annexed hereto as Exhibit A.)

37. CLOs are a form of securitization where interest and principal payments on corporate loans made to multiple mid-sized and large businesses are pooled together by a lender or the owner of the loans, and then passed on through a securitization structure to investors. CLOs typically involve multi-million dollar loans known as syndicated loans, or leveraged loans made to new businesses or existing businesses, often to acquire other companies. The loan originators are able to spread risk through the CLO securitization, and simultaneously free up capital to make new loans to other businesses. The Original Engagement contemplated the securitization of CLO securities. Thus, the securitization contemplated by Highland Capital would have been a “CLO Squared” transaction.

38. On or about May 22, 2007, as contemplated by the Original Engagement Letter, UBSS and Highland Capital entered into a warehouse agreement (the “Original Cash Warehouse Agreement”). (A copy of the Original Cash Warehouse Agreement is annexed hereto as Exhibit B.) In accordance with the terms of the Original Engagement Letter and the Original Cash Warehouse Agreement, UBSS agreed to acquire securities as directed by Highland Capital. Highland Capital instructed UBS to acquire various CLO securities issued in connection with prior CLO transactions involving other sponsors and issuers (the “Cash Portfolio”).

39. In a separate but related synthetic warehouse agreement (the “Original Synthetic Warehouse Agreement,” and together with the “Original Cash Warehouse



Agreement,” the “Original Warehouse Agreements”), UBS AG agreed to enter into credit default swaps (the “CDS Portfolio,” and together with the Cash Portfolio, the “Warehouse Assets”), pursuant to which UBS AG sold credit protection to various third parties. (A copy of the Original Synthetic Warehouse Agreement is annexed hereto as Exhibit C.)

40. For Highland Capital’s benefit, UBS held the Warehouse Assets on its balance sheet (the “Warehouse Facility”). UBS was expected to hold the Warehouse Assets until such time as the parties could arrange for the assets to be securitized as part of the contemplated securitization. In particular, if the parties believed that a securitization was economically feasible, they would create a special purpose entity that would acquire the Warehouse Assets from UBS using the proceeds from the sale of securities to investors. The special purpose entity’s debt securities would be secured by those Warehouse Assets.

41. Under the Original Warehouse Agreements, if the Original Engagement terminated without a securitization, Highland Capital and the Fund Counterparties were obligated to pay UBS for losses on the Warehouse Assets. In particular, under the terms of the Original Cash Warehouse Agreement, Highland Capital was directly responsible for the first \$50 million in losses in the Cash Portfolio, and under the terms of the Original Synthetic Warehouse Agreement, the Fund Counterparties were obligated to pay UBS for any and all losses suffered on the CDS Portfolio.

42. The Original Engagement Letter expired by its terms on August 15, 2007 without a securitization occurring. The Original Warehouse Agreements expired on the same date in accordance with their respective terms.

43. As of August 15, 2007, the Warehouse Assets in the Warehouse Facility had lost in excess of \$86 million in value. Although they had sufficient capital to do so,

Highland Capital and the Fund Counterparties failed and refused to pay UBS what it was owed under the Original Warehouse Agreements.

44. As a result of extensive negotiations as well as representations and warranties made by Highland Capital on its own behalf, and on behalf of the Fund Counterparties as their investment manager, UBS agreed to restructure the terms of the Original Engagement.

**B. Highland Capital And The Fund Counterparties Resort To Fraud To Avoid Highland Capital's Obligations To UBS**

45. As alleged above, as a result of the termination of the Original Engagement, Highland Capital was directly liable to UBS under the Original Warehouse Agreement for in excess of \$86 million.

46. Between August 2007 and March 14, 2008, UBS, Highland Capital and the Fund Counterparties had discussions and negotiations concerning a restructuring of the terms of the Original Engagement. Those negotiations resulted in agreements to restructure the Original Engagement (the "Restructured Transaction"), including a release by UBS of its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement. (The terms of the Restructured Transaction are set forth in the Engagement Letter and Warehouse Agreements described below (collectively, the "Agreements"), which are annexed hereto as Exhibits D, E and F, respectively.)

47. During the course of negotiations and before March 14, 2008, Highland Capital and Fund Counterparties made several material misrepresentations to UBS concerning the creditworthiness of the Fund Counterparties. Dondero, Highland Capital and the Fund Counterparties also failed to disclose to UBS information which would have been material to UBS's decision to enter the Restructured Transaction ("Omissions," as defined above). As

Highland Capital and the Fund Counterparties knew, UBS reasonably relied upon those material misrepresentations and, due to the Omissions, a misstated assessment of the Fund Counterparties, all to its detriment in deciding whether to enter the Restructured Transaction. UBS reasonably and justifiably relied on these misrepresentations and Omissions of facts and information that were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS reasonably believed that Highland Capital and the Fund Counterparties would not provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets as it in fact did.

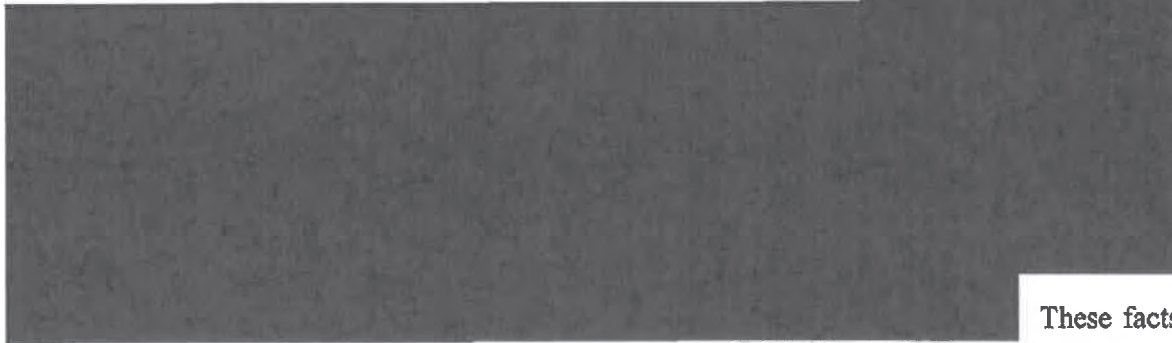
48. For example, on or about December 28, 2007, to induce UBS to enter the Restructured Transaction and related Agreements, Gibran Mahmud of Highland Capital sent SOHC financial statements to UBS. On or about January 29, 2008, UBS requested additional financial information related to SOHC. Later that same day, to induce UBS to enter the Restructured Transaction and related Agreements, Phil Braner of Highland Capital emailed UBS a copy of SOHC's Statement of Financial Condition, dated December 31, 2007.

49. As described with more particularity below, the SOHC financial information that Highland Capital and the Fund Counterparties provided to UBS, which Highland Capital was responsible for preparing, was materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon SOHC's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

50. On or about February 4, 2008, Matt Killebrew of Highland Capital provided UBS with financial reports via email that reflected financial summaries, and aggregate

valuations for CDO Fund's assets as of December 31, 2007. On or about March 4, 2008, Mr. Killebrew sent UBS similar reports for the period ended January 31, 2008. As described with more particularity below, these financial reports, which Highland Capital prepared, also were materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon CDO Fund's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

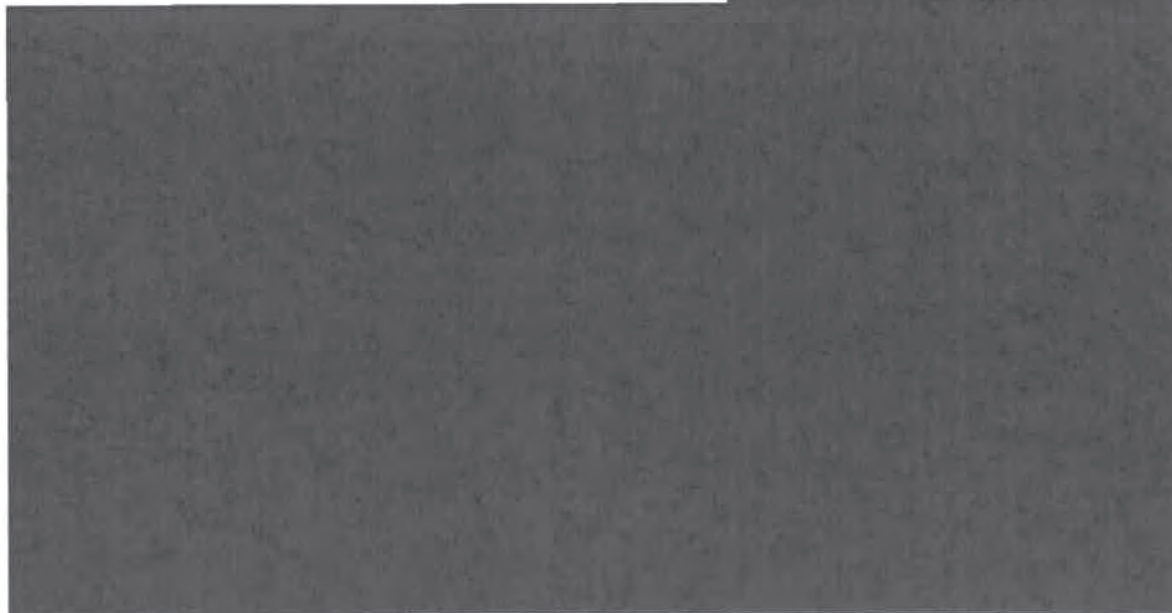
51. The Fund Counterparties' financial statements



These facts

and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties.

52. CDO Fund's financial statements



[REDACTED]

53. Similarly, Highland Capital and the Fund Counterparties concealed from UBS the fact that the Fund Counterparties

[REDACTED]

54. In addition, the Fund Counterparties' financial statements that Highland Capital and the Fund Counterparties provided to UBS in advance of the Restructured Transaction contained

[REDACTED]



[REDACTED]

55. During the course of negotiations concerning the restructuring, UBS also insisted that the Fund Counterparties have the ability to post \$70 million in cash and securities as collateral, which would be held at State Street Bank (the "Initial Restructured Transaction Collateral"), and in which UBS would hold a security interest. The Fund Counterparties' ability to do so using their own assets was qualitatively and quantitatively material to UBS. Among other things, it demonstrated the strength of their balance sheets, and by extension, their ability to satisfy future obligations to UBS.

56. Highland Capital and the Fund Counterparties agreed that the Fund Counterparties would post \$70 million in Initial Restructuring Collateral.

[REDACTED]

57.

[REDACTED]

58.

As the Fund Counterparties' investment manager, Highland Capital maintained the Fund Counterparties' accounting records, and knew

Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe, and reasonably did not believe, that Highland Capital would provide it with false, incomplete or otherwise misleading information about

59. If UBS had known that the Fund Counterparties

[REDACTED] It also  
would have drawn into question the Fund Counterparties' liquidity.  
[REDACTED]

60. But for Dondero's, Highland Capital's and the Fund Counterparties' false and misleading statements and Omissions concerning the Fund Counterparties' finances and assets, and [REDACTED] UBS would not have entered into the Restructured Transaction or the Agreements that memorialized its terms. Given the Fund Counterparties' weak credit quality, additional adverse information about their collective or individual creditworthiness would have deterred UBS from going forward with the Restructured Transaction and putting more assets at risk. These misrepresentations and Omissions proximately caused harm to UBS.

61. UBS would not have entered into a transaction with parties that made misrepresentations as Highland Capital and the Fund Counterparties did. UBS also would not have agreed to release its valuable claims arising out of the Original Engagement under such circumstances. Because of, and in reliance on, the false and misleading information about the Fund Counterparties provided by Dondero, Highland Capital and the Fund Counterparties, UBS entered into the Restructured Transaction memorialized in the Agreements. Because each of the misrepresentations and Omissions identified above disguised the Fund Counterparties' inability to satisfy their obligations to UBS, the misrepresentations and Omissions proximately caused harm to UBS.

**C. The Restructured Transaction Agreements**

**1. The Engagement Letter**

62. On or about March 14, 2008, the parties reached agreement on the terms of a restructured engagement, which were memorialized in a new engagement letter (the “Engagement Letter,” annexed hereto as Exhibit D). Pursuant to the Engagement Letter, Highland Capital re-engaged UBSS to act as placement agent in the event that market conditions improved, and the parties could go forward with securitizing the Warehouse Assets already held by UBS in the Warehouse Facility. UBS agreed to continue holding the Warehouse Assets in the Warehouse Facility, which had a notional value of approximately \$818 million.

63. Under the terms of the Engagement Letter, UBS released claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

**2. The Restructured Warehouse Agreements**

64. On March 14, 2008, UBSS, the Fund Counterparties and Highland Capital also entered into a cash warehouse agreement (the “Cash Warehouse Agreement”), pursuant to which UBSS agreed to continue to hold the Cash Portfolio. (A true and correct copy of the Cash Warehouse Agreement is annexed hereto as Exhibit E.)

65. UBS AG, the Fund Counterparties and Highland Capital also entered into a synthetic warehouse agreement, dated as of March 14, 2008 (the “Synthetic Warehouse Agreement,” and together with the Cash Warehouse Agreement, the “Warehouse Agreements”), pursuant to which UBS AG agreed to continue warehousing credit protection that it sold, *i.e.*, the CDS Portfolio. (A true and correct copy of the Synthetic Warehouse Agreement is annexed hereto as Exhibit F.)

66. Section 13(B) of the Cash Warehouse Agreement and § 11(B) of the Synthetic Warehouse Agreement make Highland Capital liable for losses, including losses in the

Warehouse Facility, by reason of acts or omissions constituting bad faith, willful misconduct, or gross negligence.

67. Under § 12 of the Synthetic Warehouse Agreement, the Fund Counterparties agreed to transfer to State Street the Initial Restructuring Collateral to partially secure their respective obligations to UBS under the Warehouse Agreements. Annex C to the Synthetic Warehouse Agreement identified the six assets that the Fund Counterparties purportedly transferred to State Street to satisfy their Initial Restructuring Collateral obligations, along with \$20 million in cash.

68. The Warehouse Agreements also contained releases whereby UBS agreed to release claims it had against Highland Capital and the Fund Counterparties for losses arising out of the Original Engagement.

**D. Highland Capital Uses Its Control Over The Fund Counterparties To Dissipate Their Assets Without Regard For The Fund Counterparties' Growing Obligations To UBS**

69. Almost immediately after the Restructured Transaction Agreements were executed, Highland Capital and the Fund Counterparties knowingly began to dissipate the Fund Counterparties' assets and make it impossible for the Fund Counterparties to ever repay UBS what they owed. Highland Capital and the Fund Counterparties did so at various times when the Fund Counterparties owed UBS hundreds of millions of dollars.

70. For example, on or about March 26, 2008, just days after entering the Restructured Transaction, Highland Capital caused certain SOHC assets to be encumbered by entering into a transaction with Barclays Bank, plc. ("Barclays"). At or around the same time, CDO Fund was negotiating financing arrangements with Morgan Stanley & Co. International Ltd. and Highland Capital IV SPC, whereby it granted a security interest in its assets to those entities. By granting a security interest in the Fund Counterparties' assets to other creditors,



Highland Capital unfairly and improperly reduced the assets available to satisfy the Fund Counterparties' obligations to UBS in bad faith and in violation of UBS's rights.

71. Similarly, on or about April 2, 2008, Highland Capital advised UBS that defendant CDO Fund had recently monetized a \$129 million long position in SunCom Wireless. When Highland Capital and CDO Fund subsequently provided UBS with additional financial information about CDO Fund, however, UBS discovered that Highland Capital had caused CDO Fund to transfer approximately \$100 million of the cash proceeds from the SunCom Wireless sale out of CDO Fund.

72. By improperly removing such a substantial amount of cash from CDO Fund, Highland Capital interfered in bad faith with CDO Fund's ability to satisfy its steadily increasing financial obligations to UBS. In particular, in or around May 2008, when the cash proceeds from the SunCom Wireless position were siphoned off, the Fund Counterparties owed UBS in excess of \$166 million related to losses in the Warehouse Facility, approximately 50% of which CDO Fund was obligated to pay.

73. Highland Capital also repeatedly caused SOHC's cash to be transferred by defendant Highland Financial. In particular, during the first five months of 2008, SOHC's cash position was reduced by over \$10 million at a time when its obligations to UBS were increasing substantially.

**E. In the Fall of 2008, Losses Mount And The Fund Counterparties Face Collateral Calls From Creditors Including UBS That They Cannot Meet Despite Highland Capital's Belated Efforts To Do So**

74. Under the terms of the Warehouse Agreements, the Fund Counterparties were required to post additional collateral with UBS if the combined market value of (a) the

Warehouse Assets and (b) the Initial Restructured Transaction Collateral, declined below a certain amount.


75. By September 2008, losses in the Warehouse Facility had increased significantly. At the same time, the value of the Initial Restructuring Collateral had declined substantially, as had the value of the assets held by the Fund Counterparties.

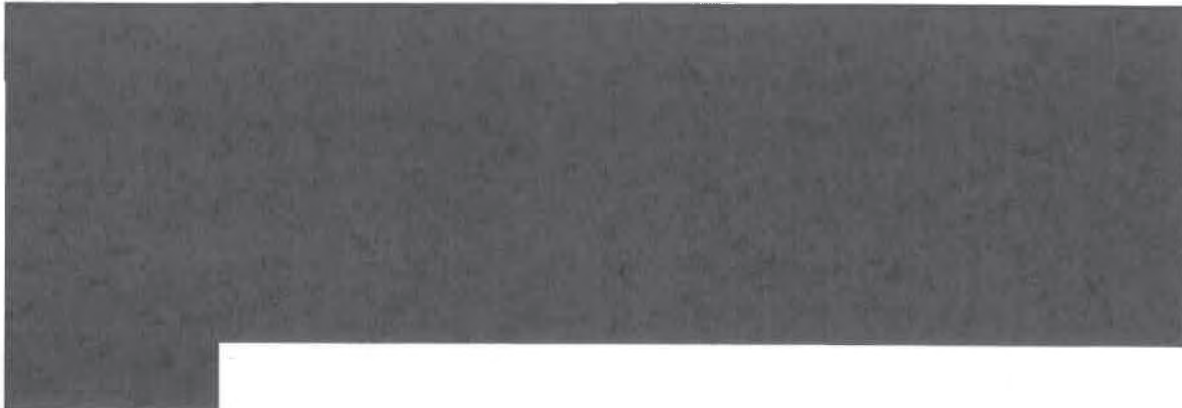
76. Highland Capital was desperate to avoid a default by any of its affiliates, including the Fund Counterparties. If a Highland Capital affiliate defaulted on its obligations to a creditor, Highland Capital's reputation in the investment community would be damaged, and there was a risk that Highland Capital's business would collapse. Highland Capital feared that a public default would lead investors in Highland Capital's hedge fund family to withdraw their capital, and lead creditors to take aggressive actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights.

#### **1. The First Margin Call**

77. On or about September 16, 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Specifically, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties were each required to post \$10 million in cash or equivalent securities (the "First Margin Call").

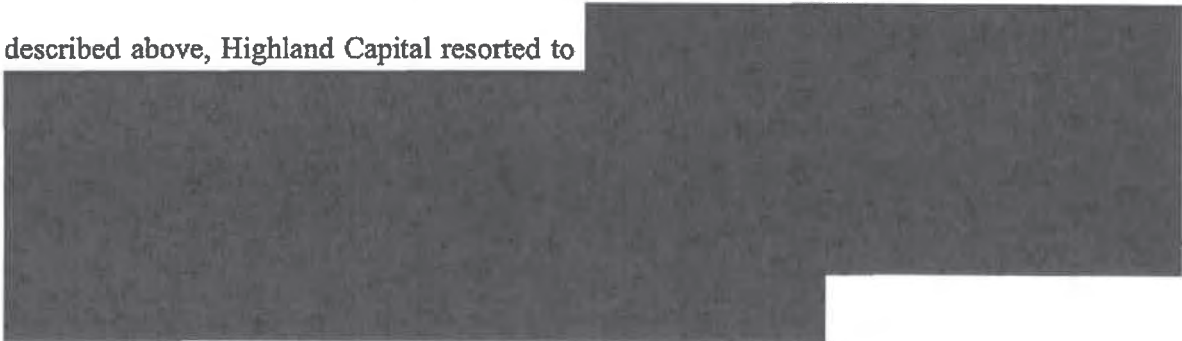
78. Because Highland Capital had routinely drained cash from the Fund Counterparties, the Fund Counterparties lacked the liquidity to meet UBS's demands using their own assets.

79. On or about September 19, 2008, the Fund Counterparties satisfied the First Margin Call by together posting \$20 million in cash as additional collateral. 



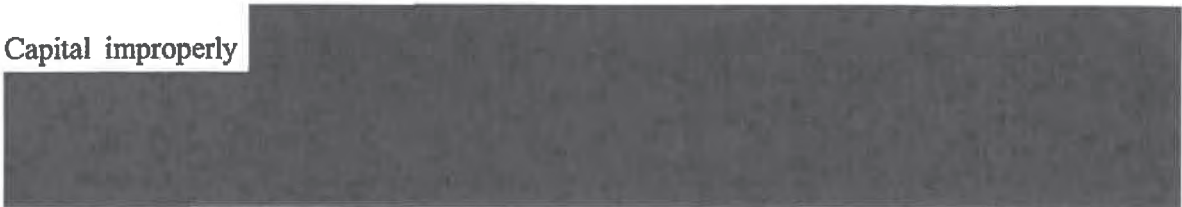
**2. UBS Is Harmed By Highland Capital's Response To The Fund Counterparties' Liquidity Crisis**

80. In the wake of the First Margin Call, the Fund Counterparties remained starved for liquidity. Still desperate to avoid defaults to creditors and the consequences described above, Highland Capital resorted to



81. Highland Capital and the individuals that directed the Fund Counterparties knew that they had caused the Fund Counterparties to become incapable of satisfying their obligations to all of their respective creditors when they came due, and that they were insolvent or, at the very least, within the zone of insolvency.

82. For example, on or about September 26, 2008, Dondero and Highland Capital improperly



83.

84.

85.

86.

Highland Capital executed this plan at UBS's expense to protect their substantial personal stake in Highland Financial and prevent negative publicity associated with defaulting [REDACTED]. Implementing this plan, however, caused SOHC (and its alter ego, Highland Financial) to improperly and in bad faith breach duties and obligations to UBS.

87.

SOHC's expected obligations to UBS were well in excess of \$250 million, which were due and owing to UBS no later than March 14, 2009. Thus, by [REDACTED], Highland Capital and the Fund Counterparties made a fraudulent conveyance and interfered in bad faith with the Fund Counterparties' ability to meet their contractual obligations to UBS.

88. Given the state of the financial markets at the time, Highland Capital, Highland Financial and SOHC had no expectation that SOHC would be able to satisfy its



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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 11**

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

IN RE:

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Chapter 11

\*

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

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*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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000752  
000761

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000815  
Thru Vol. 4  
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001144  
001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit



Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

obligations to UBS when they came due.



89.



### **3. The Second Margin Call**

90. On or about October 21, 2008, UBS notified Highland Capital that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties each owed another \$10 million (the “Second Margin Call”).


91. In response to the Second Margin Call, Highland Capital offered UBS numerous assets as collateral. UBS rejected those offers for various business-related reasons. As UBS would later learn, however, at the time Highland Capital was offering the assets to UBS, the Fund Counterparties did not own them.

92. On or about October 24, 2008, the Fund Counterparties satisfied the Second Margin Call by together posting assets with a notional value of \$49.97 million (but a market value of approximately \$20 million), with the understanding that UBS would authorize State Street to return the securities if and when the Fund Counterparties were able to replace

those securities with \$20 million in cash. As UBS would later learn,



93. Moreover, at the same time that Highland Capital was telling UBS that the Fund Counterparties did not have sufficient cash assets to meet the Second Margin call,



**4. The Third Margin Call**

94. On or about November 7, 2008, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties had an obligation to post another \$10 million as collateral (the “Third Margin Call”).

95. On or about November 11, 2008, Highland Capital and the Fund Counterparties offered to post various securities to satisfy the Third Margin Call. In response to the Third Margin Call, Phil Braner of Highland Capital emailed UBS a list of proposed collateral including eight securities with a purported market value of approximately \$20 million (i.e., twice the amount of cash due to satisfy the Third Margin Call).

96. Pursuant to the Warehouse Agreements, UBS was authorized to reject proposed collateral. UBS determined that the proposed additional collateral offered by Highland Capital and the Fund Counterparties was unacceptable. On or after November 13, 2008, UBS formally rejected the offered securities, and requested that the Fund Counterparties provide cash

or cash equivalent collateral to satisfy their obligations under § 12(C) of the Synthetic Warehouse Agreement.

97. UBS would later learn that



98. When UBS confronted Highland Capital about this issue Mr. Braner of Highland Capital explained that



**F. Termination Of The Agreements And Demand For Payment Of Losses**

99. As of December 3, 2008, the Fund Counterparties still had not met the Third Margin Call in accordance with § 12(C) of the Synthetic Warehouse Agreement. This failure resulted in UBS's declaration of a termination date ("Termination Date") under the Agreements.

100. On December 3, 2008, UBS delivered a letter (the "Termination Date Letter") to Highland Capital and the Fund Counterparties notifying them of such failure and the



occurrence of a Termination Date under each Agreement. (A true and correct copy of the Termination Date Letter is annexed hereto as Exhibit G.)

101. Sections 5 and 7 of the Cash Warehouse Agreement provided that if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, UBSS could, in its sole discretion, retain any of the securities in the Warehouse Facility or sell such securities to one of UBSS's affiliates or an unaffiliated party.

102. Pursuant to the terms of the Agreements, if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, each of the Fund Counterparties was obligated to pay to UBS its pro rata share of any market value losses on the Warehouse Assets, which UBS determined it had experienced and so notified Highland Capital and the Fund Counterparties.

103. On December 19, 2008, UBSS delivered a letter (the "Cash Warehouse Demand Letter") to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Cash Warehouse Demand Letter is annexed hereto as Exhibit H.) UBSS demanded that Highland Capital and the Fund Counterparties wire that required amount to UBSS no later than 5:00 pm on December 24, 2008 (i.e., the third business day after the date of the Cash Warehouse Demand Letter) (the "Final Payment Date"). Highland Capital and the Fund Counterparties failed to make the required payment to UBSS.

104. The Synthetic Warehouse Agreement provided that in the event the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, the Fund Counterparties would be collectively responsible for 100% of the aggregate amount of losses on the CDS Portfolio and each of the Fund Counterparties would pay, after notice of such amount due from UBS, its pro rata share of such amount to UBS within three business days.

105. On December 19, 2008, UBS AG delivered a letter (the “Synthetic Warehouse Demand Letter”) to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Synthetic Warehouse Demand Letter is annexed hereto as Exhibit I.) UBS AG demanded that the Highland Capital and the Fund Counterparties wire the required amount to UBS AG no later than 5:00 PM on the Final Payment Date (i.e., December 24, 2008 — the third business day after the date of the Synthetic Warehouse Demand Letter). Highland Capital and the Fund Counterparties failed to make the required payment to UBS AG.

**G. Notice Of Failure to Pay, Auction And Final Accounting Letter**

106. On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to make the requisite payments when due pursuant to the Agreements and the applicable demand letters. On or about January 16, 2009, in connection with unwinding the Warehouse Facility, UBS conducted the auction contemplated by the Warehouse Agreements.

107. On or about March 19, 2009, UBS delivered a letter to Highland Capital and the Fund Counterparties concerning a final accounting concerning the auction and the losses in the Warehouse Facility. UBS determined that Highland Capital and the Fund Counterparties owed it \$686,853,290.26.

**H. Highland Capital**

108.

109. In December 2008, immediately after UBS terminated the Restructured Transaction, Dondero and Highland Capital



110. On or about February 24, 2009, UBS commenced this action against Highland Capital and the Fund Counterparties. At the time, SOHC and Highland Financial, as its alter ego, owed UBS approximately \$345 million.

111. Undeterred, on or about March 17, 2009, Dondero and Highland Capital



- 

- [REDACTED]

- [REDACTED]

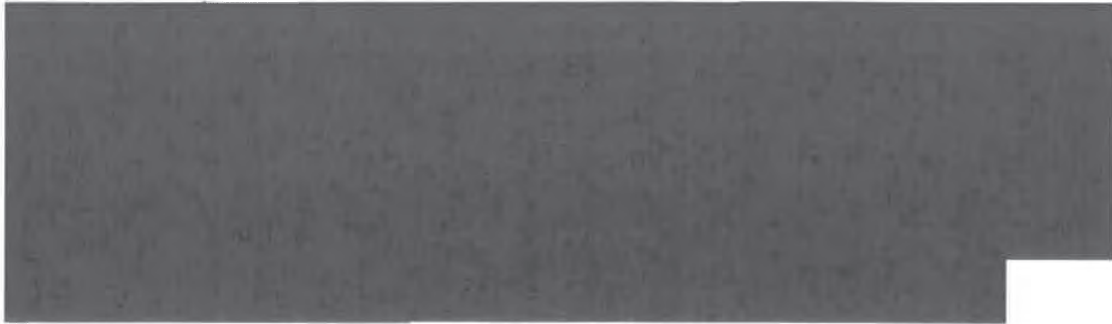
112. As a result, Highland Capital (a) further interfered in bad faith with UBS's contractual rights and the Fund Counterparties' contractual obligations under the Warehouse Agreements, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements; and (b) [REDACTED]

113. [REDACTED]

The full extent of UBS's

injury should be determined at trial.

114. [REDACTED]






**FIRST CAUSE OF ACTION**  
**(Fraud Against The Fund Counterparties)**

115. UBS repeats and realleges the allegations set forth in paragraphs 1 through 114 of this Second Amended Complaint as if fully set forth herein.

116. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

117. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

118. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties as well as information about their finances and assets, including, but not limited to, information regarding the following:

- (a) 
- (b) 
- (c) 



119. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

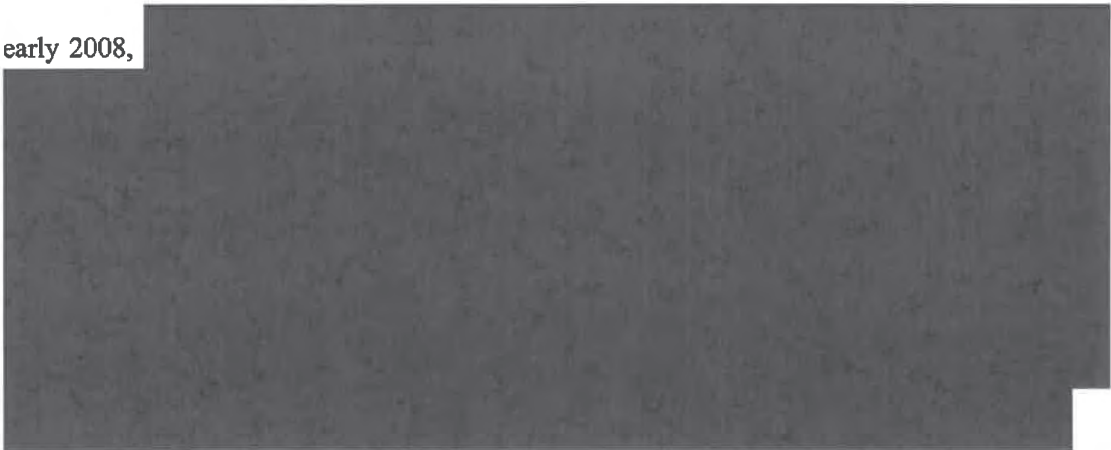
120. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances and assets when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

121. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

122. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances and assets. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Fund Counterparties to complete or clarify the information that it provided to UBS concerning

the Fund Counterparties' finances and assets. Consequently, Highland Capital's and the Fund Counterparties' concealment of the Fund Counterparties' finances and assets was fraudulent.

123. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund Counterparties' financial condition and assets. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances and assets. UBS also had no reason to believe that the financial information that Highland Capital provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008,



124. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

125. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

126. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of \$686 million in losses that the Fund Counterparties cannot pay to UBS.

127. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Fraud Against The Fund Counterparties)**  
**(Pled Solely To Preserve For Appeal)**

128. UBS repeats and realleges the allegations set forth in paragraphs 1 through 127 of this Second Amended Complaint as if fully set forth herein.

129. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

130. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

131. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties and information about their finances, assets and business practices, including, but not limited to, information regarding the following:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]

(g)



132. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions, Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

133. These Omissions rendered the Fund Counterparties' representations, statements and financial statements materially misleading. Because Highland Capital and the Fund Counterparties concealed this information from UBS, UBS could not properly evaluate SOHC's ability to satisfy its obligations to UBS. For instance, UBS received financial reports from Highland Capital for the Fund Counterparties that suggested that the Fund Counterparties held hundreds of millions of dollars worth of assets that could be used to satisfy their obligations to UBS. However, a substantial portion of the assets that UBS reasonably believed would be available, were, in fact, not going to be available to pay UBS because they were going to be encumbered as a result of other transactions. In other words, because Highland Capital concealed its intentions, the financial reports that it provided to UBS were misleading as they provided UBS with false and illusory comfort regarding the Fund Counterparties' capacity to fulfill their contractual obligations to UBS. As the Fund Counterparties' investment manager, Highland Capital would have led the negotiations related to the other financing arrangements.

134. Similarly, during negotiations concerning the Initial Restructuring Collateral, Highland Capital and SOHC made an additional Omission by not disclosing to UBS



the fact that SOHC had a serious liquidity problem. SOHC had to borrow cash from Highland Capital to satisfy the cash portion of its Initial Restructuring Collateral obligation. On or about December 18, 2007, while the parties were negotiating the restructuring, Highland Capital loaned \$30 million to SOHC, which Highland Capital and SOHC's alter ego, Highland Financial, earmarked for SOHC to use as collateral in connection with negotiating extensions of warehouse facilities, including the one with UBS. As Highland Financial's and SOHC's investment manager, Highland Capital knew about SOHC's liquidity problems since they were discussed openly at Highland Financial board meetings attended by Highland Capital. The failure to fully disclose SOHC's liquidity problem, and its inability to meet the Initial Restructuring Collateral obligation using its own cash assets was an Omission, because it was indicative of the strength of SOHC's finances and assets, and SOHC's ability to satisfy obligations to UBS.

135. Highland Capital and Fund Counterparties also concealed from UBS that Highland Capital had to commingle assets among its various affiliates and disregard corporate formalities to satisfy the Fund Counterparties' liquidity needs. Facts and information concerning these business practices, including Highland Capital's commingling of assets and disregard of corporate formalities was information solely and peculiarly within the knowledge of Highland Capital and its affiliates. As the investment manager to Highland Financial, SOHC and CDO Fund (as well as the Affiliated Transferee Defendants), Highland Capital knowingly arranged and caused the asset transfers between and among the various affiliates in disregard of corporate formalities.

136. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and

qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances, assets and business practices when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

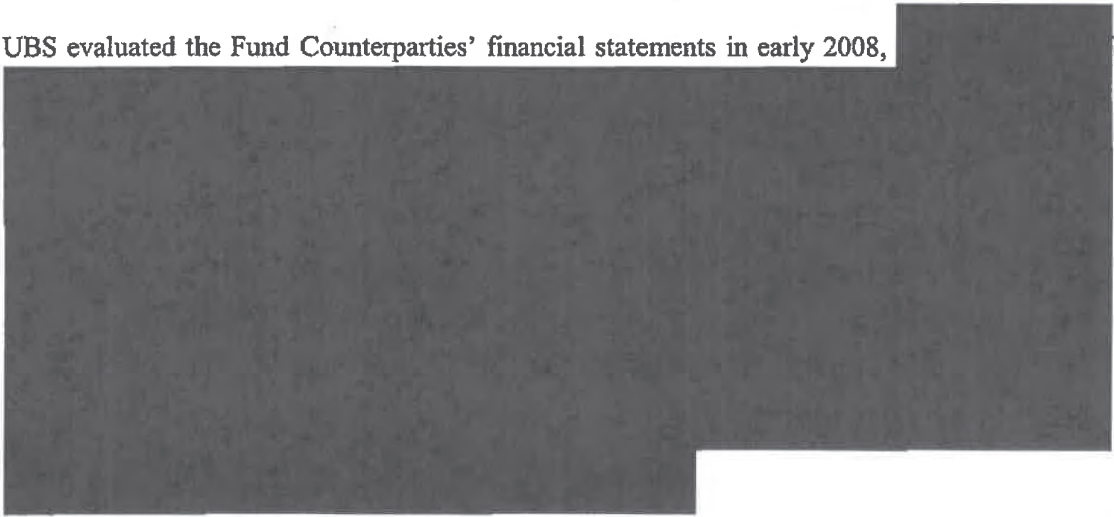
137. In addition, if UBS had known that Highland Capital and the Fund Counterparties ignored corporate formalities or that Highland Capital freely transferred assets among its controlled entities, UBS would not have entered the Restructured Transaction. These misrepresentations and Omissions proximately caused harm to UBS.

138. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital and the Fund Counterparties provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

139. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances, assets and business practices. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Highland Entities to complete or clarify the information that it provided to UBS concerning the Fund Counterparties' finances, assets and business practices. Consequently, Highland Capital's and the Fund Counterparties' concealment about the Fund Counterparties' finances, assets and business practices was fraudulent.

140. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund

Counterparties' financial condition, assets and business practices. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances, assets and business practices. UBS also had no reason to believe that the financial information that Highland Capital and the Fund Counterparties provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008,



141. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

142. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole

for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

143. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of \$686 million in losses that the Fund Counterparties cannot pay to UBS.

144. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(Breach of Contract Under the Cash Warehouse Agreement Against The Fund Counterparties)**

145. Plaintiff UBSS repeats and realleges the allegations set forth in paragraphs 1 through 144 of this Second Amended Complaint as if fully set forth herein.

146. The Cash Warehouse Agreement is a valid and binding contract.

147. UBSS has performed all of its obligations under the Cash Warehouse Agreement.

148. Pursuant to the Cash Warehouse Agreement, each of the Fund Counterparties was required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the required transfer. The Fund Counterparties' failure to make such transfer is a breach under the Cash Warehouse Agreement, and resulted in a Termination Date under the Cash Warehouse Agreement.

149. In accordance with the terms of the Cash Warehouse Agreement, UBSS demanded that each of the Fund Counterparties pay to UBS their respective pro rata shares of the amount of losses on the Cash Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Cash Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBSS. The failure to pay these amounts to UBSS when due under the Cash Warehouse Agreement constituted a further breach under the Cash Warehouse Agreement.

150. By reason of the foregoing, UBSS has suffered and will continue to suffer damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(Breach of Contract Under the Synthetic Warehouse Agreement Against The Fund Counterparties)**

151. Plaintiff UBS AG, repeats and realleges the allegations set forth in paragraphs 1 through 150 of this Second Amended Complaint as if fully set forth herein.

152. The Synthetic Warehouse Agreement is a valid and binding contract.

153. UBS AG has performed all of its obligations under the Synthetic Warehouse Agreement.



154. Pursuant to the Synthetic Warehouse Agreement, each of the Fund Counterparties were required to transfer their respective pro rata shares of additional collateral to satisfy the Third Margin Call within two business days of November 7, 2008. The Fund Counterparties failed to make the requisite transfer. The failure to make such transfer resulted in a breach and a Termination Date under the Synthetic Warehouse Agreement.

155. UBS AG demanded that each of the Fund Counterparties pay to UBS AG their pro rata share of losses on the CDS Portfolio and estimated expenses by 5 P.M. on the Final Payment Date (i.e., December 24, 2008 – the third business day after the date of the Synthetic Warehouse Demand Letter). The Fund Counterparties failed to pay this amount to UBS. The failure to pay these amounts when due under the Agreements was a further breach under the Synthetic Warehouse Agreement.

156. By reason of the foregoing, UBS AG has suffered and will continue to suffer damages in an amount to be determined at trial.

157. Paragraphs 157 to 166 have been intentionally left blank.

**FIFTH CAUSE OF ACTION**  
**(Fraudulent Conveyances Against All Defendants)**

167. UBS repeats and realleges the allegations set forth in paragraphs 1 through 166 of this Second Amended Complaint as if fully set forth herein.

168. Between March 14, 2008 and December 3, 2008, as losses in the Warehouse Facility grew, Highland Capital exercised its control over the Fund Counterparties and caused the Fund Counterparties to transfer valuable cash and assets out of the Fund Counterparties, thereby impairing their ability to bear losses in the Warehouse Facility, and otherwise satisfy their obligations to creditors, including UBS. [REDACTED]

169.



170.

171.



172.

173.



174.



175.





176.



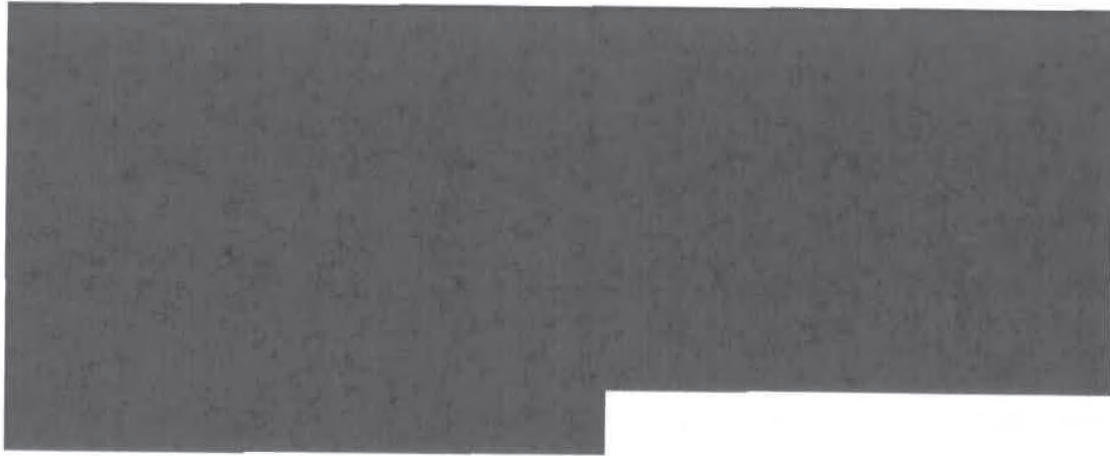
177.



178.







179. As a result of the foregoing fraudulent conveyances, the Fund Counterparties were unable to satisfy their obligations to UBS. As a result of the foregoing fraudulent conveyances, UBS has been harmed in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION**  
**(Tortious Interference With Contractual Relations**  
**Against The Affiliated Transferee Defendants)**  
**(Pled Solely To Preserve For Appeal)**

180. UBS repeats and realleges the allegations set forth in paragraphs 1 through 179 of this Second Amended Complaint as if fully set forth herein.

181. The Agreements are valid and binding contracts.


182. The parties agreed that UBS would not bear the risk of any losses in connection with the Restructured Transaction. As a direct result of the Fund Counterparties' breach of the Warehouse Agreements, UBS suffered no less than \$686,853,290.26 in damages. Under the terms of the Warehouse Agreements, the Fund Counterparties' obligation to pay UBS for losses in the Warehouse Facility expressly survived the termination of the Agreements.

183. Highland Capital knew of the Agreements, and were familiar with their terms, including the Fund Counterparties' obligations to UBS thereunder. The Affiliated

Transferee Defendants, also knew of the Agreements, and their terms, including the Fund Counterparties' obligations to UBS thereunder.

184. Highland Capital and the Affiliated Transferee Defendants intentionally and improperly caused and ensured a breach of the Warehouse Agreements by the Fund Counterparties, thereby tortiously interfering with UBS's rights under the Agreements.

185. Specifically, in 2008 and 2009 Highland Capital wrongfully caused the improper and fraudulent asset transfers, payments, distributions and dividends described above, and thereby tortiously interfered with UBS's contractual relationship with the Fund Counterparties by knowingly impairing UBS's contractual right under the Warehouse Agreements to be reimbursed by the Fund Counterparties for the losses on the Warehouse Assets. For example, Highland Capital wrongfully caused the March 2009 Fraudulent Conveyance for which there was no legitimate purpose. The Affiliated Transferee Defendants



186. Highland Capital and the Affiliated Transferee Defendants



187. Highland Capital and the Affiliated Transferee Defendants engaged in the foregoing unlawful and improper conduct, and tortiously interfered with UBS's contractual rights under the Warehouse Agreements, for their own improper personal gain by knowingly violating UBS's rights and making it impossible for the Fund Counterparties to perform under the Warehouse Agreements. In particular, the foregoing conduct constitutes independent torts

and predatory acts directed at UBS for Highland Capital's and the Affiliated Transferee Defendants' own personal gain.

188. As a direct and proximate result of Highland Capital's and the Affiliated Transferee Defendants' tortious interference with UBS's contractual rights under the Agreements, UBS has suffered damages in an amount to be determined at trial. Had Highland Capital and the Affiliated Transferee Defendants not tortiously interfered with UBS's contractual rights, the Fund Counterparties would have been able to make payments to UBS of the amount they owed to UBS under the Warehouse Agreements.

**SEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment For General**  
**Partner Liability Against Strand)**

189. UBS repeats and realleges the allegations set forth in paragraphs 1 through 188 of this Second Amended Complaint as if fully set forth herein.

190. A limited partnership's general partner is personally liable for the partnership obligations of the limited partnership.

191. Highland Capital is a Delaware limited partnership. Defendant Strand is Highland Capital's general partner. As such, Strand is personally liable for the liability, debts and obligations of Highland Capital, including but not limited to Highland Capital's liabilities to UBS arising out of the Consolidated Action.

192. A justiciable controversy exists as to whether Strand is liable to UBS for the injuries caused by Highland Capital complained of in the Consolidated Action as a result of Strand being Highland Capital's general partner.

**EIGHTH CAUSE OF ACTION**  
**(Declaratory Judgment For Alter Ego Liability**  
**Against Highland Financial)**

193. UBS repeats and realleges the allegations set forth in paragraphs 1 through 192 of this Second Amended Complaint as if fully set forth herein.

194. As alleged above, SOHC breached the Warehouse Agreements and otherwise harmed UBS by engaging in fraudulent misconduct. Highland Financial is SOHC's alter ego and should be held responsible and liable for SOHC's breach of the Warehouse Agreements and fraudulent misconduct.

195. SOHC is a mere instrumentality of Highland Financial. SOHC had no independence and could not exercise any business discretion whatsoever. [REDACTED]

[REDACTED] SOHC did not have its own offices, officers or employees. Rather, it shared common officers, directors and employees, as well as common office space, with Highland Financial.

196. As alleged in detail above, Highland Financial completely dominated the day-to-day operations of SOHC as well as SOHC's sister-affiliates. In particular, Highland Financial operated Highland Financial and its subsidiaries, including SOHC, as a single entity, [REDACTED]



197. A justiciable controversy exists as to whether Highland Financial is liable to UBS as SOHC's alter ego for the losses and harm that UBS suffered that were caused by SOHC's breach of the Warehouse Agreements, and the fraudulent and tortious conduct complained of herein.

**RELIEF DEMANDED**

WHEREFORE, plaintiffs UBSS and UBS AG demand judgment:

(a) On the first cause of action, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than \$686,853,290.26;

(b) On the second cause of action, which is pled solely to preserve UBS's appellate rights, as against the Fund Counterparties, declaring that UBS was induced to enter the Agreements as a result of fraud committed by the Fund Counterparties, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than \$686,853,290.26;



(c) On the third cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Cash Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(d) On the fourth cause of action, as against the Fund Counterparties, declaring that the Fund Counterparties breached the Synthetic Warehouse Agreement, and awarding UBS an amount to be determined at trial;

(e) On the fifth cause of action, as against all defendants, (i) declaring that the dispositions of the Fund Counterparties' and Highland Financial's assets, as directed by Highland Capital, constituted fraudulent conveyances; (ii) appointing a receiver over defendants; (iii) directing that a full accounting be had of defendants' affairs and finances; (iv) imposing a constructive trust over defendants' assets until such an accounting is completed; and/or (v) awarding UBS damages in an amount to be determined at trial, but no less than the value of the assets fraudulently and improperly transferred, or, alternatively, directing that defendants and their partners, members or shareholders return to the Fund Counterparties any assets or consideration received from Highland Financial or the Fund Counterparties, directly or indirectly, as distributions, dividends, consideration, compensation, fees, interest, principal or otherwise, between March 14, 2008 and the present.

(f) On the sixth cause of action, as against the Affiliated Transferee Defendants, which is pled solely to preserve UBS's appellate rights, declaring that each of those defendants is liable for tortiously interfering with UBS's contractual rights under the Warehouse Agreements, and awarding UBS an amount to be determined at trial;

(g) On the seventh cause of action, as against defendant Strand, declaring that Strand is responsible for Highland Capital's liability and obligations arising out of the Consolidated Action;

(h) On the eighth cause of action, as against defendant Highland Financial, declaring that Highland Financial is SOHC's alter ego, and that as such, Highland Financial is responsible for SOHC's liability and obligations to UBS arising out of this action;

(i) Awarding UBS punitive damages in an amount to be determined at trial;

(j) Granting UBS its costs and disbursements, including reasonable attorneys' fees and expenses of this action;

(k) Granting UBS pre-judgment interest; and

(l) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 11, 2011

CADWALADER, WICKERSHAM & TAFT LLP

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*Attorneys for Plaintiffs UBS Securities LLC and  
UBS AG, London Branch*

## **Exhibit B**

### **Phase I Decision and Order**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

-----X  
UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

INDEX NO. 650097/2009

Plaintiff,

- v -

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND  
SPECIAL OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND  
CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., STRAND ADVISORS,  
INC.,

**DECISION AND ORDER AFTER  
TRIAL**

Defendant.  
-----X

This action arises out of a failed restructured transaction between plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively, UBS) and defendants Highland CDO Opportunity Master Fund, L.P. (CDO Fund) and Highland Special Opportunities Holding Company (SOHC) (together, the Fund Counterparties), and defendant Highland Capital Management, L.P. (Highland Capital) (together with the Fund Counterparties, Highland), for the securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs).

The court conducted a bench trial from July 9 through July 27, 2018 on plaintiffs' third and fourth causes of action in the second amended complaint for breach of contract, and on defendant Highland Capital's first and second counterclaims against plaintiff UBS Securities

LLC for breach of contract and unjust enrichment, respectively.<sup>1</sup> Based on the credible evidence at trial, the court now makes the following determination as to the breach of contract causes of action and counterclaims.<sup>2</sup>

In April and May 2007, the parties agreed to pursue a collateralized debt obligations transaction governed by an Engagement Letter, a Synthetic Warehouse Agreement for CDSs, and a Warehouse Agreement for CLOs (Original Agreements). (DX 4, DX 5, DX 6.)<sup>3</sup> It is undisputed that UBS acted as the “financial arranger” for the transaction and was responsible for financing the acquisition of assets, which would then be held in portfolios, which the parties refer to as the Cash Warehouse and the Synthetic Warehouse or collectively as the Knox Warehouse. (Ps.’s Findings, ¶ 4; Ds.’s Findings, ¶ 5.)<sup>4</sup> Highland Capital acted as the “Servicer” and was responsible for identifying the specific CLOs to be securitized and the Reference Obligations for the CDSs to be securitized. (Ps.’s Findings, ¶¶ 3, 4; Ds.’s Findings, ¶¶ 6, 8.)

In furtherance of the transaction, UBS acquired assets with a notional value of \$818 million. (Ps.’s Findings, ¶ 6; Ds.’s Findings, ¶ 5.) There were 33 CLO tranches in the Cash Warehouse, with a notional value of \$174 million. UBS paid \$170 or \$170.5 million to acquire the CLOs because the bonds were purchased at a slight discount on their par value. (Ds.’ Findings, ¶ 6; Ps.’s Findings, ¶ 6.) The Synthetic Warehouse contained 87 credit default swaps,

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<sup>1</sup> By decision on the record on May 1, 2018 (NYSCEF Doc. No. 494), the court bifurcated the trial. The decision held that the breach of contract claims, which were to be heard by the court, would be determined prior to claims, including fraudulent conveyance claims, which were to be heard by a jury.

<sup>2</sup> At the trial, the parties agreed to the submission of extensive evidence, subject to standing objections. This decision is not based on such evidence, unless the decision expressly states otherwise.

<sup>3</sup> Defendants’ and plaintiffs’ trial exhibits will be referred to as DX \_ and PX \_, respectively. The parties’ demonstrative exhibits will be referred to as DX Demo. \_ and PX Demo. \_

<sup>4</sup> The Fund Counterparties’ and Highland Capital Management, L.P.’s Proposed Findings of Fact and Conclusions of Law will be referred to as Ds.’s Findings. Plaintiffs’ Proposed Findings of Fact and Conclusions of Law will be referred to as Ps.’s Findings. Defendants’ Findings are all identified by paragraph number. Plaintiffs’ Findings of Fact are identified by paragraph number, while their Findings of Law are identified only by page number.



with a notional value of \$644 million. (Ds.'s Findings, ¶ 7; Ps.'s Findings, ¶ 6.) UBS served as the protection seller on all of the CDSs. (Ps.'s Findings, ¶ 4; Ds.'s Findings, ¶ 8.) For five of the CDSs, with a notional value of \$45 million, Lehman Brothers Special Financing, Inc. (Lehman) acted as the protection buyer (Lehman Swaps). (Ps.'s Findings, ¶ 8; Ds.'s Findings, ¶ 9; PX 755<sup>5</sup>, at 1.) For 20 of the CDSs, with a notional value of \$124 million, UBS acted as both protection seller and protection buyer (the Internal Swaps). (Ds.'s Findings, ¶ 10; Ps.'s Findings, ¶ 9; PX 755, at 4-5.)

The Original Agreements expired by their terms on August 15, 2007. (PX 1, at 1.) The parties agreed to restructure the transaction, signing a new Engagement Letter, the 2008 Cash Warehouse Agreement (CWA), and the 2008 Synthetic Warehouse Agreement (SWA), as of March 14, 2008. (See PX 1, PX 2, PX 3.) As of March 14, 2008, the Knox assets had lost significant value and the parties agreed that, given the market conditions existing as of the date of the restructured transaction, it was not then feasible to sell the securities and close the transaction. (Ps.'s Findings, ¶ 20; 2008 Engagement Letter [PX 1, at 8].)

As discussed further below, the Synthetic Warehouse Agreement provided for the roll-over of the Existing Credit Default Swaps and the Existing Collateral Portfolio into the warehouses created under the 2008 restructured transaction. (See SWA, Whereas Clause 5.) Section 12 of the Synthetic Warehouse Agreement provided that the Fund Counterparties would transfer additional cash and securities "to secure its obligations to UBS" under the SWA and the CWA. In particular, this Section required the Fund Counterparties to make an Initial Deposit of \$20 million in cash and approximately \$54 million in Eligible Securities on the date of the

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<sup>5</sup> PX 755 is a document that that was jointly prepared by plaintiffs' and defendants' counsel so that specific information regarding the Knox Warehouse assets could be found in one place. (Trial Tr. at 858.)

execution of the SWA. (Id., § 12 [A].) The SWA contained a collateral call provision under which UBS was required to track its CDS and Cash Exposure to losses, as defined under the Agreement, on a semi-monthly basis, and the Fund Counterparties were required to deposit an additional \$10 million in collateral (cash and/or Eligible Securities) for every \$100 million increase in the defined Deposit Threshold Exposure Amount. (Id., §§ 12 [B], [C].)

It is undisputed that, pursuant to Section 12 (C) of the SWA, UBS made a first collateral call for \$10 million on September 17, 2008 (PX 4), and a second collateral call for \$10 million on October 21, 2008 (PX 5), both of which were satisfied by the Fund Counterparties. (Testimony of Keith Grimaldi, Former Head of UBS's CDO Secondary Trading Desk, Trial Transcript (Tr.) at 81, 112, 119.)

On November 7, 2008, UBS issued the third, and final, collateral call to the Fund Counterparties for an additional \$10 million. (PX 6.) It is undisputed that the Fund Counterparties did not meet this collateral call. (Ds.'s Findings, ¶ 17; Ps.'s Findings, ¶¶ 43-47).<sup>6</sup>

On December 3, 2008, UBS sent a notice to Highland stating that, to date, no deposits have been made in response to the November collateral call, and that "a Termination Date has occurred under the Warehouse Agreements and a termination date has occurred under the Engagement Letter." (PX 7; PX 9.) The notice further stated that "UBS is forbearing from exercising its remedies [under the Agreements] for a period of two Business Days from the date hereof in order to permit [the Fund Counterparties] to pay the Additional Deposits by 5 pm New York time on December 5, 2008." (Id.) On December 5, 2008, UBS sent an additional notice to

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<sup>6</sup> It is undisputed that the Fund Counterparties offered to post CLO assets to satisfy the third collateral call and that UBS did not accept that collateral. UBS's Keith Grimaldi testified that UBS rejected the CLOs because "at that time the marketplace was declining and declining rapidly. We thought there would be more declines, so we collectively made a decision that we wanted cash or government securities ... that would be easily liquid and reflect better value." (Trial Tr. at 122.) Defendants stipulated that UBS had the right to insist on cash. (See Statement of Andrew Cruciani [Ds.'s Atty.], Trial Tr. at 1736.)

Highland stating that the Additional Deposit has not been made, and that “[c]onsequently, UBS will proceed to exercise the rights and remedies available to it under the Warehouse Agreements, the Engagement Letter, at law and otherwise.” (PX 8.)

### THIRD COLLATERAL CALL

As a threshold matter, the parties dispute whether the third collateral call was proper. Highland argues that UBS should not have included the 20 Internal Swaps in calculating the Deposit Threshold Exposure Amount “because the Intradesk [i.e., Internal] Swaps were not Existing Credit Default Swaps under the SWA . . . .” (Ds.’s Findings, ¶ 28.) Highland also claims that the Lehman Swaps were not properly included in the calculation because they had been terminated prior to the third collateral call. (See id., ¶ 27.)

More particularly, Highland claims that the Internal Swaps were not Existing Credit Default Swaps because they were not documented, as allegedly required by Section 3 of the SWA, in the form of an ISDA Master Agreement and ISDA Confirmation. (Ds.’s Findings, ¶¶ 28, 30-31.) UBS does not dispute that the Internal Swaps were not documented by the ISDA Master Agreement and Confirmation, but argues that Section 3 does not require such documentation for the Internal Swaps. (Ps.’s Findings, at 24-25.)<sup>7</sup>

Resolution of this dispute involves an issue of contract interpretation. It is well settled that the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace v 600 Partners Co., 86 NY2d 543, 548 [1995]; W.W.W. Assocs., Inc. v Giancontieri, 77 NY2d 157, 162 [1990].) Written agreements are to be construed in accordance with the parties’ intent, and “the best evidence of what parties to a written agreement

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<sup>7</sup> It is undisputed that the Internal Swaps were documented by electronic trading tickets but not by ISDA Master Agreements or ISDA trade confirmations. (Ds.’s Findings, ¶ 10; Ps.’s Findings, ¶¶ 16-17; PX 29 [electronic trading tickets].)

intend is what they say in their writing.” (Schron v Troutman Sanders LLP, 20 NY3d 430, 436 [2013] [internal quotation marks, brackets, and citation omitted].) The court should determine from contractual language, without regard to extrinsic evidence, whether there is any ambiguity. (Chimart Assocs. v Paul, 66 NY2d 570, 573 [1986].) Extrinsic or parol evidence “may not be considered when the intent of the parties can be gleaned from the face of the instrument.” (Id. at 572-573.) “Extrinsic evidence of the parties’ intent may be considered only if the agreement is ambiguous. . . .” (Greenfield v Philles Records, Inc., 98 NY2d 562, 569 [2002].) “Ambiguity in a contract arises when the contract, read as a whole, fails to disclose its purpose and the parties’ intent, or where its terms are subject to more than one reasonable interpretation.” (Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa., 25 NY3d 675, 680 [2015] [internal quotation marks and citation omitted].)

It is also well settled that a court should “construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose.” (Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007] [internal quotation marks and citations omitted]; National Conversion Corp. v Cedar Bldg. Corp., 23 NY2d 621, 625 [1969] [holding that “[a]ll parts of an agreement are to be reconciled, if possible, in order to avoid inconsistency”].)

Applying these precepts, the court holds that the SWA is not ambiguous with respect to the requirements for documentation of CDSs, that Section 3 of the SWA only applies to CDSs in which a third party is the protection buyer, and that this Section does not require ISDA documentation for the Internal Swaps.

The SWA defines “Existing Credit Default Swap[s]” as the CDSs “that were the subject of the Original Synthetic Warehouse Agreement.” (SWA, Whereas Clause 5.) Section 3 of the SWA provides, in pertinent part:

“Form of Documentation. Each Existing Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, has been documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) an ISDA published confirmation. . . . Each Additional Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) the Confirmation attached [to the SWA] . . . .”

As the Agreement that governs the securitization of Existing and Additional Credit Default Swaps, the SWA contains numerous detailed provisions regarding the accumulation and disposition of these financial instruments. Section 3, which pertains to documentation of the swaps, is the only provision in the SWA that is limited to CDSs in which UBS is the Seller and a counterparty is the Buyer. All of the other provisions of the SWA refer to CDSs without such limitation.

Moreover, like SWA Section 3, the Original SWA provided: “Each Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the counterparty, which documents are confidential between UBS and each counterparty and (ii) the Confirmation attached hereto. . . .” (Original SWA, § 3 [NYSCEF Doc. No. 626].) It is undisputed, however, that the Internal Swaps were included in the Original SWA portfolio but were not documented by the ISDA Master Agreement or Confirmation. It is also undisputed that the Internal Swaps were nevertheless again included in the Initial Net Exposure Amount in the SWA for the restructured transaction. (Testimony of Peter Vinella [Highland’s expert in



structured financial products], Trial Tr. at 1097, 1124-1125 [acknowledging that the Internal Swaps were included in the Initial Net Exposure Amount].)

Initial Net Exposure Amount is defined in the SWA<sup>8</sup> as “111,767,486.88, being the amount by which the Aggregate Net Exposure Amount as of the date hereof [i.e., the March 14, 2008 “as of” date of the SWA] exceeds the Initial Deposit.” As defined in SWA Section 12 (A), the Initial Deposit is the deposit of approximately \$74,000,000 in cash and Eligible Securities made on the date of execution of the SWA. Aggregate Net Exposure Amount is defined as the amount by which CDS Exposure and Cash Exposure, as of the date of the collateral calculation, exceed the balance on deposit in the Deposit Account plus Positive Carry with respect to each Collateral Obligation.<sup>9</sup> As discussed above, Section 12 (C) of the SWA requires a deposit of \$10 million in additional collateral when the Deposit Threshold Exposure Amount is greater than or equal to \$100 million. The Deposit Threshold Exposure Amount is defined in the SWA as “the amount, if any, by which (i) the Aggregate Net Exposure Amount as of [the date of the collateral calculation] exceeds (ii) the Initial Net Exposure Amount.” The Initial Net Exposure Amount, which includes the Internal Swaps, is thus integral to the calculation of the Deposit Threshold Exposure Amount.

Based on this reading of the SWA as a whole, the court concludes that the Internal Swaps were Existing Credit Default Swaps within the meaning of the SWA. The lack of ISDA documentation was therefore not a bar to their inclusion in the collateral call calculation.

The court rejects Highland’s further contention that the Internal Swaps should not have been included because there was “no economic consequence” to UBS from these swaps. (Ds.’s

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<sup>8</sup> Definitions are found in the Definitions section of the SWA (SWA, Ex. A), unless the term is defined in a particular provision of the SWA, in which case the provision will be cited.

<sup>9</sup> Positive Carry is defined in the CWA. As explained by Adam Warren, Highland’s damages expert, carry includes interest payments from the CLOs. (Warren Testimony, Trial Tr. at 1299.)

Findings, ¶ 33.) The complex formula set forth in Section 12 for calculating the exposure of UBS on the assets in the warehouse that would trigger a collateral call does not contain any requirement that UBS include in the calculation only assets for which it was at risk of sustaining actual losses.<sup>10</sup>

The court further holds that, although the Internal Swaps were properly included in the third collateral call calculation, the Lehman Swaps were not. The parties do not dispute that the Lehman Swaps had been terminated based on the Event of Default that occurred upon Lehman's filing for bankruptcy on September 15, 2008. (DX 87 [UBS Default Notice].) Highland asserts, and UBS does not persuasively counter, that the Lehman Swaps should not have been included in the third collateral call. Indeed, UBS's Grimaldi forthrightly acknowledged that, given the termination, there should not have been "markdowns" on the Lehman Swaps. (Grimaldi Testimony, Trial Tr. at 297-298.).

Highland contends, based on the inclusion of the Lehman Swaps and Internal Swaps in the third collateral call calculation, that UBS "committed a prior material breach by failing to

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<sup>10</sup> In view of this holding that the Internal Swaps were properly included in the collateral call calculation pursuant to the unambiguous terms of the SWA, the court has not considered parol evidence on the issue.

The court thus rejects Highland's request for a finding that UBS admitted that the SWA required ISDA documentation of the Internal Swaps. (See Ds.'s Findings, ¶¶ 30-31.) This request is based on testimony of UBS's Keith Grimaldi who, when shown Section 3 during cross-examination and asked if every CDS was required to have ISDA documentation, responded: "According to the language, yes." (Grimaldi Testimony, Trial Tr. at 262-264.) Even if this evidence were properly considered, Highland's reliance on this answer ignores that Mr. Grimaldi further testified that ISDA documentation would not be "filled out" until the assets were transferred in the securitization. (*Id.* at 267-270.)

The court further notes that Highland requests a finding, arguably in support of its claim that the CDSs were not Existing Credit Default Swaps, that a CDS "cannot be created with the same legal entity on both sides of the transaction. . . ." (Ds.'s Findings, ¶ 29.) Even if parol evidence were properly considered, there was substantial evidence in the record that internal swaps were common in securitizations of synthetic assets. (LeRoux Testimony, Trial Tr. at 1673-1676; (Vinella Testimony, Trial Tr. at 1158-1162 [denying that intracompany swaps are "economic transactions" but acknowledging their use in CLO securitizations].)

properly calculate the collateral call[.]” (Ds.’s Findings, ¶¶ 23, 27-28.) In support of this contention, Highland relies on the testimony of its expert Peter Vinella. According to Mr. Vinella’s own analysis, however, if the Lehman swaps are excluded from the calculation for the third collateral call, but the Internal Swaps are included, the total increase in the Deposit Threshold Exposure Amount as of November 4, 2008 is \$328.62 million—an amount greater than the \$300 million required to authorize the third collateral call pursuant to Section 12 of the SWA. (Vinella Testimony, Trial Tr. at 1122-1139; DX Demo. 8.) Louis Dudney, UBS’s expert in forensic accounting and damages (Trial Tr. at 824), analyzed Mr. Vinella’s testimony and confirmed, using the same numbers as Mr. Vinella, that the Deposit Threshold Exposure Amount still exceeded \$300 million on November 4, 2008, after excluding the Lehman Swaps but including the Internal Swaps. (PX Demo. 20 [accepted without objection in lieu of Dudney rebuttal testimony, Trial Tr. at 1870-1871].)

Based on this credible testimony that the threshold for the collateral call was met without the Lehman Swaps, the court holds that the third collateral call did not constitute a material breach of the contract, notwithstanding UBS’s improper inclusion of the Lehman Swaps in the calculation.<sup>11</sup> (See generally Awards.Com v Kinko’s, Inc., 42 AD3d 178, 187 [1st Dept 2007], affd 14 NY3d 791, 793 [2010]; Frank Felix Assocs., Ltd. v Austin Drugs, Inc., 111 F3d 284, 289 [2d Cir 1997] [under New York law, for a breach to be material, “it must go to the root of the agreement between the parties”] [internal quotation marks and citations omitted].)

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<sup>11</sup> In view of this holding that the Deposit Threshold Exposure Amount exceeded \$300 million as of November 7, 2008, the court need not reach UBS’s contention that the collateral call was proper because the Deposit Threshold Exposure Amount exceeded \$300 million as of December 2, 2008, prior to the termination of the transaction. (Ps.’s Findings, at 15 n 10.)

As discussed above, there is no dispute that the Fund Counterparties failed to meet the third collateral call. The court accordingly finds that the Fund Counterparties breached the SWA and turns to the issue of damages.

## DAMAGES

### Designation of Ineligible Securities

A critical issue in determining UBS's damages is whether UBS may recover damages for CDSs that UBS retained after its termination of the 2008 transaction, under these circumstances in which UBS did not designate the underlying reference obligations for any of the CDSs as "Ineligible Securities." Resolution of this issue requires interpretation of the SWA. Highland and UBS both contend that the SWA is unambiguous as to whether Ineligible Securities must be designated, but assert fundamentally inconsistent readings of the Agreement. (Ds.'s Findings, ¶¶ 44-49; see Ps.'s Findings, at 29 n 21.)

As held above, the determination of whether a contract is ambiguous is one of law to be resolved by the court. (Matter of Wallace, 86 NY2d at 548.) Ambiguity will be found to arise where the terms of a contract are "subject to more than one reasonable interpretation." (Universal Am. Corp., 25 NY3d at 680 [internal quotation marks and citation omitted].) As also held above, a court should construe a contract so as to give full meaning and effect to its material provisions, and should read the contract as a whole and so as not to render any portion meaningless, if possible. (See Beal Sav. Bank, 8 NY3d at 324-25.)

Sections 5 (A), 5 (B), and 6 of the SWA are relevant to the calculation of CDS damages: Section 5 (A) provides for the calculation of losses with respect to CDSs removed from the warehouse during the term of the Agreement or "otherwise pursuant to Section 6"; Section 5 (B) (2) governs the calculation of losses upon a closing; and Section 6 governs this calculation in the event of a failure to close, incorporating terms from Sections 5 (A) and 5 (B).

Section 6 provides in pertinent part:

- “(A) If the Closing Date fails to occur on or prior to the Termination Date, then UBS may, with the consent of the related counterparty, either (at the election of the Servicer; provided that notice of such election is received on or prior to the Termination Date) (i) terminate each Credit Default Swap or (ii) novate each Credit Default Swap to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer), in each case, on the Termination Date.
- ....
- (C) To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.”

CDS Losses are in turn defined in Section 5 (B) (2), the closing provision, as:

“(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, plus (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, plus (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the ‘CDS Losses’) . . . .”

Relying on the requirement in the definition of CDS Losses that Reference Obligations be designated as Ineligible Securities, Highland argues that “[t]he term ‘CDS Losses’



unambiguously limits UBS's recovery for unrealized (mark-to-market) losses to securities designated as 'Ineligible Securities,' and the Court is bound to enforce the agreement pursuant to its unambiguous terms." (Ds.'s Findings, ¶ 46.) Put another way, Highland argues that UBS may recover mark-to-market losses only on CDSs that have been designated Ineligible Securities. (*Id.*, ¶ 53.)<sup>12</sup> UBS asserts, among other things, that under Section 6, UBS may terminate, novate, or retain CDSs regardless of eligibility, that ineligibility designations are not relevant absent a closing, and that Highland's reading renders meaningless other provisions of the SWA. (Ps.'s Findings, at 29 n 21.)

Upon close reading of the SWA, the court concludes that the SWA is not ambiguous with respect to ineligibility designations and that, under Section 6, upon the failure to close UBS is entitled to retain CDSs and to recover losses for the retained CDSs, without first designating the underlying Reference Obligations as Ineligible Securities. Section 6 (A) expressly provides for UBS to terminate or novate the CDSs, and does not require UBS to first make such designation. Although Section 6 (A) does not also, by its terms, provide for UBS to retain CDSs, a reading of the contract as a whole leaves no question that UBS was not only entitled to retain the CDSs upon the failure to close, but also that it was entitled to recover losses on the retained CDSs without first designating the underlying Reference Obligations as Ineligible.<sup>13</sup>

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<sup>12</sup> Highland's damages expert, Adam Warren, testified that realized losses are losses sustained where a transaction has been closed out and an actual cash payment has been made. (Warren Testimony, Trial Tr. at 1249, 1253.) He also testified that, in his opinion, there were no unrealized losses in the Synthetic Warehouse because no assets had been designated as ineligible. (*Id.* at 1257 ["[O]ur computation is that there are no unrealized losses in the Synthetic Warehouse because of the need to . . . create a designation of ineligible. And we saw no evidence of any Synthetic Warehouse asset being designated ineligible".])

<sup>13</sup> In its decision of defendants' motion for summary judgment, this court held that it could not determine on the record of that motion whether the SWA was ambiguous with respect to UBS's entitlement to recover losses on retained CDSs, pursuant to Section 6, without a prior designation of such assets as Ineligible Securities. (2017 NY Slip Op. 30546[U], 2017 WL 1103879, \* 4-7 [Sup Ct, NY County Mar. 13 2017], aff'd 159 AD3d 512, lv dismissed 32 NY3d 1080.) With the benefit of the parties' extensive trial briefing on this issue, the court now concludes, for the reasons discussed further in the text, that the agreement is not ambiguous.

As the above-quoted definition of CDS Losses in Section 5 (B) (2) shows, this definition relates to Credit Default Swaps which, upon a closing, have been “terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security . . . .” After setting forth the definition of CDS Losses (and CDS Gains) in the context of a closing, Section 5 (B) (2) further provides: “To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.”

Significantly, while Section 6 (C) incorporates the defined term CDS Losses, the term CDS Losses also incorporates both the definition of Ineligible Security and the term Replacement Losses from Section 5 (A). These incorporated terms modify the definition of CDS Losses where a closing does not occur.

The definition of Ineligible Security pertains to securities that are ineligible for securitization upon a closing. The SWA thus defines Ineligible Security, in pertinent part, as “any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination . . . .” (SWA, Exhibit A-2 [emphasis added].)

Section 5 (A), which defines the term Replacement Losses, distinguishes between such Losses sustained during the term of the Agreement and those sustained upon termination in the event of a failure to close pursuant to Section 6. Section 5 (A) primarily addresses the removal of CDSs from the warehouse “during the term of this [the SWA] Agreement” where “a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria” that must be met for securitization. This section provides that “UBS shall be entitled in

good faith to designate any Reference Obligation (and the related Credit Default Swap) as an Ineligible Security and (ii) in its sole discretion to remove any such Reference Obligation (and the related Credit Default Swap) from the CDS Portfolio.” Section 5 (A), however, continues:

“To the extent any such Credit Default Swaps are terminated or novated, or at UBS’s discretion, such exposure is retained following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6, UBS shall determine the Replacement Gain or Replacement Loss relating to such Credit Default Swaps [according to the formula that follows].”

(emphasis added). Section 5 (A) then sets forth a formula for calculating Replacement Gain and Replacement Loss, which specifically provides for such calculation not only upon termination or novation but also upon UBS’s retention of the CDSs. (SWA § 5 [A] [1] – [3].)

Section 5 (A) thus clearly contemplates that UBS may novate, terminate, or retain CDSs both during the term of the Agreement and in the event of a failure to close. The Section affords UBS the discretion to terminate, novate, or retain CDSs “pursuant to Section 6,” as distinct from its discretion to do so upon a designation of the underlying Reference Obligation as Ineligible during the term of the Agreement. Any other reading would render meaningless the Section 5 (A) provision “or otherwise pursuant to Section 6.”

Moreover, in order to reconcile all of the provisions of the SWA, the Section 5 (B) (2) definition of CDS Losses, when used in Section 6, cannot be construed as requiring a designation of Ineligible Securities. As discussed above, Ineligible Securities are defined as securities ineligible for sale at a closing. Section 5 (B) (2), which governs the calculation of losses where a closing will occur, requires the designation of Ineligible Securities to facilitate the parties’ calculation of losses on assets deemed ineligible for inclusion in the securitization that will occur upon the closing. When a closing will not occur, none of the CDSs or other assets will be securitized, and there is no need to distinguish between eligible and ineligible assets. While the

definition of CDS Losses with the Ineligible Security designation requirement serves the purposes of Section 5 (B) (2) in the event of a closing, it is inconsistent with the CDS Loss calculation required in Section 6 where the closing does not occur.

Contrary to Highland's apparent contention (Ds.'s Findings, ¶ 46), a reading of the CDS Loss provision in Section 6 to permit calculation of losses on retained assets without an Ineligible Security designation does not violate the fundamental precept that a defined term in a contract must be given effect. (See generally Mionis v Bank Julius Baer & Co., 301 AD2d 104, 109 [1st Dept 2002].) Rather, the CDS Loss definition, as used in Section 6, is modified by the contractual provisions discussed above.

Although inartfully drafted, the SWA is not ambiguous. If the contract is read as a whole, and all of the provisions are given meaning, it is reasonably susceptible to only one meaning—namely, that CDS Losses for retained assets may be recovered without a designation of the underlying Reference Obligations as Ineligible Securities where, as here, the contract has been terminated before the closing.<sup>14</sup> The court accordingly holds that UBS is entitled to recover damages for the retained CDSs in the Synthetic Warehouse.<sup>15</sup>

#### Calculation of Damages

As discussed above, UBS terminated the transaction based on the Fund Counterparties'

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<sup>14</sup> The court notes that the SWA and the Cash Warehouse Agreement (CWA) both contain provisions which state that the two agreements "set forth the entire understanding of the parties hereto relating to the subject matter hereof . . . ." (SWA, § 18; CWA, § 18.) Assuming, without deciding, that these agreements should be read together in construing the SWA, the court finds that, although the assets at issue in the SWA and the CWA have markedly different attributes, the CWA is consistent with the SWA to the extent that the CWA permits UBS, in the event a closing does not occur, to retain and recover for losses on the CLOs that are the subject of the CWA, without a designation of the CLOs as Ineligible Securities. (See CWA, §§ 5 [A], 7 [A].)

<sup>15</sup> In view of this holding that the SWA is not ambiguous as to whether CDS losses may be recovered without designation of the underlying Reference Obligations as Ineligible Securities, the court has not considered any parol evidence, either documentary or testimonial, in construing the SWA in this regard. Without limiting the foregoing, the court has not considered prior drafts of the SWA, which Highland offered in the event parol evidence were to be admitted. (See Ds.'s Findings, ¶ 53.)

failure to meet the third collateral call. UBS sent Highland a notice, dated December 3, 2008, stating that a Termination Date had occurred under the Warehouse Agreements but that it would forbear from exercising its remedies for two days to permit the Fund Counterparties to meet this collateral call. (PX 7.) UBS then sent a further notice to Highland, dated December 5, 2008, stating that it would exercise its remedies as the call had not been met. (PX 8.) UBS held a public auction of the assets in the Knox Warehouse on December 16, 2008. By notice dated December 19, 2008, UBS demanded payment for its claimed losses based on the results of the auction—\$157,949,885.47 for the assets in the Cash Warehouse (PX 10) and \$587,357,060.59 for the assets in the Synthetic Warehouse. (PX 11.) UBS also notified Highland that it elected to retain the Collateral Obligations in the Cash Warehouse. (PX 10.)

#### CDS Damages

Highland argues that even if the recovery of damages for the CDSs is not barred by UBS's failure to designate the Reference Obligations for the CDSs as Ineligible Securities (a claim this court has rejected above), UBS has not proved damages for these CDSs. Specifically, Highland contends that UBS did not comply with the contractual requirements for calculation of losses because its post-termination auction was untimely and otherwise improper. (Ds.'s Findings, ¶¶ 57-59.) Highland also contends that UBS's marks do not otherwise "establish a reasonable connection between the asset value and UBS's alleged damages." (*Id.*, ¶¶ 60-65.) UBS disputes these assertions. (Ps.'s Findings, at 29-31.)

Sections 6 (C), 5 (B) (2), and 5 (A) (3) are the provisions of the SWA that govern the calculation of CDS Losses upon termination. Section 6 (C) provides in full:

"To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such



amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.”

As discussed above, the definition of CDS Losses in Section 5 (B) (2) includes Replacement Loss, the calculation of which is governed by Section 5 (A). With respect to Replacement Loss relating to CDSs that are retained, Section 5 (A) (3) provides in full:

“To the extent UBS retains such exposure, the Replacement Gain and Replacement Loss will be imputed based on the arithmetic average of at least three bids (or, if UBS is unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized derivatives dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates; provided that any such bid must be provided in good faith) to assume UBS’s position under such Credit Default Swap.”

The SWA, by its terms, thus contemplated that payment would be made within three days after the Termination Date, subject to notice from UBS. As the SWA provided for an auction to calculate the amount of the losses, it also contemplated that an auction could or would occur within that three day period.

By the terms of UBS’s notices to Highland, although a Termination Date had occurred as of December 3, UBS extended the Fund Counterparties’ time to meet the third collateral call until December 5. The court thus finds that the Fund Counterparties’ breach of the Agreements for failure to meet the third collateral call occurred on December 5. UBS did not conduct the auction to calculate the CDS Losses until December 16.

UBS’s delay of approximately 11 days in conducting the auction, while seemingly de minimis, in fact had momentous financial consequences, given that the delay occurred in the wake of the September 15, 2008 Lehman bankruptcy filing and at the height of the financial crisis. With the market spiraling downward, the CDS losses ascertained through the auction process were approximately \$117 million more than the losses calculated by using UBS’s marks

on either December 3 or December 5. (PX Demo. 21; DX Demo. 12 [showing UBS and Highland marks as of December 3 and 5; PX Demo. 28 at 60 [Ps.'s Closing Statement Demonstrative Exhibit, acknowledging that CDS damages, as calculated based on the auction, exceeded the losses calculated using UBS's marks on December 3 and 5 by over \$117 million].)<sup>16</sup>

UBS contends that the three day payment period was for its benefit and that it "could exercise its right to get paid after three business days without waiver." (Ps.'s Findings, at 28.) The court agrees that UBS's delay in demanding payment or holding the auction did not result in a waiver of its right to seek payment of its damages resulting from the Fund Counterparties' breach. (See SWA § 20 ["Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver hereof. . . ."].) Highland correctly contends, however, that the delayed auction could not serve as a basis for calculating UBS's damages because the results of the auction did not reflect market conditions as of the date of termination or breach. (See Ds.'s Findings, ¶ 57.)

As explained by the Court of Appeals:

"It has long been recognized that the theory underlying damages is to make good or replace the loss caused by the breach of contract. Damages are intended to return the parties to the point at which the breach arose and to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach."

(Brushton-Moira Cent. Sch. Dist. v Fred H. Thomas Assocs., P.C., 91 NY2d 256, 261

[1998] [internal citations omitted].)

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<sup>16</sup> At the trial, the parties stipulated to dispense with rebuttal testimony from plaintiffs' damages expert, Louis Dudney and, in lieu of such testimony, to the admission into evidence of plaintiffs' Demonstrative Exhibits 20 and 21, and defendants' Demonstrative Exhibit 12. (Trial Tr. at 1868, 1870 [Stipulation].) PX Demo. 21 and DX Demo. 12, which were prepared by Mr. Dudney, calculated damages using plaintiffs' and defendants' marks, respectively, on December 3 and 5, 2008. (Trial Tr. at 1870-1877.)

It is further settled that damages need not be proven with mathematical certainty. It is sufficient that a reasonable basis for the calculation of damages be shown. (See generally J.R. Loftus, Inc. v White, 85 NY2d 874, 877 [1995] [“While a plaintiff may recover damages when the measure of damages is unavoidably uncertain or difficult to ascertain, a reasonable connection between a plaintiff’s proof and a [] determination of damages is nevertheless necessary”]; CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, \*2 [US Dist Ct SD NY, Sept. 29, 2011] [“The law of New York is clear that once the fact of damage has been established, the non-breaching party need only provide a stable foundation for a reasonable estimate [of damages]” [internal quotation marks and citations omitted, brackets in original].)

UBS’s December 16, 2008 auction cannot satisfy either of these standards because, as held above, the auction did not provide a reliable basis for determining UBS’s losses at, or even shortly after, the breach, due to the exceptional circumstances presented by the financial crisis.<sup>17</sup> The court accordingly turns to the alternative basis advanced by UBS for the calculation of damages—its marks on December 5, 2008. (Ps.’s Findings, at 29.)

It is well settled that “where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages.” (Sharma v Skaarup Ship Mgt. Corp., 916 F2d 820, 825 [2d Cir 1990], cert denied 499 US 907 [1991] [applying New York law and citing Simon v Electrospace

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<sup>17</sup> There is authority that “in accordance with the objective that a party seeking recovery for breach of contract is entitled ‘to be made whole’ as of the time of the breach, the [factfinder] should be able to make its valuation determination on all relevant elements of the case, whether dated prebreach, on the date of breach, or ‘some short time period thereafter.’” (Credit Suisse First Boston v Utrecht-America Fin. Co., 84 AD3d 579, 580 [1st Dept 2011] [quoting Boyce v Soundview Tech. Group, Inc., 464 F3d 376, 389 [2d Cir 2006] [other internal quotation marks and citations omitted].) Although the auction was held shortly after the breach, this authority does not support calculation of damages based on the auction results, as the auction did not provide a reliable basis for assessing the losses.

Corp., 28 NY2d 136, 145-146 [1971], motion to amend remittitur and clarify denied 28 NY2d 809].) In accordance with the objective that the injured party be made whole, “damages for breach of contract are ordinarily ascertained as of the date of the breach.” (Brushton-Moira Cent. Sch. Dist., 91 NY2d at 261.)

UBS offered credible testimony that its December 5, 2008 marks reasonably reflected the market value of the CDSs as of the December 5 breach date. In particular, Timothy LeRoux, who at the time of the transaction was second in command to Mr. Grimaldi on the UBS trading desk (LeRoux Testimony, Trial Tr. at 1640), gave credible testimony that, in the regular course of business, the trading desk “marked to market” hundreds of CLO assets, and every week or two was required to assign values on every one of the assets, both cash and synthetic, in the Knox Warehouse. (Id. at 1724.) Mr. LeRoux also described the marking process and identified information, including public information as to offers and bids on CDSs in the marketplace, that UBS considered in developing “objective” prices. (Id. at 1727, 1745-1750.) Mr. Grimaldi also testified that, although the trading desk performed the mark-to-market valuation of the assets in the Knox Warehouse, the UBS valuation group established oversight due to the volatility of the market and “would look at other market observations and make sure that those [the trading desk marks] were in line with the marketplace.” (Grimaldi Testimony, Trial Tr. at 207-208.)

Highland does not dispute that the mark-to-market process is a methodology for determining loss in market value of retained assets. (See e.g. Testimony of Adam Warren [Highland’s damages expert], Trial Tr. at 1268-1269; Testimony of Philip Braner [Highland former executive], Trial Tr. at 469-472; Testimony of UBS’s Timothy LeRoux, Trial Tr. at 1640, 1727-1729.)

Rather, in claiming that UBS’s marks are not competent evidence on which to award damages, Highland suggests that the setting of marks by the trading group involved a conflict of

interest, because the trading group's bonuses were based on the performance of the mark-to-mark assets and the group had the incentive to inflate the value of the assets. (Ds.s' Findings, ¶¶ 61-62.) Highland makes no showing that UBS inflated the value of the CDSs or that trading groups do not routinely develop marks. Moreover, Highland's assertion that "UBS's trading group alone set the marks for the Knox Warehouse assets" (Ds.'s Findings, ¶ 62) ignores UBS's credible testimony, discussed above, that the valuation group exercised oversight in connection with the development of the marks.

Highland's further assertion that its own marks are more reliable (Ds.'s Findings, ¶ 65) is unsupported by persuasive evidence. Philip Braner, who ultimately became Chief Operating Officer of the Highland Capital Management CLO Group and COO of Highland Financial Partners (Braner Testimony, Trial Tr. at 397), testified that Highland was itself tracking marks on the assets in the Knox Warehouse (id. at 615) and had an "internal valuation team that was responsible for accumulating marks" in a process in which portfolio managers of the Highland funds participated. (See id. at 467.) While Highland appears to assert that its marks are more reliable than UBS's because they were set by a valuation team, Highland fails to show that the role of its valuation team differed in any material respect from that of the UBS valuation group that performed oversight on its trading group in the marking process.

Notably, Highland fails to explain how its methodology in setting marks was more reliable than UBS's. Adam Warren, Highland's damages expert, forthrightly testified that he was not opining on the reasonableness of any marks in this case (Warren Testimony, Trial Tr. at 1247-1248), and he did not in fact give any testimony on whether UBS's or Highland's marks were more reliable.

The evidence at trial also demonstrated that Highland, like UBS, set marks on the CDSs on an asset by asset basis from March 2008 through October 2008. While there were differences



between Highland's and UBS's marks during this period, the Highland and UBS marks in the month of October were substantially similar. The difference in the marks did not escalate substantially until November 2008. (PX Demo. 9, at 4.) Mr. Dudney gave testimony, which was not disputed, that although Highland, like UBS, had been setting marks on an asset by asset basis, Highland stopped doing so as of October 2008 and, in a November 30, 2008 calculation of damages, attributed the same mark (37) to each asset. (Dudney Testimony, Trial Tr. at 883-884, 905-909, DX 116.) Highland offered no explanation for this change in methodology. Mr. Dudney, in contrast, gave plausible testimony that this use of the same mark did not make sense given the deterioration of the market. (Id. at 908.)

In sum, based on the credible evidence at the trial, the court holds that UBS has met its burden of demonstrating that its December 5, 2008 marks provide a reasonable basis, under the circumstances, for the calculation of damages at the time of the breach. In so holding, the court rejects Highland's not fully articulated contention that only an auction, and not a mark-to-market methodology, is a reliable method for calculating damages. (See Ds.'s Findings, ¶ 59.) Highland's reliance on the testimony of its damages expert, Adam Warren, in support of this contention (see id.) is misplaced. While Mr. Warren testified that CDSs are "bespoke contracts," he did not give any testimony that an auction was required to ascertain their value.

Further, as held above, the auction did not provide a reliable basis for determining UBS's damages due to the volatility of the market at the time of the auction. It bears emphasis that, although the market was also volatile at the time the December 5, 2008 marks were accumulated, Highland has not advanced an alternative, other than the non-viable auction, to the mark-to-market valuation methodology. Nor has Highland made any showing that the market value of

the CDSs was not reasonably determinable as of the date of breach using the mark-to-market valuation methodology.<sup>18</sup>

The court further holds that UBS has met its burden of demonstrating the reasonableness of its calculation of damages using those marks. UBS's and Highland's experts both provided the court with calculations of damages using UBS's and Highland's marks, respectively, as of December 5, 2008. Mr. Warren confirmed that his main differences with Mr. Dudney regarding the calculation of damages for the Synthetic Warehouse were that Mr. Dudney considered it appropriate, and he did not, to include damages for unrealized CDS losses and for the 20 Internal Swaps in which UBS was both the protection seller and the protection buyer. (Warren Testimony, Trial Tr. at 1298; DX Demo. 12; PX Demo. 21; see also Dudney Testimony, Trial Tr. at 1004.)

Mr. Warren excluded from his damages calculation unrealized CDS losses for all CDSs as to which a designation of ineligibility had not been made. He testified that his basis for doing so was his understanding of the contract—i.e, his understanding that the SWA required such designation—and not industry custom. (Warren Testimony, Trial Tr. at 1281-1282.) For the reasons discussed above, this court has rejected Highland's position that the SWA should be

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<sup>18</sup> In its post-trial briefing, Highland sought a finding that if UBS is held to be entitled to recover damages for CDS losses, Highland's marks are more reliable than UBS's for determining those damages. (Ds.'s Findings, ¶ 65.) Highland did not argue that the market value of the losses could not reasonably be determined by using marks. In contrast, in support of its claim that it is entitled to an offset against CDS damages for post-breach termination payments received by UBS on the CDSs, Highland questioned the accuracy of the market valuation at the time of the breach. Highland thus asserted in a footnote: "Given the scant market pricing data available at the time of the breach, post-termination payments and asset dispositions are relevant for the additional reason that they provide a more accurate measurement of the actual value of the Knox assets." (Ds.'s Post-Trial Memo., at 8 n 5.) This assertion is unsupported by any citation to trial testimony. More important, at the trial Highland did not offer any expert testimony that the mark-to-market methodology was not a reliable basis for calculating the CDS damages. For the additional reasons set forth in the section of this decision on Highland's requested Offset for Post-Breach Appreciation In CDS Asset Value, the court finds that offset of post-breach payments received by UBS on the CDSs would be inconsistent with calculation of UBS's damages based on their market value at the time of the breach.

construed as requiring ineligibility designations as a condition of the inclusion of unrealized losses on the CDSs in the calculation of damages. Also for the reasons discussed above, the court has rejected Highland's position that the losses on the Internal Swaps should not be included in this calculation.

Review of the experts' calculations shows, moreover, that when such losses are included in the calculations, the difference between Highland's and UBS's totals is substantially reduced. As previously noted, the parties stipulated to the introduction into evidence of charts prepared by Mr. Dudney comparing his and Mr. Warren's calculations of CDS damages using UBS's and Highland's marks as of December 5, 2008. Using Highland's marks, Mr. Dudney calculated CDS mark-to-market losses of \$388,284,750, compared to Mr. Warren's calculation of \$26,952,895—a difference of \$361,331,855. (DX Demo. 12.) Using UBS's marks, Mr. Dudney calculated losses of \$470,113,605, compared to Mr. Warren's calculation of \$26,952,895—a difference of \$443,160,710. (PX Demo. 21.)

The difference in the totals is largely due to Mr. Warren's exclusion from his calculation of all unrealized CDS losses and all losses for the Internal Swaps. (Warren Testimony, Trial Tr. at 1296-1299.) His calculation of \$26,952,895 for CDS losses includes only realized CDS losses. (*Id.* at 1250.) According to Mr. Warren, the Internal Swaps account for \$93,952,173 of the CDS damages using UBS's marks, or \$68,801,027 using Highland's marks. (*Id.* at 1269.) Although Mr. Warren disputed UBS's entitlement to unrealized CDS losses, he performed a calculation including such losses. Using UBS's marks as of December 5, 2008, these losses totaled \$355,487,606. (DX Demo. 10, at 14.) Using Highland's marks as of that date, these losses totaled \$299,118,973. (Warren Testimony, Trial Tr. at 1269; DX Demo. 10, at 14.) Mr. Warren's total, using UBS's marks, for the Internal Swaps (\$93,952.173) and the unrealized CDS losses (\$355,487,606) was \$449,439,779. (DX Demo. 10, at 14.) As stated above, Mr. Dudney's

calculation of total Synthetic Warehouse losses, using UBS's December 5, 2008 marks, was \$470,113,605. Given the magnitude of the damages, this disparity is not material.

The court accordingly holds that UBS incurred losses in the Synthetic Warehouse of \$470,113,605 as of December 5, 2008, the date of the breach, subject to the adjustments discussed below.

#### CLO Damages

Highland does not dispute that unrealized losses are recoverable for the CLO assets. (Warren Testimony, Trial Tr. at 1293.) Moreover, UBS's (Mr. Dudney's) and Highland's (Mr. Warren's) calculations of the CLO losses as of December 5, 2008 are the same: Using Highland's marks, these losses were \$106,157,101. (DX Demo. 12, at 2.) Using UBS's marks, the losses were \$128,848,101. (PX Demo. 21.) Having concluded that UBS's damages were properly calculated based on UBS's marks as of December 5, 2008, the date of the breach, the court holds that UBS incurred losses in the Cash Warehouse of \$128,848,101, subject to the adjustments discussed below.

#### Adjustments to Damages Calculation

In calculating the Synthetic and Cash Warehouse losses, Mr. Dudney and Mr. Warren made adjustments for the same items: carry (premiums and interest), collateral value, financing fees, and financing savings. Mr. Dudney's adjustment of \$79,587,557 and Mr. Warren's adjustment of \$76,632,634 did not differ materially. (PX Demo. 21.) According to Mr. Warren, the difference of approximately \$3 million is due to Mr. Warren's exclusion of the Internal Swaps in calculating the carry. (Warren Testimony, Trial Tr. at 1298-1299.) As the court has held that the Internal Swaps were properly included in the damages calculation, Mr. Dudney's adjustments will be accepted.

Reducing UBS's damages by the adjustments, the court holds that UBS sustained total

damages of \$519,374,149 (Cash Warehouse Losses of \$128,848,101 plus Synthetic Warehouse Losses of \$470,113,605 minus \$79,587,557).

### OFFSETS

#### Offset for Post-Breach Appreciation In CDS Asset Value

A central issue in this action is whether Highland is entitled to an offset against UBS's damages for appreciation in the value of the CDSs after the breach. The parties stipulated that UBS received post-breach termination payments net of carry on the CDSs, including the Internal Swaps, in the amount of \$202,223,059. (DX 491.) It is undisputed that these payments were received months and, for many of the CDSs, years after the termination of the transaction. (Ds.'s Post-Trial Memo., at 10 [acknowledging that UBS "liquidated the assets years later"]; PX 335 [spreadsheet showing termination dates for CDSs through 2011].)

Highland argues that, at the time the transaction was terminated, "frozen credit markets had created a severe mismatch between the assets' alleged market value and their actual value based on their cash flows." (Ds.'s Post-Trial Memo., at 10.) Highland further argues that UBS was able to sell these assets for hundreds of millions of dollars more than their December 2008 marks and that, while UBS is entitled to retain the sale proceeds, "it cannot ignore these monies in calculating the harm it actually suffered." (*Id.* at 11.) According to Highland, if disposition of the assets after the termination is not considered, UBS will receive "an enormous windfall." (*Id.*) UBS acknowledges that if a non-breaching party obtains a benefit "because of the breach," the benefit must be offset against the non-breaching party's damages. (Ps.'s Post-Trial Memo., at 6 [emphasis UBS's].) UBS argues, however, that the Fund Counterparties' breach was not a but for cause of the post-breach payments UBS received for the CDSs. (*Id.* at 7.) Rather, subsequent gains that resulted from UBS's disposition of the assets were "the result of UBS's contractual rights [to retain the assets] in the event of any termination and of its subsequent



investment strategy.” (*Id.* at 14.) According to UBS, the Fund Counterparties’ proposed offset would deprive UBS of the benefit of the bargain and result in a windfall for the Fund Counterparties. (*Id.*)

As discussed above, contract damages are intended to make “good or replace the loss” caused to a party by the breach of contract and “to place the nonbreaching party in as good a position as it would have been had the contract been performed. Thus, damages for breach of contract are ordinarily ascertained as of the date of the breach.” (*Brushton-Moira Cent. Sch. Dist.*, 91 NY2d at 261.) Further, “where the breach involves the deprivation of an item with a determinable market value, the market value at the time of the breach is the measure of damages.” (*Sharma*, 916 F2d at 825 [applying New York law and citing *Simon*, 28 NY2d at 145-146].)

The calculation of damages is also subject to the fundamental precept that where a non-breaching party acquires a “benefit or opportunity for benefit . . . because of the breach, a balance must be struck between benefit and loss” and the benefit must be offset against the non-breaching party’s damages. (*Indu Craft, Inc. v Bank of Baroda*, 47 F3d 490, 495 [2d Cir 1995] [applying New York law]; accord *Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas*, 727 F Supp 2d 256, 289 [SD NY 2010] [“[I]f a victim derives a benefit from the breaching party’s breach of contract, the breaching party only is responsible for the victim’s net loss”], *reconsideration denied* 2010 WL 3431132; *Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc.*, 70 NY2d 76, 84 [1987], *rearg denied* 70 NY2d 694 [holding, in a “cover” action governed by the Uniform Commercial Code, that “[g]ains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable, unless such gains could not have been made, had there been no breach”]) [quoting 5 Corbin, Contracts § 1041].)

Here, although UBS and Highland agree that any benefit derived by UBS because of the breach must be offset against its losses, neither party has cited, and the court's own research has not located, any case in which a court has considered how to apply this precept to a non-breaching party's retention of assets upon a failed securitization transaction and realization of subsequent gains. There is, however, a substantial body of law involving a breaching party's failure to deliver or purchase assets subject to fluctuations in value, in which the courts have assessed damages based on the market value of the assets at the time of breach and have declined to consider any subsequent increases or decreases in value of the assets. As discussed further below, the court concludes that these cases are inconsistent with the offset sought by Highland.

As the Second Circuit has explained in reviewing this body of law, New York courts reject damage awards "based on what 'the actual economic conditions and performance' were in light of hindsight." (Sharma, 916 F2d at 826, quoting Aroneck v Atkin, 90 AD2d 966, 967 [4th Dept 1982], lv denied 59 NY2d 601 [1983].) "They have explicitly rejected the use of subsequent changes in value or profits where they would increase an award, and where they would decrease the award." (Sharma, 916 F2d at 826 [internal citations omitted].)

In the securities context, courts have repeatedly held that the damages for failure to deliver or purchase shares of stock should be based on their market value at the time of breach, and not on any subsequent increase or decrease in their value. (Simon, 28 NY2d at 145-146 [where the seller breached a contract to deliver shares, holding: "The proper measure of damages for breach of contract is determined by the loss sustained or gain prevented at the time and place of breach. The rule is precisely the same when the breach of contract is nondelivery of shares of stock"] [internal citations omitted]; Aroneck, 90 AD2d at 967 [where the buyer breached a contract to purchase shares, holding that

damages should be based on market value at the time of breach, and rejecting the buyer's theory that the "value should be based on the actual economic conditions and performance" of the company post-breach]; Emposimato v CIFIC Acquisition Corp., 89 AD3d 418, 421 [1st Dept 2011] [quoting Aroneck and citing Simon in holding that "[i]n the case of a breach of contract to sell securities, expectation damages are calculated as 'the difference between the agreed price of the shares and the fair market value at the time of the breach'"]; Oscar Gruss & Son, Inc. v Hollander, 337 F3d 186, 197 [2d Cir 2003] [following Simon and Aroneck in a case involving the defendant's breach of a contract to deliver warrants]; see also Kaminsky v Herrick Feinstein LLP, 59 AD3d 1, 11-12 [1st Dept 2008], lv denied 12 NY3d 715 [2009] [holding that damages for breach of contract to deliver shares prior to an initial public offering (IPO) should be awarded based on the value of the shares at time of the breach, not their higher value post-IPO].)

The court holds that these cases involve transactions that are analogous to (although far less complex than) the transaction at issue, and apply the same measure of damages that this court has adopted above—namely, the measure of damages based on the market value of the assets on the date of the breach. These cases accordingly govern the calculation of damages here. The court notes, moreover, that sound reasons support the application of this measure of damages without consideration of post-breach fluctuations in the value of the assets.

As the Second Circuit reasoned, a contrary rule that would permit calculation of damages at the time of trial "would be a two-edged sword, because courts would have to diminish damage awards where the value of the item decreased or where losses were encountered subsequent to the breach as well as enhance them where conditions improve. However, New York courts have expressly refused to adopt this 'wait and see' theory of

damages.” (Sharma, 916 F2d at 826.) In addition, although the court does not adjust for changes in the value of the shares when calculating damages according to the date of breach measure, the parties themselves can protect against changes in value by hedging or acquiring shares in the market. As the Second Circuit further reasoned: “To be sure, uncertainties about the future and lack of perfect information may cause an asset to be under- or over-valued at any particular time. At that time, however, either party has an opportunity to hedge according to his or her judgment about the future stream of income.” (Sharma, 916 F2d at 826; see also Simon, 28 NY2d at 146 [where the seller breached a contract to deliver shares, reasoning that “[i]f plaintiff were anxious to own the shares rather than obtain their value, he was free to purchase them in the market. His cause of action should not and may not be converted into carrying a market ‘call’ or ‘warrant’ to acquire the stock on demand if the price rose above its value as reflected in his cause of action”].)

The court further holds that application of the date of breach measure of damages, without adjustments for fluctuations in the value of the assets, will serve the objective of putting UBS in the position it would have been in had the contract been performed. If the securitization had closed, UBS would have been entitled, under the express terms of the SWA, to novate to the Issuer its positions as protection seller on all of the eligible Knox CDSs. (SWA § 5 [B] [1].) As a result of the breach, UBS was forced to assume a substantial risk of loss under the CDSs that would have been novated to the Issuer had the closing occurred. As discussed above, the loss in market value of the retained CDSs as of the date of breach was determined using the mark-to-market methodology. More specifically, as confirmed by both UBS’s and Highland’s experts, the mark-to-market losses calculated as of the date of breach represent the cost to UBS to exit the CDSs—

that is, the payments to be made to third-parties so that they would take on, and UBS could extricate itself from, the risk. (Warren Testimony, Trial Tr. at 1304-1306; Dudney Testimony, Trial Tr. at 894-895.) A damage award for these mark-to-market losses will therefore compensate UBS for the exposure to risk that it would not have faced had the contract been performed.

To the extent that Highland contends that a damage award is not appropriate for these mark-to-market losses because the losses were not realized, the court rejects that contention. The damage award is appropriate, notwithstanding that the losses were not realized, because, as held above, the contract affords UBS the right of recovery for such losses. (See CDO Plus Master Fund Ltd. v Wachovia Bank, N.A., No. 07 Civ. 11078 [LTS], 2011 WL 4526132, \* 2 [US Dist Ct SD NY, Sept. 29, 2011] [reasoning that, where the contractual definition of loss for the purpose of calculating damages did not require the CDS protection buyer to sustain “actual loss,” “[t]he absence of an actual loss on a Reference Obligation transaction, thus, is not a barrier to [the protection buyer’s] recovery. . .”] [emphasis in original].)

The court further holds that the record does not support Highland’s contention that UBS’s post-breach gains were realized because of the breach, and that this case therefore falls under the line of authority that requires an offset for such gains. Highland in effect contends that because UBS retained the CDSs as a result of the breach, it also realized the post-breach gains because of the breach.<sup>19</sup> That conclusion does not follow. As held

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<sup>19</sup> In so holding, the court rejects UBS’s contention that it would have been entitled to retain the CDS assets, regardless of the Fund Counterparties’ breach, because the Agreements would have terminated in any event as of March 14, 2009, at which point UBS would have had the contractual right to retain the assets. (Ps.’s Post-Trial Memo., at 8.) This assertion is not only speculative but ignores that UBS did in fact acquire the right to retain the assets upon the Fund Counterparties’ breach of the Agreements as a result of their failure to meet the third collateral call. For the reasons discussed in the text, however, the court cannot accept Highland’s further contention that UBS realized gains on the retained CDSs because of the breach.



above, UBS had a contractual right to retain the CDSs upon the termination of the transaction based on the Fund Counterparties' breach of the SWA by failing to meet the collateral call. The SWA does not contain any provision that limited UBS's discretion as to when to dispose of the assets after termination. Rather, as UBS persuasively argues, the gains realized as a result of the post-breach disposition of assets were attributable not to the breach itself but to UBS's assumption of the risk of loss on the CDSs and its investment strategy as to when to dispose of them based on its assessment of the market. (See G & R Corp. v American Sec. Trust Co., 523 F2d 1164, 1175 [DC Cir 1975] [holding that while the transfer of property to the plaintiffs was caused by the defendant's breach, the profit realized by the plaintiffs from a post-breach sale was not "caused by the breach" but was "attributable to the [plaintiffs'] decision to hold [the property] until [its] condition and the market were favorable for sale"].)

Nor does Highland successfully argue that the gains realized by UBS on the post-breach disposition of the assets must be offset under general principles which require a party who suffers damages as a result of another's breach to take reasonable steps to mitigate its damages. (See Ds.'s Post-Trial Memo., at 5-9.) Highland cites cases requiring mitigation in connection with the purchase and sale of securities and transactions in other markets. (See e.g. Drummond v Morgan Stanley & Co., Inc., No. 95 Civ. 2011 [DC], 1996 WL 631723, \* 2-3 [US Dist Ct SD NY, Oct. 31, 1996] [holding that where the buyer breached a contract to purchase securities, the seller must take steps to mitigate its damages by selling the securities within "a reasonable period of time"]; Saboundjian v Bank Audi (USA), 157 AD2d 278, 284-285 [1st Dept 1990] [holding that where a broker failed to execute a customer's speculative currency exchange order, the customer was required to direct execution of the trade "within a reasonable time after he learned that it had not been effected earlier"].)

These cases are inapposite, as the SWA affords UBS the contractual right to retain the securities upon the Fund Counterparties' breach. Ironically, although purporting to rely on these cases, which in fact require that the non-breaching party mitigate within a reasonable period of time, Highland argues not that UBS was required to dispose of the CDSs within a reasonable period of time after the breach but that it was required to hold them for months and, indeed, years, until the market improved. Highland thus asserts that UBS reasonably mitigated by "holding (as opposed to fire selling) fully performing interest and premium-bearing assets in the face of a dysfunctional market. . .," and that "UBS's mitigation was not only reasonable, but required by law." (Ds.'s Post-Trial Memo., at 7.) Put another way, Highland does not identify a specific date or dates by which UBS was required to mitigate. To the contrary, without citation to any legal authority, Highland argues that UBS was required to hold the assets for an indefinite period, until the market improved, to minimize its losses.

The mitigation cases provide no support for Highland's assertion that UBS's disposition, months and years after the breach, of assets that it had a contractual right to retain, constitutes mitigation.<sup>20</sup> Rather, in claiming that it is entitled to "offsets" for the post-breach gains realized by UBS, Highland appears in effect to advance a measure of damages that is patently inconsistent with the fundamental tenet of the date of breach measure of damages—namely, that a non-breaching party's damages for assets with a determinable market value must be calculated

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<sup>20</sup> Nor does Highland cite any other authority that supports its claim that it is entitled to offsets for post-breach gains realized by UBS. Cases in which a party has a duty to cover (see e.g. Fertico Belgium S.A. v Phosphate Chemicals Export Assn., Inc., 70 NY2d 76, supra) are inapposite, given UBS's contractual right to retain the CDSs upon the breach. Cases in which a party is on both sides of a securities transaction are factually dissimilar. (See Aristocrat Leisure Ltd. v Deutsche Bank Trust Co. Americas, 727 F Supp 2d 256, supra [where the plaintiff company breached a contract affording the defendant bondholders the right to convert their bonds to the company's stock, and the bondholders held open existing short positions in the company's stock on which they realized post-breach gains, the company was entitled to an offset]; see also Minpeco, S.A. v Conticommodity Servs., Inc., 676 F Supp 486, 490 [SD NY 1987] [holding that the plaintiff's losses on short futures positions on silver as a result of the defendants' manipulation of the market were required to be offset by the plaintiff's profits on physical silver positions also then held by the plaintiff].)

at the date of breach, not based on hindsight, and that neither party can select the date on which the damages calculation will be most favorable to it. Thus, a non-breaching buyer cannot select the date on which the assets “had their highest value or a period of time that was profitable but that excludes periods when losses occurred.” (See Sharma, 916 F2d at 826.) Similarly, a breaching buyer cannot avoid or reduce the damages caused by its breach by invoking post-breach decreases in the value of the assets. (See id.)

The court accordingly holds that Highland’s request for an offset for UBS’s post-breach gains from the disposition of the CDSs must be denied.

Offset for Right of First Refusal Counterclaim

Highland Capital Management, L.P. (Highland Capital) seeks judgment on its first counterclaim against plaintiff UBS Securities LLC for breach of the Cash Warehouse Agreement provision affording it the right to purchase CLO assets in the event UBS elected to retain such assets upon the termination of the Agreement. Section 5 (A) of the CWA provides that in event of failure to close, “UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures.” The Liquidation Procedures set forth in section 7 (A) of the CWA provide in pertinent part:

“If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS’s Affiliates in which event, for purposes of determining Net Collateral Gain and Net Collateral Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to its Market Value. To the extent that UBS in its sole discretion elects to retain such Collateral Obligation, the Servicer will have the right to purchase such Collateral Obligation at its Market Value.”

Section 7 (A) further provides that if UBS elects to sell CLOs upon termination, “the Servicer will have the right to bid for and purchase such Collateral Obligation at a purchase price equal to

the highest third party bid received by UBS for the purchase of such Collateral Obligation.”

It is undisputed that Highland Capital notified UBS that it sought to purchase six of the CLOs with a bid price of \$1.9 million and a notional value of \$44 million, but that it sought to provide the funds for the purchase, and to settle the trades, in the name of one of its affiliates, CLO Value Fund. (Ds.’s Findings, ¶ 21.) UBS declined to agree to the sale to the Highland Capital affiliate. (Id.; DX 72; PX 292.)

The court is unpersuaded that a Highland Capital affiliate had the right, under the CWA, to purchase the CLOs. Section 7 (A), which governs the disposition of the CLO assets upon termination, expressly affords one UBS Affiliate the right to purchase CLOs. In contrast, this Section affords the right to purchase only to the Servicer, and not to any other Highland entity. The Servicer is defined as Highland Capital Management, L.P. (CWA, First Paragraph.) Reading the CWA as a whole, the court further finds that no other provision modifies or is inconsistent with this limitation. On the contrary, where the acts of Highland Capital’s Affiliates were implicated, the CWA expressly referred to the Affiliates. (CWA, § 13 [B] [limiting the liability of the “Servicer” “for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders [and others] under or in connection with this Agreement, or for any decrease in the value of the Collateral Portfolio . . . .”].)<sup>21</sup> The court accordingly holds that the CWA unambiguously provides that the right to purchase retained CLOs is limited, among the Highland entities, to Highland Capital.

In view of this holding that the CWA is not ambiguous with respect to Highland’s post-

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<sup>21</sup> The parties to the transaction knew how to afford rights to purchase assets to Affiliates of the Servicer. The SWA provides that if the closing fails to occur, UBS may, with the consent of the related counterparty, novate CDSs “to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer). . . .” (SWA § 6 [A].) The omission from the CWA of authorization to Affiliate(s) of the Servicer to purchase CLOs is therefore notable. Moreover, Highland Capital does not claim that the concerns—regulatory and other—that are implicated in novating CDSs are comparable to those in selling CLOs.

termination right to purchase CLOs, the court rejects Highland's contention that the court should consider evidence allegedly showing that UBS and Highland Capital had a prior course of conduct in which UBS permitted Highland Capital to settle trades "at its fund level." (Ds.'s Findings, ¶¶ 80-81.) Parol evidence of course of conduct is not admissible to construe an unambiguous contract. (See e.g. Sigismondi v Queens Transit Corp., 38 AD2d 71, 73 [2d Dept 1971], aff'd no opinion 32 NY2d 745 [1973]; Evans v Famous Music Corp., 1 NY3d 452, 459 [2004].)

The court further notes that even if Highland Capital could recover on its counterclaim, the damages it seeks are not recoverable. Highland Capital seeks a finding that because the CLOs continued to perform until maturity, "it would have profited \$46 million" if it had been permitted to exercise its right of first refusal to purchase the CLOs. (Ds.'s Findings, ¶ 82; DX Demo. 9.) As Highland Capital acknowledges, however, the market value of the CLOs at the time of breach was \$1,934,214. (DX Demo. 9.) The measure of damages, as explained above in connection with Highland Capital's claim for offsets against UBS's damages, is the market value of the assets as of the date of breach, not the increase in their value in the indefinite future.

#### Offset for Unjust Enrichment

Highland Capital also seeks judgment on its second counterclaim alleging that UBS was unjustly enriched by its failure to permit Highland Capital, through its affiliate CLO Value Fund, to purchase the Collateral Obligations upon termination. This claim for unjust enrichment is not maintainable as the right to purchase is governed by contract—the CWA. (See generally Pappas v Tzolis, 20 NY3d 228, 234 [2012], rearg denied 20 NY3d 1075 [2013]; Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388-389 [1987].)

#### Offset for Settlements with Highland Affiliates



Highland also requests an offset for settlements with three Highland Affiliates—Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Offshore), and Highland Crusader Holding Corporation (Crusader Holding) (collectively, the Settling Highland Affiliates). Credit Strategies and Crusader Offshore were defendants in this action. UBS asserted its fraudulent conveyance cause of action against them as well as all of the other defendants. (Second Am Compl., Fifth Cause of Action.) Crusader Holding was a defendant in a separate complaint, which asserted a fraudulent conveyance cause of action against it. (UBS Secs. LLC v Highland Crusader Holding Corp., Sup Ct, NY County, Index No. 652646/11, Compl., First Cause of Action; Ps.'s Letters, dated July 21, 2015 [NYSCEF Doc. No. 397]; Jan. 7, 2016 [NYSCEF Doc. No. 398].) This court bifurcated the trial of this action, directing that it would first hold a bench trial on the breach of contract claims, which were triable by the court and are the subject of this decision, and that the fraudulent conveyance and other claims, which are triable by a jury, would be heard subsequently. (May 1, 2018 Decision on the Record [NYSCEF Doc. No. 494].)

The parties dispute whether the confidential settlements (DX 76 id and DX 77 id) may be considered in this action. They also dispute whether the settlements may be offset, pursuant to statute or case law, against the damages awarded by this decision to UBS against the Fund Counterparties on the breach of contract causes of action. (See Ps.'s Post-Trial Memo., at 14-21; Ds.'s Post-Trial Memo., at 15-19, 21-24.)

Even assuming, without deciding, that the damages may be subject to offset by the settlements, the determination of whether or to what extent the offset should be allowed must await determination of the jury trial. Where an offset for a settlement is sought, "the damages against which the settlement is sought to be applied should be determined so a proper comparison can be made between them and the damages covered by the settlement." (Carter v.

State of New York, 139 Misc 2d 423, 429 [Ct Cl, 1988], affd 154 AD2d 642 [2d Dept 1989];  
accord Moller v North Shore Univ. Hosp., 12 F3d 13, 16 [2d Cir 1993] [applying New York  
law].)

Here, Highland argues that the causes of action against the settling defendants are  
“wholly derivative of its breach-of-contract claims against the Fund counterparties.” (Ds.’s Post-  
Trial Memo., at 16.) UBS persuasively argues, in opposition, that the fraudulent conveyance  
causes of action seek relief in addition to compensatory damages, including imposition of a  
constructive trust and punitive damages. (Ps.’s Post-Trial Memo, at 22-24; Second Am. Compl.,  
at 57-58.) Moreover, the damages, if any, that will be awarded against the Fund Counterparties  
and Highland Capital on the fraudulent conveyance cause of action remain to be determined at  
the jury trial. On this record the court accordingly cannot compare the settlements with the  
fraudulent conveyance damages. Nor is there any basis for the court to determine the extent to  
which the settlements cover the same damages, or damages that overlap with, the breach of  
contract damages awarded to UBS against the Fund Counterparties by this decision. The  
determination of the offset issue will therefore be deferred pending the jury trial. As it appears,  
however, that Highland may be entitled to an offset for some or all of the settlement amounts, the  
court will stay enforcement, to the extent of the settlement amount (\$70.5 million), of the  
judgment to be awarded to UBS against the Fund Counterparties for the damages for breach of  
contract.

### Conclusion

UBS is entitled to damages for \$519,374,149 on the third and fourth causes of action  
against the Fund Counterparties for breach of the Cash Warehouse and Synthetic Warehouse  
Agreements. Enforcement of the judgment for this amount will be stayed up to \$70.5 million,  
the amount of the settlements with the Settling Highland Affiliates.

ORDER

It is hereby ORDERED that the parties shall meet and confer with a view to reaching agreement on the form of the judgment, including but not limited to the Allocation Percentages of CDO Fund and SOHC, and the award of interest. If the parties are unable to reach such agreement, they shall promptly settle judgment; and it is further

ORDERED that this decision shall be filed under seal for ten business days from the date hereof to afford the parties the opportunity to confer and to advise the court as to whether there is any information in the decision which is claimed by any party to be confidential. The parties shall, within five business days of the date hereof, submit a joint letter of no more than three pages, advising the court of their positions on this issue. The letter should be accompanied by a joint copy of the decision, highlighting the portion(s) of the decision which each party claims is confidential and should be redacted in the decision that will be publicly filed; and it is further

ORDERED that the parties shall telephone the court on a conference call within five business days of the date hereof (at a specific date and time to be arranged with the Clerk of Part 60) to discuss the above confidentiality issue as well as the jury trial phase of this action. The parties should be prepared to address whether, or to what extent, the jury trial may proceed in light of Highland Capital's filing of a bankruptcy petition.<sup>22</sup>

This constitutes the decision and order of the court.

Dated: New York, New York  
November 14, 2019

  
MARCY FRIEDMAN, J.S.C.

<sup>22</sup> By letter dated October 17, 2019 (NYSCEF Doc. No. 640), counsel (Reid Collins & Tsai LLP) for Highland Capital, the Fund Counterparties and other Highland defendants, advised the court of Highland Capital's bankruptcy filing, and represented that the automatic stay does not preclude decision of the causes of action against the Fund Counterparties or the counterclaim by Highland Capital. This letter sought to reserve defendants' position on the effect of the bankruptcy filing on subsequent proceedings in this action.

## **EXHIBIT 4 – FILED UNDER SEAL**

## **EXHIBIT 5**



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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	

**DECLARATION OF ELISSA A. WAGNER IN SUPPORT OF DEBTOR'S MOTION  
 FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191  
OF UBS SECURITIES LLC AND UBS AG, LONDON BRANCH**

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

I, Elissa A. Wagner, declare as follows:

1. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP (“PSZJ”), counsel to Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”). I submit this declaration in support of the *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch*, filed concurrently herewith (the “Motion”). This declaration is based on my personal knowledge of the facts set forth herein and my review of the documents identified below.

2. Attached as **Exhibit 1** to the *Appendix of Exhibits in Support of Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Appendix”) is a true and correct copy, with exhibits, of Claim No. 190 filed by UBS Securities LLC in the Bankruptcy Case.

3. Attached as **Exhibit 2** to the Appendix is a true and correct copy, without exhibits, of the unredacted version of *UBS’s Omnibus Response to Objections to the UBS Proofs of Claim* [D.E. 1133] (the “UBS Response”). The unredacted version of the UBS Response was provided to PSZJ by counsel for UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”) on or about September 26, 2020. Exhibit 2 and certain other documents are the subject of the *Debtor’s Motion for Leave to File Certain Documents Under Seal in Connection with Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* (the “Motion to Seal”).

4. Attached as **Exhibit 3** to the Appendix is a true and correct copy, without exhibits, of the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [D.E. 488].

5. Attached as **Exhibit 4** to the Appendix is a true and correct copy of the *Order Denying UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action* [D.E. 765].

6. Attached as **Exhibit 5** to the Appendix is a true and correct copy of the *Judgment* entered in favor of the Debtor on February 22, 2010 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) [NY D.E. 84].

7. Attached as **Exhibit 6** to the Appendix is a true and correct copy of a February 18, 2010 decision of the Appellate Division, First Department, of the Supreme Court of the State of New York (the "Appellate Division") reported at *UBS v. Highland Capital Mgmt., L.P.*, 2010 NY Slip Op 1436 (N.Y. App. Div.).

8. Attached as **Exhibit 7** to the Appendix is a true and correct copy of a July 21, 2011 decision of the Appellate Division reported at *UBS v. Highland Capital Mgmt., L.P.*, 86 A.D.3d 469 (N.Y. App. Div. 2011).

9. Attached as **Exhibit 8** to the Appendix is a true and correct copy of a March 13, 2012 decision of the Appellate Division reported at *UBS v. Highland Capital Mgmt., L.P.*, 93 A.D.3d 489 (N.Y. App. Div. 2012).

10. Attached as **Exhibit 9** to the Appendix is a true and correct copy of a March 15, 2018 decision of the Appellate Division reported at *UBS v. Highland Capital Mgmt., L.P.*, 159 A.D.3d 512 (N.Y. App. Div. 2018).

11. Attached as **Exhibit 10** to the Appendix is a true and correct copy of a document filed on August 7, 2020 in the Bankruptcy Case [D.E. 933-13], which UBS identified, at page 9 of the UBS Response, as its June 28, 2010 complaint against the Debtor in *UBS v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.).

12. Attached as **Exhibit 11** to the Appendix is a true and correct copy of the unredacted version of a document filed under seal on August 13, 2020 [D.E. 953-6] by the

Redeemer Committee of the Highland Crusader Funds (the “Redeemer Committee”), which UBS identified, at pages 10-11 of the UBS Response, as the June 17, 2015 settlement agreement between UBS, Highland Crusader Offshore Partners, L.P., and Highland Crusader Holding Corporation. The unredacted version of D.E. 953-6 was provided to PSZJ by counsel for the Redeemer Committee on or about August 13, 2020. Exhibit 11 and certain other documents are the subject of the Motion to Seal.

13. Attached as **Exhibit 12** to the Appendix is a true and correct copy of the unredacted version of a document filed under seal on August 13, 2020 [D.E. 953-9] by the Redeemer Committee, which UBS identified, at page 10 of the UBS Response, as the June 11, 2015 settlement agreement between UBS and Highland Credit Strategies Master Fund, L.P. The unredacted version of D.E. 953-9 was provided to PSZJ by counsel for the Redeemer Committee on or about August 13, 2020. Exhibit 12 and certain other documents are the subject of the Motion to Seal.

14. Attached as **Exhibit 13** to the Appendix is a true and correct excerpt from Exhibit 18 to the UBS Response, the *Defendants’ Memorandum of Law in Opposition to Plaintiffs’ Omnibus Motion in Limine* filed on June 13, 2017 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.). UBS filed Exhibit 18 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-12]. UBS’s counsel provided an unredacted version of D.E. 1133-12 to PSZJ on or about September 26, 2020.

15. Attached as **Exhibit 14** to the Appendix is a true and correct copy of the unredacted version of Exhibit 35 to the UBS Response, which UBS identified, at page 27 of the UBS Response, as a June 2015 email chain between counsel for UBS and counsel for Highland Credit Strategies Master Fund, L.P. UBS filed Exhibit 35 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-22]. UBS’s counsel provided an unredacted

version of D.E. 1133-22 to PSZJ on or about September 26, 2020. Exhibit 14 and certain other documents are the subject of the Motion to Seal.

16. Attached as **Exhibit 15** to the Appendix is a true and correct copy of the unredacted version of Exhibit 34 to the UBS Response, which UBS identified, at pages 27-28 of the UBS Response, as a June 2015 email chain between counsel for UBS and counsel for the Redeemer Committee, on behalf of Highland Crusader Offshore Partners, L.P. and Highland Crusader Holding Corporation. UBS filed Exhibit 34 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-21]. UBS's counsel provided the unredacted version of D.E. 1133-21 to PSZJ on or about September 26, 2020. Exhibit 15 and certain other documents are the subject of the Motion to Seal.

17. Attached as **Exhibit 16** to the Appendix is a true and correct excerpt from the unredacted version of Exhibit 6 to the UBS Response, which UBS identified in the UBS Response as the March 8, 2013 report of one of UBS's expert witnesses in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.). UBS filed Exhibit 6 to the UBS Response under seal in the Bankruptcy Case on October 6, 2020 [D.E. 1133-5]. UBS's counsel provided the unredacted version of D.E. 1133-5 to PSZJ on or about September 26, 2020. Exhibit 16 and certain other documents are the subject of the Motion to Seal.

18. Attached as **Exhibit 17** to the Appendix is a true and correct excerpt from the *Plaintiffs' Pre-Trial Brief in Support of Bifurcation of Trial* filed by UBS on April 18, 2018 in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) [NY D.E. 472].

19. Attached as **Exhibit 18** to the Appendix is a true and correct excerpt from the transcript of a May 1, 2018 hearing in *UBS v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) [NY D.E. 494].



20. Attached as **Exhibit 19** to the Appendix is a true and correct excerpt from the transcript of the October 6, 2020 status conference in the Bankruptcy Case [D.E. 1145].

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 16, 2020 at Scottsdale, Arizona.

*/s/ Elissa A. Wagner*

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Elissa A. Wagner

## **EXHIBIT 6**

EXECUTION COPY

March 14, 2008

**Private and Confidential**

Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240

Re: Engagement of UBS Securities as Structuring and Placement Agent in Connection with  
Proposed Collateralized Debt Obligations Transaction

Ladies and Gentlemen:

UBS Securities LLC ("UBS Securities") and Highland Capital Management, L.P. (the "Servicer") were parties to an engagement letter dated April 20, 2007 (the "Original Engagement Letter"); UBS Securities, the Servicer, Highland CDO Opportunity Master Fund, L.P. (the "CDO Fund") and Highland Special Opportunities Holding Company ("SOHC") were parties to a cash warehouse agreement dated May 22, 2007 (the "Original Cash Warehouse Agreement"); and UBS AG, London Branch ("UBS AG"), the Servicer, the CDO Fund and SOHC were parties to a synthetic warehouse agreement dated April 12, 2007 (the "Original Synthetic Warehouse Agreement") and together with the Original Engagement Letter and the Original Cash Warehouse Agreement, the "Original Documents").

The Original Engagement Letter expired by its terms on August 15, 2007 and the Original Cash Warehouse Agreement and the Original Synthetic Warehouse Agreement expired on the same date in accordance with their respective terms.

The Servicer and UBS Securities desire to enter into this new engagement letter (together with all schedules, annexes, exhibits and attachments hereto and as amended from time to time, this "Agreement") pursuant to which UBS Securities will act in accordance with the terms of this Agreement as the financial arranger and placement agent in connection with a proposed collateralized debt obligations transaction with an anticipated aggregate issuance size of approximately U.S.\$818 million in securities (or such other amount mutually agreed to in writing by the Servicer and UBS Securities) (the "Transaction").

1. The Transaction. The Transaction will involve, among other things, the formation and capitalization of a special purpose vehicle or vehicles (collectively, the "Issuer"), to be organized under the laws of a jurisdiction to be determined by UBS Securities and the Servicer, that will acquire an investment portfolio, which will be managed by the Servicer and will be comprised primarily of collateralized loan obligations ("CLOs") or credit default swaps ("CDS") referencing CLOs (collectively, the "Portfolio Investments").

The Issuer will finance its acquisition of the Portfolio Investments through the issuance of one or more classes of notes (the "Notes") and one or more classes of preferred shares or subordinated notes (the "Subordinated Notes" and together with the Notes, the "Securities"). A portion of the Portfolio Investments will be acquired or entered into prior to the date on which



the Securities are issued (the "Closing Date") through one or more warehouse facilities (collectively, the "Warehouse Facility") to be arranged by UBS Securities and/or its affiliates, which will be documented in one or more separate written agreements (collectively, the "Warehouse Documents") containing terms and conditions mutually acceptable to the parties hereto and the providers of the Warehouse Facility (the "Warehouse Provider"). The assets accumulated under the Original Cash Warehouse Agreement and the Original Synthetic Warehouse Agreement and still registered in the name of UBS Securities and or its affiliates will be eligible for inclusion in the Portfolio Investments under the Warehouse Documents.

Although the Issuer's capital structure is subject to change prior to the Closing Date, it is expected that (a) the Notes will be rated by Moody's Investors Service Inc. and Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc., or such other internationally recognized rating agencies as UBS Securities and the Servicer shall mutually agree upon in writing (collectively, the "Rating Agencies"), and will be secured by the Portfolio Investments and certain other assets of the Issuer and (b) the Subordinated Notes will be unrated, unsecured and subordinate in all respects in right of payment to the Notes.

The Securities will be offered and sold pursuant to an exemption from, or in transactions not subject to, the registration requirements of the Securities Act of 1933 including Section 4(2) thereof and Rule 144A or Regulation S promulgated thereunder (as amended, the "Securities Act"). The Securities will qualify for exemption under the Investment Company Act of 1940 as amended (the "Investment Company Act"), pursuant to Section 3(c)(7) thereof.

Any securities purchased by the Servicer, any of its affiliates, respective directors, officers or employees, or any of their respective affiliates, directors, officers or employees thereof, SOHC or the CDO Fund (the "Highland Securities") on the Closing Date will be purchased directly from the Issuer, as described further in Section 4 below. The Securities other than the Highland Securities will be sold through UBS Securities and one or more of its affiliates to third-party investors.

2. Engagement of UBS Securities; Mutual Release. (a) The Servicer has engaged UBS Securities to act as financial arranger of the Transaction and UBS Securities will serve as sole placement agent for the Offering, pursuant to the terms of a placement agency agreement to be entered into between UBS Securities and the Issuer on UBS Securities' standard terms or on terms otherwise acceptable to UBS Securities and the Servicer. The Servicer acknowledges that UBS Securities will act as sole bookrunner, will use commercially reasonable efforts to place Securities in connection with the Transaction and will receive fees associated with its respective placement of such Securities. Other than UBS Securities, one other co-manager (the "Co-Manager") can be named by the Servicer, with the consent of UBS Securities (which consent shall not be unreasonably withheld), prior to the Closing. The Servicer agrees that it shall not appoint any third party as an additional financial arranger of the Transaction or as initial purchaser or placement agent for the Offering without obtaining the UBS Securities' prior written consent to such appointment and to the terms of such third party's participation in the Transaction, such consent not to be unreasonably withheld. UBS Securities will be placed on the center of the cover of any offering document and any Co-Manager will be placed on the bottom left below UBS Securities on any offering document.

Subject to the proviso to Section 7(b), in engaging UBS Securities pursuant to this Agreement, the Servicer agrees that, it will not, directly or indirectly, solicit investors, agents, investment bankers or any other person to negotiate or consummate the Transaction, during the term hereof, without UBS Securities' prior written consent as set forth above, which consent shall not be unreasonably withheld. In addition, neither the Servicer nor any of its affiliates (including managed funds and accounts over which the Servicer or its affiliates exercise investment discretion) shall participate in the marketing of any other privately placed structured finance transaction (excluding any hedge fund, private equity fund or balance sheet transaction) backed by or referencing a portfolio of greater than 35% CLO securities ("Similar Transaction"), at the same time as it is marketing the Transaction.

(b) The following services will be provided by UBS Securities in connection with its engagement hereunder:

(i) assisting the Servicer and/or the Issuer in (A) structuring and pricing the Securities, (B) preparing legal documentation related to the Offering including, without limitation, the offering memoranda (the "Offering Documents") and preliminary marketing materials (the "Marketing Materials") and together with the Offering Documents, the "Disclosure Documents") relating to the Securities, (C) establishing the Issuer, (D) appointing third-party service providers to be engaged by the Issuer in connection with the Offering (e.g. trustee, custodian, counsel, administrators and accountants), (E) procuring credit ratings on the Notes from the Rating Agencies and preparing informational materials to be used in connection therewith, (F) facilitating communications between the Servicer and potential investors regarding the Offering and (G) responding to inquiries from potential investors and negotiating with prospective investors; and

(ii) taking such incidental or related actions on behalf of the Servicer as may be appropriate, necessary or reasonable in connection with the issuance of the Securities.

It is understood that the Offering Documents and operative agreements relating to the Transaction, other than the Servicing Agreement (as defined in Section 3 below), shall be drafted by McKee Nelson LLP, counsel to the Issuer and UBS Securities, and that the Servicing Agreement shall be drafted by Orrick, Herrington & Sutcliffe LLP, counsel to the Servicer.

(c) The Servicer acknowledges and agrees that, except as otherwise set forth in Section 2(a) above, UBS Securities' engagement hereunder is not an agreement by UBS Securities to purchase or place the Securities or any other securities. Any such agreement will be set forth in a placement agency agreement, as applicable, between the Issuer and UBS Securities that is in UBS Securities' customary form and that contains mutually acceptable terms and conditions.

The Servicer further acknowledges and agrees that nothing herein constitutes an agreement or commitment by or on behalf of any affiliate of UBS Securities to enter into any derivative transaction or other financing which shall be subject to agreement of documentation and any necessary internal approvals of the Servicer or UBS Securities. Any such agreement or commitment with respect to any derivative transaction or other financing by any affiliate of UBS Securities will be subject to, among other things, its internal approval processes and will be set



forth in separate written agreements, which will be in such affiliate's customary form and will contain mutually acceptable terms and conditions.

(d) Each of the parties acknowledges and agrees that neither the Servicer nor UBS Securities shall have any further rights and/or obligations under the Original Engagement Letter.

(e) The Servicer, on behalf of itself and its current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, hereby releases and forever discharges UBS Securities, including, but not limited to, any of its current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns and any of their past or present officers, directors, employees, attorneys and agents (collectively, the "UBS Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which the Servicer and such other persons ever had, now have or may have had against the UBS Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Engagement Letter and/or the transactions contemplated thereby.

(f) UBS Securities, on behalf of itself and its respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, hereby releases and forever discharges the Servicer, including, but not limited to, any of their respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns and any of their past or present officers, directors, employees, attorney and agents (collectively, the "Highland Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which UBS Securities and such other persons ever had, now has or may have had against the Highland Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Engagement Letter and/or the transactions contemplated thereby.

3. The Servicer. (a) The Servicer will act as servicer for the Issuer in accordance with an agreement between the Servicer and the Issuer, which will contain terms mutually acceptable to the Servicer and UBS Securities (the "Servicing Agreement"). The services to be provided by the Servicer to the Issuer under the Servicing Agreement will include supervising, managing and directing the investment and disposition of the Portfolio Investments and other assets of the Issuer. During the term of the Warehouse Facility, the Servicer will direct the investment of the Portfolio Investments in accordance with the Warehouse Documents.

(b) As compensation for its portfolio management services with respect to the Issuer, the Servicer will be entitled to receive from the Issuer a periodic fee to be reasonably determined by agreement between UBS Securities and the Servicer on or prior to the date of pricing of the

Securities, which fee will be subordinate in all respects in right of payment to the Notes and will be calculated on the aggregate par amount of the Portfolio Investments held by the Issuer and payable on each payment date of the Notes in accordance with the final documentation for the Transaction. In addition, on each payment date of the Notes once a pre-determined internal rate of return, as reasonably agreed to by the Servicer and UBS Securities, is achieved in respect of the Subordinated Notes, the Servicer will be entitled to receive from the Issuer incentive compensation, to be reasonably determined by UBS Securities and the Servicer prior to the Closing Date.

(c) UBS Securities and the Servicer agree that the CDO Fund and SOHC will in aggregate bear 100% of the risk of the Warehouse Facility in accordance with their respective Allocation Percentages (as defined in the Warehouse Documents) and otherwise in accordance with the terms of the Warehouse Documents and that, solely for U.S. federal income tax purposes, UBS Securities, the CDO Fund and SOHC will each treat the Warehouse Facility as two separate loans made by UBS Securities to the CDO Fund and SOHC.

4. Marketing and Offering of Securities. (a) The Servicer agrees to actively assist UBS Securities in completing a satisfactory preliminary marketing and offering of the Securities in such manner as UBS Securities may reasonably request from time to time, including, without limitation, (i) furnishing UBS Securities with all financial and other information regarding the Servicer, the Issuer and their respective affiliates that UBS Securities may reasonably request for inclusion in the Marketing Materials or the Offering Documents or otherwise, (ii) arranging direct contacts, both in person and by telephone, between senior management of the Servicer and prospective investors, (iii) hosting with UBS Securities road shows and "one-on-one" meetings with prospective investors in both the United States and other countries, and (iv) cooperating with UBS Securities in its negotiations with the Rating Agencies on behalf of the Servicer and the Issuer and promptly responding and providing information in response to all reasonable requests from the Issuer or UBS Securities for information under the Servicer's control and in regard to which the Servicer does not owe any duty of confidentiality to clients or otherwise to be provided to Rating Agencies.

(b) The Servicer acknowledges and agrees that UBS Securities may rely, without independent verification, upon the accuracy and completeness of all information furnished in writing by the Servicer to UBS Securities for use in connection with the Offering (collectively, the "Information") and that UBS Securities does not assume any responsibility therefor.

The Servicer warrants that the Information, including that which is contained in the Offering Documents, will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The Servicer agrees that during the period of UBS Securities' engagement hereunder and, if any Securities are issued on or before the Expiration Date (as defined in Section 7 hereof), until the completion of the Offering, the Servicer shall notify UBS Securities promptly if (i) any material adverse change, or any development that may lead to a material adverse change, occurs in the business, properties, operations, financial condition or prospects of the Servicer or the

Issuer or (ii) any Information furnished by the Servicer to UBS Securities is or becomes inaccurate, incomplete or misleading in any material respect.

The Servicer (and any affiliate of the Servicer that purchases Securities, including, solely for this purpose, SOHC and any affiliate of SOHC) and the CDO Fund shall be addressed on all legal opinions (other than any 10b-5 negative assurances letter) rendered to, or for the benefit of, UBS Securities or the Issuer by any counsel retained in connection with the Transaction.

UBS Securities agrees to use all non-public information relating to the Servicer provided to UBS Securities by or on behalf of the Servicer hereunder solely for the purpose of providing the services that are the subject of this Agreement and to treat all such information confidentially; provided that nothing herein shall prevent UBS Securities from disclosing any such information (i) to purchasers or prospective purchasers of the Securities in connection with the Offering, (ii) to any rating agency, (iii) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, (iv) pursuant to law or regulation or upon the request or demand of any regulatory authority having jurisdiction over UBS Securities or any of its affiliates, (v) to the extent that such information was or becomes publicly available other than by reason of disclosure by UBS Securities in violation of this Agreement or was or becomes available to UBS Securities or its affiliates from a source that is not known by UBS Securities to be subject to a confidentiality obligation to the Servicer, (vi) as contemplated by the provisions of Section 8, or (vii) to UBS Securities' affiliates and its and their respective employees, legal counsel, independent auditors and other experts or agents who need to know such information in connection with the Offering or any other services provided by UBS Securities or its affiliates to the Servicer and its affiliates. UBS Securities accepts responsibility for compliance by the persons referred to in clause (vii) above with the provisions of this paragraph. This undertaking by UBS Securities shall automatically terminate one year following the termination of UBS Securities' engagement hereunder.

Notwithstanding anything to the contrary contained in this Agreement, UBS may disclose to any and all persons, without limitation of any kind, the U.S. federal, state and local tax treatment of the securities and the Issuer, any fact that may be relevant to understanding the U.S. federal, state and local tax treatment of the securities and the Issuer, and all materials of any kind (including opinions or other tax analyses) relating to such U.S. federal, state and local tax treatment and that may be relevant to understanding such tax treatment.

(c) The Servicer shall, or shall cause one or more of its affiliates (including funds and accounts managed by it or its affiliates) or other non-affiliated persons identified by it to UBS Securities, to purchase directly from the Issuer (or in the case of any such non-affiliated person, only through UBS Securities) on the Closing Date 100% of the aggregate principal or notional amount, as applicable, of the Subordinated Notes issued on the Closing Date at a purchase price to be agreed between UBS and the Servicer prior to the Closing Date. Subject to the foregoing, the allocation of Securities to be purchased by the Servicer and/or its affiliates shall be determined by the Servicer at the time of pricing of the Securities.

(d) Completion of the Transaction shall be subject to the following conditions precedent as well as such other terms and conditions as shall be set forth in the definitive documentation for the Transaction and as may be required by UBS Securities, the Servicer, the Rating Agencies, the

trustee to the Transaction, the counterparty to or provider of any credit protection, the accountants of the Issuer and/or legal counsel to the Transaction on or prior to the Closing Date:

(i) UBS Securities and its counsel shall have completed a due diligence review with respect to the Servicer (including any of the officers, directors, partners or principals thereof) and the Transaction and such due diligence review shall have been entirely satisfactory to UBS Securities and its counsel;

(ii) a preliminary version of the offering memorandum, in form and substance reasonably satisfactory to UBS Securities, the Issuer and the Servicer shall have been prepared on a timetable suitable to give UBS Securities an adequate opportunity to distribute such document to potential investors, and the final offering memorandum shall have been prepared and distributed to investors prior to the Closing Date;

(iii) UBS Securities shall have received all necessary internal approvals;

(iv) on or prior to the Closing Date, agreement shall have been reached on the final terms of the Transaction (including the terms of and ratings provided for the Notes and the composition of the initial Portfolio Investments), in each case consistent with the terms reflected in this Agreement (unless otherwise agreed by the parties hereto) and in each case to the extent not covered by the condition set forth in paragraph (vi) below;

(v) all of the definitive documentation (including any documentation relating to any credit protection with a counterparty to or other provider thereof) for the Transaction shall have been negotiated and, as may be specified by the terms thereof, entered into in form and substance reasonably satisfactory to each of UBS Securities, the Issuer and the Servicer and consistent with the terms reflected in this Agreement (unless otherwise agreed by the parties hereto and the applicable Transaction participant(s)) and containing customary provisions for financings of this nature, including appropriate conditions (not inconsistent with this Section), representations and warranties and indemnification and contribution provisions;

(vi) on or prior to the Closing Date, all necessary third party approvals and consents, including any governmental and regulatory approvals and/or consents, any comfort letter to be provided by any independent accountants and any legal opinions (as may reasonably be required by UBS Securities, the Rating Agencies, the Issuer, the Servicer, the provider of any credit protection and investors) with respect to the Transaction shall have been obtained, in form reasonably satisfactory to UBS Securities, the Servicer, the Rating Agencies, the Issuer, investors, the counterparty to any Hedge and the counterparty to or provider of any credit protection;

(vii) there shall not have occurred after the date of this Agreement and prior to the Closing Date, any material adverse change in the business, operations, financial condition or prospects of the Servicer such that it no longer has the capacity to perform its obligations hereunder or under the definitive documents for the Transaction;

(viii) there shall not have occurred after the date of incorporation thereof and prior to the Closing Date any material adverse change in the business, operations, financial condition or prospects of the Issuer;



(ix) as of the Closing Date, the Issuer shall have entered into purchase commitments for not less than the amount of Portfolio Investments that is necessary to be purchased (or committed to be purchased) by the Issuer as of the Closing Date to satisfy the Rating Agencies and other requirements as set forth in the definitive documentation. These purchase commitments must include the Portfolio Investments;

(x) there shall not exist as at the Closing Date any material breach of any of the terms of this Agreement that is not capable of being remedied or, if capable of being remedied, has not been remedied within five days of notice of the breach as provided by the party not in breach;

(xi) the Notes shall have been assigned ratings by each of the Rating Agencies at levels that are consistent with the ratings for the Securities included in the Disclosure Documents;

(xii) none of the following events shall have occurred on or prior to the Closing Date: (1) a suspension or material limitation in trading in securities generally on the New York Stock Exchange, the American Stock Exchange or the NASDAQ; (2) a general moratorium on commercial banking activities declared by either federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (3) an outbreak or escalation of hostilities or acts of terrorism involving the United States or a declaration by the United States of a national emergency or war; or (4) any other calamity or crisis or any change in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (3) or (4) in UBS' judgment makes it impracticable or inadvisable to proceed with the offering or the delivery of the Securities on the terms and in the manner contemplated in this Agreement and the Placement Agreement; and

(xiii) the aggregate discounts to par on the Securities shall not exceed the Structuring and Placement Fee payable to UBS.

Nothing herein shall prevent or limit UBS Securities at its sole election from discussing and/or marketing, placing or selling any type or types of securities of any issuer or issuers or company or companies to any of UBS Securities' clients or potential clients. UBS Securities recognizes and acknowledges that the Servicer shall continue to investigate, promote and service its own or its clients structured products and any private placements. Such activities shall not constitute a breach of this Agreement save that the Servicer undertakes not to market or promote any Similar Transaction.

Each of the Servicer and UBS Securities acknowledges and agrees that, given the market conditions existing as of the date hereof for securities similar to the Securities and the rate of return desired by the Servicer on the Subordinated Notes that it is obligated hereunder to purchase (directly or through one or more affiliates), it is not currently feasible under such circumstances to sell the Securities and to close the Transaction.

5. Fees and Expenses. (a) It is agreed that on the Closing Date a portion of the proceeds from the issuance of the Securities issued on the Closing Date will be applied to pay UBS Securities or any affiliate of UBS Securities, with respect to any securities that UBS Securities, or affiliate of UBS Securities, as applicable, places as compensation for its services hereunder, a



fee (the "Structuring and Placement Fee") that is equal to 1.0% of the par or notional amount of the Securities that is required for an anticipated U.S.\$818,000,000 deal size. The Issuer will pay from the proceeds of the Transaction an amount equal to U.S.\$150,000 to the Co-Manager, if any.

(b) In addition, it is acknowledged and agreed that the Issuer shall apply proceeds from the issuance of its Securities to pay for its reasonable out-of-pocket costs and expenses incurred by it in connection with the Transaction and to reimburse each of the Servicer and UBS Securities for its out-of-pocket costs and expenses incurred by it in connection with the Transaction, including, without limitation, the reasonable fees and disbursements of each of the Servicer's legal counsel and UBS Securities' legal counsel the Rating Agencies and the fees and expenses of any other third party necessary for the completion of the Offering, including legal counsel to the Issuer, printers, trustees, accountants and custodians; provided, however, that if the Offering is not completed (i) by reason of gross negligence, fraud or willful misconduct of any party under, or other material breach by any party of, this Agreement, then such party shall bear all the reasonable out-of-pocket costs and expenses incurred by the parties hereto and the Issuer in connection with the Transaction; (ii) if the Servicer unilaterally terminates this Agreement other than as a result of an act by UBS Securities described in clause (i) or UBS Securities unilaterally terminates this Agreement other than as a result of a Servicer Event (as defined below) or an act by the Servicer described in clause (i), then such terminating party shall bear all the reasonable out-of-pocket costs and expenses incurred by the other parties hereto and the Issuer in connection with the Transaction and (iii) for any other reason (other than the scenario described in Section 7(b) below), each party hereto agrees to split equally the reasonable fees and disbursements of the legal counsel to the Servicer and the legal counsel to UBS Securities and any fees and expenses of the Issuer or the Rating Agencies or other third parties incurred in connection with the Transaction but all other reasonable out-of-pocket cost and expenses will be paid by the party which incurs the cost or expense. The party responsible for any expenses will also be responsible for any taxes which may be due in respect of such expenses.

(c) As used above, "Servicer Event" means the Servicer shall fail to perform its material obligations under this Agreement or the Warehouse Documents in any material respect or shall breach any provision of this Agreement in any material respect.

(d) If any payment required to be made pursuant to this Agreement is to be made on a day that is not a Business Day, then such payment shall be made on the next following Business Day. As used herein, "Business Day" means any day of the year other than a Saturday, Sunday or other day on which commercial banking institutions in New York City, in London or, solely to the extent any action is to be taken in the Cayman Islands, in the Cayman Islands, are authorized or obligated by law, regulation or executive order to be closed.

6. Indemnification and Contribution. The parties hereto agree to the provisions set forth in Schedule I hereto, which provisions are incorporated by reference herein and constitute a part hereof.

7. Termination and Survival. (a) UBS Securities' engagement hereunder shall terminate automatically on the earlier of (i) March 14, 2009 (the "Expiration Date") and (ii) the termination date of the Warehouse Documents, without notice or other action by any of the parties, except

that if any Securities are issued on or before the Expiration Date, then UBS Securities' engagement hereunder shall terminate upon the completion of the Offering; provided that either party hereto may terminate UBS Securities' engagement hereunder at any time upon written notice to the other party without any liability or continuing obligation of either party to the other, except as otherwise expressly provided herein; and provided further that if termination of the Warehouse Documents is extended beyond the Expiration Date, then the Expiration Date shall automatically be extended to the termination date of the Warehouse Documents. Notwithstanding the foregoing or anything to the contrary herein this Section 7 (Termination and Survival), the provisions of Section 2 (Engagement of UBS Securities; Mutual Release) related to release of liability, Section 4 (Marketing and Offering of Securities) related to confidentiality of non-public information, Section 5 (Fees and Expenses), Section 6 (Indemnification and Contribution), Section 8 (Certain Matters Relating to Engagement), Section 10 (Governing Law, Waiver of Jury Trial and Submission to Jurisdiction) and Section 11 (Miscellaneous) will survive any termination of this Agreement or the termination of UBS Securities' engagement hereunder (whether as a result of the completion of the Offering or otherwise). Notwithstanding anything herein to the contrary, no termination of this Agreement by either party will result in the automatic termination of the Warehouse Documents, unless (i) the Servicer unilaterally terminates this Agreement by written notice to UBS Securities other than as a result of a material breach by UBS Securities of this Agreement or gross negligence, fraud (as evidenced by an indictment) or willful misconduct of UBS Securities related to its duties hereunder (a "UBS Termination Event") or (ii) UBS Securities unilaterally terminates this Agreement by written notice to the Servicer as a result of the Servicer's failure to (a) purchase Subordinated Notes in accordance with Section 4(c) or (b) pay fees and expenses due and payable to UBS Securities pursuant to Section 5(b) or Section 7(b).

(b) The Servicer further agrees that if (i) it terminates UBS Securities' engagement hereunder or determines not to proceed with the Transaction, in either case, prior to the Expiration Date and for any reason other than a UBS Termination Event), (ii) no Securities are issued and (iii) it or any of its affiliates performs the services of the Servicer described herein or any similar services for any Similar Transaction during the 90-day period following such termination or determination not to proceed, then UBS Securities shall be entitled to payment by the Servicer of (x) any out-of-pocket costs and expenses borne by UBS Securities in connection with the Transaction (including, but not limited to, any such reasonable out-of-pocket costs and expenses of the Issuer borne by UBS Securities) and (y) as consideration for its services hereunder, the fees that UBS Securities would have been entitled to under Section 5 had the Closing Date occurred and the Securities been issued, calculated based on the actual par or notional amount of securities issued in such Similar Transaction, which amount shall in no event be less than the Structuring and Placement Fee; provided, however, that if the Transaction is not completed for failure to satisfy the conditions precedent in Sections 4(d)(xii) and (xiii), the Servicer shall be permitted to engage any other person to consummate the Transaction and the provisions of this Section 7(b) shall not then apply and UBS Securities shall be responsible only for its own out-of-pocket costs and expenses.

8. Certain Matters Relating to Engagement. (a) The Servicer acknowledges that UBS Securities has been retained solely to provide the services set forth herein. In rendering such services, UBS Securities' shall act as an independent contractor, and any duties of UBS Securities arising out of its engagement hereunder shall be owed solely to the Servicer. In



trading and brokerage activities, as well as providing investment banking, asset management, financing and financial advisory services and other commercial and investment banking products and services to a wide range of corporations and individuals. In the ordinary course of its trading, brokerage, asset management and financing activities, UBS Securities and its affiliates may at any time hold long or short positions, and may trade or otherwise effect transactions, for its own account or the other accounts of customers, in debt or equity securities or senior loans of persons or entities that may be involved in the transactions contemplated hereby (including, without limitation, obligors under proposed or actual Portfolio Investments). UBS Securities and its affiliates recognize its responsibility for compliance with federal securities laws in connection with such activities.

(b) In addition, UBS Securities and its affiliates may have and may in the future have investment and commercial banking, trust and other relationships with parties other than the Servicer, which parties may have interests with respect to the transactions contemplated hereby (including, without limitation, obligors under proposed or actual Portfolio Investments). Although UBS Securities and its affiliates in the course of such other relationships may acquire information about such other parties, UBS Securities and its affiliates shall have no obligation to disclose such information, or the fact that UBS Securities and its affiliates is in possession of such information, to the Servicer or to use such information on its behalf. Furthermore, UBS Securities and its affiliates may have fiduciary or other relationships whereby UBS Securities and its affiliates may exercise voting power over securities of various persons, which securities may from time to time include securities of persons or entities that may be involved in the transactions contemplated hereby (including, without limitation, obligors under proposed or actual Portfolio Investments). The Servicer acknowledges that UBS Securities and its affiliates may exercise such powers and otherwise perform its functions in connection with such fiduciary or other relationships without regard to its relationship to the Servicer.

10. Governing Law, Waiver of Jury Trial and Submission to Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York State without regard to its conflicts of law principles.

(b) Each of the parties hereto irrevocably agree that any state or federal court sitting in The City of New York, New York shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement (respectively "Proceedings" and "Disputes") and, for such purposes, irrevocably submits to the exclusive jurisdiction of such courts. Each of the parties hereto irrevocably waive any objection which it might now or hereafter have to any state and federal courts sitting in The City of New York, New York being nominated as the forum to hear and determine any Proceedings and to settle any Disputes and agrees not to claim that any such court is not a convenient or appropriate forum. ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY SUCH DISPUTE OR PROCEEDING IS EXPRESSLY AND IRREVOCABLY WAIVED.

11. Miscellaneous. This Agreement and the Warehouse Documents contain the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto. This Agreement may not be amended or



modified except by a writing executed by each of the parties hereto. Section headings herein are for convenience only and are not a part of this Agreement. This Agreement is solely for the benefit of the parties hereto, and no other person (except for indemnified persons to the extent set forth in Schedule I hereto, UBS AG and affiliates of UBS Securities as provided in Section 8(a)) shall acquire or have any rights under or by virtue of this Agreement. This Agreement may not be assigned by either party hereto without the other party's prior written consent. Neither party hereto shall be responsible or have any liability to any other party for any indirect, special or consequential damages arising out of or in connection with this Agreement or the transactions contemplated hereby, even if advised of the possibility thereof.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.



If the foregoing correctly sets forth our understanding, please so indicate by executing this letter, together with the enclosed duplicate originals, in the place indicated and returning two of these originals for our files.

Very truly yours,

UBS SECURITIES LLC

By: Keith Grimaldi  
Name: KEITH GRIMALDI  
Title: MANAGING DIRECTOR

By: Timothy E. LeRoy  
Name: TIMOTHY LEROY  
Title: EXEC DIRECTOR

Accepted and agreed to as of the date first written above:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: \_\_\_\_\_  
Name:  
Title:

If the foregoing correctly sets forth our understanding, please so indicate by executing this letter, together with the enclosed duplicate originals, in the place indicated and returning two of these originals for our files.

Very truly yours,

UBS SECURITIES LLC

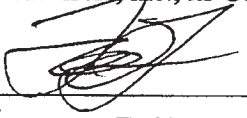
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Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed to as of the date first written above:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:  \_\_\_\_\_  
Name: **Todd Travers**  
Title: **Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

## SCHEDULE I

In connection with the engagement of UBS Securities, the Servicer hereby agrees to indemnify and hold harmless UBS Securities, its affiliates, and each of UBS Securities' and such affiliates' respective officers, directors, agents, employees and controlling persons (each of the foregoing, including UBS Securities, being hereinafter referred to as an "UBS Indemnified Party") from and against any and all losses, costs, claims, damages, liabilities expenses (including reasonable fees, disbursements and other charges of counsel), actions, proceedings, arbitrations or investigations (regardless of whether any of such UBS Indemnified Parties is a party thereto), or threats thereof, based upon, relating to, arising out of or in connection with (i) any breach or alleged breach by the Servicer (or any of its affiliates) of any agreement, representation, covenant or warranty in the Agreement or the Servicing Agreement; or (ii) any untrue statement or alleged untrue statement of a material fact contained in any prospectus, offering memorandum or other written material delivered to prospective purchasers of any Securities, in each case, including but not limited to any amendments or supplements thereto and including but not limited to any documents deemed to be incorporated in any such documents by reference (the "Offering Materials"), or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, but only to the extent such untrue statement or alleged untrue statement or omission or alleged omission is made in reliance upon and in conformity with any written information relating to the Servicer delivered by or on behalf of the Servicer to the Issuer, its agents or UBS Securities expressly for use in the Offering Materials. In connection with the Servicer's obligation to indemnify for expenses as set forth above, it further agrees to reimburse each UBS Indemnified Party for (without duplication) all such expenses (including reasonable fees, disbursements and other charges of counsel) as they are incurred by such UBS Indemnified Party.

UBS Securities hereby agrees to indemnify and hold harmless the Servicer, and each of its respective affiliates, and the Servicer's and such affiliates' respective officers, directors, agents, employees and controlling persons (each of the foregoing, including the Servicer, being hereinafter referred to as a "Servicer Indemnified Party") from and against any and all losses, costs, claims, damages, liabilities expenses (including reasonable fees, disbursements and other charges of counsel), actions, proceedings, arbitrations or investigations (regardless of whether any of such Servicer Indemnified Parties is a party thereto), or threats thereof, based upon, relating to, arising out of or in connection with any untrue statement or alleged untrue statement of a material fact contained in the Offering Materials, or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading but only to the extent such untrue statement or alleged untrue statement or omission or alleged omission is made in reliance upon and in conformity with any written information relating to UBS Securities delivered by or on behalf of UBS Securities to the Issuer or its agents expressly for use in the Offering Materials. In connection with UBS Securities' obligation to indemnify for expenses as set forth above, it further agree to reimburse each Servicer Indemnified Party for (without duplication) all such expenses (including reasonable fees, disbursements and other charges of counsel) as they are incurred by such Servicer Indemnified Party. (The Servicer Indemnified Party and UBS Securities Indemnified Party being hereinafter referred to collectively as the "Indemnified Parties" and individually, as an "Indemnified Party.")

In case any proceeding (including any governmental investigation) shall be instituted involving an Indemnified Party, such Indemnified Party shall promptly notify in writing the Servicer (the "Servicer Indemnifying Party"), in the case such Indemnified Party is a UBS Indemnified Person, or UBS Securities (the "UBS Indemnifying Party"), in the case such Indemnified Party is a Servicer Indemnified Party (the Servicer Indemnifying Parties and UBS Indemnifying Parties being hereinafter referred to collectively as the "Indemnifying Parties" and individually, as an "Indemnifying Party") (provided that the failure to give such notice to an Indemnifying Party hereunder shall not relieve such Indemnifying Party from any liability such Indemnifying Party has hereunder unless and only to the extent that such Indemnifying Party is materially prejudiced thereby), and the applicable Indemnifying Party shall have the right, exercisable by giving written notice to such Indemnified Party, within 30 days of receipt of such written notice from such Indemnified Party of such proceeding, to retain counsel reasonably satisfactory to such Indemnified Party to represent such Indemnified Party and any others that the Servicer, in the case such Indemnified Party is a Servicer Indemnified Party, or UBS Securities, in the case such Indemnified Party is a UBS Indemnified Party, may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, such Indemnified Party shall have the right to retain its own counsel and to participate in the defense of the proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Servicer, in the case such Indemnified Party is a UBS Indemnified Party, and UBS Securities, in the case such Indemnified Party is a Servicer Indemnified Party, and such Indemnified Party shall have mutually agreed in writing to the retention of such counsel, (ii) the use of counsel chosen by the applicable Indemnifying Party to represent such Indemnified Party would present such counsel with a conflict of interest or (iii) the named parties to any such proceeding (including any impleaded parties) include the Servicer, in the case such Indemnified Party is a UBS Indemnified Party, or UBS Securities, in the case such Indemnified Party is a Servicer Indemnified Party, and such Indemnified Party, and (A) such Indemnified Party has been advised by counsel that representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them or (B) such Indemnified Party has reasonably concluded (based on advice of counsel to such Indemnified Party) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the applicable Indemnifying Party. It is understood that the Servicer, with respect to a UBS Indemnified Party, and UBS Securities, with respect to a Servicer Indemnified Party, shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such UBS Indemnified Parties in the case of the Servicer and for all Servicer Indemnified Parties, in the case of UBS Securities, and that all such reasonable fees and expenses shall be reimbursed as they are incurred and paid.

Neither Indemnifying Party shall be liable for any settlement of any proceeding without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Servicer in the case of a UBS Indemnified Party and UBS Securities in the case of a Servicer Indemnified Party agrees, subject to the limitations set forth in this Schedule I, to indemnify such Indemnified Party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an Indemnified Party shall have requested an Indemnifying Party to reimburse such Indemnified Party for fees and expenses of counsel as contemplated by this Schedule I, then such Indemnifying Party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such

The Servicer and UBS Securities agree that it would not be just and equitable if contribution pursuant to this Schedule I were determined by pro rata allocation or any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to limitations set forth above, any legal or other expenses incurred in connection with investigating or defending any such action or claim. Notwithstanding any of the provisions of this Schedule I, in no event shall UBS Securities' aggregate contribution to the amount paid or payable exceed the aggregate amount of the fees actually received by UBS Securities under the Agreement and the Transaction contemplated herein.

002788



Capitalized terms used but not defined in this Schedule I have the meanings assigned to such terms in the Agreement.



## **EXHIBIT 7**

EXECUTION COPY

## CASH WAREHOUSE AGREEMENT

WAREHOUSE AGREEMENT dated as of March 14, 2008 (this "Agreement"), among UBS Securities LLC ("UBS"), Highland CDO Opportunity Master Fund, L.P. (the "CDO Fund"), Highland Special Opportunities Holding Company ("SOHC") and Highland Capital Management, L.P. (the "Company") in its capacity as Servicer (the "Servicer").

### RECITALS

WHEREAS, UBS and the Company were parties to an engagement letter dated April 20, 2007 (the "Original Engagement Letter"), UBS, the Servicer and SOHC were parties to a warehouse agreement dated May 22, 2007 (the "Original Cash Warehouse Agreement") and UBS AG, London Branch ("UBS AG"), the Servicer and SOHC were parties to a Synthetic Warehouse Agreement dated April 12, 2007 (the "Original Synthetic Warehouse Agreement") and together with the Original Engagement Letter and the Original Cash Warehouse Agreement, the "Original Documents").

WHEREAS, pursuant to the terms of the Original Documents, UBS AG agreed to act as seller with respect to the portfolio of credit default swaps selected by the Servicer and UBS agreed to purchase collateral debt securities selected by the Servicer.

WHEREAS, the Original Engagement Letter expired on August 15, 2007 and the Original Cash Warehouse Agreement and the Original Synthetic Warehouse Agreement expired in accordance with their terms.

WHEREAS, pursuant to an engagement letter dated March 14, 2008 (as amended from time to time, the "Engagement Letter"), between UBS and the Company, UBS has been engaged to act as exclusive financial arranger and placement agent with respect to, among other things, (a) the structuring of several classes of debt securities (collectively, the "Notes") and one or more classes of equity securities or subordinated notes (collectively, the "Subordinated Notes") and, along with the Notes, collectively, the "CDO Securities") to be issued by one or more newly formed special purpose entities (collectively, the "Issuer") in a collateralized debt obligation transaction (the "Transaction") and (b) the marketing and placement of the CDO Securities.

WHEREAS, each of the Servicer, SOHC, the CDO Fund and the Company desires that UBS AG warehouse the portfolio of credit default swaps (each an "Existing Credit Default Swap") and that UBS warehouse the collateral obligations (each an "Existing Collateral Obligation") and, collectively, the "Existing Collateral Portfolio") that were the subject of the Original Synthetic Warehouse Agreement and the Original Cash Warehouse Agreement, respectively, on the terms set forth herein and in the Synthetic Warehouse Agreement dated as of even date herewith (the "New Synthetic Warehouse Agreement") among UBS AG, the Servicer, the CDO Fund and SOHC.

WHEREAS, each of the Servicer, SOHC, the CDO Fund and the Company desires that UBS AG warehouse additional portfolio of credit default swaps referencing collateralized loan obligations ("CLO Securities") pursuant to the terms of the New Synthetic Warehouse Agreement (such swaps, the "Additional Credit Default Swaps" and such CLO



Securities, the "Reference Obligations"). The Additional Credit Default Swaps and the Existing Credit Default Swaps are collectively referred to as the "Credit Default Swaps." The portfolio of Additional Credit Default Swaps, together with the Existing Credit Default Swaps, is herein called the "CDS Portfolio."

WHEREAS, each of the Servicer, SOHC, the CDO Fund and the Company desires that UBS warehouse additional CLO Securities that otherwise satisfy the Eligibility Criteria set forth in Annex A hereto (such collateral obligations, the "Additional Collateral Obligations" and together with the Existing Collateral Obligations, the "Collateral Obligations") pursuant to the terms of this Agreement. The portfolio of Additional Collateral Obligations, together with the Existing Collateral Obligations, is herein referred to as the "Collateral Portfolio."

WHEREAS, the CDO Securities will be secured or backed by the CDS Portfolio and the Collateral Portfolio and certain other assets of the Issuer.

WHEREAS, in order to facilitate the Issuer's purchase of the Collateral Portfolio on the Closing Date, the Company has requested UBS, and UBS has agreed, to acquire and warehouse the Collateral Portfolio on the terms and conditions set forth herein.

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

1. Definitions. Capitalized terms used herein and not otherwise defined herein, including in Exhibit A, shall have the meanings set forth in the New Synthetic Warehouse Agreement. Words importing the singular number shall include the plural number and vice versa.
2. Accumulation, Holding and Hedging of Collateral Obligations; Servicer Duties.
  - (A) Accumulation of Collateral Obligations. Each of the Existing Collateral Obligations identified on Schedule 1 attached hereto shall be deemed to be acquired by UBS pursuant to this Agreement on the date hereof at the price at which UBS acquired such Existing Collateral Obligation under the Original Cash Warehouse Agreement (net of all payments of principal received by UBS on or prior to the date hereof in respect thereof) and UBS shall deposit or otherwise cause such Collateral Obligation to be credited to the Warehouse Account on the date hereof. During the Accumulation Period, the Servicer will select each Additional Collateral Obligation to be included in the Collateral Portfolio and, at least three Business Days' prior to committing the Issuer to purchase such Collateral Obligation, will provide notice (a "Purchase Request") to UBS of the identity of such Collateral Obligation and the price at which UBS shall purchase such Collateral Obligation (the "Offer Price"). Subject to the immediately succeeding sentence and the satisfaction of the conditions set forth in Section 3 hereof, UBS shall purchase any Additional Collateral Obligation identified by the Servicer at a price no greater than the Offer Price (or such other price as UBS and the Servicer may mutually agree to). The Servicer shall provide UBS (or any of



its Affiliates) the opportunity to offer for sale any security for inclusion as a Collateral Obligation in the Collateral Portfolio at a price that is mutually agreed upon by UBS and the Servicer; provided that the Servicer is not obligated to purchase any such security.

- (B) Hedging of Collateral Obligations. After consultation with the Servicer, UBS (or any of its Affiliates) may enter into a Hedging Transaction in respect of any one or a group of Collateral Obligations held in the Warehouse Account. UBS (or its Affiliates) may terminate, in part or in whole, or amend any such Hedging Transaction upon the liquidation of the related Collateral Obligation or, after consultation with the Servicer, at any other time. In addition, on the Pricing Date or on any other date determined by UBS in its reasonable discretion, UBS shall (i) terminate any Hedging Transactions in respect of any Collateral Obligations, and (ii) assist the Servicer in arranging for the Issuer to enter into an interest rate hedging agreement for the account of the Issuer with respect to the portfolio of Collateral Obligations to be acquired by the Issuer on the Closing Date. UBS (or the relevant Affiliate) will provide the Servicer with copies of each Hedging Transaction confirmation; provided, however, that the identity of the related swap counterparty shall be disclosed only to the extent such counterparty thereto provides its prior written consent thereto.
- (C) Limit on Amount of Collateral Obligations. The sum of the aggregate par amount of the CLO Securities in the Collateral Portfolio and the aggregate notional amount of the Credit Default Swaps in the CDS Portfolio (the "Aggregate Portfolio Balance") shall not exceed \$817,940,000 (or such other amount as the parties hereto may otherwise agree in writing).
- (D) Holding Collateral Obligations. UBS shall hold all Collateral Obligations in the Warehouse Account pending the sale or liquidation of such Collateral Obligations pursuant to Sections 4, 5 or 6 hereof. With respect to each Collateral Obligation held in the Warehouse Account, UBS shall, until conveyed, transferred or sold to the Issuer or otherwise conveyed in accordance with this Agreement, be entitled, subject to the provisions of Sections 4, 5 and 6 hereof, to (1) receive and retain any and all proceeds (including, without limitation, any principal, interest and other payments) on such Collateral Obligation; provided that within three Business Days following the end of the related Carry Period, UBS shall deposit any Positive Carry with respect to such Collateral Obligation into the Deposit Account; (2) following consultation with the Servicer, exercise any and all other rights (including without limitation, voting and exchange rights) with respect to such Collateral Obligation and (3) rehypothecate, or otherwise transfer or hedge the credit or other risk associated with, such Collateral Obligation.
- (E) Eligibility Criteria. The Servicer shall not issue any Purchase Request to UBS in connection with the purchase of a Collateral Obligation hereunder that it knows or (consistent with the customary standards, policies and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Collateral Portfolio) should have known that if (A) any of the

Eligibility Criteria will not be satisfied by such Collateral Obligation or by the Collateral Portfolio immediately after giving effect to such purchase or (B) the acquisition and ownership of such Collateral Obligation by the Issuer would cause the Issuer to be engaged in a trade or business within the United States for United States Federal income tax purposes (provided that the Servicer shall be deemed to comply with this clause (B) to the extent it complies with the procedures set forth in Annex B).

- (F) Notice of Ineligibility. The Servicer shall notify UBS promptly if at any time during the term of this Agreement it becomes aware that a Collateral Obligation does not conform to the Eligibility Criteria, as applicable. At any time during the Accumulation Period, UBS shall be entitled, in good faith to designate any Collateral Obligation as an Ineligible Security and, in its sole discretion, to remove any Ineligible Security from the Collateral Portfolio following such designation, subject to Section 4.
3. Conditions to Accumulation. The obligation of UBS to acquire any Collateral Obligation for inclusion in the Warehouse Account in accordance with Section 2 hereof is subject to the satisfaction of the following conditions:
- (A) with respect to any Collateral Obligation proposed for inclusion in the Warehouse Account, (i) UBS is satisfied, in its sole discretion, that such Collateral Obligation satisfies the Eligibility Criteria and (ii) UBS shall have given prior consent, in its sole discretion, to the acquisition of such Collateral Obligation;
- (B) in the case of any Collateral Obligation to be acquired by UBS prior to the Pricing Date, UBS is satisfied in its reasonable discretion that the risk of depreciation in Market Value of such Collateral Obligation by reason of an increase in interest rates during the Carry Period for such Collateral Obligation is hedged pursuant to one or more Hedging Transactions or does not require hedging; and
- (C) the CDO Fund and SOHC shall collectively have deposited in the Deposit Account, the Initial Deposit and any required Additional Deposit in accordance with the terms of the New Synthetic Warehouse Agreement on the date hereof.
4. Sale of Collateral Obligations in Connection with the Closing Date or During the Accumulation Period.
- (A) If the Closing Date occurs on or prior to the Termination Date, UBS (or its Affiliate) shall enter into the Forward Sale Agreement with the Issuer at least three days prior to the Closing Date and, with respect to each Collateral Obligation held in the Warehouse Account (other than a Collateral Obligation determined to be an Ineligible Security pursuant to Section 6 hereof), a Forward Sale Transaction pursuant to which it shall sell such Collateral Obligation to the Issuer on the Closing Date in exchange for the payment to it by the Issuer of an amount equal to the related Issuer Purchase Price in immediately available funds.

- (B) At any time during the Accumulation Period, any Ineligible Security may be liquidated by UBS in its sole discretion in accordance with Section 6 and Section 7.
- (C) If a Net Collateral Loss is determined in connection with any sale or liquidation of Collateral Obligations under clause (A) or (B) above, such Net Collateral Loss shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages.
- (D) If a Net Collateral Gain is determined in connection with any sale or liquidation of Collateral Obligations under clause (A) or (B) above, such Net Collateral Gain shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages.
- (E) If the Closing Date occurs, UBS shall be entitled to retain for its own account an aggregate amount equal to (i) the sum of its Financing Costs with respect to each Collateral Obligation *plus* (ii) (A) the sum of the Issuer Purchase Price with respect to each Collateral Obligation *minus* (B) the sum of all accrued and unpaid interest (other than Purchase Accrued Interest) with respect to each such Collateral Obligation, and, subject to Section 5(C), the CDO Fund and SOHC shall be entitled to receive any Positive Carry with respect to each Collateral Obligation, allocated to each of them based on their respective Allocation Percentages.
- (F) If the Closing Date occurs, each of the CDO Fund and SOHC shall, after notice from UBS of the amount of the excess if any of the aggregate of the Net Collateral Losses with respect to all Ineligible Securities over the aggregate of the Net Collateral Gains with respect to all Ineligible Securities (such excess, the "Aggregate Collateral Loss"), remit such Aggregate Collateral Loss by wire transfer in immediately available funds on the Closing Date to UBS, such amounts to be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. UBS shall pay an amount equal to the excess if any of the aggregate of the Net Collateral Gains over the aggregate of the Net Collateral Losses ("Aggregate Collateral Gain") to the CDO Fund and SOHC, collectively, based on their respective Allocation Percentages, on the Termination Date following determination of such Aggregate Collateral Gain by wire transfer in immediately available funds.

5. Failure to Close; Termination Date.

- (A) If the Closing Date fails to occur on or prior to the Termination Date, then the Forward Sale Agreement, if entered into, shall terminate in whole by its terms on the Termination Date and UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures. Following the completion of such liquidation of the Collateral Obligations, any Aggregate Collateral Loss shall be allocated to the CDO Fund and to SOHC on the basis of their respective Allocation Percentages.

For purposes of determining the Net Collateral Gain and Net Collateral Loss, any Collateral Obligation which UBS does not direct to be sold, shall be deemed sold to UBS for its Market Value. Each of the CDO Fund and SOHC shall, within three Business Days after the Termination Date, remit to UBS by wire transfer in immediately available funds its respective allocation of any Aggregate Collateral Loss determined by UBS and notified to it. UBS shall pay each of the CDO Fund and SOHC within three Business Days after the Termination Date any Aggregate Collateral Gain due to such parties by wire transfer in immediately available funds, such payment to be allocated in accordance with their respective Allocation Percentages.

- (B) If the Closing Date fails to occur for any reason, UBS shall be entitled to retain for its own account an aggregate amount equal to (i) the sum of its Financing Costs with respect to each Collateral Obligation and (ii) the sum of the Issuer Purchase Prices with respect to each Collateral Obligation.

6. Liquidation of Ineligible Securities.

- (A) If, at any time during the Carry Period therefor, the Servicer determines that a Collateral Obligation is an Ineligible Security it, shall promptly so notify UBS in writing (including by electronic mail or facsimile).
- (B) If either (i) UBS agrees with the Servicer's determination that a Collateral Obligation is an Ineligible Security or (ii) UBS itself determines in good faith that any Collateral Obligation is an Ineligible Security UBS may notify the Servicer that UBS elects to sell such Collateral Obligation, then any related Forward Sale Transaction shall immediately terminate in whole by its terms and UBS shall be authorized (but not required) to sell such Collateral Obligation.
- (C) Notwithstanding anything herein to the contrary, any Net Collateral Gain or other amounts otherwise payable by UBS hereunder to the CDO Fund or SOHC in connection with the sale or liquidation of a Collateral Obligation under this Section 6 shall be deposited into the Deposit Account for application as otherwise permitted by this Agreement or the New Synthetic Warehouse Agreement and shall not be payable to the CDO Fund or SOHC prior to the Termination Date.

7. Liquidation Procedures.

- (A) If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS's Affiliates in which event, for purposes of determining Net Collateral Gain and Net Collateral Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to its Market Value. To the extent that UBS in its sole discretion elects to retain such Collateral Obligation, the Servicer will have the right to purchase such Collateral Obligation at its Market Value. To the extent

that UBS in its sole discretion elects to sell such Collateral Obligation, the Servicer will have the right to bid for and purchase such Collateral Obligation at a purchase price equal to the highest third party bid received by UBS for the purchase of such Collateral Obligation. For the avoidance of doubt, UBS may terminate the sale process with respect to any such Collateral Obligation at anytime prior to the consummation of the contemplated sale without responsibility or liability to the Servicer. Notwithstanding Section 2(B), on or about the date of the liquidation of any Collateral Obligation hereunder, UBS shall terminate any related Hedging Transaction (or the related portion of any Hedging Transaction that relates to a group of Collateral Obligations).

(B) The Servicer will, if reasonably requested by UBS, cooperate with UBS in effecting any sale of a Collateral Obligation hereunder.

8. Set-off. If any amount is due from UBS to the CDO Fund or SOHC pursuant to this Agreement, UBS shall promptly pay such amount on the Termination Date after deducting first therefrom all amounts due from the CDO Fund or SOHC to UBS or UBS AG, in each case solely under this Agreement or the New Synthetic Warehouse Agreement.
9. Notices. Unless expressly provided otherwise in writing by the parties hereto, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or in the case of facsimile, when confirmation of transmission is received, addressed as set forth below:

If to UBS:

UBS Securities LLC  
677 Washington Blvd  
Stamford, Connecticut 06701  
Fax: (203) 719-5639  
Attention: CLO Group  
E-mail: OL-CDO-IR@ubs.com

If to the Servicer:

Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240  
Fax: (972) 628-4022  
Attention: Todd Travers  
E-mail: [tatravers@hcmlp.com](mailto:tatravers@hcmlp.com)



If to the CDO Fund:

c/o Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240  
Fax: (972) 628-4022  
Attention: Todd Travers  
E-mail: [tatravers@hcmlp.com](mailto:tatravers@hcmlp.com)

If to SOHC:

c/o Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240  
Fax: (972) 628-4022  
Attention: Todd Travers  
E-mail: [tatravers@hcmlp.com](mailto:tatravers@hcmlp.com)

Any party hereto may alter the address or facsimile number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 9 for the giving of notice.

10. Term. This Agreement shall continue in full force and effect and shall be irrevocable by any party hereto until the Termination Date; provided, however, that Sections 4, 5, 6, 7, 13, 14 and 15 shall survive the termination of this Agreement.

11. Representation and Acknowledgements.

(A) Each of the parties represents and warrants to the other parties that:

(1) it is duly authorized to execute and deliver this Agreement and/to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance;

(2) the person signing this Agreement on its behalf is duly authorized to do so on its behalf;

(3) it has obtained all authorizations of any governmental body required in connection with this Agreement and the transactions contemplated hereby and such authorizations are in full force and effect; and

(4) the execution, delivery and performance by it of this Agreement and the transactions contemplated hereby will not violate any law, ordinance, charter, by-law, partnership agreement or rule applicable to it or any other agreement by which it is bound or by which any of its assets

are affected. Each party shall be deemed to repeat all of the foregoing representations made by it on each date on which UBS purchases any Collateral Obligation.

(B) Each of the CDO Fund, SOHC and the Company acknowledges and agrees that neither UBS nor any Affiliate thereof is, or holds itself out to be, an advisor as to legal, tax, accounting or regulatory matters in any jurisdiction. Each such Person shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the risks, benefits and suitability of the transactions contemplated by this Agreement, and agrees that neither UBS nor any Affiliate thereof shall have any responsibility or liability to the such Person (in any capacity) or any other Person with respect thereto.

(C) Each of the CDO Fund, SOHC and the Company hereby acknowledges that:

(1) UBS AG (the parent of UBS) and its subsidiaries, branches and affiliates (the "UBS Group") are involved in a wide range of commercial banking, investment banking and other activities (including investment management, corporate finance and securities issuing, trading and research) from which conflicting interests or duties, may arise;

(2) information which is held within UBS, or within the UBS Group, but of which none of the individuals involved in this Agreement (including in the purchase or sale of Collateral Obligations pursuant to this Agreement) actually has (or without breach of internal procedures can properly obtain) knowledge, will not for any purpose be taken into account in determining UBS' responsibilities hereunder;

(3) neither UBS nor any other part of the UBS Group will have any duty to disclose to the parties hereto or utilize for the benefit of the parties hereto any non-public information acquired in the course of providing services to any other person, engaging in any transaction (on its own account or otherwise) or otherwise carrying on its business; and

(4) in the ordinary course of business, UBS, and its Affiliates may trade the Collateral Obligations comprising the Collateral Portfolio for its own account and for the accounts of customers, and may at any time hold a long or short position in such obligations.

(D) Each of the parties acknowledge and agree that:

(1) Until each Collateral Obligation acquired by UBS and held in the Warehouse Account is conveyed, transferred or sold to the Issuer or otherwise conveyed in accordance with this Agreement, UBS is the owner of and has sole "control" (within the meaning of Articles 8 and 9 of the Uniform Commercial Code as in effect in the State of New York) over each such Collateral Obligation, and neither the Issuer, the CDO Fund, the



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Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any person other than the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, none of the parties hereto may assign its rights or obligations pursuant to this Agreement without the prior written consent of the other parties hereto; provided further that UBS may assign its rights and obligations hereunder to any of its Affiliates without such prior written consent.

19. Provisions Separable. If any term, provision, covenant or condition of this Agreement, or the application thereof to any party or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, provisions, covenants and conditions of this Agreement, modified by the deletion of the unenforceable, invalid or illegal portion (in any relevant jurisdiction), will continue in full force and effect, and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms, provisions, covenants and conditions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the deletion of such portion of this Agreement will not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavour in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.
20. Indulgences Not Waivers. Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or any other right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver. The rights and remedies of the parties provided herein are cumulative and are in addition to, and not exclusive of, any rights, remedies, powers or privileges provided by law.
21. Titles Not to Affect Interpretation. The titles of the sections and paragraphs contained in this Agreement are for convenience only, and they neither form part of this Agreement nor are they to be used in the construction or interpretation hereof.
22. Counterparts. This Agreement may be executed in two or more counterparts, all of which together shall be considered a single instrument. Delivery of an executed counterpart of this Agreement by telecopier or facsimile transmission shall constitute due and sufficient delivery thereof.
23. UBS Agents. UBS may appoint any of its Affiliates (including UBS AG) to act as an agent for UBS hereunder or as custodian of the Collateral Obligations for UBS.



- (A) Each of the Company, the Servicer, the CDO Fund and SOHC, on behalf of itself and its current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns (collectively, the "Highland Releasing Parties"), hereby releases and forever discharges UBS, including, but not limited to, any of its current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns and any of their past or present officers, directors, employees and agents (collectively, the "UBS Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which such Highland Releasing Parties ever had, now have or may have had against the UBS Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Cash Warehouse Agreement and/or the transactions contemplated thereby.
- (B) UBS, on behalf of itself and its respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, hereby releases and forever discharges the Company, the Servicer, the CDO Fund and SOHC, including, but not limited to, any of their respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns and any of their past or present officers, directors, employees and agents (collectively, the "Highland Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which UBS and such other Persons ever had, now has or may have had against the Highland Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Cash Warehouse Agreement and/or the transactions contemplated thereby.
- (C) All Aggregate Collateral Losses determined in respect of the Existing Collateral Portfolio shall be payable solely in accordance with this Agreement.

- (B) UBS, on behalf of itself and its respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, hereby releases and forever discharges the Company, the Servicer, the CDO Fund and SOHC, including, but not limited to, any of their respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns and any of their past or present officers, directors, employees and agents (collectively, the "Highland Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which UBS and such other Persons ever had, now has or may have had against the Highland Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Cash Warehouse Agreement and/or the transactions contemplated thereby.

- (C) All Aggregate Collateral Losses determined in respect of the Existing Collateral Portfolio shall be payable solely in accordance with this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UBS SECURITIES LLC

By:°

Name: KEITH GRIMARDI  
Title: MANAGING DIRECTOR

By:

Name: Timothy E Leroux  
Title: EXEL DIRECTOR

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HIGHLAND CDO OPPORTUNITY MASTER  
FUND, L.P.

By:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

By:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UBS SECURITIES LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HIGHLAND CAPITAL MANAGEMENT, L.P.**


By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Todd Travers**  
**Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

# HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By:   
Name: **Todd Travers**  
Title: **Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

HIGHLAND SPECIAL OPPORTUNITIES  
HOLDING COMPANY

By:   
Name: \_\_\_\_\_  
Title: Highland Special Opportunities Holding Company  
Todd Travers  
Chief Executive Office

ANNEX A

**ELIGIBILITY CRITERIA**

Except as otherwise agreed in writing by UBS and the Servicer, no Collateral Obligation may be purchased for initial and continuing inclusion in the Warehouse Account unless it:

- (1) is a U.S. dollar denominated collateralized loan obligation security issued by a U.S. issuer, a Qualified SPV Issuer or a Qualified Foreign Issuer;
- (2) is not a Defaulted Security;
- (3) provides for a fixed amount of principal to be payable at maturity;
- (4) is not a loan covered by (7);
- (5) is rated by the applicable Rating Agency or Agencies or otherwise meets the requirements to obtain a rating therefrom;
- (6) is a security issued by an entity treated as a corporation for U.S. federal income tax purposes and no payments thereon are subject to withholding tax imposed by any jurisdiction unless the obligor of the security is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after-tax basis;
- (7) is not an obligation pursuant to which future advances or payments may be required;
- (8) has not been put on a watch list for a possible ratings downgrade by Moody's or S&P, as applicable;
- (9) is a security which complies with the tax restrictions set forth in Annex B;
- (10) is not Margin Stock and is not convertible into, and has no associated rights, warrants or options to purchase, Margin Stock; and
- (11) is not a Premium Security.

The foregoing criteria as applicable to the Transaction are subject to amendment by UBS, in its reasonable discretion, from time to time on or prior to the Settlement Date in accordance with (i) the requirements of the Rating Agencies, (ii) investor feedback received by UBS or (iii) if applicable, the requirements of any monoline insurer, hedge provider or other credit enhancement provider to the Issuer. For the avoidance of doubt, the determination of whether a Collateral Obligation complies with the Eligibility Criteria shall take into account not only the individual characteristics of such Collateral Obligation, but also all of the Collateral Obligations that then comprise the Collateral Portfolio and the effect on the Collateral Portfolio of inclusion of such Collateral Obligation.

EXHIBIT A

**DEFINITIONS**

"Accumulation Period" means the period commencing on the first date on which the conditions set forth in Section 3 are satisfied or waived and ending on, and including, the Termination Date.

"Adjusted Purchase Price" means, with respect to any Collateral Obligation constituting part of the Collateral Portfolio on any date of determination, a price equal to (a) the UBS Purchase Price of such Collateral Obligation *minus* (b) the aggregate amount of all distributions of principal actually received from the issuer thereof by UBS on or prior to such date of determination in respect of such Collateral Obligation.

"Affiliate" means, in relation to any specified Person, (a) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such Person or (b) any other Person who is a director, officer, member or partner of (i) such Person or (ii) any such other Person described in clause (a) above; provided that no other special purpose company to which an administrator of the Issuer provides directors and acts as share trustee shall be an Affiliate of the Issuer. For the purposes of this definition, *control* of a Person means the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Aggregate Portfolio Balance" shall have the meaning provided in Section 2(C).

"Allocation Percentage" means (a) with respect to the CDO Fund, (i) if the Closing Date has not occurred, the percentage obtained by multiplying 100 by a fraction, the numerator of which is the par value of the subordinated notes or other equity issued to the CDO Fund in connection with the Transaction and the denominator of which is the aggregate par value of all subordinated notes or other equity issued to the CDO Fund, HFP and any subsidiaries of Highland Financial Partners, LP, in connection with the closing of the Transaction and (ii) if the Closing Date has occurred, 51%; and (b) with respect to SOHC, (i) if the Closing Date has occurred, the percentage obtained by subtracting the percentage obtained for the CDO Fund under clause (a)(i) from 100% and (ii) if the Closing Date has not occurred, 49%.

"Applicable Spread" means 0.35%.

"Business Day" means any day of the year other than a Saturday, Sunday or other day on which commercial banking institutions in New York City, in London or, solely to the extent any action is to be taken in the Cayman Islands, in the Cayman Islands, are authorized or obligated by law, regulation or executive order to be closed. If any payment required to be made pursuant to this Agreement or the New Synthetic Warehouse Agreement is to be made on a day that is not a Business Day, then such payment shall be made on the next following Business Day.

"Carry" means, with respect to any Collateral Obligation, an amount determined by (a) calculating, for each day during the related Carry Period therefor, the product of (i) the sum of (x) the UBS Purchase Price of such Collateral Obligation *minus* (y) the aggregate amount



of all distributions of principal of such Collateral Obligation, in each case, actually received by UBS in respect of such Collateral Obligation on or prior to such accrual date *multiplied by* (ii) the Carry Yield *divided by* (iii) 360 and (b) calculating the sum of the products calculated pursuant to clause (a).

"Carry Period" means, with respect to each Collateral Obligation constituting part of the Collateral Portfolio (other than a Collateral Obligation that is a Defaulted Security pursuant to clause (ii) of the definition of such term), the period commencing on (and including) the settlement date on which UBS acquires such Collateral Obligation, including the original acquisition date of any Existing Collateral Obligation, and ending on (and excluding) (a) if such Collateral Obligation is to be sold to the Issuer pursuant to Section 4, the Settlement Date of such Collateral Obligation or (b) if such Collateral Obligation is to be liquidated in accordance with Section 5 or 6, the date of liquidation of such Collateral Obligation.

"Carry Yield" means:

- (a) with respect to a Collateral Obligation that is a Discount Security or Premium Security, the effective yield (determined by UBS in good faith) on such Collateral Obligation on the first day of the Carry Period for such Collateral Obligation implied by the UBS Purchase Price (expressed on a "clean" basis); provided that, with respect to any such Collateral Obligation that bears interest at an interest rate determined by reference to a fixed spread above or below a London Interbank offered rate or other index, such effective yield (as determined by UBS in good faith) shall be expressed as the sum of (i) such London Interbank offered rate or other index (as in effect from time to time) *plus* (or *minus*) (ii) a spread above or below the level of such London Interbank offered rate or other index used to calculate such interest rate for the period that includes the first day of the Carry Period for such Collateral Obligation; and
- (b) with respect to a Collateral Obligation that is not a Discount Security or Premium Security, the rate per annum at which interest is stated to accrue on such Collateral Obligation on the first day of the Carry Period for such Collateral Obligation; provided that, with respect to any such Collateral Obligation that bears interest at an interest rate determined by reference to a fixed spread above or below a London Interbank offered rate, the rate per annum equal to the sum of such London Interbank offered rate (as in effect from time to time) *plus* (or *minus*) such fixed spread.

"Cash Exposure" shall have the meaning provided in Section 12(B) of the Synthetic Warehouse Agreement.

"CDS Exposure" shall have the meaning provided in Section 12(B) of the Synthetic Warehouse Agreement.

"Closing Date" means the date of the closing of the Transaction and the issuance of the CDO Securities.

"Collateral Portfolio" means the Collateral Obligations in the Warehouse Account.

"Defaulted Security" means any Collateral Obligation with respect to which (i) the maturity of all or a portion of any payment due under such obligation has been accelerated; (ii) there has occurred and is continuing a default as to payment of principal and/or interest; (iii) the issuer thereof is in default as to payment of principal and/or interest on another obligation (and such default has not been cured or waived) which is senior or *pari passu* in right of payment to such Collateral Obligation; (iv) the issuer or guarantor thereof is bankrupt or insolvent, or there is appointed over it or a substantial part of its assets a receiver, administrator, administrative receiver, trustee or similar officer or (v) the rating thereof from S&P is "CCC" or lower or is withdrawn by S&P or the rating thereof from Moody's is "Caa2" or lower or is withdrawn by Moody's.

"Deposit" has the meaning specified thereto in the New Synthetic Warehouse Agreement.

"Deposit Account" has the meaning specified thereto in the New Synthetic Warehouse Agreement.

"Designated Security" means a Collateral Obligation included in the Warehouse Account that UBS and the Servicer mutually agree should be liquidated in accordance with this Agreement.

"Discount Security" means any Collateral Obligation with a UBS Purchase Price (exclusive of accrued interest) less than the principal amount thereof on the date of purchase by UBS hereunder.

"Eligibility Criteria" means the criteria set forth in Annex A attached.

"Financing Cost" means, with respect to any Collateral Obligation, an amount determined by (a) calculating, for each day during the related Carry Period therefor, the product of (i) the sum of (x) the UBS Purchase Price of such Collateral Obligation *plus* any Purchased Accrued Interest *plus* any Net Hedge Payment *minus* any Net Hedge Receipt *less* (y) the aggregate amount of all distributions of principal of and Purchased Accrued Interest on such Collateral Obligation, in each case, actually received by UBS in respect of such Collateral Obligation on or prior to such accrual date *multiplied by* (ii) LIBOR for the LIBOR Period in effect on such accrual date *plus* the Applicable Spread *divided by* (iii) 360 and (b) calculating the sum of the products calculated pursuant to clause (a).

"Forward Sale Agreement" means the forward sale agreement that shall be entered into between UBS and the Issuer in connection with the Closing Date, which shall govern each Forward Sale Transaction and which shall include the terms and conditions set forth in Section 4 hereof.

"Forward Sale Transaction" means a forward sale transaction in which UBS shall agree to sell a Collateral Obligation to the Issuer pursuant to the Forward Sale Agreement.

"Hedge Termination Amount" means, in connection with the termination of any Hedging Transaction, an amount equal to the aggregate of any Hedge Termination Payments *less* the aggregate of any Hedge Termination Receipts (such resulting amount may be a positive or negative number).

"Hedge Termination Payment" means, with respect to any Collateral Obligation subject to a Hedging Transaction, the amount, if positive, equal to (a) the amount of any net payment required to be paid by UBS upon the early termination or liquidation of the Hedging Transaction related to such Collateral Obligation and otherwise, zero.

"Hedge Termination Receipt" means, with respect to any Collateral Obligation subject to a Hedging Transaction, the amount, if positive, equal to (a) the amount of any net payment required to be paid to UBS upon the early termination or liquidation of the Hedging Transaction related to such Collateral Obligation and otherwise, zero.

"Hedging Transaction" means an interest rate exchange or protection agreement or short sales of securities, entered into by UBS or any of its Affiliates with respect to one or more Collateral Obligation in accordance with this Agreement.

"Ineligible Security" means, any Collateral Obligation in the Collateral Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Collateral Obligation to conform to the Eligibility Criteria as it exists at such time of determination (whether as a result of a change in the Eligibility Criteria required by a Rating Agency, a request by potential investors or otherwise). Each of the following is an "Ineligible Security": a Defaulted Security, a Designated Security or a Written Down Security.

"Initial Deposit" has the meaning specified thereto in the New Synthetic Warehouse Agreement.

"Issuer Purchase Price" means, with respect to any Collateral Obligation constituting part of the Collateral Portfolio on any date of determination, a price equal to (a) the Adjusted Purchase Price of such Collateral Obligation on such date *plus* (b) accrued and unpaid interest (including unpaid Purchased Accrued Interest and any interest accrued in respect of Carry Yield on Discounted Securities and Premium Securities) *plus* any Hedge Termination Payment or Net Hedge Payment made on or prior to such date of determination by UBS (or any of its Affiliates) under any Hedging Transaction (or portion thereof) related to such Collateral Obligation, *minus* (d) any Hedge Termination Receipt or Net Hedge Receipt received on or prior to such date of determination by UBS (or any of its Affiliates) under any Hedging Transaction (or portion thereof) related to such Collateral Obligation.

"LIBOR" means, for any LIBOR Period, the offered rate, as determined by UBS, for dollar deposits in Europe of one month that appears on Telerate Page 3750 (or such other page as may replace such Telerate Page 3750 for the purpose of displaying comparable rates) as of 11:00 a.m. (New York City time) on the date two Banking Days prior to the first day of such LIBOR Period; provided that LIBOR, for any Collateral Obligation that bears interest based on the London intermarket offered rate, means such rate, as determined in accordance with the terms of such Collateral Obligation.

"LIBOR Period" means (a) the period commencing on (and including) the date hereof and ending on (but excluding) the one-month anniversary of such date and (b) each period thereafter commencing on (and including) the day following the last day included in the immediately preceding LIBOR Period and ending on (but excluding) the one-month anniversary of the first day of such LIBOR Period.

"Liquidation Procedures" means the sale of a Collateral Obligation in accordance with the procedures set forth in Section 7.

"Margin Stock" has the meaning assigned thereto under Regulation U.

"Market Value" means

(1) with respect to any Collateral Obligation at any time, an amount, as determined by or at the direction of UBS, equal to:

(a) if the Market Value is being determined for a security which has been sold (or is being sold) hereunder, the price paid or to be paid by the purchaser thereof (excluding amounts paid or to be paid in respect of accrued interest), less any costs, fees and expenses incurred (or estimated by UBS to be incurred) by UBS in connection with such sale; and

(b) otherwise, the arithmetic average of at least three bids (or, if UBS is unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized securities dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates) to purchase such security (exclusive of accrued interest, but after deducting all reasonable costs, fees and expenses that UBS estimates would be incurred in connection with any actual sale or other liquidation of such security by UBS); and

(c) otherwise, the mean of bid and ask prices for such security as determined by UBS using its customary methods and in good faith or, if UBS determines that such bid and ask prices are not available, such other method as is customarily used by UBS in good faith to value similar securities; and

(2) with respect to any Eligible Security at any time, the market value thereof determined by UBS in good faith.

Any determination of the Market Value of a Collateral Obligation or Eligible Security (including any determination of any cost, fee or expense that would be incurred in consideration of a sale thereof) made by or on behalf of UBS in the manner described above shall be conclusive, absent manifest error.

"Net Collateral Gain" means, as of any date, with respect to any specified Collateral Obligations sold by UBS pursuant to Sections 4, 5 or 6, the excess, if any, of (a) the aggregate amount of all Realized Gains accrued on or prior to such date with respect to such Collateral Obligations over (b) the aggregate amount of all Realized Losses incurred on or prior to such date with respect to such Collateral Obligations.

"Net Collateral Loss" means, as of any date, with respect to any specified Collateral Obligations sold by UBS pursuant to Sections 4, 5 or 6, the excess, if any, of (a) the aggregate amount of all Realized Losses incurred on or prior to such date with respect to such Collateral Obligations over (b) the aggregate amount of all Realized Gains incurred on or prior to such date with respect to such Collateral Obligations.

"Net Hedge Payment" means, with respect to any Collateral Debt Obligation or Credit Default Swap, the excess, if any, of (i) any payments (other than termination payments) paid by UBS (or any of its Affiliates) under any related Hedging Transaction to the extent allocable to such Collateral Obligation or Credit Default Swap, as the case may be, *over* (ii) any payments (other than termination payments) paid to UBS (or any of its Affiliates) under any related Hedging Transaction to the extent allocable to such Collateral Obligation or Credit Default Swap, as the case may be.

"Net Hedge Receipt" means the excess, if any, of (i) any payments (other than termination payments) paid to UBS (or any of its Affiliates) under any related Hedging Transaction to the extent allocable to such Collateral Obligation or Credit Default Swap, as the case may be, *over* (ii) any payments (other than termination payments) paid by UBS (or any of its Affiliates) under any related Hedging Transaction to the extent allocable to such Collateral Obligation.

"Offer Price" has the meaning assigned thereto in Section 2(A).

"Person" means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Positive Carry" means, with respect to each Collateral Obligation at any time constituting part of the Collateral Portfolio, (a) the Carry with respect to such Collateral Obligation *minus* (b) the Financing Cost with respect to such Collateral Obligation *minus* (c) any Net Hedge Payment with respect to such Collateral Obligation *plus* (d) any Net Hedge Receipt; provided that, if the Positive Carry so determined for any Collateral Obligations is less than zero, the Positive Carry with respect to such Collateral Obligation shall be deemed to be equal to zero.

"Premium Security" a security for which the UBS Purchase Price exceeds the principal amount thereof.

"Pricing Date" means the date on which UBS and the Issuer have priced the Notes.

"Purchased Accrued Interest" means, with respect to any Collateral Obligation purchased by UBS, unpaid interest thereon accrued to the settlement date for such purchase included in the purchase price therefor.

"Purchase Request" has the meaning assigned thereto in Section 2(A).

"Qualified Foreign Issuer" means a corporation, partnership or other issuer located in Australia, Canada, France, Germany, Ireland, the Netherlands, the Netherlands







collateral securing such securities (excluding defaulted collateral and after taking into account any appraisal reductions).



(C) Collateralized Obligations Purchased from the Servicer and Affiliates.

If the Servicer or an affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structuror in connection with the issuance or origination of a Collateral Obligation or was a member of the original lending syndicate with respect to the Collateral Obligation, the Issuer will not acquire any interest in such Collateral Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Collateral Obligation has been outstanding for at least 30 days, (ii) the holder of the Collateral Obligation did not identify the obligation or security as intended for sale to the Issuer within 30 days of its issuance, (iii) the employees or agents or the Servicer responsible for selecting Collateral Obligations for the Issuer were not directly involved in the origination of the Collateral Obligation on behalf of the Servicer, an affiliate of the Servicer, or a fund managed by the Servicer (e.g. responsible for approving or reviewing the lending decision, participation in a credit committee reviewing any loan proposed to be made), (iv) the price paid for such obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (v) after the acquisition the Issuer will own less than 50% of the aggregate principal amount of the borrowing that includes such Collateral Obligation.

(D) Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is treated for U.S. federal income tax purposes as:

- (1) an equity interest in a "partnership" (within the meaning of Section 7701(a)(2) of the Code) engaged or deemed to be engaged in a trade or business within the United States, or
- (2) a United States real property interest" as defined in Section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may acquire stock of a subsidiary and cause such subsidiary to acquire assets set forth in clause (i) or (ii) above (an "ETB/897 Asset") in connection with the workout of defaulted Collateral Obligations, so long as the acquisition of ETB/897 Assets by such subsidiary will not cause the stock of such subsidiary to be deemed to be an ETB/897 Asset.

(E) Debt Securities.

The Issuer will acquire or commit to acquire Collateral Obligations, other than those described in Section 1(G) and Section 2, only if either:

- (i) the obligation or security was issued pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), in an underwriting or placement where none of the Servicer or any Affiliate thereof acted as an underwriter or placement agent (unless they are issued by a Person for whom one of its Affiliates acts as one of a syndicate of placement agents or underwriters provided the Servicer purchases any such security on an arms length basis at a then current market price from a member of such syndicate); or



- (ii) the obligation or security was privately placed under Rule 144A or Regulation S promulgated under the Securities Act, it was originally issued pursuant to an offering circular, private placement memorandum, or similar offering document, and it is purchased from an underwriter or placement agent and not directly from the obligor and:
- (x) the Servicer and its employees did not participate in the placement as placement agent or underwriter or participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities); or
  - (y) the Servicer and its Affiliates did not (i) participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) or (ii) acquire or commit to acquire more than 33% of the aggregate principal amount of such obligations or securities or any other class of obligations or securities offered by the obligor or issuer in the same or any related offering (unless Persons unrelated to the Servicer and its Affiliates purchased more than 50% of the aggregate principal amount of such obligations or securities or such class at substantially the same time and on substantially the same terms as the Issuer).

(F) Revolving Loans and Delayed Drawdown Loans.

The Issuer will not purchase any Collateral Obligation that constitutes a Revolving Loan or Delayed Drawdown Loan.

(G) Application to Synthetic Securities.

The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex A or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security Collateral Accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, in each case in accordance with the Indenture, shall not constitute the making of advances).

No Synthetic Security acquired by the Issuer shall (i) require that the purchaser of credit protection thereunder own the applicable Reference Obligation or (ii) require by its terms the delivery of reports or other information relating to the Reference Obligation if the effect of such requirement is that the purchaser of credit protection thereunder would be required to own the applicable Reference Obligation.



of credit issued to an obligor in connection with an interest in a term loan of the same obligor that is at least as large as the exposure under the letter of credit and that is acquired at the same time and with the intent and expectation to hold the interest in the term loan at least as long as it holds the interest in the letter of credit.

2. Restrictions with Respect to Loans and Forward Purchase Commitments.

- (A) Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller must be treated as a forward sale agreement (a "Forward Purchase Commitment") unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent investment decision whether to purchase such Loan on behalf of the Issuer after completion of the closing and full funding of the Loan) (a "Non-Binding Agreement").
- (B) No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof, (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.
- (C) In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Commitment.
- (D) The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment earlier than 48 hours (24 hours in connection with a Non-Binding Agreement) after the time of the closing and full funding of the Loan.
- (E) The Issuer cannot have a contractual relationship with the borrower with respect to a Loan until the Issuer actually purchases the Loan.
- (F) The Issuer cannot be a signatory on the lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan prior to the actual funding of the Loan by the institutions lending to the borrower.
- (G) The Issuer cannot purchase or commit to purchase a Loan if it would cause the Issuer to own more than 50% of the aggregate principal amount of the borrowing that includes such Loan.
- (H) The Issuer will not be listed as a "lender" or otherwise a party to a loan until after closing.

3. General Restrictions. The Issuer shall not:

- (A) hold itself out, through advertising or otherwise, as originating loans, lending funds, or making a market in or a dealer in loans or other assets;
- (B) register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, surety bond issuer, or a company engaged in loan origination;
- (C) take any action causing it to be treated as a bank, insurance company, or company engaged in loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;
- (D) hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;
- (E) treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;
- (F) disclose the identity of any holder of a Security to any person from whom it purchases Collateral Obligations or attempt to obtain more favorable terms from any seller as a result of the identity of any holder of a Security;
- (G) allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to invest in a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the Indenture or acquire a Collateral Obligation conditioned upon a particular person or entity holding Securities;
- (H) acquire any asset the holding or acquisition of which the Servicer believes would cause the Issuer to be subject to income tax on a net income basis;
- (I) hold any security as nominee for another person; or
- (J) buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

4. Amendments and Modifications.

In furtherance and not in limitation of this Annex A, the Servicer shall comply with all of the provisions set forth in this Annex A, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of McKee Nelson LLP that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause

the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Annex A may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received an opinion of McKee Nelson LLP that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.



## **EXHIBIT 8**

EXECUTION COPY

SYNTHETIC WAREHOUSE AGREEMENT

SYNTHETIC WAREHOUSE AGREEMENT dated as of March 14, 2008 (this "Agreement"), among UBS AG, London Branch ("UBS"), Highland CDO Opportunity Master Fund, L.P. (the "CDO Fund"), Highland Special Opportunities Holding Company ("SOHC") and Highland Capital Management, L.P. (the "Company") in its capacity as Servicer (the "Servicer").

RECITALS

WHEREAS, UBS Securities LLC ("UBSS") and the Company were parties to an engagement letter dated April 20, 2007 (the "Original Engagement Letter"), UBSS, the Company and SOHC were parties to a warehouse agreement dated May 22, 2007 (the "Original Cash Warehouse Agreement") and UBS, the Company and SOHC were parties to a Synthetic Warehouse Agreement dated April 12, 2007 (the "Original Synthetic Warehouse Agreement" and together with the Original Engagement Letter and the Original Cash Warehouse Agreement, the "Original Documents").

WHEREAS, pursuant to the terms of the Original Documents, UBS agreed to act as seller with respect to the portfolio of credit default swaps selected by the Servicer and UBSS agreed to purchase collateral debt securities selected by the Servicer.

WHEREAS, the Original Engagement Letter expired on August 15, 2007 and the Original Cash Warehouse Agreement and the Original Synthetic Warehouse Agreement expired in accordance with their terms.

WHEREAS, pursuant to an engagement letter dated March 14, 2008 (as amended from time to time, the "Engagement Letter"), between UBSS and the Company, UBSS has been engaged to act as exclusive financial arranger and placement agent with respect to, among other things, (a) the structuring of several classes of debt securities (collectively, the "Notes") and one or more classes of equity securities or subordinated notes (such equity securities, along with the Notes, collectively, the "CDO Securities") to be issued by one or more newly formed special purpose entities (collectively, the "Issuer") in a collateralized debt obligation transaction (the "Transaction") and (b) the marketing and placement of the CDO Securities.

WHEREAS, each of the Servicer, SOHC, the CDO Fund and the Company desires that UBS warehouse the portfolio of credit default swaps (each an "Existing Credit Default Swap") and that UBSS warehouse the collateral obligations (each an "Existing Collateral Obligation" and collectively, the "Existing Collateral Portfolio") that were the subject of the Original Synthetic Warehouse Agreement and the Original Cash Warehouse Agreement, respectively, on the terms set forth herein and in the Cash Warehouse Agreement dated as of even date herewith (the "New Cash Warehouse Agreement") among UBSS, the Servicer, the CDO Fund and SOHC.

WHEREAS, each of the Servicer, SOHC, the CDO Fund and the Company desires that UBS warehouse additional portfolio of credit default swaps referencing collateralized loan obligations ("CLO Securities") pursuant to the terms hereof (such credit default swaps, the "Additional Credit Default Swaps" and such CLO Securities, the "Reference



Obligations"). The Additional Credit Default Swaps and the Existing Credit Default Swaps are collectively referred to as the "Credit Default Swaps." The portfolio of Additional Credit Default Swaps, together with the Existing Credit Default Swaps, is herein referred to as the "CDS Portfolio."

WHEREAS, each of the Servicer, SOHC, the CDO Fund and the Company desires that UBSS warehouse additional CLO Securities that otherwise satisfy the Eligibility Criteria set forth in Annex A to the New Cash Warehouse Agreement (such collateral obligations, the "Additional Collateral Obligations" and together with the Existing Collateral Obligations, the "Collateral Obligations") pursuant to the terms of the New Cash Warehouse Agreement. The portfolio of Additional Collateral Obligations, together with the Existing Collateral Obligations, is herein referred to as the "Collateral Portfolio."

WHEREAS, the CDO Securities will be secured or backed by the CDS Portfolio and the Collateral Portfolio and certain other assets of the Issuer.

WHEREAS, in order to facilitate the Issuer's exposure to the CDS Portfolio on the Closing Date, the Company has requested that UBS, and UBS has agreed prior to the issuance of the CDO Securities, to act as seller (the "Seller") with respect to the CDS Portfolio with counterparties selected in accordance with the procedures set forth in Section 2 below, acting as buyers (each a "Buyer"), in each case, subject to the terms and conditions set forth herein.

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

1. Definitions. Capitalized terms used herein and not otherwise defined herein (including in Exhibits A and B) shall have the meanings set forth in the New Cash Warehouse Agreement. Words importing the singular number shall include the plural number and vice versa.
2. Accumulation of Reference Obligations, Hedging Transactions and Servicer Duties.
  - (A) Identification of Reference Obligations. As of the date hereof, UBS shall be deemed to have entered into each of the Existing Credit Default Swaps identified on Schedule 1 attached hereto, as Seller, pursuant to the terms of this Agreement and from and after the date hereof each such Existing Credit Default Swap shall be subject to the terms of this Agreement and shall be deemed to have been entered into on the date hereof and otherwise on the same terms as those on which such Credit Default Swaps were entered into by UBS under the Original Synthetic Warehouse Agreement; provided that the notional amount of each Existing Credit Default Swap shall be adjusted to reflect the payment of any Floating Amounts (as defined in the related Credit Default Swap) thereunder by UBS on or prior to the date hereof. During the Accumulation Period, the Servicer will identify each Additional Credit Default Swap satisfying the Eligibility Criteria set forth in Annex A hereto for possible inclusion in the CDS Portfolio and provide a list of

each Reference Obligation, including the pricing terms therein, to UBS. UBS will have the right in its sole discretion to enter into an Additional Credit Default Swap as Seller with a counterparty as Buyer with respect to any Reference Obligation identified by the Servicer. For the avoidance of doubt, as of the date hereof, there have been no Floating Amounts paid in respect of the CDS Portfolio.

- (B) Hedging Transactions. With the prior written consent of the Servicer, UBS (or any of its Affiliates) may enter into a Hedging Transaction in respect of any one or a group of Credit Default Swaps with respect to which it acts as Seller. UBS (or its Affiliates) may terminate, in part or in whole, or amend any such Hedging Transaction upon the liquidation of the related Credit Default Swaps or, after consultation with the Servicer, at any other time. In addition, on the Pricing Date or on any other date determined by UBS in its reasonable discretion, UBS shall (i) terminate any Hedging Transactions in respect of any Credit Default Swaps, and (ii) assist the Servicer in arranging for the Issuer to enter into a hedging agreement for the account of the Issuer with respect to the portfolio of Credit Default Swaps to be entered into directly or indirectly by the Issuer on the Closing Date. Upon written request by the Servicer, UBS (or the relevant Affiliate) will provide the Servicer with copies of each Hedging Transaction confirmation; provided, however, that the identity of the related swap counterparty shall be disclosed to the Servicer only to the extent such counterparty provides its prior written consent thereto.
- (C) Limit on Amount CDS Portfolio and Collateral Portfolio. The Aggregate Portfolio Balance shall not exceed U.S.\$817,940,000 (or such other amount as the parties hereto may otherwise agree in writing).
- (D) Holding Credit Default Swaps. UBS shall hold all Credit Default Swaps and Hedging Transactions in the Warehouse Account pending the termination or novation of such Credit Default Swaps pursuant to Sections 5 or 6 hereof and the termination of the related Hedging Transactions. With respect to each Credit Default Swap and each related Hedging Transaction held in the Warehouse Account, UBS shall, until conveyed, transferred or sold to the Issuer or otherwise disposed of in accordance with this Agreement, be entitled, subject to the provisions of Sections 5 and 6 hereof, to (1) receive and retain any and all proceeds (including, without limitation, any premiums, floating amounts and other payments) made to it under such Credit Default Swaps and Hedging Transactions; (2) exercise any and all other rights with respect to such Credit Default Swaps and Hedging Transactions and (3) transfer or hedge the credit or other risks associated with such Credit Default Swaps and Hedging Transactions.
- (E) Servicer Duties. The Servicer shall not identify any Reference Obligation that it knows or (consistent with the customary standards, policies and procedures followed by institutional managers of national standing relating to assets of the nature and character of the CDS Portfolio) should have known that (A) any of the Eligibility Criteria will not be satisfied by such Reference Obligation or by the portfolio of Reference Obligations immediately after UBS enters into such Credit

Default Swap or (B) the exposure to such Reference Obligation by the Issuer on the Closing Date would cause the Issuer to be engaged in a trade or business within the United States for United States Federal income tax purposes (provided that the Servicer shall be deemed to comply with this clause (B) to the extent it complies with the procedures set forth in Annex B).

- (F) Financing Fee. As consideration for entering into the Credit Default Swaps, UBS, shall be entitled to receive a monthly fee (the "Financing Fee") equal to 0.05% per annum of the average daily outstanding notional balance of the CDS Portfolio for the applicable monthly period, which Financing Fee will be deducted monthly from the premiums received by UBS in its capacity as Seller.
3. Form of Documentation. Each Existing Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, has been documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) an ISDA published confirmation for Credit Derivative Transaction on Collateralized Debt Obligation with Pay-As-You-Go or Physical Settlement (Dealer Form) consistent with the terms specified in the Original Synthetic Warehouse Agreement. Each Additional Credit Default Swap between UBS, acting as Seller, and a counterparty, acting as Buyer, will be documented in the form of (i) the ISDA Master Agreement and Schedule currently in effect between UBS and the related counterparty, which documents are confidential between UBS and such counterparty and (ii) the Confirmation attached hereto as Exhibit B, consistent with the terms specified in this Agreement. Upon written request by the Servicer, UBS (or the relevant Affiliate) will provide the Servicer with copies of each Credit Default Swap confirmation or Additional Credit Default Swap confirmation; provided, however, that the identity of the related swap counterparty shall be disclosed to the Servicer only to the extent such counterparty provides its prior written consent thereto.
4. Terms of Credit Default Swaps. From the Effective Date through the Scheduled Termination Date (as such capitalized terms are defined in the Credit Default Swaps) or earlier in each case as specified in the related Credit Default Swap, UBS as Seller will be entitled to receive from the Buyer a Fixed Amount specified in the related Credit Default Swap representing the premium for the protection purchased and upon the occurrence of certain designated events in the related Credit Default Swap, UBS as Seller will be required to make Floating Payments to the Buyer that will mirror the performance of the underlining Reference Obligations. Upon the occurrence of specified Credit Events in the related Credit Default Swap, the Buyer will upon delivery of notice to UBS as Seller have the right to terminate the Credit Default Swap and require UBS as Seller to purchase the Deliverable Obligation to physically settle the transaction. To the extent that there are reimbursement payments required pursuant to the terms of the related Credit Default Swap, the Buyer will be required to pay such amounts to UBS in the form of Additional Fixed Payments.
5. Novation and/or Termination of Credit Default Swaps; Procedures on Closing Date.



(A) The Servicer shall notify UBS promptly if at any time during the term of this Agreement it becomes aware that a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria. UBS shall be entitled in good faith to designate any Reference Obligation (and the related Credit Default Swap) as an Ineligible Security and (ii) in its sole discretion to remove any such Reference Obligation (and the related Credit Default Swap) from the CDS Portfolio. Any Credit Default Swap the Reference Obligation of which UBS does not designate (or does not agree with the Servicer's designation) as an Ineligible Security shall be deemed to be an "Eligible Credit Default Swap" and for the avoidance of doubt, any Credit Default Swap the Reference Obligation of which is removed from the CDS Portfolio may be terminated or novated by UBS in its sole discretion, subject only to the consent of the related counterparty. In connection with any election by UBS to remove any Ineligible Security from the CDS Portfolio, the Servicer, subject to the consent of the related counterparty, shall have the right to require UBS to assign its exposure under such Credit Default Swap to the Servicer or any of its Affiliates in lieu of terminating such Credit Default Swap or novating its position thereunder to a third party; provided that UBS, at any time prior to the consummation of any such novation and without liability to the Servicer or its Affiliates, may rescind its election to terminate or assign such Ineligible Security. To the extent any such Credit Default Swaps are terminated or novated, or at UBS's discretion, such exposure is retained following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6, UBS shall determine the Replacement Gain or Replacement Loss relating to such Credit Default Swaps as follows:

(1) To the extent there are any net replacement or termination payments made by a counterparty or dealer to UBS in connection with a novation or termination of a Credit Default Swap or a Hedging Transaction, such amount shall constitute the "Replacement Gain" with respect thereto.

(2) To the extent there are any net replacement or termination payments payable by UBS to a counterparty or dealer in connection with a novation or termination of a Credit Default Swap or a Hedging Transaction, such amount shall be the "Replacement Loss" with respect thereto.

(3) To the extent UBS retains such exposure, the Replacement Gain and Replacement Loss will be imputed based on the arithmetic average of at least three bids (or, if UBS is unable to obtain three such bids having made commercially reasonable efforts, such lesser number of bids as UBS is able to obtain) obtained by or on behalf of UBS from nationally recognized derivatives dealers in the relevant market (no more than one of which may be UBS or any of its Affiliates; provided that any such bid must be provided in good faith) to assume UBS's position under such Credit Default Swap.

(B) On the Closing Date:

(1) UBS shall have the right to enter into the following arrangements at its discretion with respect to Eligible Credit Default Swaps:

(a) A novation of the Eligible Credit Default Swaps to the Issuer;

(b) With the consent of the Servicer, a novation of the Eligible Credit Default Swaps to a third party counterparty, which counterparty shall simultaneously enter into Credit Default Swaps with the Issuer on the same terms as the Existing Credit Default Swaps and referencing the Reference Obligations that the counterparty is selling protection on pursuant to the Eligible Credit Default Swaps; or

(c) A purchase of credit protection from the Issuer pursuant to credit default swaps substantially in the form of the Credit Default Swaps that reference the Reference Obligations that UBS is selling protection on pursuant to the Eligible Credit Default Swaps.

To the extent that UBS opts to enter into the arrangements specified in (a), (b) or (c) above, it shall at least three Business Days prior to the Closing Date enter into a Forward Commitment Agreement (the "Forward Commitment Agreement") with the Issuer (or with respect to (b) above, it shall enter into a Forward Commitment Agreement with the related third party counterparty), pursuant to which the Issuer or such third party counterparty, as the case may be, will commit to either (i) assume all of the obligations of UBS by way of a novation or (ii) sell credit protection to UBS on the same terms as the existing Eligible Credit Default Swaps and referencing the Reference Obligations that are the subject of the Eligible Credit Default Swaps, as applicable. Notwithstanding the foregoing, to the extent that UBS elects to enter into the arrangements specified in clause (a) or (b) above, it shall be entitled to receive from the Buyer of protection under the Eligible Credit Default Swaps, any Additional Fixed Payments due and payable thereunder and such amount shall be payable by UBS to the CDO Fund and SOHC, collectively, to the extent the CDO Fund and SOHC has already reimbursed UBS for such amount, and allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. In the case of Eligible Credit Default Swaps novated to a third party counterparty, such right to receive Additional Fixed Payments shall be evidenced by a letter agreement (the "CDS Supplemental Agreement") between UBS and the third party counterparty.

To the extent that UBS elects to enter into the arrangements specified in (c) above, it shall be entitled to receive an annual

intermediation fee of 0.02% per annum that will be deducted from the premiums payable by UBS in its capacity as protection buyer to the Issuer in its capacity as protection seller. To the extent that UBS opts to enter into the arrangements specified in (b) above, the counterparty shall be entitled to receive an annual credit swap counterparty fee to be agreed upon by the Servicer and UBS that will be deducted from the premiums payable by such counterparty in its capacity as protection buyer to the Issuer in its capacity as protection seller.

(2) An amount equal to the excess, if any, of (x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, *plus* (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, *plus* (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the "CDS Losses") *over* (y) the sum of (1) the aggregate amount of all Fixed Amounts and Additional Fixed Payments received by UBS with respect to all Credit Default Swaps in excess of the related Financing Fee *plus* (2) the aggregate amount of Net Hedging Receipts received by UBS with respect to all of the Hedging Transactions related to the Credit Default Swaps, *plus* (3) the aggregate Replacement Gains determined with respect to all of the Credit Default Swaps that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (y), the "CDS Gains") shall collectively be paid by each of the CDO Fund and SOHC after notice from UBS of the amount due, by wire transfer in immediately available funds (i) on the Termination Date in the case of a Termination Date occurring on (a) March 14, 2009, (b) March 14, 2010 or (c) the Closing Date or (ii) three Business Days after the Termination Date in the case of any other Termination Date. Such CDS Loss shall be allocated among the CDO Fund and SOHC on the basis of their respective Allocation Percentages.

(3) an amount equal to the excess, if any, of (x) the CDS Gains *over* (y) the CDS Losses shall be paid by UBS to the CDO Fund and SOHC, collectively. Such CDS Gains shall be allocated among the CDO Fund and SOHC on the basis of their respective Allocation Percentages.

To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.

6. Failure to Close; Termination Date.

- (A) If the Closing Date fails to occur on or prior to the Termination Date, then UBS may, with the consent of the related counterparty, either (at the election of the Servicer; provided that notice of such election is received on or prior to the Termination Date) (i) terminate each Credit Default Swap or (ii) novate each Credit Default Swap to a third party or to the Servicer (or any Affiliate of the Servicer designated by the Servicer), in each case, on the Termination Date.
- (B) To the extent there are any CDS Gains, 100% of any such CDS Gains will be paid by UBS to the CDO Fund and SOHC, collectively. Such CDS Gains shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. UBS shall pay any CDS Gains to each of the CDO Fund and SOHC within three Business Days after the Termination Date by wire transfer in immediately available funds.
- (C) To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.
7. Set-off. If any amount is due from UBS to the CDO Fund or SOHC pursuant to this Agreement, UBS shall promptly pay such amount on the Termination Date after deducting first therefrom all amounts due from the CDO Fund or SOHC to UBS or UBS AG, in each case solely under this Agreement or the New Cash Warehouse Agreement.
8. Notices. Unless expressly provided otherwise in writing by the parties hereto, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or in the case of facsimile or e-mail, when confirmation of transmission is received, addressed as set forth below:

If to UBS:

UBS Securities LLC  
677 Washington Blvd  
Stamford, Connecticut 06701  
Fax: (203) 719-5639  
Attention: CLO Group  
E-mail: [OL-CDO-IR@ubs.com](mailto:OL-CDO-IR@ubs.com)

If to the Servicer:

Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240  
Fax: (972) 628-4022  
Attention: Todd Travers  
E-mail: [tatravers@hcmlp.com](mailto:tatravers@hcmlp.com)

If to the CDO Fund:

c/o Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240  
Fax: (972) 628-4022  
Attention: Todd Travers  
E-mail: [tatravers@hcmlp.com](mailto:tatravers@hcmlp.com)

If to SOHC:

c/o Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, Texas 75240  
Fax: (972) 628-4022  
Attention: Todd Travers  
E-mail: [tatravers@hcmlp.com](mailto:tatravers@hcmlp.com)

Any party hereto may alter the address or facsimile number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 8 for the giving of notice.

9. Term. This Agreement shall continue in full force and effect and shall be irrevocable by any party hereto until the Termination Date; provided, however, that Sections 4, 5, 6, 12, 13 and 14 shall survive the termination of this Agreement.

10. Representations and Acknowledgements.

(A) Each of the parties represents and warrants to the other parties that:

- (1) it is duly authorized to execute and deliver this Agreement and/to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance;
- (2) the person signing this Agreement on its behalf is duly authorized to do so on its behalf;



(4) the execution, delivery and performance by it of this Agreement and the transactions contemplated hereby will not violate any law, ordinance, charter, by-law, partnership agreement or rule applicable to it or any other agreement by which it is bound or by which any of its assets are affected. Each party shall be deemed to repeat all of the foregoing representations made by it on each date on which UBS purchases any Collateral Obligation.

(C) Each of the CDO Fund, SOHC and the Company hereby acknowledges that:

(2) Information which is held within UBS, or within the UBS Group, but of which none of the individuals involved in this Agreement (including in the warehousing of Credit Default Swaps pursuant to this Agreement) actually has (or without breach of internal procedures can properly obtain) knowledge, will not for any purpose be taken into account in determining UBS' responsibilities hereunder;

(4) In the ordinary course of business, UBS and its Affiliates may trade the Reference Obligations comprising the CDS Portfolio for its own

account and for the accounts of customers, and may at any time hold a long or short position in such obligations.

(D) Each of the parties acknowledge and agree that:

(1) Until a novation of any Eligible Credit Default Swap to the Issuer or a third party pursuant to the Section 5(B)(1)(a) or (b) of this Agreement or the termination of any Credit Default Swap, UBS is the owner of and has sole "control" "control" (within the meaning of Articles 8 and 9 of the UCC) over the CDS Portfolio and neither the Issuer, the CDO Fund, the Company, the Servicer nor SOHC has any rights in or title to any Credit Default Swap in the CDS Portfolio.

(2) This Agreement and any Forward Commitment Agreement entered into pursuant to this Agreement is intended to be and shall constitute either (a) a "securities contract" within the meaning of Section 741(7) of the Bankruptcy Code, 11 U.S.C. § 741(7), (b) a "forward contract" within the meaning of Section 101(25) of the Bankruptcy Code, 11 U.S.C. § 101(25) or (c) a "swap agreement" within the meaning of Section 101(53B) of the Bankruptcy Code, 11 U.S.C. § 101(53B).

11. Activity of the Servicer; Written Disclosure Statement.

- (A) The Company agrees to act as Servicer hereunder and to perform the duties and obligations of the Servicer described herein. The Servicer shall discharge its duties under this Agreement, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it manages for itself and others with similar investment objectives in accordance with its customary practices and procedures and no less than that which institutional money managers exercise with respect to comparable assets.
- (B) The Servicer will not be liable to UBS or any other Person for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders, advisors, attorneys or employees under or in connection with this Agreement, or for any decrease in the value of the CDS Portfolio, except by reason of acts or omissions constituting bad faith, willful misconduct or gross negligence in the performance of, or reckless disregard with respect to, the duties of the Servicer hereunder. For the avoidance of doubt, the provisions of this Section 11(B) are not intended to and shall not affect any liability that the Servicer may otherwise have under and pursuant to any other agreement.
- (C) The Servicer will not be entitled to compensation under this Agreement. Each party will be responsible for its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby except as provided for in Section 6.

- (D) The Servicer shall provide the Issuer (with a copy to UBS) with a copy of Part II of the Servicer's Form ADV for attachment as an exhibit to the final offering memorandum no later than two Business Days prior to the printing of the final offering memorandum for the CDO Securities.
- (E) If requested, the Servicer shall provide its auditors with information regarding the mark-to-market value of the Collateral Portfolio and the CDS Portfolio as of the date hereof and, if further requested, it shall periodically provide its auditors with updates of such information.

12. Deposit of Cash and Eligible Securities.

Each of the CDO Fund and SOHC collectively hereby agrees to transfer to the Deposit Account cash and Eligible Securities to secure its obligations to UBS hereunder and under the New Cash Warehouse Agreement in the amounts set forth below (collectively, the "Deposit"):

- (A) On the date of execution of this Agreement, an amount equal to (i) U.S.\$20,000,000 in cash and (ii) U.S.\$53,960,000 in Eligible Securities (collectively, the "Initial Deposit"); provided that, for the avoidance of doubt, the outstanding principal amount of each Eligible Security shall be determined after giving effect to the valuation percentages specified in Annex C hereto. The Initial Deposit shall be allocated 51% to the CDO Fund and 49% to SOHC. Dividends, distributions, interest payments and similar amounts representing investment earnings paid in respect of the Eligible Securities shall be deposited in the Deposit Account and applied in accordance with Section 14(C) hereof.
- (B) On the first and third Tuesday of each calendar month, or the next following Business Day if such Tuesday is not a Business Day, except that if such following Business Day occurs in the following calendar month, then the immediately preceding Business Day (each, a "Semi-Monthly Determination Date"), UBS shall determine (i) the aggregate amount of CDS Losses as of such Semi-Monthly Determination Date, assuming designation as of such date of each Eligible Credit Default Swap as an Ineligible Security and termination as of such date of each Eligible Credit Default Swap and each related Hedging Transaction (such amount, the "CDS Exposure"), (ii) the sum of (A) the aggregate Realized Losses incurred as of such date with respect to the Collateral Obligations and (B) the aggregate amount of Unrealized Losses incurred as of such date in respect of Collateral Obligations that have not been liquidated or deemed liquidated hereunder pursuant to Sections 4, 5 or 6 of the New Cash Warehouse Agreement (such sum, the "Cash Exposure"), (iii) the Aggregate Net Exposure Amount as of such date, (iv) the Deposit Threshold Exposure Amount as of such date, and (v) the aggregate required amount of Additional Deposits, if any, as of such date; provided that for purposes of calculating the balance on deposit in (or amounts transferred to) the Deposit Account for any purpose hereunder or under the New Cash Warehouse Agreement, any Eligible Security credited to the Deposit Account shall be included in such balance at the Market Value thereof.

- (C) If, as of any Semi-Monthly Determination Date, the Deposit Threshold Exposure Amount is greater than or equal to U.S.\$100,000,000, then, for each increment of U.S.\$100,000,000 included in the Deposit Threshold Exposure Amount, each of the CDO Fund and SOHC shall within two Business Days after such Semi-Monthly Determination Date, transfer to the Deposit Account an amount in cash and/or Eligible Securities equal to U.S.\$10,000,000 (each such required amount, an "Additional Deposit"), which amount shall be allocated between the CDO Fund and SOHC in accordance with their respective Allocation Percentages; provided, however, that in no event shall an Additional Deposit be required in respect of any U.S.\$100,000,000 increment of a Deposit Threshold Exposure Amount in respect of which an Additional Deposit was previously made in connection with the calculation of the Deposit Threshold Exposure Amount as of a prior Semi-Monthly Determination Date.
- (D) If as of the first Tuesday of any calendar month occurring after March 14, 2009, or the next following Business Day if such Tuesday is not a Business Day (each, a "Monthly Determination Date") a Material Adverse Change has occurred and is continuing, then the provisions of Section 12(C) above shall not apply on such Monthly Determination Date, and each of the CDO Fund and SOHC shall instead, within two Business Days after such Monthly Determination Date, transfer to the Deposit Account an amount in cash and/or Eligible Securities equal to the Aggregate Net Exposure Amount as of such Monthly Determination Date, which amount shall be allocated between the CDO Fund and SOHC in accordance with their respective Allocation Percentages.
- (E) Amounts on deposit in the Deposit Account shall be subject to the security interest created by Section 13 and shall be applied in accordance with Section 14.
13. Security Interest. The CDO Fund and SOHC each hereby grants to UBS, for the benefit of itself and UBSS, a continuing first priority security interest in and right of setoff against the Deposits (as and to the extent provided in Section 14), all of its rights under the Deposit Account, all other securities, money and other property credited to the Deposit Account, and all proceeds of any of the foregoing, now or hereafter delivered or deemed delivered to UBS or UBSS under this Agreement or the New Cash Warehouse Agreement (collectively, the "Collateral"), as security for the payment and performance by the CDO Fund and SOHC of their respective obligations to UBS hereunder and under the New Cash Warehouse Agreement (collectively, the "Secured Obligations"). This Agreement shall constitute a security agreement under the laws of the State of New York applicable to agreements made and to be performed therein, for the benefit of UBS. With respect to the Collateral, UBS shall have all of the rights and remedies provided to a secured party under the UCC and, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

Each of the CDO Fund and SOHC shall cause State Street Bank and Trust Company ("State Street"), in its capacity as a "securities intermediary" (within the meaning of Section 8-102(a)(14) of the Uniform Commercial Code as in effect in the State of New York) (the "UCC"), to establish on its books and records two segregated accounts to be maintained by State Street as

securities intermediary, one relating to deposits made by the CDO Fund and the other relating to deposits made by SOHC, in the name of "Highland CDO Opportunity Master Fund, L.P. – Subject to UBS Lien – Knox" and "Highland Special Opportunities Holding Company – Subject to UBS Lien – Knox," respectively, each for the benefit of UBS and UBSS as secured parties (said accounts, together with any replacements thereof or substitutions therefor, collectively, the "Deposit Account"). Each of the CDO Fund and SOHC hereby agrees to enter into an account control agreement with State Street dated as of the date hereof (the "Control Agreement") in form and substance reasonably acceptable to UBS on the date hereof with respect to the Deposit Account for the purpose of perfecting the security interest granted hereunder to UBS, for the benefit of itself and UBSS, in the Deposit Account and any "financial asset" (within the meaning of Article 8 of the UCC) credited thereto.

14. Application of Deposit Account.

- (A) Amounts up to the full amount of the Deposits (or any portion thereof) may be taken and applied by UBS on the Termination Date to the payment of amounts due and payable by SOHC and the CDO Fund hereunder and under the New Cash Warehouse Agreement, and the amounts so applied in each case shall be applied without regard to the proportion in which the CDO Fund and SOHC has made deposits, or is required to make deposits, to the Deposit Account and otherwise without regard to their respective proportionate interests in such account; provided that prior to liquidating any Eligible Security, UBS agrees to provide SOHC and the CDO Fund the opportunity to substitute cash for any Eligible Security to be liquidated to the extent such parties transfer such cash to the Deposit Account no later than the second Business Day following the date UBS gives notice that such liquidation is to occur.
- (B) Upon the completion of the sale of all Collateral Obligations under the New Cash Warehouse Agreement and the termination or novation of all Credit Default Swaps hereunder pursuant to Sections 4, 5 or 6 in connection with the Termination Date and payment of all amounts payable to UBS hereunder and under the New Cash Warehouse Agreement, UBS shall deliver to SOHC and the CDO Fund within three Business Days after the Termination Date (unless the Termination Date is also the Closing Date in which case such payment shall be made on the Termination Date) an amount, in immediately available funds, equal to the remaining Available Amount, if any, and following such delivery shall have no further obligation to deliver amounts to the CDO Fund or SOHC; provided that as between the CDO Fund and SOHC, the Available Amount shall be allocated to the CDO Fund and to SOHC in accordance with their respective Allocation Percentages.
- (C) Pursuant to the Control Agreement, (i) all cash on deposit in the Deposit Account shall be invested in Eligible Investments (as defined in the Control Agreement) at the direction of the Servicer in accordance with the Control Agreement, (ii) all income received in respect of Eligible Securities transferred to the Deposit Account by the CDO Fund shall be paid quarterly to the CDO Fund and (iii) all income received in respect of Eligible Securities transferred to the Deposit



Account by SOHC shall be paid quarterly to SOHC; provided that such quarterly payments shall be made on the second day of each February, May, August and November (or, if any such day is not a Business Day, the next succeeding Business Day) (each such day, a "Payment Date"). Any losses realized on Eligible Investments purchased with funds described in clauses (ii) and (iii) above shall be netted against the amounts payable pursuant to such clauses (ii) and (iii).

15. Choice of Law; Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (including without limitation Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York). The parties hereto submit to the exclusive jurisdiction of the federal and New York State courts located in the county of New York, New York in connection with any dispute related to this letter agreement or any of the matters contemplated hereby.
16. Access to Information. The Servicer shall afford UBS access, upon reasonable prior notice, to any information the Servicer possesses or can reasonably obtain, about the Reference Obligations, each of the underlying obligations of the Reference Obligations and their respective financial condition, results of operations, business, property, management and prospects in order to enable UBS to evaluate a proposed sale of protection on the Reference Obligations.
17. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
18. Entire Agreement; Sole Benefit. This Agreement and the New Cash Warehouse Agreement set forth the entire understanding of the parties hereto relating to the subject matter hereof, and supersede and cancel all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be amended or modified except by the parties hereto in writing.

Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any person other than the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, none of the parties hereto may assign its rights or obligations pursuant to this Agreement without the prior written consent of the other parties hereto; provided further that UBS may assign its rights and obligations hereunder to any of its Affiliates without such prior written consent.

19. Provisions Separable. If any term, provision, covenant or condition of this Agreement, or the application thereof to any party or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, provisions, covenants and conditions of this Agreement, modified by the deletion of the unenforceable, invalid or illegal portion (in any relevant jurisdiction),

will continue in full force and effect, and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms, provisions, covenants and conditions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the deletion of such portion of this Agreement will not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavour in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

20. Indulgences Not Waivers. Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or any other right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver. The rights and remedies of the parties provided herein are cumulative and are in addition to, and not exclusive of, any rights, remedies, powers or privileges provided by law.
21. Titles Not to Affect Interpretation. The titles of the sections and paragraphs contained in this Agreement are for convenience only, and they neither form part of this Agreement nor are they to be used in the construction or interpretation hereof.
22. Counterparts. This Agreement may be executed in two or more counterparts, all of which together shall be considered a single instrument. Delivery of an executed counterpart of this Agreement by telecopier or facsimile transmission shall constitute due and sufficient delivery thereof.
23. UBS Agents. UBS may appoint any of its Affiliates (including UBS) to act as an agent for UBS hereunder.
24. Payments. Any allocation of amounts payable by one party hereunder to the other party shall promptly be paid by wire transfer on the business day following receipt of such notice of allocation.
25. Waiver and Release. Each of the parties acknowledges and agrees that none of the parties hereto shall have any further rights and/or obligations under the Original Synthetic Warehouse Agreement.
  - (A) Each of the Company, the Servicer, the CDO Fund and SOHC, on behalf of itself and its current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns (collectively, the "Highland Releasing Parties"), hereby releases and forever discharges UBS, including, but not limited to, any of its current and former parent companies, subsidiaries, affiliates, predecessors,

successors and assigns and any of their past or present officers, directors, employees and agents (collectively, the "UBS Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which such Highland Releasing Parties ever had, now have or may have had against the UBS Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Synthetic Warehouse Agreement and/or the transactions contemplated thereby.


- (B) UBS, on behalf of itself and its respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, hereby releases and forever discharges the Company, the Servicer, the CDO Fund and SOHC, including, but not limited to, any of their respective current and former parent companies, subsidiaries, affiliates, predecessors, successors and assigns and any of their past or present officers, directors, employees and agents (collectively, the "Highland Released Parties") of and from any and all actions, causes of action, demands, rights, suits, debts, dues, charges, fees, costs, liabilities, complaints, claims, obligations, promises, agreements, controversies, damages and expenses of any nature whatsoever, whether in law or in equity or otherwise, whether arising under contract, tort, statute, or any other legal theory or basis of any nature whatsoever, which UBS and such other Persons ever had, now has or may have had against the Highland Released Parties, or any of them, from the beginning of time to the date of this Agreement, whether known or unknown, suspected or unsuspected, claimed or concealed, contingent or non-contingent, asserted or not asserted, that relate to the subject matter of the Original Synthetic Warehouse Agreement and/or the transactions contemplated thereby.
- (C) All CDS Losses determined in respect of the Existing CDS Portfolio shall be payable solely in accordance with the terms of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UBS AG, LONDON BRANCH

By:

  
Name: KEITH GRINARDI  
Title: MANAGING DIRECTOR

By:

  
Name: TIMOTHY E. LEROUX  
Title: EXEC. DIRECTOR

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:

\_\_\_\_\_  
Name:  
Title:

HIGHLAND CDO OPPORTUNITY MASTER  
FUND, L.P.

By:

\_\_\_\_\_  
Name:  
Title:

HIGHLAND SPECIAL OPPORTUNITIES  
HOLDING COMPANY

By:

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

UBS AG, LONDON BRANCH

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

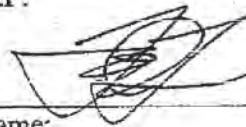
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

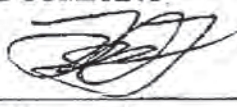
**Todd Travers**  
**Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

HIGHLAND CDO OPPORTUNITY MASTER  
FUND, L.P.

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Todd Travers**  
**Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

HIGHLAND SPECIAL  
HOLDING COMPANY

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Highland Special Opportunities Holding Company**  
**Todd Travers**  
**Chief Executive Office**



## ANNEX A

**ELIGIBILITY CRITERIA**

Except as otherwise agreed in writing by UBS and the Servicer, no Credit Default Swap may reference a Reference Obligation unless the Reference Obligation:

- (A) is a U.S. dollar denominated collateralized loan obligation security issued by a U.S. issuer, a Qualified SPV Issuer or a Qualifying Foreign Issuer or a Synthetic Security and is not a Defaulted Security;
- (B) provides for a fixed amount of principal to be payable at maturity;
- (C) is publicly rated by at least one Rating Agency or otherwise meets the requirements to obtain a rating therefrom;
- (D) is a security issued by an entity treated as a corporation for U.S. federal income tax purposes and no payments on the related Credit Default Swap are subject to withholding tax imposed by any jurisdiction unless the counterparty is required to make "gross-up" payments that cover the full amount of any such withholding tax on an after tax basis;
- (E) is not an obligation pursuant to which future advances or payments may be required;
- (F) has not been put on a watch list for a possible ratings downgrade by Moody's or S&P, as applicable unless the Company notifies UBS and UBS approves of such Reference Obligation;
- (G) is a security which complies with the tax restrictions set forth in Annex B;
- (H) is not margin stock (as defined in Regulation U) and is not convertible into, and has no associated rights, warrants or options to purchase, margin stock;
- (I) satisfies other criteria and collateral quality tests to be agreed between the Servicer and UBS.

The foregoing criteria as applicable to the Transaction are subject to amendment by UBS, in its reasonable discretion, from time to time on or prior to the Settlement Date in accordance with (i) the requirements of the Rating Agencies, (ii) investor feedback received by UBS or (iii) if applicable, the requirements of any monoline insurer, hedge provider or other credit enhancement provider to the Issuer. For the avoidance of doubt, the determination of whether a Reference Obligation complies with the Eligibility Criteria shall take into account not only the individual characteristics of such Reference Obligation, but also all of the Reference Obligations that then comprise the CDS Portfolio and the effect on the CDS Portfolio of inclusion of such Reference Obligation.

The parties hereto agree that the Servicer shall have the right to participate in the negotiation of any term sheet or engagement letter with any monoline insurer, hedge provider or other credit enhancement provider to the Issuer.

## EXHIBIT A

### DEFINITIONS

"Accumulation Period" means the period commencing on the date of execution of this Agreement and ending on, and including, the Termination Date.

"Affiliate" means, in relation to any specified Person, (a) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such Person or (b) any other Person who is a director, officer, member or partner of (i) such Person or (ii) any such other Person described in clause (a) above; provided that no other special purpose company to which an administrator of the Issuer provides directors and acts as share trustee shall be an Affiliate of the Issuer. For the purposes of this definition, *control* of a Person means the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Aggregate Net Exposure Amount" means, as of any date of determination, the amount, if any, by which (i) the sum of the CDS Exposure and the Cash Exposure as of such date exceeds (ii) the sum of (a) the balance on deposit in the Deposit Account as of such date and (b) the sum of the Positive Carry as of such date with respect to each Collateral Obligation (in each case only to the extent not previously deposited in the Deposit Account).

"Allocation Percentage" means (a) with respect to the CDO Fund, (i) if the Transaction has closed, the percentage obtained by multiplying 100 by a fraction, the numerator of which is the par value of the subordinated notes or other equity issued to the CDO Fund in connection with the Transaction and the denominator of which is the aggregate par value of all subordinated notes or other equity issued to the CDO Fund, HFP and any subsidiaries of Highland Financial Partners, LP, in connection with the closing of the Transaction and (if the Transaction has not closed, 51%; and (b) with respect to SOHC, (i) if the Transaction has closed, the percentage obtained by subtracting the percentage obtained for the CDO Fund under clause (a)(i) from 100% and (ii) if the Transaction has not closed, 49%.

"Available Amount" means, as of any date of determination, an amount equal to the amount on deposit in the Deposit Account as of such date of determination.

"Business Day" means any day of the year other than a Saturday, Sunday or other day on which commercial banking institutions in New York City or in the Cayman Islands are authorized or obligated by law, regulation or executive order to be closed.

"CDS Gains" has the meaning assigned thereto in Section 5(B)(2).

"CDS Losses" has the meaning assigned thereto in Section 5(B)(2).

"Closing Date" means the date of the closing of the Transaction and the issuance of the CDO Securities.

"Defaulted Security" means any Reference Obligation with respect to which (a) the issuer thereof has defaulted in the payment of principal or interest (beyond any applicable grace or notice period) or (b) pursuant to the indenture or other agreement pursuant to which such Reference Obligation was issued or created or any other agreement that governs the terms of or secures such Reference Obligation, there has occurred any default or event of default which entitles the holders of such Reference Obligation, with notice or lapse of time or both, to accelerate the maturity (whether by mandatory prepayment, mandatory redemption or otherwise) of all or a portion of the principal amount of such Reference Obligation and (x) in the case of a default or event of default consisting of a failure of the obligor on such Reference Obligation to make required interest payments, such Reference Obligation has not resumed current cash payments of interest (whether or not any waiver or restructuring has been effected) or (y) in the case of any other default or event of default, such default or event of default is continuing.

"Deposit Threshold Exposure Amount" means, as of any date of determination, the amount, if any, by which (i) the Aggregate Net Exposure Amount as of such date exceeds (ii) the Initial Net Exposure Amount.

"Deposits" means the Initial Deposit, each Additional Deposit and all other amounts required hereunder or under the New Cash Warehouse Agreement to be credited or otherwise transferred to the Deposit Account, to the extent so credited or otherwise transferred and remaining on deposit therein.

"Designated Security" means a Reference Obligation that UBS and the Servicer mutually agree should be liquidated in accordance with this Agreement.

"Eligibility Criteria" means the criteria set forth in Annex A attached hereto.

"Eligible Security" means any security identified on Annex C hereto, and any additional security approved by UBS.

"Hedging Transaction" means an interest rate exchange or protection agreement or short sales of securities, entered into by UBS or any of its Affiliates in accordance with this Agreement.

"HFP" means Highland Financial Partners.

"Ineligible Security" means, any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination (whether as a result of a change in the Eligibility Criteria required by a Rating Agency, a request by potential investors or otherwise). Each of the following is an "Ineligible Security": a Defaulted Security, a Designated Security and a Written Down Security.

"Initial Net Exposure Amount" means U.S.\$111,767,486.88, being the amount by which the Aggregate Net Exposure Amount as of the date hereof exceeds the Initial Deposit.

"Material Adverse Change" means the occurrence of any one or more of the following events: (w) there shall have occurred after the date of this Agreement with respect to

the Company, the CDO Fund or SOHC, any change in the business, ownership, operations, historical investment performance, financial condition or prospects of the Company, the CDO Fund or SOHC or any other change relating to the Company, the CDO Fund or SOHC that would materially adversely affect or otherwise prevent the successful implementation or execution of the Transaction or the placement of the CDO Securities or the performance of the CDO Fund or SOHC's obligations under this Agreement or the New Cash Warehouse Agreement or the performance of the Company's payment obligations under the Engagement Letter; provided that if the Company, the CDO Fund and/or SOHC's ability to perform such obligations has been demonstrated at any time following such event, then no Material Adverse Change will be deemed to have occurred and be continuing at such time; (x) the Company, the CDO Fund or SOHC shall be indicted for fraud, misappropriation or embezzlement, or other criminal activity; (y) the Company, the CDO Fund or SOHC is wound up or dissolved or there is appointed over it or a substantial part of its assets a receiver, administrator, administrative receiver, trustee or similar officer; or (z) the historical investment performance of the Company, the CDO Fund or SOHC provided to UBS or any prospective investor in the CDO Securities by the Company, the CDO Fund or SOHC in connection with the Transaction shall be restated or shall have been incorrect in any respect that would, in the case of this clause (z), materially adversely affect their ability to perform their obligations under this Agreement.

"Pricing Date" means the date on which UBS and the Issuer have priced the Notes.

"Qualified Foreign Issuer" means a corporation, partnership or other issuer located in Australia, Canada, France, Germany, Ireland, the Netherlands, Switzerland, Sweden or the United Kingdom; provided that such country's unguaranteed unsecured and otherwise unsupported long-term U.S. dollar denominated sovereign debt obligations are rated "Aa2" or better by Moody's and "AA" or better by S&P.

"Qualified SPV Issuer" means a corporation, partnership or other issuer located in Bermuda, the Cayman Islands, the Netherlands Antilles, the Channel Islands or the British Virgin Islands.

"Rating Agencies" means Standard & Poor's Ratings Services (a division of The McGraw-Hill Companies, Inc.) ("S&P") and Moody's Investor Services, Inc. ("Moody's") and any other nationally recognized credit rating agency selected by UBS or the Servicer to rate the Notes.

"Regulation U" means Regulation U of the FRB, 12 C.F.R. § 221, or any successor regulation.

"Structured Finance Security" means a collateralized loan obligation.

"Termination Date" has the meaning assigned thereto in the New Cash Warehouse Agreement.

"Transaction" has the meaning assigned thereto in the Recitals.

"UBS Group" has the meaning assigned thereto in Section 10(4)(C).



"Written Down Security" means a Reference Obligation that is a part of an issue as to which the aggregate par amount of the entire class of such Reference Obligation and all other securities secured by the same pool of collateral that rank senior or *pari passu* in priority of payment to such class exceeds the aggregate par amount (including reserved interest or other amounts available for overcollateralization) of all collateral securing such issue (excluding defaulted collateral).

**EXHIBIT B**

**[ISDA CDS ON CDO STANDARD TERMS TO BE ATTACHED]**

**ISDA STANDARD TERMS SUPPLEMENT FOR USE WITH CREDIT DERIVATIVE  
TRANSACTIONS ON COLLATERALIZED DEBT OBLIGATION WITH PAY-AS-YOU-GO  
OR PHYSICAL SETTLEMENT<sup>1</sup>**

(published on August 8, 2007)

This ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Collateralized Debt Obligation with Pay-As-You-Go or Physical Settlement (the "CDS on CDO Terms") hereby incorporates by reference the definitions and provisions contained in the 2003 ISDA Credit Derivatives Definitions as published by the International Swaps and Derivatives Association, Inc. ("ISDA") (the "Credit Derivatives Definitions"). In the event of any inconsistency between the Credit Derivatives Definitions and these CDS on CDO Terms, these CDS on CDO Terms will govern.<sup>2</sup>

References to the "Reference Obligation" in these CDS on CDO Terms or in the relevant Confirmation shall be to the terms of the Reference Obligation (as defined below) set out in the Underlying Instruments (as defined below) as amended from time to time unless otherwise specified below.

**1. General Terms:**

Trade Date:	As shown in the relevant Confirmation.
Effective Date:	As shown in the relevant Confirmation.
Scheduled Termination Date:	The Legal Final Maturity Date of the Reference Obligation, subject to adjustment in accordance with the Following Business Day Convention.

THE FOOTNOTES TO THIS CDS ON CDO STANDARD TERMS SUPPLEMENT ARE PROVIDED FOR CLARIFICATION ONLY AND DO NOT CONSTITUTE ADVICE AS TO THE STRUCTURING OR DOCUMENTATION OF A CREDIT DERIVATIVE TRANSACTION.

ISDA has not undertaken to review all applicable laws and regulations of any jurisdiction in which the Credit Derivatives Definitions or these CDS on CDO Terms may be used. Therefore, parties are advised to consider the application of any relevant jurisdiction's regulatory, tax, accounting, exchange or other requirements that may exist in connection with the entering into and documenting of a privately negotiated credit derivative transaction.

<sup>1</sup> The definitions and provisions in this ISDA Standard Terms Supplement for use with Credit Derivatives Transactions on Collateralized Debt Obligation with Pay-As-You-Go or Physical Settlement may be incorporated into a Confirmation or other document (including in electronic form) (a "Confirmation") by wording in the Confirmation indicating that, or the extent to which, the Confirmation is subject to this ISDA Standard Terms Supplement for use with Credit Derivatives Transactions on Collateralized Debt Obligation with Pay-As-You-Go or Physical Settlement. All definitions and provisions so incorporated in a Confirmation will be applicable to that Confirmation unless otherwise provided in that Confirmation.

<sup>2</sup> Parties who wish to novate a trade documented by way of a Confirmation incorporating these CDS on CDO Terms should consider using the Form of Novation Confirmation set out in the Schedule to this ISDA Standard Terms Supplement.

Termination Date:	The last to occur of: <ul style="list-style-type: none"> <li>(a) the fifth Business Day following the Effective Maturity Date;</li> <li>(b) the last Floating Rate Payer Payment Date;</li> <li>(c) the last Delivery Date; and</li> <li>(d) the last Additional Fixed Amount Payment Date.</li> </ul>
Floating Rate Payer:	As shown in the relevant Confirmation (the "Seller").
Fixed Rate Payer:	As shown in the relevant Confirmation (the "Buyer").
Calculation Agent:	As shown in the relevant Confirmation.
Calculation Agent City:	As shown in the relevant Confirmation.
Business Day:	As shown in the relevant Confirmation.
Business Day Convention:	Following (which, with the exception of the Effective Date, the Final Amortization Date, each Reference Obligation Payment Date and the period end date of each Reference Obligation Calculation Period, shall apply to any date referred to in these CDS on CDO Terms or in the relevant Confirmation that falls on a day that is not a Business Day).
Reference Entity:	As shown in the relevant Confirmation.
Reference Obligation:	As shown in the relevant Confirmation.
	Section 2.30 of the Credit Derivatives Definitions shall not apply.
Reference Policy:	As shown in the relevant Confirmation.
Reference Price:	As shown in the relevant Confirmation.
Applicable Percentage:	On any day, a percentage equal to A divided by B. <p>"A" means the product of the Initial Face Amount and the Initial Factor as decreased on each Delivery Date by an amount equal to (a) the outstanding principal balance of Deliverable Obligations Delivered to Seller (as adjusted by the Relevant Amount, if any) divided by the Current Factor on such day multiplied by (b) the Initial Factor.</p> <p>"B" means the product of the Original Principal Amount and the Initial Factor;</p> <ul style="list-style-type: none"> <li>(a) as increased by the outstanding principal</li> </ul>

balance of any further issues by the Reference Entity that are fungible with and form part of the same legal series as the Reference Obligation; and

- (b) as decreased by any cancellations of some or all of the Outstanding Principal Amount resulting from purchases of the Reference Obligation by or on behalf of the Reference Entity.<sup>3</sup>

Initial Face Amount:

As shown in the relevant Confirmation.

<sup>3</sup> This represents the percentage covered by the relevant Transaction of the Outstanding Principal Amount. It may be more than 100%.



Reference Obligation Notional Amount:

On the Effective Date, the product of:

- (a) the Original Principal Amount;
- (b) the Initial Factor; and
- (c) the Applicable Percentage.

Following the Effective Date, the Reference Obligation Notional Amount will be:

- (i) decreased on each day on which a Principal Payment is made by the relevant Principal Payment Amount;
- (ii) decreased on the day, if any, on which a Failure to Pay Principal occurs by the relevant Principal Shortfall Amount;
- (iii) decreased on each day on which a Writedown occurs by the relevant Writedown Amount;
- (iv) increased on each day on which a Writedown Reimbursement occurs by any Writedown Reimbursement Amount in respect of a Writedown Reimbursement within paragraphs (ii) or (iii) of the definition of "Writedown Reimbursement"; and
- (v) decreased on each Delivery Date by an amount equal to the relevant Exercise Amount minus the amount determined pursuant to paragraph (b) of "Physical Settlement Amount" below, provided that if any Relevant Amount is applicable, the Exercise Amount will also be deemed to be decreased by such Relevant Amount (or increased by the absolute value of such Relevant Amount if such Relevant Amount is negative) with effect from such Delivery Date;

provided that if the Reference Obligation Notional Amount would be less than zero, it shall be deemed to be zero.

For the avoidance of doubt, the Reference Obligation Notional Amount shall not be increased by any deferral or capitalization of interest that relates to the Term of this Transaction or decreased by payment of any portion of the principal balance of the Reference Obligation that is attributable to the deferral or capitalization of interest during the Term of this Transaction.

Initial Payment: As shown in the relevant Confirmation.

**2. Fixed Payments:**

Fixed Rate Payer: Buyer

Fixed Rate: As shown in the relevant Confirmation.

Fixed Rate Payer Period End Date: The first day of each Reference Obligation Calculation Period.

Fixed Rate Payer Payment Dates: Each day falling five Business Days after a Reference Obligation Payment Date; provided that the final Fixed Rate Payer Payment Date shall fall on the fifth Business Day following the Effective Maturity Date.

Fixed Amount: With respect to any Fixed Rate Payer Payment Date, an amount equal to the product of:

- (a) the Fixed Rate;
  - (b) an amount determined by the Calculation Agent equal to:
    - (i) the sum of the Reference Obligation Notional Amount as at 5:00 p.m. in the Calculation Agent City on each day in the related Fixed Rate Payer Calculation Period (provided that, if the Reference Obligation is a Delayed Payment Reference Obligation, the Reference Obligation Notional Amount on each day from and including the first day of the related Reference Obligation Calculation Period to but excluding the relevant Reference Obligation Payment Date shall be deemed to be adjusted to take into account any adjustment to the Reference Obligation Notional Amount on such Reference Obligation Payment Date); divided by
    - (ii) the actual number of days in the related Fixed Rate Payer Calculation Period; and
  - (c) the Fixed Rate Day Count Fraction.
- Additional Fixed Amount Payment Dates:
- (a) Each Fixed Rate Payer Payment Date; and
  - (b) in relation to each Additional Fixed Payment Event occurring after the second Business Day prior to the last Fixed Rate Payer Payment Date, the fifth Business Day after Buyer has

received notification from Seller or the Calculation Agent of the occurrence of such Additional Fixed Payment Event.

**Additional Fixed Payments:** Following the occurrence of an Additional Fixed Payment Event in respect of the Reference Obligation, Buyer shall pay the relevant Additional Fixed Amount to Seller on the first Additional Fixed Amount Payment Date falling at least two Business Days (or in the case of an Additional Fixed Payment Event that occurs after the second Business Day prior to the last Fixed Rate Payer Payment Date, five Business Days) after the delivery of a notice by the Calculation Agent to the parties or by Seller to Buyer stating that the related Additional Fixed Amount is due and showing in reasonable detail how such Additional Fixed Amount was determined; provided that any such notice must be given on or prior to the fifth Business Day following the day that is one calendar year after the Effective Maturity Date.

**Additional Fixed Payment Event:** The occurrence on or after the Effective Date and on or before the day that is one calendar year after the Effective Maturity Date of a Writedown Reimbursement, a Principal Shortfall Reimbursement or an Interest Shortfall Reimbursement.

**Additional Fixed Amount:** With respect to each Additional Fixed Amount Payment Date, an amount equal to the sum of:

- (a) the Writedown Reimbursement Payment Amount (if any);
- (b) the Principal Shortfall Reimbursement Payment Amount (if any); and
- (c) the Interest Shortfall Reimbursement Payment Amount (if any).

For the avoidance of doubt, each Writedown Reimbursement Payment Amount, Principal Shortfall Reimbursement Payment Amount or Interest Shortfall Reimbursement Payment Amount (as applicable) shall be calculated using the Applicable Percentage which takes into account the aggregate adjustment made to the Applicable Percentage in respect of all Delivery Dates that have occurred prior to the date of such calculation.

### 3. Floating Payments:

**Floating Rate Payer:** Seller.

**Floating Rate Payer Payment** In relation to a Floating Amount Event, the first Fixed



Dates:	Rate Payer Payment Date falling at least two Business Days (or in the case of a Floating Amount Event that occurs on the Legal Final Maturity Date or the Final Amortization Date, the fifth Business Day) after delivery of a notice by the Calculation Agent to the parties or a notice by Buyer to Seller that the related Floating Amount is due and showing in reasonable detail how such Floating Amount was determined; provided that any such notice must be given on or prior to the fifth Business Day following the Effective Maturity Date.
Floating Payments:	If a Floating Amount Event occurs, then on the relevant Floating Rate Payer Payment Date, Seller will pay the relevant Floating Amount to Buyer. For the avoidance of doubt, the Conditions to Settlement are not required to be satisfied in respect of a Floating Payment.
Implied Writedown:	As shown in the relevant Confirmation.
Floating Amount Event:	A Writedown, a Failure to Pay Principal or an Interest Shortfall.
Floating Amount:	<p>With respect to each Floating Rate Payer Payment Date, an amount equal to the sum of:</p> <ul style="list-style-type: none"> <li>(a) the relevant Writedown Amount (if any);</li> <li>(b) the relevant Principal Shortfall Amount (if any); and</li> <li>(c) the relevant Interest Shortfall Payment Amount (if any).</li> </ul> <p>For the avoidance of doubt, each Writedown Amount, Principal Shortfall Amount or Interest Shortfall Payment Amount (as applicable) shall be calculated using the Applicable Percentage which takes into account the aggregate adjustment made to the Applicable Percentage in respect of all Delivery Dates that have occurred prior to the date of such calculation.</p>

#### 4. Credit Events and Physical Settlement

Conditions to Settlement: Credit Event Notice

Notifying Party: Buyer

Notice of Physical Settlement

Notice of Publicly Available Information: Applicable

Public Sources: The public sources listed in Section 3.7 of the Credit Derivatives Definitions; provided that Servicer Reports in respect of the Reference Obligation and, in respect of a Distressed Ratings Downgrade Credit Event only, any public communications by any of the Rating Agencies in respect of the Reference Obligation shall also be deemed Public Sources.

Specified Number: one

provided that if the Calculation Agent has previously delivered a notice to the parties or Buyer has previously delivered a notice to Seller pursuant to the definition of "Floating Rate Payer Payment Dates" above in respect of a Writedown or a Failure to Pay Principal, the only Conditions to Settlement with respect to any Credit Event shall be a Notice of Physical Settlement and, in relation to the Failure to Pay Interest Credit Event, the Additional Condition to Settlement specified below.



**Additional Condition to Settlement for Failure to Pay Interest:**

In addition to the Conditions to Settlement above, in respect of the Failure to Pay Interest Credit Event, if the Reference Obligation is PIK-able,<sup>4</sup> it shall be a Condition to Settlement that a period of at least 360 calendar days has elapsed since the occurrence of the Credit Event without the relevant Interest Shortfall having been reimbursed in full. For the avoidance of doubt, if it is not explicitly made clear in the Servicer Report whether or not, or to what extent, a particular Interest Shortfall has been reimbursed but the Calculation Agent determines that such Interest Shortfall has been reimbursed by a certain amount on the basis of information in such Servicer Report, then the relevant Interest Shortfall reimbursement shall be calculated by the Calculation Agent on the basis of such information.<sup>5</sup>

**Additional agreements relating to Physical Settlement:**

The parties agree that with respect to the Transaction and notwithstanding anything to the contrary in the Credit Derivatives Definitions:

- (a) the Conditions to Settlement may be satisfied on more than one occasion;
- (b) multiple Physical Settlement Amounts may be payable by Seller;
- (c) Buyer, when providing a Notice of Physical Settlement, must specify an Exercise Amount and an Exercise Percentage;
- (d) if Buyer has delivered a Notice of Physical Settlement that specifies an Exercise Amount that is less than the Reference Obligation Notional Amount as of the date on which such Notice of Physical Settlement is delivered (calculated as though Physical Settlement in respect of all previously delivered Notices of Physical Settlement has occurred in full), the rights and obligations of the parties under the Transaction shall continue and Buyer may deliver additional Notices of Physical Settlement with respect to the initial Credit Event or with respect to any additional Credit Event at any time thereafter; and
- (e) any Notice of Physical Settlement shall be delivered no later than 30 calendar days after the fifth Business Day following the Effective Maturity Date.

<sup>4</sup> See definition of "PIK-able" in paragraph 8(c) of these CDS on CDO Terms.

<sup>5</sup> This is intended to cover any situation in which the Servicer Report does not cover Interest Shortfalls.

Section 3.2(d) of the Credit Derivatives Definitions is amended to delete the words "that is effective no later than thirty calendar days after the Event Determination Date".

Section 3.3 of the Credit Derivatives Definitions is amended so that the following is added as sub-clause (d):

"(d) the expiration of any applicable grace period for a Failure to Pay Principal Credit Event".

**Credit Events:**

The following Credit Events shall apply to the Transaction (and the first sentence of Section 4.1 of the Credit Derivatives Definitions shall be amended accordingly):

Failure to Pay Principal

Writedown

Failure to Pay Interest

Payment Requirement: USD 10,000

Distressed Ratings Downgrade

The definition of "Payment Requirement" in Section 4.8(d) of the Credit Derivatives Definitions shall be amended so that the words "Failure to Pay" are deleted and replaced by the words "Failure to Pay Interest".

**Obligation:**

Reference Obligation Only

**5. Interest Shortfall:**

**Interest Shortfall Payment Amount:**

In respect of an Interest Shortfall, the relevant Interest Shortfall Amount; provided that, if Interest Shortfall Cap is specified as applicable in the relevant Confirmation and the Interest Shortfall Amount exceeds the Interest Shortfall Cap Amount, the Interest Shortfall Payment Amount in respect of such Interest Shortfall shall be the Interest Shortfall Cap Amount.

**Interest Shortfall Cap:**

As shown in the relevant Confirmation.

**Interest Shortfall Cap Amount:**

As set out in the relevant Interest Shortfall Cap Annex.

**Actual Interest Amount:**

With respect to any Reference Obligation Payment Date, payment by or on behalf of the Issuer of an amount in respect of interest due under the Reference Obligation (including, without limitation, any deferred interest or default interest but excluding payments in respect of prepayment penalties, yield maintenance provisions or



principal, except that the Actual Interest Amount shall include any payment of principal representing capitalized interest that relates to the Term of the Transaction) to the holder(s) of the Reference Obligation in respect of the Reference Obligation.

**Expected Interest Amount:**

With respect to any Reference Obligation Payment Date, the amount of current interest that would accrue during the related Reference Obligation Calculation Period calculated using the Reference Obligation Coupon on a principal balance of the Reference Obligation equal to:

- (a) the Outstanding Principal Amount taking into account any reductions due to a principal deficiency balance or realized loss amount (however described in the Underlying Instruments) that are attributable to the Reference Obligation; minus
- (b) the Aggregate Implied Writedown Amount (if any)

and that will be payable on the related Reference Obligation Payment Date assuming for this purpose that sufficient funds are available therefor in accordance with the Underlying Instruments. Except as provided in (a) in the previous sentence, the Expected Interest Amount shall be determined without regard to (i) unpaid amounts in respect of accrued interest on prior Reference Obligation Payment Dates; (ii) any prepayment penalties or yield maintenance provisions; or (iii) the effect of any provisions (however described) of such Underlying Instruments that otherwise permit the limitation of due payments to distributions of funds available from proceeds of the Underlying Assets, or that provide for the capitalization or deferral of interest on the Reference Obligation during the Term of the Transaction, or that provide for the extinguishing or reduction of such payments or distributions (each a "Limitation Provision") (but, for the avoidance of doubt, taking account of any Writedown within paragraph (i) of the definition of "Writedown" occurring in accordance with the Underlying Instruments)<sup>6</sup>.

For the purposes of calculating the Expected Interest Amount, and notwithstanding any other provision herein, the Reference Obligation Coupon shall be deemed to include any cap stated in the Underlying Instrument that is not a Limitation Provision.

**Interest Shortfall:**

With respect to any Reference Obligation Payment Date, either (a) the non-payment of an Expected Interest Amount or (b) the payment of an Actual Interest Amount that is less than the Expected Interest Amount.

<sup>6</sup> Note that this will not impact the determination of "Expected Interest Amount" in respect of a Reference Obligation that does not have a Limitation Provision.

For the avoidance of doubt, the occurrence of an event within (a) or (b) shall be determined taking into account any payment made under the Reference Policy, if applicable.

Interest Shortfall Amount:

With respect to any Reference Obligation Payment Date, an amount equal to the greater of:

- (a) zero; and
- (b) the amount equal to the product of:
  - (i) (A) the Expected Interest Amount;
 

minus

(B) the Actual Interest Amount; and
  - (ii) the Applicable Percentage;

provided that, with respect to the first Reference Obligation Payment Date only, the Interest Shortfall Amount shall be the amount determined in accordance with (a) and (b) above multiplied by a fraction equal to:

- (x) the number of days in the first Fixed Rate Payer Calculation Period; over
- (y) the number of days in the first Reference Obligation Calculation Period.

Interest Shortfall  
Reimbursement:

With respect to any Reference Obligation Payment Date, the payment by or on behalf of the Issuer of an Actual Interest Amount in respect of the Reference Obligation that is greater than the Expected Interest Amount.

Interest Shortfall  
Reimbursement Amount:

With respect to any Reference Obligation Payment Date, the product of (a) the amount of any Interest Shortfall Reimbursement on such day and (b) the Applicable Percentage.

Interest Shortfall  
Reimbursement Payment  
Amount:

If Interest Shortfall Cap is specified as not applicable in the relevant Confirmation, the relevant Interest Shortfall Reimbursement Amount. If Interest Shortfall Cap is specified as applicable in the relevant Confirmation, the amount determined pursuant to the relevant Interest Shortfall Cap Annex.

## 6. Settlement Terms

Settlement Method:

Physical Settlement

Terms Relating to Physical Settlement:

Physical Settlement Period:

Five Business Days

- Deliverable Obligations: Exclude Accrued Interest
- Deliverable Obligations: Deliverable Obligation Category: Reference Obligation Only
- Physical Settlement Amount: An amount equal to:
- (a) the product of the Exercise Amount and the Reference Price; minus
  - (b) the sum of:
    - (i) if the Aggregate Implied Writedown Amount is greater than zero, the product of (A) the Aggregate Implied Writedown Amount, (B) the Applicable Percentage, each as determined immediately prior to the relevant Delivery and (C) the relevant Exercise Percentage; and
    - (ii) the product of (A) the aggregate of all Writedown Amounts in respect of Writedowns within paragraph (i)(B) of the definition of "Writedown" minus the aggregate of all Writedown Reimbursement Amounts in respect of Writedown Reimbursements within paragraph (ii)(B) of the definition of "Writedown Reimbursement" and (B) the relevant Exercise Percentage,

provided that if the Physical Settlement Amount would exceed the product of:

- (1) the Reference Obligation Notional Amount as of the date on which the relevant Notice of Physical Settlement is delivered calculated as though Physical Settlement in respect of all previously delivered Notices of Physical Settlement has occurred in full; and
- (2) the Exercise Percentage;

then the Physical Settlement Amount shall be deemed to be equal to such product.

**Delayed Payment:**

With respect to a Delivery Date, if a Servicer Report that describes a Delayed Payment is delivered to holders of the Reference Obligation or to the Calculation Agent on or after such Delivery Date, Buyer will pay the applicable Delayed Payment Amount to Seller no later than five Business Days following the later of (a) the day on which such Servicer Report is delivered and (b) the day on which such Delayed Payment is due and payable.



**Escrow:****Applicable**

Non-delivery by Buyer or  
occurrence of the Effective  
Maturity Date:

If Buyer has delivered a Notice of Physical Settlement and:

- (a) Buyer does not Deliver in full the Deliverable Obligations specified in that Notice of Physical Settlement on or prior to the Physical Settlement Date; or
- (b) the Effective Maturity Date occurs after delivery of the Notice of Physical Settlement but before Buyer Delivers the Deliverable Obligations specified in that Notice of Physical Settlement;

then such Notice of Physical Settlement shall be deemed not to have been delivered and any reference in these CDS on CDO Terms to a previously delivered Notice of Physical Settlement shall exclude any Notice of Physical Settlement that is deemed not to have been delivered. Sections 9.2(c)(ii) (except for the first sentence thereof), 9.3, 9.4, 9.5, 9.6, 9.9 and 9.10 of the Credit Derivatives Definitions shall not apply.

**7. Additional Provisions:**

**(a) *Delivery of Servicer Report***

If either party makes a request in writing, the Calculation Agent agrees to provide such party with a copy of the most recent Servicer Report promptly following receipt of such request, if and to the extent such Servicer Report is reasonably available to the Calculation Agent (whether or not the Calculation Agent is a holder of the Reference Obligation). In addition, if a Floating Payment or an Additional Fixed Payment is due hereunder, then the Calculation Agent or the party that notifies the other party that the relevant Floating Payment or Additional Fixed Payment is due, as applicable, (the "Notifying Party") shall deliver a copy of any Servicer Report relevant to such payment that is requested by the party that is not the Notifying Party or by either party where the Notifying Party is the Calculation Agent, if and to the extent that such Servicer Report is reasonably available to the Notifying Party (whether or not the Notifying Party is a holder of the Reference Obligation).

**(b) *Calculation Agent and Buyer and Seller Determinations***

The Calculation Agent shall be responsible for determining and calculating (i) the Fixed Amount payable on each Fixed Rate Payer Payment Date; (ii) the occurrence of a Floating Amount Event and the related Floating Amount and (iii) the occurrence of an Additional Fixed Payment Event and the related Additional Fixed Amount; provided that notwithstanding the above, each of Buyer and Seller shall be entitled to determine and calculate the above amounts to the extent that Buyer or Seller, as applicable, has the right to deliver a notice to the other party demanding payment of such amount. The Calculation Agent or Buyer or Seller, as applicable, shall make such determinations and calculations based solely on the basis of the Servicer Reports, to the extent such Servicer Reports are reasonably available to the Calculation Agent or such party. The Calculation Agent or Buyer or Seller, as applicable, shall, as soon as practicable after making any of the determinations or calculations specified in (i) and (ii) above, notify the parties or the other party, as applicable, of such determinations and calculations. For the avoidance of doubt, if an Interest Shortfall

Amount is not explicitly set out in the Servicer Report but the Calculation Agent determines that an Interest Shortfall has occurred on the basis of information in such Servicer Report, then the relevant Interest Shortfall Amount shall be calculated by the Calculation Agent on the basis of such information.<sup>7</sup>

(c) *Adjustment of Calculation Agent Determinations*

To the extent that a Servicer furnishes any Servicer Reports correcting information contained in previously issued Servicer Reports, and such corrections impact calculations pursuant to the Transaction, the calculations relevant to the Transaction shall be adjusted retroactively by the Calculation Agent to reflect the corrected information (provided that, for the avoidance of doubt, no amounts in respect of interest shall be payable by either party and provided that the Calculation Agent in performing the calculations pursuant to this paragraph will assume that no interest has accrued on any adjusted amount), and the Calculation Agent shall promptly notify both parties of any corrected payments required by either party. Any required corrected payments shall be made within five Business Days of the day on which such notification by the Calculation Agent is effective.

**8. Additional Definitions and Amendments to the Credit Derivatives Definitions:**

- (a) References in Sections 4.1, 8.2, 9.1 and 9.2(a) of the Credit Derivatives Definitions as well as Section 3(a)(iv) of the form of Novation Agreement set forth in Exhibit E to the Credit Derivatives Definitions to the Reference Entity shall be deemed to be references to both the Reference Entity and the Insurer in respect of the Reference Policy, if applicable.
- (b)
  - (i) The definition of "Publicly Available Information" in Section 3.5 of the Credit Derivatives Definitions shall be amended by (i) inserting the words "the Insurer in respect of the Reference Policy, if applicable" at the end of subparagraph (a)(ii)(A) thereof, (ii) inserting the words ", servicer, sub-servicer, master servicer" before the words "or paying agent" in subparagraph (a)(ii)(B) thereof and (iii) deleting the word "or" at the end of subparagraph (a)(iii) thereof and inserting at the end of subparagraph (a)(iv) thereof the following: "or (v) is information contained in a notice or on a website published by an internationally recognized rating agency that has at any time rated the Reference Obligation".
  - (ii) The definition of "Physical Settlement" in Section 8.1 of the Credit Derivatives Definitions shall be amended by (i) deleting the words "Physical Settlement Amount" from the last line of the second paragraph thereof and (ii) inserting in lieu thereof the words "Exercise Amount".
  - (iii) The definition of "Physical Settlement Date" in Section 8.4 of the Credit Derivatives Definitions shall be amended by deleting the last sentence thereof.

<sup>7</sup> This is intended to cover any situation in which the Servicer Report does not report on Interest Shortfalls.



- (c) For the purposes of the Transaction only, the following terms have the meanings given below:

“Actual Principal Amount” means, with respect to the Final Amortization Date or the Legal Final Maturity Date, an amount paid on such day by or on behalf of the Issuer in respect of principal (excluding any amount representing capitalized interest that relates to the Term of the Transaction) to the holder(s) of the Reference Obligation in respect of the Reference Obligation.

“Aggregate Implied Writedown Amount” means the greater of (i) zero and (ii) the aggregate of all Implied Writedown Amounts minus the aggregate of all Implied Writedown Reimbursement Amounts, provided that if Implied Writedown is specified as not applicable in the relevant Confirmation, the Aggregate Implied Writedown Amount shall be deemed to be zero.

“Current Factor” means the factor of the Reference Obligation as specified in the most recent Servicer Report; provided that if the factor is not specified in the most recent Servicer Report or the factor specified includes deferred or capitalized interest that relates to the Term of the Transaction, then the Current Factor shall be the ratio equal to (i) the Outstanding Principal Amount as of such date, determined in accordance with the most recent Servicer Report over (ii) the Original Principal Amount.

“Current Period Implied Writedown Amount” means, in respect of a Reference Obligation Calculation Period, an amount determined as of the last day of such Reference Obligation Calculation Period equal to the greater of:

- (i) zero; and
- (ii) the product of:
  - (A) the Implied Writedown Percentage; and
  - (B) the greater of:
    - (1) zero; and
    - (2) the lesser of (x) the Pari Passu Amount and (y) the product of (I) the Pari Passu Amount plus the Senior Amount and (II) an amount equal to one minus the Overcollateralization Ratio.

“Delayed Payment” means, with respect to a Delivery Date, a Principal Payment, Principal Shortfall Reimbursement or a Writedown Reimbursement within paragraph (i) of the definition of “Writedown Reimbursement” that is described in a Servicer Report delivered to holders of the Reference Obligation or to the Calculation Agent on or after such Delivery Date.

“Delayed Payment Amount” means, if persons who are holders of the Reference Obligation as of a date prior to a Delivery Date are paid a Delayed Payment on or after such Delivery Date, an amount equal to the product of (i) the sum of all such Delayed Payments, (ii) the Reference Price, (iii) the Applicable Percentage immediately prior to such Delivery Date and (iv) the Exercise Percentage.

“Delayed Payment Reference Obligation” means a Reference Obligation with Reference Obligation Payment Dates that fall after the final day of the related Reference Obligation Calculation Periods.

"Distressed Ratings Downgrade" means that the Reference Obligation:

- (i) if publicly rated by Moody's, (A) is downgraded to "Caa2" or below by Moody's or (B) has the rating assigned to it by Moody's withdrawn and, in either case, not reinstated within five Business Days of such downgrade or withdrawal; provided that if such Reference Obligation was assigned a public rating of "Baa3" or higher by Moody's immediately prior to the occurrence of such withdrawal, it shall not constitute a Distressed Ratings Downgrade if such Reference Obligation is assigned a public rating of at least "Caa1" by Moody's within three calendar months after such withdrawal; or
- (ii) if publicly rated by Standard & Poor's, (A) is downgraded to "CCC" or below by Standard & Poor's or (B) has the rating assigned to it by Standard & Poor's withdrawn and, in either case, not reinstated within five Business Days of such downgrade or withdrawal; provided that if such Reference Obligation was assigned a public rating of "BBB-" or higher by Standard & Poor's immediately prior to the occurrence of such withdrawal, it shall not constitute a Distressed Ratings Downgrade if such Reference Obligation is assigned a public rating of at least "CCC+" by Standard & Poor's within three calendar months after such withdrawal; or
- (iii) if publicly rated by Fitch, (A) is downgraded to "CCC" or below by Fitch or (B) has the rating assigned to it by Fitch withdrawn and, in either case, not reinstated within five Business Days of such downgrade or withdrawal; provided that if such Reference Obligation was assigned a public rating of "BBB-" or higher by Fitch immediately prior to the occurrence of such withdrawal, it shall not constitute a Distressed Ratings Downgrade if such Reference Obligation is assigned a public rating of at least "CCC+" by Fitch within three calendar months after such withdrawal.

"Effective Maturity Date" means the earlier of (a) the Scheduled Termination Date and (b) the Final Amortization Date.

"Exercise Amount" means, for purposes of the Transaction, an amount to which a Notice of Physical Settlement relates equal to the product of (i) the original face amount of the Reference Obligation to be Delivered by Buyer to Seller on the applicable Physical Settlement Date; and (ii) the Current Factor as of such date. The Exercise Amount to which a Notice of Physical Settlement relates shall (A) be equal to or less than the Reference Obligation Notional Amount (determined, for this purpose, without regard to the effect of any Writedown or Writedown Reimbursement within paragraphs (i)(B) or (iii) of the definition of "Writedown" or paragraphs (ii)(B) or (iii) of the definition of "Writedown Reimbursement", respectively) as of the date on which the relevant Notice of Physical Settlement is delivered calculated as though the Physical Settlement of all previously delivered Notices of Physical Settlement has occurred in full and (B) not be less than the lesser of (1) the Reference Obligation Notional Amount as of the date on which the relevant Notice of Physical Settlement is delivered calculated as though Physical Settlement in respect of all previously delivered Notices of Physical Settlement has occurred in full and (2) USD100,000 or its equivalent in the relevant Obligation Currency. The cumulative original face amount of Deliverable Obligations specified in all Notices of Physical Settlement shall not at any time exceed the Initial Face Amount. For the avoidance of doubt: (a) if any capitalization or deferral of interest in respect of the Reference Obligation has occurred during the Term of the Transaction and has not been recovered by holders of the Reference Obligation pursuant to the terms of the Underlying Instruments, then, for the purpose of determining the amount of Deliverable Obligations to be Delivered, the Exercise Amount (determined above by reference to the original face amount) will represent an outstanding principal balance of the Reference Obligation to be Delivered by Buyer that includes the proportion of unrecovered interest attributable to the Reference Obligation to be Delivered and (b) notwithstanding the



foregoing, the Physical Settlement Amount payable by Seller in relation to such Exercise Amount shall not include any amount in respect of such unrecovered interest.

“Exercise Percentage” means, with respect to a Notice of Physical Settlement, a percentage equal to the original face amount of the Deliverable Obligations specified in such Notice of Physical Settlement divided by an amount equal to (i) the Initial Face Amount minus (ii) the aggregate of the original face amount of all Deliverable Obligations specified in all previously delivered Notices of Physical Settlement.

“Expected Principal Amount” means, with respect to the Final Amortization Date or the Legal Final Maturity Date, an amount equal to (i) the Outstanding Principal Amount of the Reference Obligation payable on such day (excluding any amount representing capitalized interest that relates to the Term of the Transaction) assuming for this purpose that sufficient funds are available for such payment, where such amount shall be determined in accordance with the Underlying Instruments, minus (ii) the sum of (A) the Aggregate Implied Writedown Amount (if any) and (B) the net aggregate principal deficiency balance or realized loss amounts (however described in the Underlying Instruments) that are attributable to the Reference Obligation. The Expected Principal Amount shall be determined without regard to the effect of any provisions (however described) of the Underlying Instruments that permit the limitation of due payments or distributions of funds in accordance with the terms of such Reference Obligation or that provide for the extinguishing or reduction of such payments or distributions.

“Failure to Pay Interest” means the occurrence of an Interest Shortfall Amount or Interest Shortfall Amounts (calculated on a cumulative basis) in excess of the relevant Payment Requirement.

“Failure to Pay Principal” means (i) a failure by the Reference Entity (or any Insurer) to pay an Expected Principal Amount on the Final Amortization Date or the Legal Final Maturity Date, as the case may be, or (ii) payment on any such day of an Actual Principal Amount that is less than the Expected Principal Amount; provided that the failure by the Reference Entity (or any Insurer) to pay any such amount in respect of principal in accordance with the foregoing shall not constitute a Failure to Pay Principal if such failure has been remedied within any grace period applicable to such payment obligation under the Underlying Instruments or, if no such grace period is applicable, within three Business Days after the day on which the Expected Principal Amount was scheduled to be paid.

“Final Amortization Date” means the first to occur of (i) the date on which the Reference Obligation Notional Amount is reduced to zero and (ii) the date on which the assets securing the Reference Obligation or designated to fund amounts due in respect of the Reference Obligation are liquidated, distributed or otherwise disposed of in full and the proceeds thereof are distributed or otherwise disposed of in full; provided that, for the purposes of determining the date on which the Reference Obligation Notional Amount is reduced to zero where (A) the Aggregate Implied Writedown Amount is greater than zero and (B) Interest Shortfall Cap Annex B is specified as applicable in the relevant confirmation, the Reference Obligation Notional Amount shall be determined without regard to the effect of any Writedown or Writedown Reimbursement within paragraph (iii) of “Writedown” or paragraph (iii) of Writedown Reimbursement respectively, unless, prior to the date of determination, a Distressed Ratings Downgrade Credit Event has occurred or a Failure to Pay Interest Credit Event has occurred and, as of the date of determination, a period of at least 720 calendar days have elapsed since the occurrence of such Failure to Pay Interest Credit Event without the relevant Interest Shortfall, having been reimbursed in full.

“Fitch” means Fitch Ratings or any successor to its rating business.



"Interest Shortfall Cap Annex" means the Interest Shortfall Cap Annex A or the Interest Shortfall Cap Annex B as specified in the relevant Confirmation.

"Implied Writedown Amount" means, (i) if the Underlying Instruments do not provide for writedowns, applied losses, principal deficiencies or realized losses as described in (i) of the definition of "Writedown" to occur in respect of the Reference Obligation, on any Reference Obligation Payment Date, an amount determined by the Calculation Agent equal to the excess, if any, of the Current Period Implied Writedown Amount over the Previous Period Implied Writedown Amount, in each case in respect of the Reference Obligation Calculation Period to which such Reference Obligation Payment Date relates, and (ii) in any other case, zero.

"Implied Writedown Percentage" means (i) the Outstanding Principal Amount divided by (ii) the Pari Passu Amount.

"Implied Writedown Reimbursement Amount" means, (i) if the Underlying Instruments do not provide for writedowns, applied losses, principal deficiencies or realized losses as described in (i) of the definition of "Writedown" to occur in respect of the Reference Obligation, on any Reference Obligation Payment Date, an amount determined by the Calculation Agent equal to the excess, if any, of the Previous Period Implied Writedown Amount over the Current Period Implied Writedown Amount, in each case in respect of the Reference Obligation Calculation Period to which such Reference Obligation Payment Date relates, and (ii) in any other case, zero, provided that the aggregate of all Implied Writedown Reimbursement Amounts at any time shall not exceed the Outstanding Principal Amount.

"Legal Final Maturity Date" means the date set out in paragraph 1 above (subject, for the avoidance of doubt, to any business day convention applicable to the legal final maturity date of the Reference Obligation), provided that if the legal final maturity date of the Reference Obligation is amended, the Legal Final Maturity Date shall be such date as amended.

"Moody's" means Moody's Investors Service, Inc. or any successor to its rating business.

"Outstanding Principal Amount" means, as of any date of determination with respect to the Reference Obligation, the outstanding principal balance of the Reference Obligation as of such date, which shall take into account:

- (i) all payments of principal;
- (ii) all writedowns or applied losses (however described in the Underlying Instruments) resulting in a reduction in the outstanding principal balance of the Reference Obligation (other than as a result of a scheduled or unscheduled payment of principal);
- (iii) forgiveness of any amount by the holders of the Reference Obligation pursuant to an amendment to the Underlying Instruments resulting in a reduction in the outstanding principal balance of the Reference Obligation;
- (iv) any payments reducing the amount of any reductions described in (ii) and (iii) of this definition; and
- (v) any increase in the outstanding principal balance of the Reference Obligation that reflects a reversal of any prior reductions described in (ii) and (iii) of this definition; and



- (vi) any increase in the outstanding principal balance of the Reference Obligation that is attributable to the deferral or capitalization of interest prior to the Effective Date.

For the avoidance of doubt, the Outstanding Principal Amount shall not include any portion of the outstanding principal balance of the Reference Obligation that is attributable to the deferral or capitalization of interest during the Term of this Transaction.

"Overcollateralization Ratio" means, in respect of a Reference Obligation Calculation Period:

- (i) if the most recent Servicer Report sets out a ratio representing the ratio of (A) the aggregate asset pool balance securing the payment obligations on the Reference Obligation (subject to certain adjustments as described in the Underlying Instruments) to (B) the Pari Passu Amount plus the Senior Amount, then such ratio; or
- (ii) if the ratio cannot be determined under (i) but the most recent Servicer Report for one or more senior Related Obligations (if any) sets out such a ratio, then a ratio equal to the ratio of (A) the product of (1) such ratio determined with respect to the senior Related Obligation ranking closest in priority of payment to the Reference Obligation for which such a ratio is set out, and (2) the aggregate outstanding principal balance of such Related Obligation and any other Related Obligations ranking in priority of payment either *pari passu* with or senior to such Related Obligation to (B) the sum of the Pari Passu Amount plus the Senior Amount with respect to such Reference Obligation; or
- (iii) if the ratio cannot be determined under (ii) but the most recent Servicer Report for one or more junior Related Obligations (if any) sets out such a ratio, then a ratio equal to the ratio of (A) the product of (1) such ratio determined with respect to the junior Related Obligation ranking closest in priority of payment to the Reference Obligation for which such a ratio is set out, and (2) the aggregate outstanding principal balance of such Related Obligation and any other Related Obligations ranking in priority of payment either *pari passu* with or senior to such Related Obligation (including the Reference Obligation) and (B) the sum of the Pari Passu Amount plus the Senior Amount with respect to such Reference Obligation; or
- (iv) if the ratio cannot be determined under (iii), then a ratio representing the ratio of (A) the aggregate asset pool balance securing the payment obligations under the Reference Obligation to (B) the Pari Passu Amount plus the Senior Amount.

"Pari Passu Amount" means, as of any date of determination, the aggregate of the Outstanding Principal Amount of the Reference Obligation and the aggregate outstanding principal balance of all obligations of the Reference Entity secured by the Underlying Assets and ranking *pari passu* in priority with the Reference Obligation.

"PIK-able" means, in relation to a Reference Obligation, that the Underlying Instruments include provisions that provide for capitalization or deferral of interest on such Reference Obligation.

"Previous Period Implied Writedown Amount" means, in respect of a Reference Obligation Calculation Period, the Current Period Implied Writedown Amount as determined in relation to the last day of the immediately preceding Reference Obligation Calculation Period; provided that in respect of the first Reference Obligation Calculation Period only, the Previous Period Implied Writedown Amount shall be the Current Period Implied Writedown Amount determined in relation to the last day of the preceding interest accrual period of the Reference Obligation and each reference to "Reference Obligation Calculation Period" in the



definition of Current Period Implied Writedown Amount shall be deemed to be a reference to that interest accrual period.

"Principal Payment" means, with respect to any Reference Obligation Payment Date, the occurrence of a payment of an amount to the holders of the Reference Obligation in respect of principal (scheduled or unscheduled) in respect of the Reference Obligation other than a payment in respect of principal representing capitalized interest that relates to the Term of the Transaction, excluding, for the avoidance of doubt, any Writedown Reimbursement or Interest Shortfall Reimbursement.

"Principal Payment Amount" means, with respect to any Reference Obligation Payment Date, an amount equal to the product of (i) the amount of any Principal Payment on such date and (ii) the Applicable Percentage.

"Principal Shortfall Amount" means, in respect of a Failure to Pay Principal, an amount equal to the greater of:

- (i) zero; and
- (ii) the amount equal to the product of:
  - (A) the Expected Principal Amount minus the Actual Principal Amount;
  - (B) the Applicable Percentage; and
  - (C) the Reference Price.

If the Principal Shortfall Amount would be greater than the Reference Obligation Notional Amount immediately prior to the occurrence of such Failure to Pay Principal, then the Principal Shortfall Amount shall be deemed to be equal to the Reference Obligation Notional Amount at such time.

"Principal Shortfall Reimbursement" means, with respect to any day, the payment by or on behalf of the Issuer of an amount in respect of the Reference Obligation in or toward the satisfaction of any deferral of or failure to pay principal arising from one or more prior occurrences of a Failure to Pay Principal.

"Principal Shortfall Reimbursement Amount" means, with respect to any day, the product of (i) the amount of any Principal Shortfall Reimbursement on such day, (ii) the Applicable Percentage and (iii) the Reference Price.

"Principal Shortfall Reimbursement Payment Amount" means, with respect to an Additional Fixed Amount Payment Date, the sum of the Principal Shortfall Reimbursement Amounts in respect of all Principal Shortfall Reimbursements (if any) made during the Reference Obligation Calculation Period relating to such Additional Fixed Amount Payment Date, provided that the aggregate of all Principal Shortfall Reimbursement Payment Amounts at any time shall not exceed the aggregate of all Floating Amounts paid by Seller in respect of occurrences of Failure to Pay Principal prior to such Additional Fixed Amount Payment Date.

"Rating Agencies" means Fitch, Moody's and Standard & Poor's.

"Reference Obligation Calculation Period" means, with respect to each Reference Obligation Payment Date, a period corresponding to the interest accrual period relating to such Reference Obligation Payment Date pursuant to the Underlying Instruments.



"Reference Obligation Coupon" means the periodic interest rate applied in relation to each Reference Obligation Calculation Period on the related Reference Obligation Payment Date, as determined in accordance with the terms of the Underlying Instruments as at the Effective Date, without regard to any subsequent amendment.

"Reference Obligation Payment Date" means (i) each scheduled distribution date for the Reference Obligation occurring on or after the Effective Date and on or prior to the Scheduled Termination Date, determined in accordance with the Underlying Instruments and (ii) any day after the Effective Maturity Date on which a payment is made in respect of the Reference Obligation.

"Related Obligation" means, in relation to the Reference Obligation, an obligation of the Reference Entity that is also secured by the Underlying Assets but ranks senior or junior to the Reference Obligation in priority of payment. In relation to a Related Obligation, the terms "Servicer", "Servicer Report" and "Underlying Instruments" shall have the meanings set out in this Confirmation but with references in the definitions of those terms to "Reference Obligation" being deemed, solely for this purpose, to be references to the Related Obligation.

"Relevant Amount" means, if a Servicer Report that describes a Principal Payment, Writedown or Writedown Reimbursement (other than a Writedown Reimbursement within paragraph (i) of the definition of "Writedown Reimbursement"), in each case that has the effect of decreasing or increasing the interest-accruing principal balance of the Reference Obligation as of a date prior to a Delivery Date but such Servicer Report is delivered to holders of the Reference Obligation or to the Calculation Agent on or after such Delivery Date, an amount equal to the product of (i) the sum of any such Principal Payment (expressed as a positive amount), Writedown (expressed as a positive amount) or Writedown Reimbursement (expressed as a negative amount), as applicable; (ii) the Reference Price; (iii) the Applicable Percentage immediately prior to such Delivery Date; and (iv) the Exercise Percentage.

"Senior Amount" means, as of any day, the aggregate outstanding principal balance of all obligations of the Reference Entity secured by the Underlying Assets and ranking senior in priority to the Reference Obligation.

"Servicer" means any trustee, servicer, sub-servicer, master servicer, fiscal agent, paying agent or other similar entity responsible for calculating payment amounts or providing reports pursuant to the Underlying Instruments.

"Servicer Report" means a periodic statement or report regarding the Reference Obligation provided by the Servicer to holders of the Reference Obligation.

"Standard & Poor's" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or any successor to its rating business.

"Underlying Assets" means the assets securing the Reference Obligation for the benefit of the holders of the Reference Obligation and which are expected to generate the cashflows required for the servicing and repayment (in whole or in part) of the Reference Obligation, or the assets to which a holder of such Reference Obligation is economically exposed where such exposure is created synthetically.

"Underlying Instruments" means the indenture, trust agreement, pooling and servicing agreement or other relevant agreement(s) setting forth the terms of the Reference Obligation.



“Writedown” means the occurrence at any time on or after the Effective Date of:

- (i) (A) a writedown or applied loss (however described in the Underlying Instruments) resulting in a reduction in the Outstanding Principal Amount (other than as a result of a scheduled or unscheduled payment of principal); or
- (B) the attribution of a principal deficiency or realized loss (however described in the Underlying Instruments) to the Reference Obligation resulting in a reduction or subordination of the current interest payable on the Reference Obligation;
- (ii) the forgiveness of any amount of principal by the holders of the Reference Obligation pursuant to an amendment to the Underlying Instruments resulting in a reduction in the Outstanding Principal Amount; or
- (iii) if Implied Writedown is applicable and the Underlying Instruments do not provide for writedowns, applied losses, principal deficiencies or realized losses as described in (i) above to occur in respect of the Reference Obligation, an Implied Writedown Amount being determined in respect of the Reference Obligation by the Calculation Agent.

“Writedown Amount” means, with respect to any day, the product of (i) the amount of any Writedown on such day, (ii) the Applicable Percentage and (iii) the Reference Price.

“Writedown Reimbursement” means, with respect to any day, the occurrence of:

- (i) a payment by or on behalf of the Issuer of an amount in respect of the Reference Obligation in reduction of any prior Writedowns;
- (ii) (A) an increase by or on behalf of the Issuer of the Outstanding Principal Amount of the Reference Obligation to reflect the reversal of any prior Writedowns; or
- (B) a decrease in the principal deficiency balance or realized loss amounts (however described in the Underlying Instruments) attributable to the Reference Obligation; or
- (iii) if Implied Writedown is applicable and the Underlying Instruments do not provide for writedowns, applied losses, principal deficiencies or realized losses as described in (ii) above to occur in respect of the Reference Obligation, an Implied Writedown Reimbursement Amount being determined in respect of the Reference Obligation by the Calculation Agent.

“Writedown Reimbursement Amount” means, with respect to any day, an amount equal to the product of:

- (i) the sum of all Writedown Reimbursements on that day;
- (ii) the Applicable Percentage; and
- (iii) the Reference Price.

“Writedown Reimbursement Payment Amount” means, with respect to an Additional Fixed Amount Payment Date, the sum of the Writedown Reimbursement Amounts in respect of all Writedown Reimbursements (if any) made during the Reference Obligation Calculation



Period relating to such Additional Fixed Amount Payment Date, provided that the aggregate of all Writedown Reimbursement Payment Amounts at any time shall not exceed the aggregate of all Floating Amounts paid by Seller in respect of Writedowns occurring prior to such Additional Fixed Amount Payment Date.

**Interest Shortfall Cap Annex A**

If Interest Shortfall Cap is specified as applicable and Annex A is elected in the relevant Confirmation, then the following provisions will apply:

- Interest Shortfall Cap Basis: As shown in the relevant Confirmation.
- Interest Shortfall Cap Amount: If the Interest Shortfall Cap Basis is Fixed Cap, the Interest Shortfall Cap Amount in respect of an Interest Shortfall shall be the Fixed Amount calculated in respect of the Fixed Rate Payer Payment Date immediately following the Reference Obligation Payment Date on which the relevant Interest Shortfall occurred.
- If the Interest Shortfall Cap Basis is Variable Cap, the Interest Shortfall Cap Amount applicable in respect of a Floating Rate Payer Payment Date shall be an amount equal to the product of:
- (a) the sum of the Relevant Rate and the Fixed Rate applicable to the Fixed Rate Payer Calculation Period immediately preceding the Reference Obligation Payment Date on which the relevant Interest Shortfall occurs (or, in respect of the first Fixed Rate Payer Calculation Period, the Relevant Rate and the Fixed Rate as of the Effective Date);
  - (b) the amount determined by the Calculation Agent under sub-clause (b) of the definition of "Fixed Amount" in relation to the relevant Fixed Rate Payer Payment Date; and
  - (c) the Fixed Rate Day Count Fraction.
- Interest Shortfall Compounding: As shown in the relevant Confirmation.
- Interest Shortfall Reimbursement Payment Amount: With respect to the first Additional Fixed Amount Payment Date, zero, and with respect to any subsequent Additional Fixed Amount Payment Date and calculated as of the Reference Obligation Payment Date immediately preceding such Additional Fixed Amount Payment Date, as specified by the Calculation Agent in its notice to the parties or by Seller in its notice to Buyer of the existence of an Interest Shortfall Reimbursement, an amount equal to the greater of:
- (a) zero; and
  - (b) the amount equal to:
    - (i) the product of:
      - (A) the Cumulative Interest Shortfall Payment Amount as of the Additional Fixed Amount Payment

Date immediately preceding such  
Reference Obligation Payment Date;  
and

(B) either:

- (1) if Interest Shortfall  
Compounding is  
specified as  
applicable in the  
relevant  
Confirmation, the  
relevant Cumulative  
Interest Shortfall  
Payment  
Compounding  
Factor for the Fixed  
Rate Payer  
Calculation Period  
immediately  
preceding such  
Additional Fixed  
Amount Payment  
Date (or 1.0 in  
respect of any  
Additional Fixed  
Amount Payment  
Date occurring after  
the final Fixed Rate  
Payer Payment  
Date); or
- (2) if Interest Shortfall  
Compounding is  
specified as not  
applicable in the  
relevant  
Confirmation, one;

minus

- (ii) the Cumulative Interest Shortfall Amount  
as of such Reference Obligation Payment  
Date;

provided that if the Interest Shortfall Reimbursement  
Payment Amount on an Additional Fixed Amount  
Payment Date would exceed the Interest Shortfall  
Reimbursement Amount in respect of the related  
Reference Obligation Payment Date, then such  
Interest Shortfall Reimbursement Payment Amount  
shall be deemed to be equal to such Interest Shortfall  
Reimbursement Amount.

Cumulative Interest Shortfall Amount:

With respect to any Reference Obligation Payment Date, an amount equal to the greater of:

- (a) zero; and
- (b) an amount equal to:
  - (i) the Cumulative Interest Shortfall Amount as of the Reference Obligation Payment Date immediately preceding such Reference Obligation Payment Date or, in the case of the first Reference Obligation Payment Date, zero; plus
  - (ii) the Interest Shortfall Amount (if any) in respect of such Reference Obligation Payment Date; plus
  - (iii) either:
    - (A) if Interest Shortfall Compounding is specified as applicable in the relevant Confirmation, an amount determined by the Calculation Agent as the amount of interest that would accrue on the Cumulative Interest Shortfall Amount immediately preceding such Reference Obligation Payment Date during the related Reference Obligation Calculation Period pursuant to the Underlying Instruments or, in the case of the first Reference Obligation Payment Date, zero; or
    - (B) if Interest Shortfall Compounding is specified as not applicable in the relevant Confirmation, 0; minus
  - (iv) the Interest Shortfall Reimbursement Amount (if any) in respect of such Reference Obligation Payment Date.

Upon the occurrence of each Delivery, the Cumulative Interest Shortfall Amount shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following such Delivery divided by (b) the Applicable Percentage immediately prior to such Delivery; provided, however, that if more than one Delivery is made during a Reference Obligation Calculation Period, the Cumulative Interest Shortfall Amount calculated as of the Reference Obligation Payment Date occurring immediately after such Reference Obligation Calculation Period shall be multiplied by a



fraction equal to (a) the Applicable Percentage immediately following the final Delivery made during such Reference Obligation Calculation Period divided by (b) the Applicable Percentage immediately prior to the first Delivery made during such Reference Obligation Calculation Period.



Cumulative Interest Shortfall  
Payment Amount:

The Cumulative Interest Shortfall Payment Amount with respect to any Fixed Rate Payer Payment Date and any Additional Fixed Amount Payment Date falling on such Fixed Rate Payer Payment Date shall be an amount equal to the greater of:

- (a) zero; and
- (b) the amount equal to:
  - (i) the sum of:
    - (A) the Interest Shortfall Payment Amount for the Reference Obligation Payment Date corresponding to such Fixed Rate Payer Payment Date; and
    - (B) the product of:
      - (1) the Cumulative Interest Shortfall Payment Amount as of the Fixed Rate Payer Payment Date immediately preceding such Fixed Rate Payer Payment Date (or zero in the case of the first Fixed Rate Payer Payment Date); and
      - (2) either:
        - (AA) if Interest Shortfall Compounding is specified as applicable in the relevant Confirmation, the relevant Cumulative Interest Shortfall Payment Compounding Factor; or
        - (BB) if Interest Shortfall Compounding is specified as not applicable in the relevant Confirmation, one;
  - (ii) any Interest Shortfall Reimbursement Payment Amount paid on such Fixed Rate Payer Payment Date.

minus

With respect to any Additional Fixed Amount Payment Date falling after the final Fixed Rate Payer Payment Date, the Cumulative Interest Shortfall Payment Amount shall be equal to:

- (x) the Cumulative Interest Shortfall Payment Amount as of the Additional Fixed Amount Payment Date immediately preceding such Additional Fixed Amount Payment Date (or as of the final Fixed Rate Payer Payment Date in the case of the first Additional Fixed Amount Payment Date occurring after the final Fixed Rate Payer Payment Date); minus
- (y) any Interest Shortfall Reimbursement Payment Amount paid on such Additional Fixed Amount Payment Date.

Upon the occurrence of each Delivery, the Cumulative Interest Shortfall Payment Amount shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following such Delivery divided by (b) the Applicable Percentage immediately prior to such Delivery; provided, however, that if more than one Delivery is made during a Reference Obligation Calculation Period, the Cumulative Interest Shortfall Payment Amount calculated as of the Reference Obligation Payment Date occurring immediately after such Reference Obligation Calculation Period shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following the final Delivery made during such Reference Obligation Calculation Period divided by (b) the Applicable Percentage immediately prior to the first Delivery made during such Reference Obligation Calculation Period.

Cumulative Interest Shortfall  
Payment Compounding Factor:

With respect to any Fixed Rate Payer Calculation Period, an amount equal to the sum of:

- (a) one;  
plus
- (b) the product of:
  - (i) the sum of (A) the Relevant Rate plus (B) the Fixed Rate; and
  - (ii) the actual number of days in such Fixed Rate Payer Calculation Period divided by 360;

provided, however, that the Cumulative Interest Shortfall Payment Compounding Factor shall be deemed to be one during the period from but excluding the Effective Maturity Date to and including the Termination Date.

Relevant Rate:

With respect to a Fixed Rate Payer Calculation Period, the Floating Rate, expressed as a decimal number with seven decimal places, that would be determined if:

- (a) the 2006 ISDA Definitions (and not the 2003 ISDA Credit Derivatives Definitions) applied to this paragraph;
- (b) the Fixed Rate Payer Calculation Period were a "Calculation Period" for purposes of such determination; and
- (c) the following terms applied:
  - (i) the Floating Rate Option were the Rate Source;
  - (ii) the Designated Maturity were the period that corresponds to the usual length of a Fixed Rate Payer Calculation Period; and
  - (iii) the Reset Date were the first day of the Calculation Period;

provided, however, that the Relevant Rate shall be deemed to be zero during the period from but excluding the Effective Maturity Date to and including the Termination Date.

Rate Source:

As shown in the relevant Confirmation.

**Interest Shortfall Cap Annex B**

If Interest Shortfall Cap is specified as applicable and Annex B is elected in the relevant Confirmation, then the following provisions will apply:

Interest Shortfall Cap Basis: As shown in the relevant Confirmation.

Interest Shortfall Cap Amount: If the Interest Shortfall Cap Basis is Fixed Cap, the Interest Shortfall Cap Amount in respect of an Interest Shortfall shall be the Fixed Amount calculated in respect of the Fixed Rate Payer Payment Date immediately following the Reference Obligation Payment Date on which the relevant Interest Shortfall occurred.

If the Interest Shortfall Cap Basis is Variable Cap, the Interest Shortfall Cap Amount applicable in respect of a Floating Rate Payer Payment Date shall be an amount equal to the product of:

- (a) the sum of the Relevant Rate and the Fixed Rate applicable to the Fixed Rate Payer Calculation Period immediately preceding the Reference Obligation Payment Date on which the relevant Interest Shortfall occurs (or, in respect of the first Fixed Rate Payer Calculation Period, the Relevant Rate and the Fixed Rate as of the Effective Date);
- (b) the amount determined by the Calculation Agent under sub-clause (b) of the definition of "Fixed Amount" in relation to the relevant Fixed Rate Payer Payment Date; and
- (c) the Fixed Rate Day Count Fraction.

Interest Shortfall Compounding: As shown in the relevant Confirmation.

Interest Shortfall Reimbursement Payment Amount: If Interest Shortfall Cap is specified as applicable in the relevant Confirmation, then with respect to the first Additional Fixed Amount Payment Date, zero, and with respect to any subsequent Additional Fixed Amount Payment Date and calculated as of the Reference Obligation Payment Date immediately preceding such Additional Fixed Amount Payment Date, as specified by the Calculation Agent in its notice to the parties or by Seller in its notice to Buyer of the existence of an Interest Shortfall Reimbursement, an amount equal to:

- (a) the greater of:
  - (i) zero; and
  - (ii) (A) the product of:
    - (1) the Cumulative Interest Shortfall



Payment Amount as of the  
 Additional Fixed Amount  
 Payment Date immediately  
 preceding such Reference  
 Obligation Payment Date; and

(2) either:

(AA) if Interest Shortfall  
 Compounding is specified  
 as applicable in the relevant  
 Confirmation, the relevant  
 Cumulative Interest  
 Shortfall Payment  
 Compounding Factor for  
 the Fixed Rate Payer  
 Calculation Period  
 immediately preceding  
 such Additional Fixed  
 Amount Payment Date (or  
 one in respect of any  
 Additional Fixed Amount  
 Payment Date occurring  
 after the final Fixed Rate  
 Payer Payment Date); or

(BB) if Interest Shortfall  
 Compounding is specified  
 as not applicable in the  
 relevant Confirmation, one;

minus

(B) the Cumulative Interest Shortfall  
 Amount as of such Reference Obligation  
 Payment Date;

plus

(b) the Cumulative Implied Writedown Interest  
 Payment Amount as of such Additional Fixed  
 Amount Payment Date without giving effect to  
 clause (iii) or clause (y) of such definition (the  
 "Current CIWIPA");

provided that if the Interest Shortfall Reimbursement  
 Payment Amount on an Additional Fixed Amount Payment  
 Date would exceed the Interest Shortfall Reimbursement  
 Amount in respect of the related Reference Obligation  
 Payment Date, then such Interest Shortfall Reimbursement  
 Payment Amount shall be deemed to be equal to such  
 Interest Shortfall Reimbursement Amount.



Cumulative Interest Shortfall Amount;

With respect to any Reference Obligation Payment Date, an amount equal to the greater of:

- (a) zero; and
  - (b) an amount equal to:
    - (i) the Cumulative Interest Shortfall Amount as of the Reference Obligation Payment Date immediately preceding such Reference Obligation Payment Date or, in the case of the first Reference Obligation Payment Date, zero; plus
    - (ii) the Interest Shortfall Amount (if any) in respect of such Reference Obligation Payment Date; plus
    - (iii) either:
      - (A) if Interest Shortfall Compounding is specified as applicable in the relevant Confirmation, an amount determined by the Calculation Agent as the amount of interest that would accrue on the Cumulative Interest Shortfall Amount immediately preceding such Reference Obligation Payment Date during the related Reference Obligation Calculation Period pursuant to the Underlying Instruments or, in the case of the first Reference Obligation Payment Date, zero; or
      - (B) if Interest Shortfall Compounding is specified as not applicable in the relevant Confirmation, zero;
- minus
- (iv) the greater of:
    - (A) zero; and
    - (B) the Interest Shortfall Reimbursement Amount (if any) in respect of such Reference Obligation Payment Date, minus the Current CIWIPA determined on the Additional Fixed Amount Payment Date immediately following such Reference Obligation Payment Date.

Upon the occurrence of each Delivery, the Cumulative Interest Shortfall Amount shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following such Delivery divided by (b) the Applicable Percentage immediately prior to such Delivery; provided, however, that if more than one Delivery is made during a Reference Obligation Calculation Period, the Cumulative Interest Shortfall Amount calculated as of the Reference Obligation Payment Date occurring immediately after such Reference Obligation Calculation Period shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following the final Delivery made during such Reference Obligation Calculation Period over (b) the Applicable Percentage immediately prior to the first Delivery made during such Reference Obligation Calculation Period.

Cumulative Interest Shortfall  
Payment Amount:

The Cumulative Interest Shortfall Payment Amount with respect to any Fixed Rate Payer Payment Date and any Additional Fixed Amount Payment Date falling on such Fixed Rate Payer Payment Date shall be an amount equal to the greater of:

- (a) zero; and
- (b) the amount equal to:
  - (i) the sum of:
    - (A) the Interest Shortfall Payment Amount for the Reference Obligation Payment Date corresponding to such Fixed Rate Payer Payment Date; and
    - (B) the product of:
      - (1) the Cumulative Interest Shortfall Payment Amount as of the Fixed Rate Payer Payment Date immediately preceding such Fixed Rate Payer Payment Date (or zero in the case of the first Fixed Rate Payer Payment Date); and
      - (2) either:
        - (AA) if Interest Shortfall Compounding is specified as applicable in the relevant Confirmation, the

relevant  
 Cumulative Interest  
 Shortfall Payment  
 Compounding  
 Factor; or

(BB) if Interest Shortfall  
 Compounding is  
 specified as not  
 applicable in the  
 relevant  
 Confirmation, one;

minus

(ii) the greater of:

(A) zero; and

(B) (1) any Interest Shortfall  
 Reimbursement Payment  
 Amount paid on such  
 Additional Fixed Amount  
 Payment Date;

minus

(2) the Current CIWIPA  
 determined on such  
 Additional Fixed Amount  
 Payment Date.

With respect to any Additional Fixed Amount Payment Date  
 falling after the final Fixed Rate Payer Payment Date, the  
 Cumulative Interest Shortfall Payment Amount shall be  
 equal to:

(x) the Cumulative Interest Shortfall Payment Amount  
 as of the Additional Fixed Amount Payment Date  
 immediately preceding such Additional Fixed  
 Amount Payment Date (or as of the final Fixed Rate  
 Payer Payment Date in the case of the first  
 Additional Fixed Amount Payment Date occurring  
 after the final Fixed Rate Payer Payment Date);  
 minus

(y) the greater of:

(aa) zero; and

(bb) any Interest Shortfall Reimbursement  
 Payment Amount paid on such Additional  
 Fixed Amount Payment Date minus the  
 Current CIWIPA determined on such



## Additional Fixed Amount Payment Date.

Upon the occurrence of each Delivery, the Cumulative Interest Shortfall Payment Amount shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following such Delivery divided by (b) the Applicable Percentage immediately prior to such Delivery; provided, however, that if more than one Delivery is made during a Reference Obligation Calculation Period, the Cumulative Interest Shortfall Payment Amount calculated as of the Reference Obligation Payment Date occurring immediately after such Reference Obligation Calculation Period shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following the final Delivery made during such Reference Obligation Calculation Period and (b) the Applicable Percentage immediately prior to the first Delivery made during such Reference Obligation Calculation Period.

Cumulative Implied  
Writedown Interest Payment  
Amount:

With respect to the first Fixed Rate Payer Payment Date, zero and with respect to any subsequent Fixed Rate Payer Payment Date and any Additional Fixed Amount Payment Date falling on such Fixed Rate Payer Payment Date, an amount equal to the greater of:

- (a) zero; and
- (b) the amount equal to:
  - (i) the product of:
    - (A) the Aggregate Implied Writedown Amount as of the Reference Obligation Payment Date relating to the immediately preceding Fixed Rate Payer Payment Date;
    - (B) the Applicable Percentage;
    - (C) the sum of (1) the Relevant Rate and (2) the Fixed Rate; and
    - (D) the Fixed Rate Day Count Fraction;

plus
  - (ii) the product of:
    - (A) the Cumulative Implied Writedown Interest Payment Amount as of the Fixed Rate Payer Payment Date immediately preceding such Fixed Rate Payer Payment Date (or zero in the case of the first Fixed Rate

Payer Payment Date); and

(B) either:

(1) if Interest Shortfall  
 Compounding is specified  
 as applicable in the relevant  
 Confirmation, the relevant  
 Cumulative Interest  
 Shortfall Payment  
 Compounding Factor; or

(2) if Interest Shortfall  
 Compounding is specified  
 as not applicable in the  
 relevant Confirmation, one;

minus

(iii) the lesser of:

(A) any Interest Shortfall  
 Reimbursement Payment Amount  
 paid on such Additional Fixed  
 Amount Payment Date; and

(B) the Current CIWIPA determined on  
 such Additional Fixed Amount  
 Payment Date.

With respect to any Additional Fixed Amount Payment Date falling after the final Fixed Rate Payer Payment Date, the Cumulative Implied Writedown Interest Payment Amount shall be equal to:

(x) the Cumulative Implied Writedown Interest Payment Amount as of the Additional Fixed Amount Payment Date immediately preceding such Additional Fixed Amount Payment Date (or as of the final Fixed Rate Payer Payment Date in the case of the first Additional Fixed Amount Payment Date occurring after the final Fixed Rate Payer Payment Date); minus

(y) the lesser of:

(aa) any Interest Shortfall Reimbursement  
 Payment Amount paid on such Additional  
 Fixed Amount Payment Date; and

(bb) the Current CIWIPA determined on such  
 Additional Fixed Amount Payment Date.

Upon the occurrence of each Delivery, the Cumulative Implied Writedown Interest Payment Amount shall be



multiplied by a fraction equal to (a) the Applicable Percentage immediately following such Delivery divided by (b) the Applicable Percentage immediately prior to such Delivery; provided, however, that if more than one Delivery is made during a Reference Obligation Calculation Period, the Cumulative Implied Writedown Interest Payment Amount calculated as of the Reference Obligation Payment Date occurring immediately after such Reference Obligation Calculation Period shall be multiplied by a fraction equal to (a) the Applicable Percentage immediately following the final Delivery made during such Reference Obligation Calculation Period and (b) the Applicable Percentage immediately prior to the first Delivery made during such Reference Obligation Calculation Period.

Cumulative Interest Shortfall Payment Compounding Factor: With respect to any Fixed Rate Payer Calculation Period, an amount equal to the sum of:

- (a) one;
- plus
- (b) the product of:
  - (i) the sum of (A) the Relevant Rate plus (B) the Fixed Rate; and
  - (ii) the Fixed Rate Day Count Fraction;

provided, however, that the Cumulative Interest Shortfall Payment Compounding Factor shall be deemed to be one during the period from but excluding the Effective Maturity Date to and including the Termination Date.

Relevant Rate: With respect to a Fixed Rate Payer Calculation Period, the Floating Rate, expressed as a decimal number with seven decimal places, that would be determined if:

- (a) the 2006 ISDA Definitions (and not the 2003 ISDA Credit Derivatives Definitions) applied to this paragraph;
- (b) the Fixed Rate Payer Calculation Period were a "Calculation Period" for purposes of such determination; and
- (c) the following terms applied:
  - (i) the Floating Rate Option were the Rate Source;
  - (ii) the Designated Maturity were the period that corresponds to the usual length of a Fixed Rate Payer Calculation Period; and

(iii) the Reset Date were the first day of the Calculation Period;

provided, however, that the Relevant Rate shall be deemed to be zero during the period from but excluding the Effective Maturity Date to and including the Termination Date.

Rate Source:

As shown in the relevant Confirmation.

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 12**

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
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and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

**Schedule****Form of Novation Confirmation**

[Headed paper of Party A]

**NOVATION CONFIRMATION**

for use with the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Collateralized Debt Obligation with Pay-As-You-Go or Physical Settlement as published by the International Swaps and Derivatives Association, Inc.

Date:

To: [Name and Address or Facsimile Number of Party B and Party C]

From: [Party A]

Re: Novation Transaction

Dear \_\_\_\_\_:

The purpose of this [facsimile][letter] is to confirm the terms and conditions of the Novation Transaction entered into between the parties and effective from the Novation Date specified below. This Novation Confirmation constitutes a "Confirmation" as referred to in the New Agreement specified below.

1. The definitions and provisions contained in the 2004 ISDA Novation Definitions (the "Definitions"), the terms and provisions of the 2003 ISDA Credit Derivatives Definitions (the "Credit Derivatives Definitions"), as published by the International Swaps and Derivatives Association, Inc. and amended from time to time and the Annex hereto are each incorporated in this Novation Confirmation. In the event of any inconsistency between (i) the Definitions (as amended by the Annex hereto), (ii) the Credit Derivatives Definitions and/or (iii) the Novation Agreement (as amended by the Annex hereto) and this Novation Confirmation, this Novation Confirmation will govern.

2. The terms of the Novation Transaction to which this Novation Confirmation relates are as follows:

[Novation Trade Date:]

Novation Date:

Novated Amount:

[Transferor][Transferor 1] (and notwithstanding Section 1.5 of the Definitions):

[Transferor 2 (and notwithstanding Section 1.5 of the Definitions)]:

[Transferee][Transferee 1] (and notwithstanding Section 1.6 of the Definitions):



[Remaining Party (and notwithstanding Section 1.6 of the Definitions)][Transferee 2 (and notwithstanding Section 1.6 of the Definitions)]:

[New Agreement (between [Transferee 1 and Transferee 2][Transferee and Remaining Party])]: ISDA Master Agreement [dated as of \_\_\_\_\_][as per Section 1.11 of the Definitions] subject to [English law][the laws of the State of New York]

3. The terms of each Old Transaction to which this Novation Confirmation relates[, for identification purposes, are as follows:][shall be specified in the copy of the Old Confirmation attached hereto as Exhibit A.]

Reference Entity:

Reference Obligation:

Trade Date of Old Transaction:

Effective Date of Old Transaction:

Applicable Percentage of Old Transaction:

Scheduled Termination Date of Old

Transaction:

4. The terms of each New Transaction to which this Novation Confirmation relates [are as follows:][shall be specified in Section[s] \_\_ [\_\_\_\_\_] and [\_\_\_\_\_] of the copy of the Old Confirmation attached hereto as Exhibit A.][shall be specified in the New Confirmation attached hereto as Exhibit [A][B]].

Full First Calculation Period:

Applicable, [commencing on [ ]] [commencing on [ ]], with respect to any amounts to be paid by the Transferee, and [ ], with respect to any amounts to be paid by the Remaining Party].

5. Other Provisions: [[Additional Provisions relating to the New Transaction]][Credit Support Documents relating to the New Transaction]]:

6. Miscellaneous Provisions: [Non-Reliance][ ]

7. Notice Details:

Telephone and/or Facsimile Numbers for Notices:

Transferee: [ ]

Remaining Party: [ ]

8. [The parties confirm their acceptance to be bound by this Novation Confirmation as of the Novation Date by executing a copy of this Novation Confirmation and returning it to us]. [The Transferor, by its execution of a copy of this Novation Confirmation, agrees to the terms of the Novation Confirmation as it relates to each Old Transaction. The Transferee, by its execution of a

copy of this Novation Confirmation, agrees to the terms of the Novation Confirmation as it relates to each New Transaction.].

9. The Remaining Party and the Transferee agree that, notwithstanding any provision in the Old Transaction to which this Novation Confirmation relates, all rights of the Remaining Party and the Transferor in respect of Floating Amounts and Additional Fixed Amounts that arose before the Novation Date shall be deemed to have been exercised and all obligations of such parties in respect of such events that have arisen or are deemed to have arisen shall be deemed to have been satisfied in full, in each case solely for the purposes of determining the rights and obligations of the Remaining Party and the Transferee under the New Transaction. Nothing in this paragraph shall affect the rights or obligations of the Remaining Party or the Transferor under the Old Transaction.

.....  
(Name of Remaining Party)

By: .....  
Name: .....  
Title: .....  
Date: .....

.....  
(Name of Transferor)

By: .....  
Name: .....  
Title: .....  
Date: .....

.....  
(Name of Transferee)

By: .....  
Name: .....  
Title: .....  
Date: .....

Annex

1. Section 2(a) of the Novation Agreement shall be deemed to be amended as follows:
  - (a) by the insertion of “(i)” after the words “with respect to” in the fifth line thereof; and
  - (b) by the addition of the following at the end thereof:

“and (ii) any rights or obligations arising in respect of Floating Amount Events or Additional Fixed Amount Events, in each case in respect of which the Remaining Party or the Transferor (each an “Original Party”), as applicable, had the right to deliver a notice pursuant to the terms of the Old Transaction but such notice was not delivered by that party or the Calculation Agent prior to the Novation Date (each an “Excluded Event”) provided that the rights of the Original Parties to deliver a notice in respect of an Excluded Event pursuant to the Old Transaction shall expire on the 60th calendar day following the Novation Date.”
2. Section 2(b) of the Novation Agreement shall be deemed to be amended by the addition of the following after the words “Novation Date,” in the last line thereof:

“but excluding any rights or obligations in respect of Excluded Events,”
3. Section 2.1(a)(iii)(D)(i) of the Definitions shall not apply

**ANNEX B****TAX GUIDELINES**

TERMS USED IN THIS ANNEX B BUT NOT OTHERWISE DEFINED IN THIS ANNEX B OR IN THIS AGREEMENT HAVE THE RESPECTIVE MEANINGS GIVEN TO SUCH TERMS IN EXHIBIT A HERETO.

THE FOLLOWING CONDITIONS ARE DESIGNED TO MINIMIZE THE RISK THAT THE ACQUISITION (INCLUDING THE MANNER OF ACQUISITION) OR OWNERSHIP OF A REFERENCE OBLIGATION COULD CAUSE THE ISSUER TO BE TREATED AS ENGAGED IN A U.S. TRADE OR BUSINESS FOR U.S. FEDERAL INCOME TAX PURPOSES.

**Certain Tax Provisions**

Capitalized terms used but not defined herein will have the meanings ascribed to them in the Indenture.

For purposes of this Annex B only, all references to "Issuer" in this Annex B shall be deemed to refer additionally to the Servicer when acting either on behalf of the Issuer or with respect to assets acquired for and held in the Warehouse Account, as the context may require.

**I. Specific Restrictions.****A. Communications and Negotiations with the Issuer.**

The Issuer will not have any communications or negotiations with the issuer of a Collateral Obligation or the issuer of a Reference Obligation (in any case, directly or indirectly through an intermediary such as the seller of such Collateral Obligation or the Synthetic Security) in connection with the issuance or funding of such Collateral Obligation or Reference Obligation or commitments with respect thereto, except for communications of an immaterial nature or customary due diligence communications; provided, that the Servicer may (i) consent to or withhold consent to any proposed amendments, supplements or other modifications of the term of any Collateral Obligations after such Collateral Obligations are acquired by the Issuer, and (ii) provide comments as to mistakes or inconsistencies in loan documents (including with respect to any provisions that are inconsistent with the terms and conditions of purchase of the loan by the Issuer).

**B. Fees.**

The Issuer will not earn or receive from any Person any fee or other compensation for services, however denominated, in connection with its purchase or sale of a Collateral Obligation or entering into a Synthetic Security except for (i) commitment fees or facility maintenance fees that are received by the Issuer in connection with Revolving Loans or Delayed Drawdown Loans; (ii) yield maintenance and prepayment penalty fees; (iii) fees on account of the Issuer's consenting to amendments, waivers or other modifications of the terms of any Collateral Obligations; (iv) fees from permitted securities lending; and (v) upfront payments in lieu of

periodic payments under a Synthetic Security. Except for services provided in connection with permitted fees, the Issuer will not provide services to any Person.

C. Collateralized Obligations Purchased from the Servicer and Affiliates.

If the Servicer or an affiliate of the Servicer acted as an underwriter, placement or other agent, arranger, negotiator or structurer in connection with the issuance or origination of a Collateral Obligation or was a member of the original lending syndicate with respect to the Collateral Obligation, the Issuer will not acquire any interest in such Collateral Obligation (including entering into a commitment or agreement, whether or not legally binding or enforceable, to acquire such obligation directly or synthetically), from the Servicer, an affiliate of the Servicer, or a fund managed by the Servicer, unless (i) the Collateral Obligation has been outstanding for at least 30 days, (ii) the holder of the Collateral Obligation did not identify the obligation or security as intended for sale to the Issuer within 30 days of its issuance, (iii) the employees or agents of the Servicer responsible for selecting Collateral Obligations for the Issuer were not directly involved in the origination of the Collateral Obligation on behalf of the Servicer, an affiliate of the Servicer, or a fund managed by the Servicer (e.g. responsible for approving or reviewing the lending decision, participation in a credit committee reviewing any loan proposed to be made), (iv) the price paid for such obligation by the Issuer is its fair market value at the time of acquisition by the Issuer, and (v) after the acquisition the Issuer will own less than 50% of the aggregate principal amount of the borrowing that includes such Collateral Obligation.

D. Equity Restrictions. The Issuer will not purchase any asset (directly or synthetically) that is treated for U.S. federal income tax purposes as:

- (1) an equity interest in a "partnership" (within the meaning of Section 7701(a)(2) of the Code) engaged or deemed to be engaged in a trade or business within the United States, or
- (2) a "United States real property interest" as defined in Section 897 of the Code and the Treasury Regulations promulgated thereunder.

The Issuer may acquire stock of a subsidiary and cause such subsidiary to acquire assets set forth in clause (i) or (ii) above (an "ETB/897 Asset") in connection with the workout of defaulted Collateral Obligations, so long as the acquisition of ETB/897 Assets by such subsidiary will not cause the stock of such subsidiary to be deemed to be an ETB/897 Asset.

E. Debt Securities.

The Issuer will acquire or commit to acquire Collateral Obligations, other than those described in Sections I.G. and II, only if either:

- (i) the obligation or security was issued pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"), in an underwriting or placement where none of the Servicer or any Affiliate thereof acted as an underwriter or placement agent (unless they are issued by a Person for whom one of its Affiliates acts as one of a syndicate of placement agents or



underwriters provided the Servicer purchases any such security on an arms length basis at a then current market price from a member of such syndicate); or

- (ii) the obligation or security was privately placed under Rule 144A or Regulation S promulgated under the Securities Act, it was originally issued pursuant to an offering circular, private placement memorandum, or similar offering document, and it is purchased from an underwriter or placement agent and not directly from the obligor and;
- (x) the Servicer and its employees did not participate in the placement as placement agent or underwriter or participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities); or
- (y) the Servicer and its Affiliates did not (i) participate in negotiating or structuring the terms of the obligation or security (other than to comment on offering documents to an unrelated underwriter or placement agent where the ability to comment was generally available to investors and to undertake due diligence of the kind customarily performed by investors in securities) or (ii) acquire or commit to acquire more than 33% of the aggregate principal amount of such obligations or securities or any other class of obligations or securities offered by the obligor or issuer in the same or any related offering (unless Persons unrelated to the Servicer and its Affiliates purchased more than 50% of the aggregate principal amount of such obligations or securities or such class at substantially the same time and on substantially the same terms as the Issuer).

F. Revolving Loans and Delayed Drawdown Loans.

The Issuer will not purchase any Collateral Obligation that constitutes a Revolving Loan or Delayed Drawdown Loan.

G. Application to Synthetic Securities.

The Issuer shall not (i) acquire or enter into any Synthetic Security with respect to any Reference Obligation the direct acquisition of which would violate any provision of this Annex A or (ii) use Synthetic Securities as a means of making advances to the Synthetic Security Counterparty following the date on which the Synthetic Security is acquired or entered into (for the avoidance of doubt, the establishment of Synthetic Security Collateral Accounts and the payment of Synthetic Security Counterparties from the amounts on deposit therein, in each case in accordance with the Indenture, shall not constitute the making of advances).

No Synthetic Security acquired by the Issuer shall (i) require that the purchaser of credit protection thereunder own the applicable Reference Obligation, (ii) require by its terms the delivery of reports or other information relating to the Reference Obligation if the effect of such

requirement is that the purchaser of credit protection thereunder would be required to own the applicable Reference Obligation or (iii) require physical settlement (provided however, for credit derivatives transactions providing for "Pay-As-You-Go or Physical Settlement", the only circumstance in which a party will be required to settle its obligations thereunder by delivery of the Reference Obligation will be in connection with a "Distressed Ratings Downgrade" or a substantially similar event for a Reference Obligation that is readily available on a secondary market).

With respect to each Synthetic Security: (a) the criteria used to determine whether to enter into any particular synthetic security is similar to the criteria used by the Servicer in making investment decisions in debt securities; (b) the synthetic security is acquired by or entered into by the Issuer for its own account and for investment purposes with the expectation of realizing a profit from income earned on the securities and/or any rise in their value during the interval of time between their purchase and sale or hedging purposes and not with an intention to trade or to sell for a short-term profit; (c) the Issuer enters into the synthetic security with a counterparty that is a derivatives dealer (e.g., it holds itself out as willing to enter into both sides of a synthetic transaction as a regular part of its business) and is not an insurance company (or a special purpose subsidiary of an insurance company); (d) none of the Issuer and any other person acting on behalf of the Issuer advertises or publishes the Issuer's ability to enter into synthetic securities; and (e) except with respect to (x) credit-linked notes or similar synthetic securities and (y) any other synthetic securities where standard form ISDA documentation is not applicable, the synthetic security is written on standard form ISDA documentation.

The Issuer shall not enter into offsetting positions unless such offsetting positions are entered into with the same counterparty or the subsequent position is a means to terminate all or part of the prior position as a result of a change in view of the prior position.

In the case of a security issued to the Issuer by a special purpose vehicle or other entity (a "synthetic counterparty") that is meant to expose the Issuer to risk substantially similar to those the Issuer undertakes with a credit default swap, the restrictions under Section 1.G. hereof shall apply not only to such synthetic counterparty, but also to the counterparty of such synthetic counterparty.

As used herein:

"Reference Obligation" means a debt security or other obligation upon which a Synthetic Security is based.

"Synthetic Security" means any swap transaction or security, other than a participation interest in a Loan that has payments associated with either payments of interest and/or principal on a Reference Obligation or the credit performance of a Reference Obligation.

"Synthetic Security Counterparty" means an entity (other than the Issuer) required to make payments on a Synthetic Security (including any guarantor).

#### H. Securities Lending Agreements.

The Issuer will not purchase any Collateral Obligation primarily for the purpose of entering into a securities lending agreement with respect thereto.

#### I. Letters of Credit.

If a Collateral Obligation (or any deposit owned by the Issuer) provides for participation in fees (directly or indirectly) paid with respect to a letter of credit all of the terms under which such letter of credit may be issued must have been fully negotiated no later than the original legal document closing of such Collateral Obligation and the Issuer will acquire its interest in the letter of credit issued to an obligor in connection with an interest in a term loan of the same obligor that is at least as large as the exposure under the letter of credit and that is acquired at the same time and with the intent and expectation to hold the interest in the term loan at least as long as it holds the interest in the letter of credit.

#### II. Restrictions with Respect to Loans and Forward Purchase Commitments.

- A. Any understanding or commitment to purchase a loan, a participation, a loan subparticipation or a collateralized loan obligation (collectively, "Loans") from a seller before completion of the closing and full funding of the Loan by such seller must be treated as a forward sale agreement (a "Forward Purchase Commitment") unless such an understanding or commitment is not legally binding and neither the Issuer nor the Servicer is economically compelled to purchase the Loan following the completion of the closing and full funding of the Loan (i.e., the Servicer will make an independent investment decision whether to purchase such Loan on behalf of the Issuer after completion of the closing and full funding of the Loan) (a "Non-Binding Agreement").
- B. No Forward Purchase Commitment or Non-Binding Agreement shall be made until after the seller (or a transferor to such seller of such Loan) has made a legally binding commitment to fully fund such Loan to the obligor thereof, (subject to customary conditions), which commitment cannot be conditioned on the Issuer's ultimate purchase of such Loan from such seller.
- C. In the event of any reduced or eliminated funding, the Issuer shall not receive any premium, fee, or other compensation in connection with having entered into the Forward Purchase Commitment or Non-Binding Commitment.
- D. The Issuer shall not close any purchase of a Loan subject to a Forward Purchase Commitment earlier than 48 hours (24 hours in connection with a Non-Binding Agreement) after the time of the closing and full funding of the Loan.
- E. The Issuer cannot have a contractual relationship with the borrower with respect to a Loan until the Issuer actually purchases the Loan.

- F. The Issuer cannot be a signatory on the lending agreement, and cannot be obligated to fund an assignment of or a participation in a Loan prior to the actual funding of the Loan by the institutions lending to the borrower.
- G. The Issuer cannot purchase or commit to purchase a Loan if it would cause the Issuer to own more than 50% of the aggregate principal amount of the borrowing that includes such Loan.
- H. The Issuer will not be listed as a "lender" or otherwise a party to a loan until after closing.

III. General Restrictions. The Issuer shall not:

- A. hold itself out, through advertising or otherwise, as originating loans, lending funds, or making a market in or a dealer in loans or other assets;
- B. register as, hold itself out as, or become subject to regulatory supervision or other legal requirements under the laws of any country or political subdivision thereof as, a broker-dealer, a bank, an insurance company, financial guarantor, surety bond issuer, or a company engaged in loan origination;
- C. take any action causing it to be treated as a bank, insurance company, or company engaged in loan origination for purposes of any tax, securities law or other filing or submission made to any governmental authority;
- D. hold itself out, through advertising or otherwise, as originating, funding, guaranteeing or insuring debt obligations or as being willing and able to enter into transactions (either purchases or sales of debt obligations or entries into, assignments or terminations of hedging or derivative instruments, including Synthetic Securities) at the request of others;
- E. treat Synthetic Securities as insurance, reinsurance, indemnity bonds, guaranties, guaranty bonds or suretyship contracts for any purpose;
- F. disclose the identity of any holder of a Security to any person from whom it purchases Collateral Obligations or attempt to obtain more favorable terms from any seller as a result of the identity of any holder of a Security;
- G. allow any non-U.S. bank or lending institution who is a holder of a Security to control or direct the Servicer's or Issuer's decision to invest in a particular asset except as otherwise allowed to such a holder, acting in that capacity, under the Indenture or acquire a Collateral Obligation conditioned upon a particular person or entity holding Securities;
- H. acquire any asset the holding or acquisition of which the Servicer believes would cause the Issuer to be subject to income tax on a net income basis;
- I. hold any security as nominee for another person; or

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- J. buy securities with the intent to subdivide them and sell the components or to buy securities and sell them with different securities as a package or unit.

IV. Amendments and Modifications.

In furtherance and not in limitation of this Annex A, the Servicer shall comply with all of the provisions set forth in this Annex A, unless, with respect to a particular transaction, the Servicer acting on behalf of the Issuer and the Trustee shall have received written advice of McKee Nelson LLP that, under the relevant facts and circumstances with respect to such transaction, the Servicer's failure to comply with one or more of such provisions will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis. The provisions set forth in the Annex A may be amended, eliminated or supplemented by the Servicer if the Issuer, the Servicer and the Trustee shall have received an opinion of McKee Nelson LLP that the Servicer's compliance with such amended provisions or supplemental provisions or the failure to comply with such provisions proposed to be eliminated, as the case may be, will not cause the Issuer to be engaged, or deemed to be engaged, in a trade or business within the United States for United States federal income tax purposes or otherwise to be subject to United States federal income tax on a net basis.



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ANNEX C

[ELIGIBLE SECURITIES: SPREADSHEET TO BE ATTACHED]

Annex C - 1

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Eligible Securities			
	Notional Amount Dollar & Euros	Tranche	CUSIP/ISIN
Rockwall 2	\$13,450,000.00	Equity	77426R203
Highlander 3	€ 8,200,000.00	Equity	XS0293696287
Eastland	\$11,000,000.00	BBB	277345AL8
Rockwall 2	\$3,500,000.00	BB	77426RAA2
Highlander 3	€ 6,000,000.00	BB	US43087MAE75
Stratford	\$4,000,000.00	BBB-	86280AAG2

UBS-00000662

002903

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**SCHEDULE 1**

**[EXISTING CASH COLLATERAL OBLIGATIONS  
COVERED BY THIS AGREEMENT]**

Schedule 1 - 1

245675v.22

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<u>SYMBOL CUSIP</u>	<u>SYMBOL DESCRIPTION</u>	<u>TRADE FACE</u>
675150AC0	OCEANT1 B	\$ 6,500,000.00
40256VAF5	GULFS071D	\$ 4,000,000.00
03762DAE3	APID07CAB	\$ 10,000,000.00
54347UAC6	LOOMSL1 C	\$ 8,000,000.00
387477AE2	GRANV3 B	\$ 4,000,000.00
929260AC1	WGHOR1 B	\$ 10,000,000.00
053643AJ1	AVERYST D	\$ 4,000,000.00
68244CAG1	ONEWAL2 C	\$ 1,500,000.00
04963VÁE8	ATR4CDO B	\$ 2,000,000.00
67515LAD2	OCEANT2 B	\$ 8,000,000.00
67515LAF7	OCEANT2 D	\$ 2,000,000.00
67515LAE0	OCEANT2 C	\$ 2,000,000.00
654883AG2	NOBHL D	\$ 2,940,000.00
82834WAN9	SILVA061C	\$ 1,000,000.00
009368AD3	AIRL061 C	\$ 3,000,000.00
000831AE7	ACACL062B	\$ 10,000,000.00
291086AD8	EMERPL C	\$ 6,000,000.00
42823BAD4	HEWETT5 C	\$ 8,000,000.00
03761QAC9	APIDQ C	\$ 8,000,000.00
122621AE5	BURRDG C	\$ 8,000,000.00
05357UAC5	AVECLO4 B	\$ 10,000,000.00
33842RAC7	FLAGS5 C	\$ 10,000,000.00
51829TAB4	LATCL2 B	\$ 7,000,000.00
39539XAC9	GRECK B	\$ 10,000,000.00
62874GAC1	NACM1 B	\$ 5,000,000.00
15132VAG5	CENT15 C	\$ 3,000,000.00
79014YAE3	STJRIV1 D	\$ 3,000,000.00
38145BAA9	GSCLO E	\$ 2,000,000.00
381425AE7	GSCLO D	\$ 3,000,000.00
873189AD6	T2IF1 D	\$ 3,000,000.00
79015BAA0	STJRIV1 E	\$ 2,000,000.00
85430AAA6	STANMCL B2L	\$ 2,000,000.00
85430XAE8	STANMCL B1L	\$ 5,000,000.00

**EXECUTION VERSION****WAREHOUSE AGREEMENT**

WAREHOUSE AGREEMENT dated as of May 22, 2007 (this "Agreement"), among between UBS Securities LLC ("UBS") and Highland Capital Management, L.P. ("Highland") in its capacity as Servicer (the "Servicer").

**RECITALS**

WHEREAS, pursuant to an engagement letter dated April 20, 2007 (as amended from time to time, the "Engagement Letter"), between UBS and Highland, UBS has been engaged to act as exclusive structuring, warehousing and placement agent with respect to, among other things, (a) the structuring of several classes of notes (the "Notes") and subordinated securities (collectively, the "Subordinated Securities" and, together with the Notes, the "Offered Securities") to be issued by one or more newly formed special purpose entities (each, an "Issuer" and, collectively, the "Issuers") in a collateralized debt obligation transaction (the "Transaction") and (b) the marketing and placement of the Offered Securities.

WHEREAS, a portion of the Offered Securities will be secured (or, in the case of the Subordinated Securities, backed) by a portfolio consisting of collateralized loan obligations that in each case satisfy the eligibility criteria set forth in Annex A hereto (such securities, the "Collateral Obligations") to be acquired by the Issuer pursuant to the Forward Sale Agreement and by a portfolio of credit default swaps referencing collateralized loan obligations which are the subject of a warehouse agreement dated as of April 12, 2007 between UBS AG, London Branch and Highland (the "Synthetic Warehouse Agreement").

WHEREAS, in order to facilitate the Issuer's purchase of the initial portfolio of Collateral Obligations (the "Initial Portfolio"), prior to the issuance of the Offered Securities, the Servicer has requested UBS, and UBS has agreed, to finance the acquisition and warehousing of the Initial Portfolio on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Engagement Letter. Capitalized terms used herein have the respective meanings assigned to them in Exhibit A.
2. Accumulation, Holding and Hedging of Collateral Obligations; Servicer Duties.
  - (A) Accumulation of Collateral Obligations. During the Accumulation Period, the Servicer will select each Collateral Obligation to be included in the Initial Portfolio and, at least three Business Days' prior to committing the Issuer to purchase such Collateral Obligation, will provide notice (a "Purchase Request") to UBS of the identity of such Collateral Obligation and the price at which UBS shall purchase such Collateral Obligation (the "Offer Price"). Subject to the



immediately succeeding sentence and the satisfaction of the conditions set forth in Section 3 hereof, UBS shall purchase any Collateral Obligation identified by the Servicer at a price no greater than the Offer Price (or such other price as UBS and the Servicer may mutually agree to). The Servicer shall provide UBS (or any of its Affiliates) the opportunity to offer for sale any security for inclusion as a Collateral Obligation in the Initial Portfolio at a price that is mutually agreed upon by UBS and the Servicer.

- (B) Hedging of Collateral Obligations. UBS (or any of its Affiliates) may enter into a Hedging Transaction in respect of any one or a group of Collateral Obligations held in the Warehouse Account. UBS (or its Affiliates) may terminate, in part or in whole, or amend any such Hedging Transaction upon the liquidation of the related Collateral Obligation or, after consultation with the Servicer, at any other time. In addition, on the Pricing Date or on any other date determined by UBS in its sole discretion, UBS shall (i) terminate any Hedging Transactions in respect of any Collateral Obligations, and (ii) assist the Servicer in arranging for the Issuer to enter into an interest rate hedging agreement for the account of the Issuer with respect to the portfolio of Collateral Obligations to be acquired by the Issuer on the Closing Date.
- (C) Limit on Amount of Collateral Obligations. The aggregate UBS Purchase Price of the Collateral Obligations purchased by UBS hereunder shall not exceed 100% of the Expected Portfolio Amount (or such other amount as the parties hereto may otherwise agree in writing). The aggregate principal amount of the Collateral Obligations shall not exceed 100% of the Expected Portfolio Amount (or such other amount as the parties hereto may otherwise agree in writing).
- (D) Holding Collateral Obligations. UBS shall hold all such Collateral Obligations in one or more Warehouse Accounts pending the sale or liquidation of such Collateral Obligations pursuant to Sections 4, 5 or 6 hereof. With respect to each Collateral Obligation held in a Warehouse Account, UBS shall, until conveyed, transferred or sold to the Issuer or otherwise conveyed in accordance with this Agreement, be entitled, in its sole discretion to (1) receive and retain any and all proceeds (including, without limitation, any principal, interest and other payments) on such Collateral Obligation; (2) following notice to the Servicer, exercise any and all other rights (including without limitation, voting and exchange rights) with respect to such Collateral Obligation and (3) rehypothecate, or otherwise transfer or hedge the credit or other risk associated with, such Collateral Obligation.
- (E) Eligibility Criteria. The Servicer shall not issue any Purchase Request to UBS in connection with the purchase of a Collateral Obligation hereunder that it knows or (consistent with the customary standards, policies and procedures followed by institutional managers of national standing relating to assets of the nature and character of the CDS Portfolio) should have known that if (A) any of the Eligibility Criteria will not be satisfied by such Collateral Obligation or by the portfolio of Collateral Obligations immediately after giving effect to such

purchase or (B) the acquisition and ownership of such Collateral Obligation by the Issuer would cause the Issuer to be engaged in a trade or business within the United States for United States Federal income tax purposes (provided that the Servicer shall be deemed to comply with this clause (B) to the extent it complies with the procedures set forth in Annex B).

- (F) The Servicer shall notify the Issuer and UBS promptly if at any time during the term of this Agreement it becomes aware that a Collateral Obligation does not conform to the Eligibility Criteria. If at any time during the Accumulation Period any Collateral Obligation or the portfolio of Collateral Obligations does not comply with the Eligibility Criteria, UBS shall be entitled, in its sole discretion, to designate as Ineligible Securities, one or more Collateral Obligations that, if removed from the Initial Portfolio, would cause the portfolio to be in compliance with the Eligibility Criteria.

3. Conditions to Accumulation. The obligation of UBS to acquire any Collateral Obligation for inclusion in the Warehouse Account in accordance with Section 2 hereof is subject to the satisfaction of the following conditions:

- (A) UBS shall have established the Warehouse Account;
- (B) with respect to any Collateral Obligation proposed for inclusion in the Warehouse Account, (i) UBS is satisfied, in its sole discretion, that such Collateral Obligation satisfies the Eligibility Criteria and (ii) UBS shall have given prior consent, in its sole discretion, to the acquisition of such Collateral Obligation;
- (C) in the case of any Collateral Obligation to be acquired by UBS prior to the Pricing Date, UBS is satisfied in its sole discretion that the risk of depreciation in Market Value of such Collateral Obligation by reason of an increase in interest rates during the Carry Period for such Collateral Obligation is hedged pursuant to one or more Hedging Transactions; and
- (D) the Forward Sale Agreement shall have been executed..

4. Sale of Collateral Obligations to Issuer.

- (A) If the Closing Date occurs on or prior to the Termination Date:

(i) UBS (or its Affiliate) shall enter into the Forward Sale Agreement with the Issuer and, with respect to each Collateral Obligation held in the Warehouse Account, a Forward Sale Transaction at an agreed price with the Issuer. If the Closing Date occurs on or prior to the Termination Date, UBS (or such Affiliate) shall sell each Collateral Obligation in the Warehouse Account (other than a Collateral Obligation determined to be an Ineligible Security pursuant to Section 6 hereof) to the Issuer on the Closing Date at the Issuer Purchase Price;

(ii) Ineligible Securities shall be liquidated in accordance with Section 6 and Section 7

(iii) (A) if there is a Net Loss, the lesser of (x) \$50,000,000 and (y) such Net Loss shall be allocated between the CDO Fund and SOHC on the basis of (1), in the case of the CDO Fund, the percentage of total equity or Subordinated Securities that the CDO Fund acquires in the Transaction for investment on the Closing Date to the total equity or Subordinated Securities in the Transaction held by HFP and any subsidiaries thereof, including SOHC and the CDO Fund (the “CDO Fund Loss Limit”) and (2) in the case of SOHC, any Net Loss in excess of the CDO Fund Loss Limit up to \$50,000,000 following allocation to the CDO Fund; and any Net Loss in excess of \$50,000,000 shall be born by UBS

If there is a Net Gain, the lesser of (x) \$50,000,000 and (y) such Net Gain shall be paid by UBS to the CDO Fund and SOHC to be allocated between the CDO Fund and SOHC on the basis of (1), in the case of the CDO Fund, the percentage of total equity or Subordinated Securities that the CDO Fund acquires in the Transaction for investment on the Closing Date to the total equity or Subordinated Securities in the Transaction held by HFP and any subsidiaries thereof, including SOHC and the CDO Fund (the “CDO Fund Gain Limit”) and (2) in the case of SOHC, any Net Gain in excess of the CDO Fund Gain Limit up to \$50,000,000 following allocation to the CDO Fund; and any Net Gain in excess of \$50,000,000 shall be retained by UBS. To the extent the Closing Date fails to occur, allocation of Net Loss, Net Gain and any other amounts payable will be determined in accordance with the provisions of Section 5 hereof; and

(B) In addition, UBS shall be entitled to retain its Financing Cost and Highland shall be entitled to receive any Positive Carry with respect to each Collateral Obligation.

5. Failure to Close; Termination Date.

(A) If the Closing Date fails to occur on or prior to the Termination Date then the Forward Sale Agreement shall terminate in whole by its terms on the Termination Date and UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures. Following the completion of such liquidation of the Collateral Obligations, if there is a Net Loss or Net Gain, the lesser of (x) \$50,000,000 and (y) such Net Loss or Net Gain shall be allocated or paid, as applicable, (1) 51% to CDO Fund and (2) 49% to SOHC; and any Net Loss or Net Gain in excess of \$50,000,000 shall be allocated or retained, as applicable, to UBS.. For purposes of determining the Net Gain and Net Loss, any Collateral Obligation which UBS does not direct to be sold, shall be deemed sold for its Market Value.

(A) If the Closing Date fails to occur for any reason, UBS shall be entitled to retain its Financing Cost.

- (B) If any amount is due from UBS to the Servicer pursuant to this Section 5, UBS shall promptly pay such amount after deducting first therefrom all amounts due from the Servicer under this Section 5 or under Sections 8 and 15.

6. Liquidation of Collateral Obligations.

- (A) If, at any time during the Carry Period therefor, the Servicer determines that a Collateral Obligation is an Ineligible Security, a Written-Down Security, a Credit Risk Security or a Defaulted Security it, shall promptly so notify UBS in writing (including by electronic mail or facsimile).
- (B) If either (i) UBS agrees with the Servicer's determination that a Collateral Obligation is an Ineligible Security, or (ii) UBS itself determines in good faith that any Collateral Obligation is an Ineligible Security, UBS may notify the Servicer that UBS elects to sell such Collateral Obligation, then the Forward Sale Transaction shall immediately terminate in whole by its terms and UBS shall be authorized (but not required) to sell such Collateral Obligation.

7. Liquidation Procedures.

- (A) If any Collateral Obligation is to be sold, UBS shall have the right to direct such sale on such terms and in such manner and at such time that it deems appropriate in its sole discretion. UBS may, in its sole discretion, elect to retain any such Collateral Obligation or to sell such Collateral Obligation to one of UBS's Affiliates in which event, for purposes of determining Net Gain and Net Loss, such Collateral Obligation shall be deemed to have been liquidated at a price equal to the Market Value. Notwithstanding Section 2(B), on or about the date of the liquidation of any Collateral Obligation hereunder, UBS shall terminate the related Hedging Transaction (or the related portion of a Hedging Transaction that relates to a group of Reference Obligations), if any, entered into in respect of such Collateral Obligation.
- (B) The Servicer will, if requested by UBS, cooperate with UBS in effecting any sale of a Collateral Obligation hereunder.

8. [RESERVED].

9. Notices. Unless expressly provided otherwise in writing by the parties hereto, all notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered against receipt or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or in the case of facsimile, when confirmation of transmission is received, addressed as set forth below:

If to UBS:

UBS Securities LLC  
1285 Avenue of the Americas

11th Floor  
 New York, New York 10019  
 Attention: CDO Group  
 Facsimile Number: (212) 713-1489

If to the Servicer:

Highland Capital Management, L.P.  
 Two Galleria Tower  
 13455 Noel Road, Suite 1300  
 Dallas, Texas 75240

Any party hereto may alter the address or facsimile number to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section 9 for the giving of notice.

10. Term. This Agreement shall continue in full force and effect and shall be irrevocable by any party hereto until the earlier of the Termination Date occurring and the Transaction being abandoned pursuant to the Engagement Letter; provided, however, that Sections 4, 5, 6, 7, 8, 13 and 15 shall survive the termination of this Agreement.

11. Representation and Acknowledgements.

(A) The Servicer represents and warrants to UBS that:

(1) it is duly authorized to execute and deliver this Agreement and/to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance;

(2) the person signing this Agreement on its behalf is duly authorized to do so on its behalf;

(3) it has obtained all authorizations of any governmental body required in connection with this Agreement and the transactions contemplated hereby and such authorizations are in full force and effect; and

(4) the execution, delivery and performance of this Agreement and the transactions contemplated hereby will not violate any law, ordinance, charter, by-law or rule applicable to it or any other agreement by which it is bound or by which any of its assets are affected. Each party shall be deemed to repeat all of the foregoing representations made by it on each date on which UBS purchases any Collateral Obligation.

(B) The Servicer acknowledges and agrees that neither UBS nor any Affiliate thereof is, or holds itself out to be, an advisor as to legal, tax, accounting or regulatory matters in any jurisdiction. The Servicer shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the risks, benefits and suitability of the transactions contemplated by this Agreement, and agrees that neither UBS nor any Affiliate



thereof shall have any responsibility or liability to the Servicer or any other Person with respect thereto.

(C) The Servicer hereby acknowledges that:

(1) UBS AG (the parent of UBS) and its subsidiaries, branches and affiliates (the "UBS Group") are involved in a wide range of commercial banking, investment banking and other activities (including investment management, corporate finance and securities issuing, trading and research) from which conflicting interests or duties, may arise;

(2) information which is held within UBS, or within the UBS Group, but of which none of the individuals involved in this Agreement (including in the purchase or sale of Collateral Obligations pursuant to this Agreement) actually has (or without breach of internal procedures can properly obtain) knowledge, will not for any purpose be taken into account in determining UBS' responsibilities hereunder;

(3) neither UBS nor any other part of the UBS Group will have any duty to disclose to the parties hereto or utilize for the benefit of the parties hereto any non-public information acquired in the course of providing services to any other person, engaging in any transaction (on its own account or otherwise) or otherwise carrying on its business; and

(4) in the ordinary course of business, UBS, and its Affiliates may trade the Collateral Obligations comprising the Initial Portfolio for its own account and for the accounts of customers, and may at any time hold a long or short position in such obligations.

12. Clawback. If any payment made with respect to any Collateral Obligation is required to be repaid or returned to any issuer, guarantor or other obligor thereon (an "Underlying Obligor"), or any other Person (including, without limitation, any bankruptcy trustee for any Underlying Obligor) in accordance with a sharing or similar clause in any Collateral Obligation or as required by bankruptcy, insolvency or similar law (a "Repayment"), then (i) each payment obligation under this Agreement that gave rise to such Repayment shall be recomputed by UBS in good faith, as if it had not been made, and UBS shall promptly notify the parties to this Agreement of such recomputed amounts, and (ii) any additional amount required to be paid by UBS or the Servicer in light of such recomputation shall be paid to the other party within three Business Days after such other party's demand therefor. The obligations of the parties under this paragraph shall survive the Termination Date except that no party shall be liable hereunder with respect to a claim for a Repayment that is first made by an Underlying Obligor or other person more than two years after the Termination Date.

13. Activity of the Servicer; Written Disclosure Statement.

(A) The Servicer shall discharge its duties under this Agreement, using a degree of skill and attention no less than that which the Servicer exercises with respect to comparable assets that it manages for itself and others with similar investment objectives in accordance with its customary practices and procedures and no less than that which institutional money managers exercise with respect to comparable assets.

- (B) The Servicer will not be liable to UBS or any other Person for any acts or omissions by the Servicer or any Affiliate of the Servicer, or any of their directors, officers, members, agents, equity holders, advisors, attorneys or employees under or in connection with this Agreement, or for any decrease in the value of the Initial Portfolio other than pursuant to Sections 4, 5, 6, 7 or 12, except by reason of acts or omissions constituting bad faith, willful misconduct or gross negligence in the performance of, or reckless disregard with respect to, the duties of the Servicer hereunder.
- (C) The Servicer will not be entitled to compensation under this Agreement. Each party will be responsible for its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby.
- (D) The Servicer shall provide UBS with a copy of Part II of the Servicer's Form ADV for attachment as an exhibit to the final offering memorandum no later than 2 Business Days prior to the printing of the final offering memorandum.

14. Choice of Law; Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (including without limitation Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York) without regard to the conflict of laws principles. The parties hereto submit to the exclusive jurisdiction of the federal and New York state courts located in the county of New York, New York in connection with any dispute related to this letter agreement or any of the matters contemplated hereby.

15. Access to Information. The Servicer shall afford UBS access, upon reasonable prior notice, to any information the Servicer possesses or can reasonably obtain, about the Collateral Obligations, each of the Underlying Obligors of the Collateral Obligations and their respective financial condition, results of operations, business, property, management and prospects in order to enable UBS to evaluate a proposed investment in the Collateral Obligations.

16. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

17. Entire Agreement; Sole Benefit. This Agreement and the Engagement Letter set forth the entire understanding of the parties hereto relating to the subject matter hereof, and supersede and cancel all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be amended or modified except by the parties hereto in writing.

Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any person other than the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, none of the parties hereto may assign its rights or obligations

## **EXHIBIT 9 – FILED UNDER SEAL**

## **EXHIBIT 9 – FILED UNDER SEAL**

## **EXHIBIT 11 – FILED UNDER SEAL**



## **EXHIBIT 12 – FILED UNDER SEAL**

## **EXHIBIT 13 – FILED UNDER SEAL**

## **EXHIBIT 14 – FILED UNDER SEAL**

## **EXHIBIT 15 – FILED UNDER SEAL**

## **EXHIBIT 16**



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As of: May 29, 2020 6:06 PM Z

## UBS Sec. LLC v Highland Capital Mgt., L.P.

Supreme Court of New York, Appellate Division, First Department

February 18, 2010, Decided; February 18, 2010, Entered

2194, 650097/09

### Reporter

70 A.D.3d 526 \*; 893 N.Y.S.2d 869 \*\*; 2010 N.Y. App. Div. LEXIS 1411 \*\*\*; 2010 NY Slip Op 1436 \*\*\*\*

Cadwalader, Wickersham & Taft LLP, New York  
(Gregory A. Markel of counsel), for respondents.

[\*\*\*\*1] UBS Securities LLC et al., Respondents,  
v Highland Capital Management, L.P., Appellant,  
et al., Defendants.

**Judges:** Friedman, J.P., Sweeny, Nardelli,  
Freedman, JJ. Concur--Friedman, J.P., Sweeny,  
Nardelli, Freedman and JJ.

**Subsequent History:** Motion denied by *UBS Sec. LLC v. Highland Capital Mgt., L.P.*, 30 Misc 3d 1230A, 924 NYS2d 312, 2011 N.Y. Misc. LEXIS 798 (N.Y. Sup. Ct., Mar. 1, 2011)

**Prior History:** *UBS Sec. LLC v. Highland Capital Mgt., L.P.*, 25 Misc 3d 1243A, 906 NYS2d 784, 2009 N.Y. Misc. LEXIS 3408 (2009)

### Opinion

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[\*526] [\*\*869] Order, Supreme Court, New York County (Bernard J. Fried, J.), entered October 8, 2009, which, insofar as appealed from, denied defendant Highland Capital Management, L.P.'s (Highland) motion to dismiss the complaint as against it, unanimously reversed, on the law, with costs, and the motion granted. The Clerk is directed to enter judgment in favor of Highland dismissing the complaint.

Dismissal of plaintiffs' indemnification claim against Highland is warranted, since the agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of defendant off-shore funds' obligations to bear the risk of investment losses. Absent facts alleging that Highland otherwise breached the Engagement Letter, the indemnification provision contained in said letter was not triggered (*see generally Hooper*

### Headnotes/Summary

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#### Headnotes

Indemnity--Contractual Indemnification

**Counsel:** [\*\*\*1] Lackey Hershman, L.L.P., Dallas, TX (Paul B. Lackey, of the Texas Bar, admitted pro hac vice, of counsel), for appellant.

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70 A.D.3d 526, \*526; 893 N.Y.S.2d 869, \*\*869; 2010 N.Y. App. Div. LEXIS 1411, \*\*\*1; 2010 NY Slip Op 1436, \*\*\*\*1

*Assoc. v AGS Computers*, 74 NY2d 487, 491-492,  
548 NE2d 903, 549 NYS2d 365 [1989]). Concur--  
Friedman, J.P., Sweeny, Nardelli, Freedman and JJ.  
[Prior Case History: 25 Misc 3d 1243(A), 2009  
NY Slip Op 52565(U).]

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## **EXHIBIT 17**



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As of: May 29, 2020 6:07 PM Z

## UBS Sec. LLC v Highland Capital Mgt., L.P.

Supreme Court of New York, Appellate Division, First Department

July 21, 2011, Decided; July 21, 2011, Entered

650097/09 4694, 650752/10, 4693

### Reporter

86 A.D.3d 469 \*; 927 N.Y.S.2d 59 \*\*; 2011 N.Y. App. Div. LEXIS 5875 \*\*\*; 2011 NY Slip Op 5979 \*\*\*\*

[\*\*\*\*1] UBS Securities LLC et al., Respondents-Appellants, v Highland Capital Management, L.P., Appellant-Respondent, et al., Defendants. UBS Securities LLC et al., Respondents-Appellants, v Highland Capital Management, L.P., Appellant-Respondent.

**Prior History:** UBS Sec. LLC v. Highland Capital Mgt., L.P., 30 Misc. 3d 1230A, 924 N.Y.S.2d 312, 2011 N.Y. Misc. LEXIS 798 (2011)

### Case Summary

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#### Procedural Posture

Plaintiff investors and defendant manager appealed an order by the New York County Supreme Court (New York) that denied the manager's motion to dismiss the investors' claims for fraudulent inducement, breach of the covenant of good faith and fair dealing, fraudulent conveyance, and tortious interference with contractual relations; the parties disputed to what extent the doctrine of res judicata applied.

#### Overview

The investors agreed to finance and act as placement agent in connection with the issuance of certain collateral debt obligations by the manager. An engagement letter provided that the manager would hold the investors harmless from any claims against them arising out of the breach of the agreements by the manager or its affiliated funds. After the investors' action against the manager for breach of contract and indemnification was dismissed, they filed a new action. The appellate court found, inter alia, that to the extent the investors' claims implicated events alleged to have taken place before the filing of the original complaint, res judicata applied. Nevertheless, to the extent that the causes of action for breach of the covenant of good faith and fair dealing and fraudulent conveyance relied on conduct alleged to have occurred after the commencement of the prior action, they were allowable. As the cause of action for tortious interference with contractual relations was based on events that occurred after the original complaint was filed, it was properly dismissed.

#### Outcome

The order was unanimously modified to grant the motion as to the causes of action that relied on conduct predating the prior action, and as so modified, the order was otherwise affirmed; the investors' appeal of an order that partially denied their motion for leave to file an amended complaint

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86 A.D.3d 469, \*469; 927 N.Y.S.2d 59, \*\*59; 2011 N.Y. App. Div. LEXIS 5875, \*\*\*5875; 2011 NY Slip Op 5979, \*\*\*\*1

was unanimously dismissed as moot.

Civil Procedure > Judgments > Preclusion of  
Judgments > Res Judicata

## **LexisNexis® Headnotes**

Civil Procedure > Judgments > Preclusion of  
Judgments > Res Judicata

### **HN1[📌] Preclusion of Judgments, Res Judicata**

The doctrine of res judicata dictates that, as to the parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action.

Civil Procedure > Judgments > Preclusion of  
Judgments > Res Judicata

### **HN2[📌] Preclusion of Judgments, Res Judicata**

Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.

Civil Procedure > Judgments > Preclusion of  
Judgments > Res Judicata

### **HN3[📌] Preclusion of Judgments, Res Judicata**

When alternative theories are available to recover what is essentially the same relief for harm arising out of the same or related facts such as would constitute a single factual grouping, the circumstance that the theories involve materially different elements of proof will not justify presenting the claim by two different actions.

### **HN4[📌] Preclusion of Judgments, Res Judicata**

Whether facts are deemed to constitute a single factual grouping for res judicata purposes depends on how the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Civil Procedure > Judgments > Preclusion of  
Judgments > Res Judicata

### **HN5[📌] Preclusion of Judgments, Res Judicata**

The proper inquiry for res judicata purposes is when a party could have raised a cause of action, not when it had enough evidence to prove the claim at trial.

## **Headnotes/Summary**

### **Headnotes**

Judgments--Res Judicata--Motion to Amend  
Complaint Following Dismissal of Complaint

Torts--Interference with Contractual Relations

**Counsel:** [\*\*\*1] Lackey Hershman, LLP, New York (Paul B. Lackey of counsel), for appellant-respondent.

Cadwalader, Wickersham & Taft LLP, New York

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86 A.D.3d 469, \*469; 927 N.Y.S.2d 59, \*\*59; 2011 N.Y. App. Div. LEXIS 5875, \*\*\*1; 2011 NY Slip Op 5979, \*\*\*\*1

(Gregory A. Markel of counsel), for respondents-appellants.

**Judges:** Concur--Mazzarelli, J.P., Sweeny, Renwick, Richter, Manzanet-Daniels, JJ.

## Opinion

[\*469] [\*\*60] Order, Supreme Court, New York County (Bernard J. Fried, J.), entered August 9, 2010, which, insofar as appealed [\*\*61] from, in this consolidated action arising out of investment losses incurred by plaintiffs, denied defendant Highland Capital Management, L.P.'s motion to dismiss the complaint in the second action as to the first, third and fourth causes of action for fraudulent inducement, breach of the covenant of good faith and fair dealing and fraudulent conveyance, respectively, and granted the motion as to the fifth cause of action for tortious interference with contractual relations, unanimously modified, on the law, to grant the motion as to the first cause of action and as to those portions of the third and fourth causes of action that rely on conduct pre-dating the commencement of the prior action, and otherwise affirmed, without costs. Appeal from order, same court and Justice, entered June 21, 2010, which granted in part and [\*470] denied [\*\*\*2] in part plaintiffs' motion for leave to file an amended complaint, unanimously dismissed, without costs, as moot. [\*\*\*\*2]

In April 2007, plaintiff UBS\* agreed to finance and act as placement agent in connection with the issuance of certain collateral debt obligations by defendant Highland Capital Management, L.P. (Highland). Highland, a Texas-based hedge fund, did not complete the issuance, and the agreement

expired. At that point Highland owed UBS as much as \$86 million under the arrangement, based on the depreciation of assets that UBS had been required to hold, or "warehouse." However, because Highland still desired to issue the collateral debt obligations with UBS's assistance, UBS agreed to restructure the transaction. The new arrangement, formed in March 2008, consisted of two agreements between UBS, on the one hand, and Highland, and certain funds affiliated with Highland, on the other. A third agreement, referred to by the parties as an engagement letter, was entered into by UBS and Highland. The engagement letter provided, inter alia, that UBS would bear no risk in connection with losses in the securities to be held by UBS. It further provided that Highland would hold UBS harmless [\*\*\*3] from any claims against UBS arising out of the breach of the agreements by Highland or its affiliated funds.

The agreements gave UBS the right to make margin calls on the Highland affiliated funds if the market value of the securities it was holding on behalf of those funds declined. During the fall of 2008, UBS made three such margin calls. The affiliated funds provided additional collateral in response to the first two margin calls, but not in response to the third call, made in November 2008. In December 2008, UBS terminated the restructured transaction before Highland could issue the collateral debt obligations, and demanded payment for almost \$700 million in losses claimed as a result of the depreciation of the assets it was holding. Highland refused to pay.

In early 2009, UBS commenced an action against Highland and the affiliated funds asserting three causes of action. The first two causes of action alleged breach of contract against the affiliated funds only. The third claim was asserted against Highland, and was based on the indemnification language contained in the [\*\*\*4] engagement letter. Highland asserted counterclaims for breach of contract and unjust enrichment against UBS arising out of the restructured transaction.

\*There are two affiliated UBS companies named as plaintiffs that are referred to herein collectively as "UBS."

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86 A.D.3d 469, \*470; 927 N.Y.S.2d 59, \*\*61; 2011 N.Y. App. Div. LEXIS 5875, \*\*\*4; 2011 NY Slip Op 5979, \*\*\*\*2

Highland moved to dismiss the complaint as against it, on the [\*471] basis that the indemnification provision did not apply to [\*\*62] the particular losses claimed by UBS. The court denied the motion, finding that UBS's interpretation of the clause was not unreasonable, and that there was at least a question of fact whether it applied. However, on February 18, 2010, this Court unanimously reversed, holding that "[d]ismissal of plaintiffs' indemnification claim against Highland is warranted, since the agreements between the parties contain no promise on the part of Highland to undertake liability with respect to the investment losses suffered by plaintiffs, or to ensure or guarantee the performance of defendant off-shore funds' obligations to bear the risk of investment losses. Absent facts alleging that Highland otherwise breached the engagement letter, the indemnification provision contained in said letter was not triggered" (70 AD3d 526, 893 NYS2d 869). [\*\*\*\*3] The Clerk was directed to enter judgment against Highland dismissing the complaint.

Only two days before this [\*\*\*5] Court issued its ruling, UBS had written a letter to the motion court, as required by the rules of the Commercial Part. It sought permission to move to amend its complaint to assert against Highland, and others, "a variety of new allegations that further support the indemnification and breach of contract claims that UBS already has alleged in the original Complaint." UBS also stated in the letter that "the new causes of action arise out of the same or related circumstances and events as UBS's pending claims."

Knowing that this Court had dismissed the complaint against Highland, the court granted the request, and UBS made its motion.

In support of the motion, UBS submitted an attorney's affirmation that summarized documents produced by Highland the month before. UBS claimed that the documents, primarily minutes of meetings of Highland's board of directors, formed

the basis of the proposed new claims. Those documents, it was explained, revealed that Highland disregarded corporate formalities vis-a-vis the affiliated funds, that it knew that its methodology for pricing the assets held by UBS was unreasonable and inaccurate, and that it caused improper asset transfers and payments to the [\*\*\*6] affiliated funds' creditors in the fall of 2008 and in 2009, when those funds were insolvent or nearly insolvent.

UBS also submitted the affidavit of Timothy Leroux, a former employee who was involved in the Highland transaction. According to Leroux, in November 2008, after UBS made the third margin call and Highland's affiliated funds were unable to immediately comply, Highland permitted UBS representatives to [\*472] make several due diligence trips to its offices to evaluate the affiliated funds' finances, assets and business practices. Leroux attested:

"Among other things, the information that Highland Capital provided to UBS *in November 2008* revealed the following:

(a) The Fund Counterparties[] did not satisfy their Initial Restructuring Collateral obligation by the Agreements using their own assets;

(b) CDO Fund had pledged and encumbered a substantial portion of its assets prior to entering the Agreements, and additional assets immediately thereafter;

(c) While Highland Capital was negotiating the Restructured Transaction, it did not tell UBS that it was planning to encumber more of the Fund Counterparties' assets, including immediately after March 14, 2008;

[\*\*63] (d) Highland Capital assigned [\*\*\*7] unreasonable valuations to the Fund Counterparties' assets;

(e) Highland Capital was willing to ignore corporate formalities and commingle assets between and among various entities related to

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Highland Capital and the Fund Counterparties to satisfy debts and liquidity needs; and

[\*\*\*\*4] (f) Highland Capital was willing to manage the Fund Counterparties without regard for the corporate form to achieve its goals" (emphasis added).

The proposed amended complaint included the following claims against Highland: (1) fraudulent inducement arising out of, inter alia, the misrepresentation of information and omissions to UBS concerning defendants' financial ability and commingling of assets; (2) breach of the covenant of good faith and fair dealing implied in the agreements underlying the restructured transaction; (3) fraudulent conveyance arising out of the transfer of cash and assets from the affiliated funds, impairing the funds' ability to satisfy their obligations to UBS, including transfers of assets made in March 2009 (after commencement of the original action); and (4) tortious interference with contract based on the allegation that Highland caused the affiliated funds to breach the agreements [\*\*\*8] by fraudulently transferring assets and money.

In opposition, Highland asserted that UBS's complaint against it had been dismissed and could not be amended. Highland further argued that res judicata barred the proposed claims because they arose out of the same transaction or series of transactions as the original action. Highland maintained that the preclusive effect of this Court's decision dismissing the original [\*473] action as against Highland was not diminished by the fact that UBS' claims against the affiliated funds and Highland's counterclaims were still pending. Highland also challenged the sufficiency of the claims and asserted that it could not have tortiously interfered with a contract to which it was a party.

The motion court denied that portion of UBS's motion that sought leave to add new claims against Highland, agreeing with Highland's position that a party cannot amend a pleading that has already been dismissed. However, the court expressly

rejected Highland's res judicata argument, stating that "the evidence that UBS needs to prove the new claims is entirely different from the evidence that it needed to prove the contract claim that was dismissed." The court also found that [\*\*\*9] it would be unfair to bar relief on res judicata grounds because, pursuant to the Commercial Part's rules, UBS sought permission to make the motion and, before permission was granted, this Court issued its decision dismissing the original complaint as against Highland. The Court also found it would be unfair to apply res judicata here because the dismissal of the original complaint took place in the context of the same action, to which Highland remained a party, having asserted counterclaims.

The court next found that the claims of fraudulent inducement (as to misrepresentations about the funds' ownership of assets and creditworthiness, but not as to the failure to disclose), fraudulent conveyance and breach of covenant of good faith and fair dealing had been adequately pleaded. However, the court found that UBS had not asserted a claim for tortious interference with contract, because economic justification was a defense and "Highland Capital's [\*\*64] alleged acts were evidently taken in its own economic interests."

UBS commenced a new action against Highland, in which it asserted the causes of action it had unsuccessfully proposed to add to the original complaint. That action was consolidated [\*\*\*10] with the original action. Highland moved to dismiss the action, based on the substantive arguments it had made in opposition to the motion to amend. The court granted the motion to the extent of dismissing one of the fraudulent conveyance claims and the tortious interference claim. However, based on the reasoning in its previous order, the court denied the motion with respect [\*\*\*\*5] to UBS's other claim for fraudulent conveyance, its claim for fraudulent inducement, and its claim for breach of the implied covenant of good faith and fair dealing.



The parties appealed, presenting us with the question whether and to what extent the doctrine of res judicata applies to these circumstances. *HNI* [¶] The doctrine dictates that, "as to the [\*474] parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action" (*Gramatan Home Inv. Corp. v Lopez*, 46 NY2d 481, 485, 386 NE2d 1328, 414 NYS2d 308 [1979]). It used to be the rule that, even if the two actions arose out of an identical course of dealing, the second was not barred by res judicata if "the requisite elements of proof and hence [\*\*\*11] the evidence necessary to sustain recovery var[ied] materially" (*Smith v Kirkpatrick*, 305 NY 66, 72, 111 NE2d 209 [1953]). However, the Court of Appeals expressly rejected that method of analysis in *O'Brien v City of Syracuse* (54 NY2d 353, 429 NE2d 1158, 445 NYS2d 687 [1981]). There it held that *HN2* [¶] "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (54 NY2d at 357). The Court further stated: *HN3* [¶] "[w]hen alternative theories are available to recover what is essentially the same relief for harm arising out of the same or related facts such as would constitute a single factual grouping" (Restatement, Judgments 2d, § 61 [Tent Draft No. 5]), the circumstance that the theories involve materially different elements of proof will not justify presenting the claim by two different actions" (*id.* at 357-358). Notably, regarding this point, the Court stated in a footnote that, insofar as *Smith* (305 NY at 66) "may be to the contrary, it is overruled" (*id.*). *HN4* [¶] Whether facts are deemed to constitute a single factual grouping for res judicata purposes "depends on how the facts are related in time, [\*\*\*12] space, origin, or motivation, whether they form a convenient trial unit, and whether . . . their treatment as a unit conforms to the parties' expectations or business understanding or usage" (*Smith v Russell Sage Coll.*, 54 NY2d 185, 192-193, 429 NE2d 746, 445

NYS2d 68 [1981] [internal quotation marks and citations omitted]).


Here, to the extent the claims against Highland in the new complaint implicate events alleged to have taken place before the filing of the original complaint, res judicata applies. That is because UBS's claims against Highland in the original action and in this action all arise out of the restructured warehousing transaction. While the claim against Highland in the [\*\*65] original action was based on Highland's alleged obligation to indemnify UBS for actions taken by the affiliated funds, and the claims against Highland in the second action arose out of Highland's alleged manipulation of those funds, they form a single factual grouping. Both are related to the same business deal and to the diminution in the value of the securities placed with UBS as a result of that deal. Thus, the claims form a convenient trial [\*475] unit. Moreover, it can hardly be said that the claims in the two actions are so unrelated [\*\*\*13] that reasonable business people, not to mention the parties themselves, would have expected them to be tried separately (*see Smith v Russell Sage Coll.*, 54 NY2d at 192-193). Also, we note that, when seeking permission to amend the complaint, UBS itself asserted that "the new causes of action arise out of the same or related circumstances and events as UBS's pending claims."

Further, the Court of Appeals' holding in *Xiao Yang Chen v Fischer* (6 NY3d 94, 843 NE2d 723, 810 NYS2d 96 [2005]) [\*\*\*\*6] does not support UBS's position. Nor does it represent a shift in res judicata jurisprudence, as UBS argues. The circumstances of this case bear no resemblance to those in *Xiao Yang Chen*, which involved a woman who, in a previously filed separate action, was granted a divorce on the ground of cruel and inhuman treatment. In the divorce action, the plaintiff supported her cruel and inhuman treatment claim with an allegation that her husband had

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slapped her, causing injury. While the divorce action was pending, the plaintiff commenced a separate personal injury action seeking damages for the intentional infliction of emotional distress and injuries arising out of the alleged assault. In finding that res judicata did not bar the personal injury action, [\*\*\*14] the Court of Appeals noted that the two actions sought different types of relief and did not constitute a convenient trial unit. The Court of Appeals also noted other significant distinctions, such as the facts that divorce actions are typically decided by a judge and that attorneys in personal injury actions may be compensated by a contingency fee, and the policy consideration of expediting divorce proceedings. None of those considerations applies here, where the action seeks money damages arising only in connection with a commercial transaction.

While we have concluded that res judicata bars the claims in this action, we still must address UBS's assertion that it would be fundamentally unfair to apply res judicata under the circumstances of this case. UBS bases this argument primarily on the contention that it would have moved to amend the complaint in the original action while that action was still in existence (i.e., before this Court dismissed it), but for the necessity that it comply with the Commercial Part rules requiring that it first seek permission in a letter. However, this argument fails because, even had they made such a motion, the ultimate result would have been the [\*\*\*15] same. As evidenced by the affidavit of its former employee, UBS was aware of the facts that support the claims in this action as long ago as November 2008. That was before UBS filed the *original* action.

[\*476] Indeed, the evidence that the former employee admits had been gathered by UBS at that time supports all the claims asserted against Highland in this action. That UBS received additional evidence in the document production that Highland made shortly before UBS sought to amend its complaint is irrelevant. *HNS*[] The [\*\*66] proper inquiry for res judicata purposes is

when UBS could have *raised* a cause of action, not when it had enough evidence to prove the claim at trial (*see Castellano v City of New York*, 251 AD2d 194, 195, 674 NYS2d 364 [1998], *lv denied* 92 NY2d 817, 707 NE2d 444, 684 NYS2d 489 [1998], *cert denied* 526 US 1131, 119 S Ct 1804, 143 L Ed 2d 1008 [1999]). In this regard, we note that, based on what it admits it knew in November 2008, UBS could have pleaded its fraud claim with the requisite particularity at that time, since the facts available would have permitted a "reasonable inference of the alleged conduct" (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 492, 890 NE2d 184, 860 NYS2d 422 [2008]). Because UBS could have asserted the instant claims in the original complaint or moved [\*\*\*16] to amend well before that complaint was dismissed by this Court, we are not persuaded that the Rules of the Commercial Part affected the eventual result. Nevertheless, to the extent that the third and fourth causes of action, alleging breach of the covenant of good faith and fair dealing and fraudulent conveyance, respectively, rely on conduct alleged to have occurred after the commencement of the prior action, such claims should be allowed.

Nor do we share the motion court's concern that it is unfair to apply res judicata where Highland remains a party to the action by dint of its counterclaims. It would likewise be unjust to hold that a defendant that chooses to assert a counterclaim forfeits its right to assert the defense of res judicata with respect to the main claims. Indeed, to so hold would deal a blow to judicial economy since counterclaims are not compulsory in New York (*67-25 Dartmouth St. Corp. v Syllman*, 29 AD3d 888, 889, 817 NYS2d 299 [2006]), and defendants would merely assert their own [\*\*\*\*7] claims in separate actions to avoid the application of res judicata.

Finally, to the extent the fifth cause of action, alleging tortious interference with contractual relations, is based on events that [\*\*\*17] occurred after the original complaint was filed, it was properly dismissed, since Highland was a party to

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86 A.D.3d 469, \*476; 927 N.Y.S.2d 59, \*\*66; 2011 N.Y. App. Div. LEXIS 5875, \*\*\*17; 2011 NY Slip Op 5979, \*\*\*\*7

the contracts with which it is alleged to have interfered. While some courts have held that a party to a multilateral agreement can be found liable for tortious interference with the agreement (*see e.g. Rosecliff, Inc. v C3, Inc.*, 1995 WL 276156, \*3, 1995 US Dist LEXIS 6281, \*9 [SDNY 1995]), that has generally been where the alleged tortfeasor has rights and duties that are separate [\*477] from those of the breaching party (*see Aljassim v S.S. South Star*, 323 F Supp 918, 925 [SDNY 1971]). Here, the complaint is thoroughly suffused with allegations that Highland was essentially the alter ego of the parties it induced to breach the agreements. Under such circumstances, Highland cannot be considered a "stranger" to the contractual relationship between UBS and the affiliated funds, and there can be no claim for tortious interference with contract (*see Koret, Inc. v Christian Dior, S.A.*, 161 AD2d 156, 157, 554 NYS2d 867 [1990], *lv denied* 76 NY2d 714, 565 NE2d 1269, 564 NYS2d 718 [1990]). Concur--Mazzarelli, J.P., Sweeny, Renwick, Richter and Manzanet-Daniels, JJ.

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## **EXHIBIT 18**

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As of: May 29, 2020 6:09 PM Z

## UBS Sec. LLC v Highland Capital Mgt., L.P.

Supreme Court of New York, Appellate Division, First Department

March 13, 2012, Decided; March 13, 2012, Entered

7080, 650097/09

### Reporter

93 A.D.3d 489 \*; 940 N.Y.S.2d 74 \*\*; 2012 N.Y. App. Div. LEXIS 1745 \*\*\*; 2012 NY Slip Op 1777 \*\*\*\*; 2012 WL 787602

appellants.

[\*\*\*\*1] UBS Securities LLC et al., Respondents,  
v Highland Capital Management, L.P., et al.,  
Defendants, and Highland Financial Partners, L.P.,  
et al., Appellants.

Kirkland & Ellis, LLP, New York (Andrew B.  
Clubok of counsel), for respondents.

**Judges:** Tom, J.P., Saxe, Acosta, DeGrasse,  
Román, JJ. Concur--Tom, J.P., Saxe, Acosta,  
DeGrasse, and Román, JJ.

**Subsequent History:** Motion denied by, Sanctions  
disallowed by, Injunction denied by UBS Sec. LLC  
v. Highland Capital Mgt. L.P., 2013 N.Y. Misc.  
LEXIS 5489 (N.Y. Sup. Ct., Nov. 25, 2013)

### Opinion

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**Prior History:** UBS Sec. LLC v. Highland Capital  
Mgt., L.P., 30 Misc. 3d 1230(A), 924 N.Y.S.2d  
312, 2011 N.Y. Misc. LEXIS 798 (Mar. 1, 2011)

[\*490] [\*\*74] Order, Supreme Court, New York  
County (Bernard J. Fried, J.), entered March 3,  
2011, which denied the motion of defendants  
Highland Financial Partners, L.P., Highland Credit  
Opportunities CDO, L.P., and Strand Advisors, Inc.  
to dismiss the amended complaint's causes of action  
for declaratory judgment and fraudulent  
conveyance, unanimously modified, on the law, to  
the extent of granting the motion with [\*\*75]  
respect to claims arising before February 2009, and  
otherwise affirmed, without costs.

### Headnotes/Summary

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#### Headnotes

Judgments--Res Judicata--Privity

This Court's reversal of an order denying dismissal  
of the complaint in a related action (*UBS Sec. LLC  
v Highland Capital Mgt., L.P.*, 86 AD3d 469, 927  
NYS2d 59 [2011]), warrants dismissal of a portion  
of plaintiff's claims in this action due to res judicata  
since defendants are in privity with the defendant in

**Counsel:** [\*\*\*1] Lackey Hershman, LLP, New  
York (Kieran M. Corcoran of counsel), for

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93 A.D.3d 489, \*490; 940 N.Y.S.2d 74, \*\*75; 2012 N.Y. App. Div. LEXIS 1745, \*\*\*1; 2012 NY Slip Op 1777, \*\*\*\*1

the other action (*see Simmons v New York City Health & Hosps. Corp.*, 71 AD3d 410, 411, 894 NYS2d 750 [2010], *lv denied* 16 NY3d 709, 946 NE2d 177, 921 NYS2d 189 [2011]).

Contrary to plaintiff's contention, there is no need to remand the matter for a determination [\*\*\*2] regarding whether defendants are in privity with defendant Highland Capital Management, L.P. The complaint seeks to hold Highland Financial liable as the alter ego of defendant Highland Special Opportunities Holding Company (SOHC). The motion court correctly ruled that New York law governs plaintiff's veil-piercing claim (*see Serio v Ardra Ins. Co., Ltd.*, 304 AD2d 362, 761 NYS2d 1 [2003], *lv denied* 100 NY2d 516, 801 NE2d 423, 769 NYS2d 202 [2003]), and that such claim was sufficiently stated based on the alter ego allegations which allege, inter alia, that SOHC's sole board member is on Highland Financial's board, Highland Financial did not distinguish between its debts and obligations and those of SOHC, and that it operated SOHC and Highland Financial as a single economic entity. The fraudulent conveyance claim is also sufficiently stated with particularized detail (*see CPLR 3016 [b]; Holme v Global Mins. & Metals*, 63 AD3d 417, 418, 879 NYS2d 453 [2009]), insofar [\*\*\*\*2] as the complaint specifically alleges certain fraudulent conveyances and transfers.

We have considered defendant's remaining contentions and find them unavailing. Concur--Tom, J.P., Saxe, Acosta, DeGrasse, and Román, JJ. [Prior Case History: 30 Misc 3d 1230, 924 NYS2d 312, 2011 NY Slip Op 50297U.]

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## **EXHIBIT 19**



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Neutral  
As of: May 17, 2021 2:55 AM Z

**UBS Sec. LLC v Highland Capital Mgt., L.P.**

Supreme Court of New York, Appellate Division, First Department

March 15, 2018, Decided ; March 15, 2018, Entered

650097/09, 4835, 4834

**Reporter**

159 A.D.3d 512 \*; 72 N.Y.S.3d 72 \*\*; 2018 N.Y. App. Div. LEXIS 1664 \*\*\*; 2018 NY Slip Op 01652 \*\*\*\*; 2018 WL 1320248

**HN1[📄] Preclusion of Judgments, Res Judicata**

[\*\*\*\*1] UBS Securities LLC et al., Respondents-Appellants, v Highland Capital Management, L.P., et al., Appellants-Respondents, et al., Appellants.

**Subsequent History:** Leave to appeal dismissed by *UBS Sec. LLC v. Highland Capital Mgt., L.P.*, 32 N.Y.3d 1080, 2018 N.Y. LEXIS 3260, 89 N.Y.S.3d 110, 113 N.E.3d 944 (Nov. 27, 2018)

Under the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated, but also to claims that could have been raised in the prior litigation. In contrast, where a claim could not have been raised in the prior litigation because it had not yet matured, res judicata does not apply.

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

**Prior History:** *UBS Sec. LLC v. Highland Capital Mgt., L.P.*, 154 A.D.3d 631, 63 N.Y.S.3d 53, 2017 N.Y. App. Div. LEXIS 7619, 2017 NY Slip Op 7567 (Oct. 31, 2017); *UBS Sec. LLC v. Highland Capital Mgt., L.P.*, 2017 N.Y. Misc. LEXIS 977 (N.Y. Sup. Ct. Mar. 13, 2017)

**HN2[📄] Preclusion of Judgments, Res Judicata**

A claim arising subsequent to a prior action is not barred by res judicata even if the new claim is premised on facts representing a continuance of the same course of conduct.

**LexisNexis® Headnotes**

**Headnotes/Summary**

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

**Headnotes**

**Judgments—Res Judicata—Claims Arising Subsequent to Commencement of Prior Action Not Barred**

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 159 A.D.3d 512, \*512; 72 N.Y.S.3d 72, \*\*72; 2018 N.Y. App. Div. LEXIS 1664, \*\*\*1664; 2018 NY Slip Op 01652, \*\*\*\*1

**Corporations—Disregarding Corporate Entity—Evidence of Conduct before Commencement of Prior Action**

**Evidence—Judicial Notice—Reinstatement of Claim for Breach of Implied Covenant**

**Counsel:** [\*\*\*1] Lackey Hershman, L.L.P., New York (Kieran M. Corcoran of counsel), for appellants and appellants-respondents.

Kirkland & Ellis LLP, New York (Andrew B. Clubok of counsel), for respondents-appellants.

**Judges:** Concur—Richter, J.P., Webber, Kern, Moulton, JJ.

## Opinion

[\*512] [\*\*73] Order, Supreme Court, New York County (Marcy S. Friedman, [\*513] J.), entered on or about March 27, 2017, which granted the motions for summary judgment of defendants Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company, Highland Capital Management, L.P., Highland Financial Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. to the extent of dismissing the claim for breach of implied covenant against defendant Highland Capital, and otherwise denied the motions, unanimously affirmed, without costs.

In a prior order in this case, we dismissed, on res judicata grounds, the fraudulent conveyance and breach of implied covenant causes of action, as against one defendant, solely to the extent that they relied on conduct pre-dating the February 24, 2009

commencement of the prior action (86 AD3d 469, 469, 927 NYS2d 59 [1st Dept 2011]). However, we also held that "to the extent that [those] causes of action . . . rely on conduct alleged to have [\*\*\*2] occurred *after* the commencement of the prior action, such claims should be allowed" (*id. at 476 [emphasis added]*). We reiterated this point in a subsequent order, wherein we dismissed the fraudulent conveyance claim, as against several other defendants, only "with respect to claims arising before February 2009" (93 AD3d 489, 490, 940 NYS2d 74 [1st Dept 2012]).

In this appeal, the conduct underlying the fraudulent conveyance and breach of implied covenant claims took place after the February 24, 2009 commencement of the prior action. In view of this Court's prior decisions, which explicitly contemplated the survival of such post-February 24, 2009 claims, there is no merit to defendants' contention that res judicata applies. This result is consistent with the legal principles underlying res judicata. HNI [↑] "Under the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated but also to claims that *could have been raised* in the prior litigation" (Matter of Hunter, 4 NY3d 260, 269, 827 NE2d 269, 794 NYS2d 286 [2005] [emphasis added]).

In contrast, where a claim could not have been raised in the prior litigation because it had not yet matured, res [\*\*\*3] judicata does not apply (1050 Tenants Corp. v Lapidus, 118 AD3d 560, 560-561, 987 NYS2d 159 [1st Dept 2014]; Sannon-Stamm Assoc., Inc. v Keefe, Bruyette & Woods, Inc., 68 AD3d 678, 890 NYS2d 828 [1st Dept 2009]; Indosuez Intl. Fin. v National Reserve Bank, 304 AD2d 429, 758 NYS2d 308 [1st Dept 2003]; see Lawlor v National Screen Service Corp., 349 US 322, 328, 75 S Ct 865, 99 L Ed 1122 [1955]). Because the conduct at issue here took place after the commencement of the prior action, there is no res judicata [\*514] bar to the fraudulent

Case 19-34054-sgj11 Doc 2331-19 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 4 of 4  
 Page 3 of 3  
 159 A.D.3d 512, \*514; 72 N.Y.S.3d 72, \*\*73; 2018 N.Y. App. Div. LEXIS 1664, \*\*\*3; 2018 NY Slip Op 01652, \*\*\*\*1

conveyance and breach of implied covenant claims arising from that post-commencement [\*\*\*2] conduct (see *TechnoMarine SA v Giltports, Inc.*, 758 F.3d 493, 499 [2d Cir. 2014] [HN2] "a claim arising subsequent to a prior action . . . (is) not barred by *res judicata* even if the new claim is premised on facts representing a continuance of the same course of conduct" (emphasis added and internal quotation marks omitted))).

We agree with the motion court's reasons for denying dismissal of the cause of [\*\*74] action asserting liability based on an alter ego theory. There is no dispute that plaintiffs are precluded from pursuing fraudulent conveyance and breach of implied covenant claims that arose prior to February 24, 2009. However, neither our prior decisions nor the doctrine of *res judicata* bars plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims.

The court correctly rejected defendants' arguments in support of dismissal of the remaining [\*\*\*4] claims at issue. Issues of fact exist with respect to whether UBS suffered any recoverable contract damages, and as to whether it can establish justifiable reliance to support its claims that defendants committed fraud by misrepresenting their creditworthiness or the assets they owned prior to entering the transaction.

We take judicial notice of the decision of the trial court, dated September 19, 2017, which granted plaintiffs leave to reargue the dismissal of the claim for breach of implied covenant against defendant Highland Capital, and upon reargument, held that the claim should be reinstated. To the extent this decision has rendered moot plaintiffs' cross appeal of that part of the order on appeal, we exercise our broad discretionary authority to reach beyond the scope of defendants' notices of appeal to review the merits of that order, as the same issues have been briefed on the cross appeal, and we find that the

trial court properly reinstated this claim. Concur—Richter, J.P., Webber, Kern, Moulton, JJ.

The Decision and Order of this Court entered herein on October 31, 2017 (*154 AD3d 631, 63 NYS3d 53 [1st Dept 2017]*) is hereby recalled and vacated (see *2018 NY Slip Op 66852[U] [2018]* [decided simultaneously herewith]). [Prior Case History: *2017 NY Slip Op 30546(U) [\*\*\*5]* .]

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End of Document

## **EXHIBIT 20**

**FILED: NEW YORK COUNTY CLERK 02/22/2010**

NYSCEF DOC. NO. 84

NYSCEF DOC. NO. 82

INDEX NO. 650097/2009

Case 19-34054-sgj-11 Doc 2331-20 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 2 of 8

RECEIVED INDEX NO. 650097/2009

RECEIVED NYSCEF: 02/19/2010

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**-----X  
**UBS SECURITIES LLC, et al.****Plaintiffs/Petitioners,****-against-****Index No. 650097/2009****HIGHLAND CAPITAL MANAGEMENT, L.P., et al.****Defendants/Respondents.**  
-----X**CERTIFICATE REQUESTING ENTRY OF JUDGMENT  
IN ELECTRONICALLY-FILED CASE**

To: The County Clerk, County of New York

Kieran M. Corcoran, an attorney admitted to the Bar of the State of New York and counsel for defendant Highland Capital Management, L.P. in the above-captioned electronically-filed case, does hereby request that judgment be entered in this case based upon the Decision and Order of the Supreme Court, Appellate Division, First Department, dated February 18, 2010 and entered on February 18, 2010. Pursuant to CPLR 5017 (a), I do hereby certify that the following documents shall constitute the Judgment Roll for this Judgment. Each document is identified by title of the paper, the date filed with the electronic filing system, and the number of the paper as listed on the E-Filing List of Papers Filed.

<u>Title of Document</u>	<u>Number of Paper On E-Filing List of Papers</u>	<u>Date Filed</u>
1) Complaint	No. 2	2/24/09
2) Notice of Motion to Dismiss	No. 9	5/29/09
3) Defendants' Memorandum of Law in Support of Motion to Dismiss	No. 10	5/29/09
4) Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss	No. 22	6/16/09
5) Affidavit of Jason Jurgens	No. 23	6/16/09
6) Defendants' Reply Memorandum of Law in Support of Motion to Dismiss	No. 26	7/01/09
7) Signed Order	No. 28	10/08/09
8) Notice of Entry of Order	No. 29	10/08/09




- |  |        |          |
|--|--------|----------|
| 9) Answer of Defendants Highland CDO Opportunity Master Fund, L.P. and Highland Special Opportunities Holding Company          | No. 32 | 10/19/09 |
| 10) Answer of Highland Capital Management, L.P.  | No. 33 | 10/19/09 |
| 11) Notice of Appeal of Order  | No. 34 | 10/22/09 |
| 12) Amended Answer and Counterclaims of Highland Capital Management, L.P.  | No. 38 | 11/02/09 |
| 13) Amended Answer of Defendants Highland CDO Opportunity Master Fund, L.P. and Highland Special Opportunities Holding Company | No. 39 | 11/02/09 |
| 14) Notice of Entry of Decision and Order of Supreme Court, Appellate Division, First Department                               | No. 80 | 2/18/10  |

The documents listed above are available on the electronic filing website and may be downloaded and printed as needed.

Dated: February 19, 2010

**FILED**  
FEB 22 2010  
COUNTY CLERKS OFFICE  
NEW YORK

  
Kieran M. Corcoran  
LACKEY HERSHMAN, LLP  
1285 Avenue of the Americas  
35<sup>th</sup> Floor  
New York, New York 10019  
(212) 554-4150 (t)  
(212) 554-4089 (f)  
*Attorneys for Defendant  
Highland Capital Management, L.P.*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
UBS SECURITIES LLC and UBS AG, LONDON  
BRANCH,

Index No. 650097/2009

Plaintiffs,

Assigned to :  
Hon. Bernard J. Fried

-against-

Commercial Division  
Part 60

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND CDO OPPORTUNITY MASTER FUND,  
L.P. and HIGHLAND SPECIAL OPPORTUNITIES  
HOLDING COMPANY,

~~PROPOSED~~ JUDGMENT

Defendants.  
-----X

On February 24, 2009, plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively, "Plaintiffs") filed a complaint (the "Complaint") against defendants Highland Capital Management, L.P., Highland CDO Opportunity Master Fund, L.P., and Highland Special Opportunities Holding Company (collectively, "Defendants"). On May 1, 2009, Defendants filed their Notice of Motion to Dismiss pursuant to CPLR 3211(a)(1) and Memorandum of Law in Support of the Motion to Dismiss the Complaint. On June 16, 2009, Plaintiffs filed their Memorandum of Law in Opposition to Defendants' Motion to Dismiss and an Affidavit of Jason Jurgens, dated June 16, 2009. On July 1, 2009, Defendants filed their Reply Memorandum of Law in Support of the Motion to Dismiss the Complaint. Oral argument was held on the motion to dismiss before the Honorable Bernard J. Fried on September 10, 2009. In its Order dated October 6, 2009, entered in the Office of the Clerk of the County of New York on October 8, 2009, notice of which was served on October 8, 2009 (the "October 8 Order"), a true copy of which is attached hereto, the Supreme Court, County of New York, (Hon. Bernard J. Fried) denied Defendants' motion to dismiss. On October 22, 2009, Highland Capital Management, L.P. noticed its appeal of the October 8 Order denying Highland Capital Management, L.P.'s

motion to dismiss the Complaint against it to the Appellate Division of the Supreme Court of the State of New York, First Department (the "Appeal"). Thereafter, Highland Capital Management, L.P. submitted its Brief for Defendant-Appellant dated November 9, 2009. Plaintiffs submitted their Brief for Plaintiffs-Respondents dated December 9, 2009, and Highland Capital Management, L.P. submitted its Reply Brief for Defendant-Appellant dated December 18, 2009. Oral argument was held on the Appeal on January 28, 2010. On February 18, 2010, the Supreme Court, Appellate Division, First Department issued its Decision and Order (entered by the Clerk of that Court that same date), a true copy of which is attached hereto, reversing the October 8 Order, granting Highland Capital Management, L.P.'s motion to dismiss the Complaint against it and further directing the Clerk to enter judgment in favor of Highland Capital Management, L.P. dismissing Plaintiffs' Complaint against Highland Capital Management, L.P.

NOW THEREFORE IT IS ADJUDGED, that Highland Capital Management, L.P., 13455 Noel Road, 8<sup>th</sup> Floor, Dallas, Texas 75240, shall have judgment on UBS Securities LLC and UBS AG, London Branch's Complaint against it and recover from plaintiffs UBS AG, London Branch, Finsbury Avenue, London, United Kingdom, and UBS Securities LLC, 677 Washington Blvd., Stamford, Connecticut and 299 Park Avenue, New York, New York, costs as ~~taxed~~ by the Clerk in the sum of \$ 250<sup>00</sup>, and that Highland Capital Management, L.P. shall have execution thereon.

IT IS FURTHER ADJUDGED that UBS Securities LLC and UBS AG, London Branch's Complaint against Highland Capital Management, L.P. is dismissed.

Judgment signed February 22, 2010.

**FILED**  
FEB 22 2010  
COUNTY CLERK'S OFFICE  
NEW YORK

  
CLERK

Case 19-34054-sj11 Doc 2331-20 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 6 of 8  
**FILED: NEW YORK COUNTY CLERK 02/19/2010** INDEX NO. 650097/2009  
NYSCEF DOC. NO. 83 RECEIVED NYSCEF: 02/19/2010

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
UBS SECURITIES LLC, et al.,

Plaintiffs,

Index No. 650097/2009

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
et al.,

**COSTS OF DEFENDANT  
HIGHLAND CAPITAL  
MANAGEMENT, L.P.**

Defendants.  
-----X

**COSTS for:**

Appeal to Appellate Division – CPLR § 8203(a) ..... \$250.00

**SUBTOTAL \$250.00**

**FEES and DISBURSEMENTS for:**

None.

**SUBTOTAL \$0.00**

**TOTAL \$250.00**

I HEREBY CERTIFY THAT I HAVE  
ADJUSTED THIS BILL OF COSTS AT  
\$ 250.00  
FEB 22 2010  
[Signature]  
CLERK

**COSTS OF DEFENDANT  
HIGHLAND CAPITAL MANAGEMENT, L.P. – Page 1 of 2**

002945

### ATTORNEY'S AFFIRMATION

STATE OF NEW YORK )  
 )  
COUNTY OF NEW YORK )

The undersigned, KIERAN M. CORCORAN, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms the following under penalty of perjury:

I am an attorney at Lackey Hershman, LLP, counsel of record for Defendant Highland Capital Management, L.P. in the above captioned action, and as such, am fully familiar with the facts and circumstances of the above captioned action; that the foregoing costs are correct and were necessarily incurred in this action and are reasonable in amount; and that the services for which fees have been charged were actually and necessarily performed and are reasonable in amount.

Dated: February 19, 2010

  
KIERAN M. CORCORAN

**FILED**  
FEB 22 2010  
COUNTY CLERK'S OFFICE  
NEW YORK



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
UBS SECURITIES LLC and UBS AG, LONDON  
BRANCH,

Plaintiffs,

Index No. 650097/2009

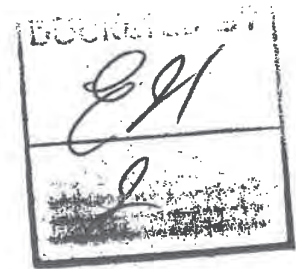
-against-

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND CDO OPPORTUNITY MASTER FUND,  
L.P. and HIGHLAND SPECIAL OPPORTUNITIES  
HOLDING COMPANY,

~~PROPOSED~~ JUDGMENT

Defendants.  
-----X

Dated: February \_\_, 2010  
New York, New York



LACKEY HENSHMAN, LLP  
1285 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019

1-2  
FILED AND  
DOCKETED  
FEB 22 2010  
100  
AT  
N.Y. CO. CLKS OFFICE

## **EXHIBIT 21 – FILED UNDER SEAL**

## **EXHIBIT 22**

CONFIDENTIAL

Page 455

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----  
UBS SECURITIES, LLC and UBS AG,  
London Branch,

Plaintiffs,

-against-

No. 650097/  
2009

HIGHLAND CAPITAL MANAGEMENT L.P.,  
HIGHLAND SPECIAL OPPORTUNITIES  
HOLDING COMPANY, HIGHLAND CDO  
OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P.,  
HIGHLAND CREDIT STRATEGIES MASTER  
FUND, L.P., HIGHLAND CRUSADER  
OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P.,  
and STRAND ADVISORS, INC.,

Defendants.  
-----

CONFIDENTIAL

Continued videotaped deposition of

CLIFFORD STOOPS

August 30, 2012

1:11 p.m.

Reported by:

Lisa Rosenfeld

Ref: 8144

## CONFIDENTIAL

Page 568	Page 570
<p>1 Stoops - Confidential</p> <p>2 they were never engaged to audit the 12/31/2008</p> <p>3 year-end.</p> <p>4 Q. So Mr. Louis is inaccurate when he</p> <p>5 asks for information on the legal entities we are</p> <p>6 engaged to audit, is that correct?</p> <p>7 MR. ROBINOWITZ: Object to the form.</p> <p>8 A. I don't recall an engagement letter</p> <p>9 being signed for year-end, I don't recall. I</p> <p>10 think he's sort of using it -- and you have to</p> <p>11 understand, you see it says hedge fund notes, he</p> <p>12 could be referencing hedge funds that he's been</p> <p>13 engaged, which I'd have no knowledge of. So at</p> <p>14 the time, no, I don't recall that Mr. Louis or</p> <p>15 PWC were engaged to audit HFP, so therefore I</p> <p>16 can't tell you if it's inaccurate because he may</p> <p>17 have been engaged on behalf of the hedge funds.</p> <p>18 Q. But PWC was never engaged to audit</p> <p>19 HFP consolidated for the 2008 fiscal year, is</p> <p>20 that correct?</p> <p>21 A. I think you mean as of year-end,</p> <p>22 because there were points in time where PWC --</p> <p>23 where they were. No, no, no, you're right.</p> <p>24 You're talking about audits, those would have</p> <p>25 been reviews. I don't believe so.</p>	<p>1 Stoops - Confidential</p> <p>2 with it.</p> <p>3 Q. At some point HFP consolidated</p> <p>4 decided -- strike that. At some point the</p> <p>5 decision was made not to move forward with an</p> <p>6 audit of HFP consolidated for the 2008 fiscal</p> <p>7 year?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you recall when that point was?</p> <p>10 A. I don't recall specifically but I</p> <p>11 think it was the end of March/April of 2009 time</p> <p>12 frame.</p> <p>13 Q. Do you recall who made that decision?</p> <p>14 A. I don't recall specifically.</p> <p>15 Q. Were you involved in that</p> <p>16 decision-making process?</p> <p>17 A. I was not.</p> <p>18 Q. Not at all?</p> <p>19 A. Somebody told me, so technically I'm</p> <p>20 involved in that, but in the decision-making I</p> <p>21 was not involved.</p> <p>22 Q. Were you told after the decision had</p> <p>23 already been made?</p> <p>24 A. Again not being involved, I don't</p> <p>25 know -- yes, I was told at some point we're not</p>
Page 569	Page 571
<p>1 Stoops - Confidential</p> <p>2 Q. So you never provided information --</p> <p>3 strike that. Do you recall providing information</p> <p>4 to PWC in 2009 to assist in an audit for the 2008</p> <p>5 fiscal year of HFP consolidated?</p> <p>6 MR. ROBINOWITZ: Object to form.</p> <p>7 A. Repeat the question.</p> <p>8 Q. Do you recall PWC requesting</p> <p>9 information from HFP consolidated in 2009 in</p> <p>10 preparation for an audit of the 2008 fiscal year</p> <p>11 of HFP consolidated?</p> <p>12 A. Well, I have this, yes, there's at</p> <p>13 least this much.</p> <p>14 Q. And so in this e-mail he is</p> <p>15 requesting information from HFP to assist in the</p> <p>16 2008 audit, is that correct?</p> <p>17 A. That's what appears to be happening.</p> <p>18 Q. In or around January 2009 was HFP</p> <p>19 consolidated planning on doing a year-end audit</p> <p>20 for the 2008 fiscal year?</p> <p>21 A. Yes. Well, yes, we were going</p> <p>22 forward with it.</p> <p>23 Q. And at some point you decided not to</p> <p>24 go forward with it, correct?</p> <p>25 A. I didn't decide not to go forward</p>	<p>1 Stoops - Confidential</p> <p>2 going forward.</p> <p>3 Q. But the decision not to go forward</p> <p>4 had been made before they told you?</p> <p>5 A. Presumably.</p> <p>6 Q. Do you recall them giving a reason</p> <p>7 for why HFP consolidated decided not to go</p> <p>8 forward with a 2008 year-end audit?</p> <p>9 A. I think in general the decision was</p> <p>10 based on what was communicated in the</p> <p>11 January 27th, 2009 communication. I think it</p> <p>12 appears the operations for HFP at that point in</p> <p>13 time will be limited in scope, therefore there's</p> <p>14 no need to spend all the money for that.</p> <p>15 Q. And you're referring to the</p> <p>16 January 27th, 2009 investor letter marked as</p> <p>17 Plaintiffs' Exhibit 425, is that correct?</p> <p>18 A. I know the date, I don't know the --</p> <p>19 MR. ROBINOWITZ: Object to the form.</p> <p>20 A. I'm referencing what begins on page 2</p> <p>21 of that, certainly not the e-mail and the other</p> <p>22 attachments, but it's contained therein.</p> <p>23 Q. Were you surprised by the decision to</p> <p>24 not move forward with a year-end audit of HFP</p> <p>25 consolidated for the 2008 fiscal year when it was</p>

30 (Pages 568 to 571)



## **EXHIBIT 23 – FILED UNDER SEAL**

## **EXHIBIT 24 – FILED UNDER SEAL**

## **EXHIBIT 25**

**FILED: NEW YORK COUNTY CLERK 09/03/2013**NYS Case 19-34054-sq111 Doc 2331-25 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 2 of 3  
 Note of issue and certificate of readiness:  
 Uniform Rules, 22 NYCRR 202.212(b) 9-95

INDEX NO. 650097/2009

RECEIVED BY CLERK, N.Y.C. 09/03/2013  
 www.blumberg.com**NOTE OF ISSUE**

For use of Clerk

Calendar No. (if any)  
 Index No. 650097/2009

Supreme Court New York County, N. Y.

UBS SECURITIES LLC and UBS AG,  
 LONDON BRANCH

Hon. Marcy S. Friedman

name of judge assigned

**NOTICE FOR TRIAL**

- ☐ Trial by jury demanded
- ☐ Of all issues
- ☐ Of issues specified below
- ☐ Or attached hereto
- ☒ Trial without jury

Filed by attorney for Plaintiffs  
 Date summons served February 25, 2009  
 Date service completed February 25, 2009  
 Date issue joined October 19, 2009

against Plaintiff(s)

HIGHLAND CAPITAL MANAGEMENT, LP;  
 HIGHLAND CDO OPPORTUNITY MASTER  
 FUND, LP; HIGHLAND SPECIAL  
 OPPORTUNITIES HOLDING COMPANY;  
 HIGHLAND FINANCIAL PARTNERS, LP;  
 HIGHLAND CREDIT STRATEGIES  
 MASTER FUND, LP; HIGHLAND  
 CRUSADER OFFSHORE PARTNERS, LP;  
 HIGHLAND CREDIT OPPORTUNITIES  
 CDO, LP; and STRAND ADVISORS,  
 INC.

Defendant(s)

**NATURE OF ACTION OR SPECIAL PROCEEDING**

- ☒ Tort: ☐ Motor vehicle negligence  
☐ Medical malpractice  
☒ Other tort
- ☒ Contract  
☐ Contested matrimonial  
☐ Uncontested matrimonial  
☐ Tax certiorari  
 Condemnation  
☐ Other (not itemized above) specify

☐ This action is brought as a class action

Amount demanded \$ \$750,079,870 plus interest

Other relief Declaratory relief requested in Second Amended Complaint  
 including (but not limited to) return of fraudulently transferred assets  
 Insurance carrier(s), if known

Special preference claimed under

on the ground that

Attorney(s) for Plaintiff(s) Andrew B. Clubok and Lee Ann Stevenson; Kirkland & Ellis LLP  
 Office & P.O. Address: 601 Lexington Avenue  
 New York, NY 10022

Phone No.: (212) 446-4800

Attorney(s) for Defendant(s) Paul Lackey and Kieran Corcoran; Lackey Hershman LLP  
 Office & P.O. Address: 1325 Avenue of the Americas  
 New York, NY 10019

Phone No.: (212) 763-8491

**NOTE: Clerk will not accept this note of issue unless accompanied by a certificate of readiness.**

002955

Case 19-34054-sgj11 Doc 2331-25 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 3 of 3

For Clerk's Use

**CERTIFICATE OF READINESS FOR TRIAL**

(Items 1-7 must be checked)

N.I. served  
on

	Completed	Waived	Not Required
1. All pleadings served _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Bill of particulars served _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Physical examinations completed _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Medical reports exchanged _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Appraisal reports exchanged _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Compliance with the Rules in matrimonial actions (22NYCRR 202.16)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Discovery proceedings now known to be necessary completed _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. There are no outstanding requests for discovery.			
9. There has been a reasonable opportunity to complete the foregoing proceedings.			
10. There has been compliance with any order issued pursuant to the Precalendar Rules (22 NYCRR 202.12).			
11. If a medical malpractice action, there has been compliance with any order issued pursuant to 22 NYCRR 202.56.			
12. The case is ready for trial.			

Dated: September 3, 2013

/s/ Andrew Clubok

Signature - type name below.

Andrew B. Clubok; Kirkland & Ellis LLP  
Plaintiffs601 Lexington Avenue  
New York, NY 10022Attorney(s) for:  
Office & P.O. Address

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not a  
party to the action, is over 18 years of age and resides atThat on the \_\_\_\_\_ day of \_\_\_\_\_  
deponent served the within note of issue and certificate of  
readiness onattorney(s) for  
herein, at his office atduring his absence from said office  
(a) by then and there leaving a true copy of the same with  
his clerk; partner; person having charge of said office.  
(b) and said office being closed, by depositing a true copy of  
same, enclosed in a sealed wrapper directed to said attorney(s),  
in the office letter drop or box.  
Sworn to before me on

Admission of Service

admitted \_\_\_\_\_

Due service of a note of issue and certificate of readiness, of which the within is a copy,

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not a  
party to the action, is over 18 years of age and resides atThat on the \_\_\_\_\_ day of \_\_\_\_\_  
deponent served the within note of issue and certificate of  
readiness onattorney(s) for  
atthe address designated by said attorney(s) for that purpose by  
depositing a true copy of same enclosed in a postpaid properly  
addressed wrapper, in--a post office--official depository under  
the exclusive care and custody of the United States Postal  
Service within New York State.

Sworn to before me on

Attorney(s) for \_\_\_\_\_

002956



## **EXHIBIT 26**

FILED: NEW YORK COUNTY CLERK 03/24/2017 02:22 PM

INDEX NO. 650097/2009

NYSCEF DOC. NO. 411

Case 19-34054-sgj11 Doc 2331-26 Filed 05/18/21

Entered 05/18/21 20:21:59

Page 2 of 37

RECEIVED NYSCEF: 03/24/2017

## SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMANPART 60

Justice

UBS SECURITIES LLC,INDEX NO. 650097/2009

-against-

MOTION DATE \_\_\_\_\_

HIGHLAND CAPITAL MANAGEMENT, L.P., et al.,MOTION SEQ. NO. 026, 027

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

No (s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

No (s). \_\_\_\_\_


Replying Affidavits \_\_\_\_\_

No (s). \_\_\_\_\_

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

It is hereby ORDERED that these motions for summary judgment are decided in accordance with the attached decision and order of today's date.

Dated: 3-13-17
  
 \_\_\_\_\_ J.S.C.  
**MARCY S. FRIEDMAN, J.S.C.**

1. Check one: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. Check as appropriate:.....Motion is: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. Check if appropriate:..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 60

-----X  
UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

-against-

Index No. 650097/09

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND  
SPECIAL OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND  
CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., and STRAND  
ADVISORS, INC.,

Defendants.  
-----X

FRIEDMAN, J:

This action arises out of a failed restructured transaction for securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs). Plaintiffs UBS Securities LLC (UBSS) and UBS AG, London Branch (UBS AG) (together, UBS) seek damages of \$686 million in investment losses from the following affiliated defendants: Highland Capital Management, L.P. (Highland Capital); Highland Financial Partners, L.P. (Highland Financial); Highland Special Opportunities Holding Company (SOHC); Highland CDO Opportunity Master Fund, L.P. (CDO Fund); Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Fund), Highland Credit Opportunities CDO, L.P. (Credit Opp Fund); and Strand Advisors, Inc. (Strand).<sup>1</sup>

The second amended complaint (complaint) asserts causes of action for fraud against the Fund Counterparties (first and second causes of action), breach of contract against the Fund

<sup>1</sup> SOHC and CDO Fund are referred to as the Fund Counterparties. Credit Strategies, Crusader Fund, and Credit Opp Fund are referred to as the Affiliated Transferee defendants.

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Counterparties (third and fourth causes of action), fraudulent conveyance against all defendants (fifth cause of action), tortious interference with contractual relations against the Affiliated Transferee defendants (sixth cause of action), declaratory judgment for general partner liability against Strand (seventh cause of action), and declaratory judgment for alter ego liability against Highland Financial (eighth cause of action).<sup>2</sup>

The instant action was consolidated with another action commenced by UBS only against Highland Capital. (UBS Secs. LLC v Highland Capital Mgt. L.P., Sup Ct, NY County, Nov. 1, 2010, Fried, J., index No. 650752/10.) The complaint in that action asserts causes of action against Highland Capital for fraud (first and second causes of action), breach of the covenant of good faith and fair dealing (third cause of action), fraudulent conveyance (fourth cause of action), and tortious interference with contractual relations (fifth cause of action).

Highland Capital, Highland Financial, Strand, and the Affiliated Transferee defendants move for summary judgment dismissing all causes of action against them. By separate motion, the Fund Counterparties seek summary judgment dismissing all causes of action against them.<sup>3</sup>

#### Factual Background

It is undisputed that the transaction at issue (Transaction), known as the Knox Warehouse, called for UBS to finance the purchase of CLOs and related CDSs and to hold them as “warehouse assets” for the benefit of Highland Capital, which was to sponsor the securitization. (Compl., ¶¶ 4, 35.) As pleaded in the complaint, Highland Capital was the

<sup>2</sup> The second and sixth causes of action are purportedly pleaded solely to preserve them for appeal.

<sup>3</sup> After service of the motion, UBS settled its claims in this action against defendants Credit Strategies and Crusader Fund, two of the Affiliated Transferee defendants. (See Kirkland & Ellis Letter dated Jan. 7, 2016.)

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investment manager of Highland Financial, and these two entities allegedly owned and/or controlled the Fund Counterparties and the Affiliated Transferee defendants. (*Id.*, ¶¶ 22, 25.) Strand was Highland Capital's general partner. (*Id.*, ¶ 23.) Nonparty James Dondero was the president, founder, and owner of Highland Capital, and allegedly controlled all of the Highland entities through Highland Capital. (*Id.*, ¶¶ 22, 25.)

#### The Cash and Synthetic Warehouse Agreements

The parties' dispute arises out of the following three agreements, all of which are dated as of March 14, 2008: an Engagement Letter, entered into between UBSS and Highland Capital (Corcoran Aff., Ex. 13); a "Synthetic Warehouse Agreement," entered into among UBS AG, the Fund Counterparties, and Highland Capital (Corcoran Aff., Ex. 14); and a "Cash Warehouse Agreement," entered into among UBSS, the Fund Counterparties, and Highland Capital (Corcoran Aff., Ex. 15). In the Engagement Letter, UBSS agreed to act "as the financial arranger and placement agent in connection with a proposed collateralized debt obligations transaction with an anticipated aggregate issuance size of approximately U.S.\$818 million in securities . . . (the 'Transaction')." The Transaction contemplated the "formation and capitalization of a special purpose vehicle or vehicles (collectively, the 'Issuer') . . . that will acquire an investment portfolio" comprised of CLOs and CDSs that reference CLOs, to be managed by Highland Capital as "Servicer." (*Id.*, § 1, 3 [a].) In the Engagement Letter, UBSS and Highland Capital "agree[d] that the CDO Fund and SOHC will in aggregate bear 100% of the risk of the Warehouse Facility in accordance with their respective Allocation Percentages (as defined in the Warehouse Documents) and otherwise in accordance with the terms of the Warehouse Documents . . . ." (*Id.*, § 3 [c].)



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Section 5 (B) of the Synthetic Warehouse Agreement opens with the clause “On the Closing Date:” and provides, among other things, for compensation to UBS by the Fund Counterparties for CDS Losses. Subsection 5 (B) (2) provides that “[a]n amount equal to the excess, if any,” of CDS Losses over CDS Gains

“shall collectively be paid by each of the CDO Fund and SOHC after notice from UBS of the amount due, by wire transfer in immediately available funds (i) on the Termination Date in the case of a Termination Date occurring on (a) March 14, 2009, (b) March 14, 2010 or (c) the Closing Date or (ii) three Business Days after the Termination Date in the case of any other Termination Date. Such CDS Loss shall be allocated among the CDO Fund and SOHC on the basis of their respective Allocation Percentages.”

Section 5 (B) (2) defines CDS Losses as follows:

“(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, *plus* (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, *plus* (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the ‘CDS Losses’) . . . .”

(emphasis in original.) Ineligible Security is defined as: “any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination. . . .” (Synthetic Warehouse Agreement, Ex. A-2.) This definition further states: “Each of the following is an ‘Ineligible Security’: a Defaulted Security, a Designated Security and a Written Down Security.” (*Id.*) Closing Date is defined as “the date

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of the closing of the Transaction and the issuance of the CDO Securities.” (Id., Ex. A-1.)

Section 5 of the Synthetic Warehouse Agreement further provides: “To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.”

Section 6 (C), in turn, provides:

“To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.”

The Cash Warehouse Agreement, section 5 (A), provides that, in the event that “the Closing Date fails to occur on or prior to the Termination Date, . . . UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures.” This section further provides: “Following the completion of such liquidation of the Collateral Obligations, any Aggregate Collateral Loss shall be allocated to the CDO Fund and to SOHC on the basis of their respective Allocation Percentages” and shall be paid to UBS.

#### UBS Margin Calls and Termination of Agreements

Section 12 (C) of the Synthetic Warehouse Agreement required the Fund Counterparties to transfer an additional deposit of \$10 million in cash or eligible securities into a “Deposit Account” in the event that the “Deposit Threshold Exposure Amount is greater than or equal to U.S. \$100,000,000.” On September 16, 2008, UBS made a “margin call” under section 12 (C) of the Synthetic Warehouse Agreement, demanding additional collateral of \$10 million from

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each of the Fund Counterparties. (Compl., ¶ 77.) The Fund Counterparties satisfied this margin call on September 19, 2008. (Id., ¶ 79.) On October 21, 2008 UBS made a second margin call under section 12 (C) of the Synthetic Warehouse agreement, which the Fund Counterparties satisfied on October 24 by posting assets with a notional value of \$49.97 million. (Id., ¶¶ 90, 91.) On November 7, 2008, UBS made a third margin call. Highland Capital and the Fund Counterparties allegedly offered to post various securities to satisfy this margin call. (Id., ¶ 94-95.) On November 13, UBS rejected the securities and requested cash or cash equivalent collateral. (Id., ¶ 96.)

On December 3, 2008, UBS terminated the parties' agreements based on the Fund Counterparties' failure to post the requested collateral. (Id., ¶¶ 99-100.) Shortly thereafter, UBS demanded payment for its losses under the Cash and Synthetic Warehouse Agreements. (Id., ¶¶ 103, 105.) On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to pay UBS's losses, and commenced unwinding the warehouse facility. (Id., ¶ 106.) On January 16, 2009, UBS conducted an auction of the warehoused assets, as contemplated under the parties' agreements, and on March 19, 2009, UBS notified Highland Capital and the Fund Counterparties of UBS's final accounting, and asserted that these entities owed UBS \$686,853,290.26. (Id., ¶¶ 106-107.)<sup>4</sup>

<sup>4</sup> The parties' claims and the procedural history of this action and two related actions are further discussed in several previous decisions of the Appellate Division and of this court, familiarity with which is presumed. (See UBS Secs. LLC v Highland Capital Mgt., L.P., 93 AD3d 489 [1st Dept 2012]; 86 AD3d 469 [1st Dept 2011]; 70 AD3d 526 [1st Dept 2010]; 42 Misc 3d 580 [Sup Ct, NY County 2013]; 30 Misc 3d 1230 [A], 2011 NY Slip Op 50297 [U] [Sup Ct, NY County 2011]; 25 Misc 3d 1243 [A], 2009 NY Slip Op 52565 [U] [Sup Ct, NY County 2009].) To the extent that additional facts are necessary to resolve the instant motions, they are discussed in the legal analysis that follows.

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The Fund Counterparties seek summary judgment dismissing all of the causes of action of the complaint, on four principal grounds: UBS cannot show that it suffered any damages. UBS committed prior material breaches of the parties' Agreements that excused the Fund Counterparties' performance. UBS did not justifiably rely on any misrepresentation that would support its fraud claim. UBS's claim against them as fraudulent transferors must be dismissed because New York does not recognize such a claim.

Limitation of Liability and UBS's Damages

The Fund Counterparties argue that UBS suffered no damages with respect to the Credit Default Swaps, which accounted for most of the warehoused assets. This argument is based upon defendants' interpretation of "CDS Losses," as defined in section 5 (B) (2) (x) of the Synthetic Warehouse Agreement. In particular, defendants argue that this definition "largely limited compensation [with respect to Credit Default Swaps] to realized losses"; that "an unrealized loss could become a 'CDS Loss' only 'upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security"; and that UBS's failure to designate any such Obligation as an Ineligible Security precludes it from recovering damages. (Fund Counterparties' Memo. In Supp. at 12-13.)

It is well settled that "agreements are construed in accord with the parties' intent," and a "written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." (Greenfield v Philles Records, 98 NY2d 562, 569 [2002].) The court's "aim is a practical interpretation of the expressions of the parties to the end that there be a 'realization of [their] reasonable expectations.'" (Brown Bros. Elec. Contrs.,

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Inc. v Beam Constr. Corp., 41 NY2d 397, 400 [1977] [internal citation omitted]; Matter of Lipper Holdings, LLC v Trident Holdings, LLC, 1 AD3d 170, 171 [1st Dept 2003] [a “contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties” [internal citations omitted].) “A contract is unambiguous if the language it uses has ‘a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion.’” (Greenfield, 98 NY2d at 569 [internal citation omitted].) It is further settled that “[e]xtrinsic evidence of the parties’ intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide.” (Id.)

It is undisputed that the Warehouse Agreements were terminated prior to securitization and therefore prior to a Closing Date. As provided in section 5 of the Synthetic Warehouse Agreement (quoted supra at 5), section 6 governs the determination of CDS Losses in the event a closing fails to occur. Thus, the issue is whether any CDS Losses arose under section 6.

The definition of CDS Losses specifies three separate components of such Losses: (1) “aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS”; (2) “aggregate amount of Net Hedging Payments made by UBS”; and (3) “aggregate Replacement Losses.” (Synthetic Warehouse Agreement, § 5 [B] [2] [x] [quoted in full, supra at 4.]) The requirement that a Reference Obligation be designated an Ineligible Security is set forth in the last clause of subdivision (3) of the definition of CDS Losses. Subdivision (3) concerns the Replacement Losses component of CDS Losses. The inclusion of the Ineligible Security designation requirement in subdivision (3) unambiguously requires compliance with that requirement in order to claim Replacement Losses, as a component of CDS Losses, under



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section 5 of the Synthetic Warehouse Agreement.

As attested by Phillip Braner, Managing Director of Structured Products for Highland Capital and previous Chief Operating Officer of Highland Financial, “[t]he UBS-affiliated entities . . . did not designate any of the credit default swaps held in the synthetic warehouse as ineligible securities.” (Braner Aff., ¶¶ 1-2.) The Fund Counterparties contend that UBS is therefore barred from claiming Replacement Losses under section 6 of the Synthetic Warehouse Agreement. In support of this contention, they claim that CDS Losses are calculated in the same manner under both sections 5 and 6, because section 6 uses the defined term CDS Losses from section 5.

In arguing that UBS did not sustain any damages, however, the Fund Counterparties do not claim merely that UBS failed to designate Ineligible Securities pursuant to section 5 (B) (2) (x). Rather, they argue that the Synthetic Warehouse Agreement “expressly limited damages to realized losses” and that “[t]he designation of such securities as ‘Ineligible’ in order to recover unrealized market losses, is clearly required by the definition of ‘CDS Losses.’” (Fund Counterparties’ Memo. In Supp. at 4, 13.)<sup>5</sup>

The definition of CDS Losses does not by its terms distinguish between realized and unrealized losses and, indeed, does not use those terms. Although the Fund Counterparties

<sup>5</sup> The Fund Counterparties at times state, without qualification, that under the Synthetic Warehouse Agreement, the Fund Counterparties “were responsible for realized losses, but not unrealized losses.” (Fund Counterparties’ Memo. In Supp. at 16; *see also id.* at 4, 6, 15.) At other times, they acknowledge that unrealized losses are recoverable against them under the Synthetic Warehouse Agreement, but only upon the designation of an Ineligible Security. (*Id.* at 13.)

The Fund Counterparties also argue that while the Synthetic Warehouse Agreement made them liable only for “actual, realized losses on documented CDS assets” (Fund Counterparties’ Memo. In Supp. at 6), they were liable for “market losses on cash assets” under the Cash Warehouse Agreement. (*Id.* at 6, 15.)

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assert that the terms of the Synthetic Warehouse Agreement are unambiguous (Fund Counterparties' Reply Memo. at 3), they resort to parol evidence from their expert to support their claim that, under the Synthetic Warehouse Agreement, in order for unrealized losses to be included within the definition of CDS Losses, UBS must designate Ineligible Securities. (Corcoron Aff., Exs. 39, 39-A [Aff. of Adam Warren, ¶ 5; Warren Expert Report at 15].)

In response, UBS does not dispute that it did not designate Ineligible Securities. Rather, it argues that "securities can only be designated 'Ineligible' if and when the Knox Warehouse is securitized and sold to the market on a Closing Date." (UBS Memo. In Opp. at 8.) UBS asserts that where, as here, the Agreement was terminated prior to securitization, the Ineligible designation "could not have been required for UBS to recover losses because UBS could not have done so [i.e., could not have made the Ineligible designation] under the clear contractual terms." (*Id.* [emphasis in original].) According to UBS, "[t]his is why the contract expressly distinguishes the calculation of CDS Losses upon securitization and Closing (in which case Ineligible Securities must be designated as such and removed from the securitization pool) from the calculation of CDS Losses if the agreement is terminated before securitization (in which case securities cannot be designated Ineligible, and the Fund Counterparties are responsible for all Replacement Losses, including unrealized losses, on the CDS assets)." (*Id.* at 8-9.)

UBS's contention that securities could only have been designated Ineligible in the event of a closing appears to be highly questionable. As discussed above, Ineligible Security is defined to mean "any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date. . . ." (Synthetic Warehouse Agreement, Ex. A-2.) Other provisions of the Synthetic Warehouse Agreement address designation of Ineligible Securities

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prior to Closing. Thus, section 5 (A) provides for the Servicer to “notify UBS promptly if at any time during the term of this Agreement it becomes aware that a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria.” This section then sets forth procedures for UBS to designate Reference Obligations as Ineligible Securities. In the event UBS terminates the related CDSs or retains exposure, section (A) also sets forth procedures for UBS to calculate Replacement Loss and Replacement Gain “following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6. . . .”

The court nevertheless concludes that the Fund Counterparties do not on this record demonstrate as a matter of law that, under these circumstances in which the Agreement was terminated without a closing having occurred, the Synthetic Warehouse Agreement unambiguously provides that the Fund Counterparties are responsible for unrealized losses only upon designation of the Reference Obligations relating to the CDSs as Ineligible Securities.

The parties submit sharply conflicting expert reports on the items to be included in calculating UBS’s damages, including the propriety of including unrealized losses in calculating CDS Losses. (See Corcoran Aff., Ex. 39 A [Report of Defs.’ Expert Adam Warren]; Corcoran Aff., Ex. 33 [Report of UBS’s Expert Louis Dudney].) To the extent that the determination of UBS’s damages will involve assessment of the credibility of the parties’ experts, the determination is not properly made on a motion for summary judgment. (See generally Bradley v Soundview Healthcenter, 4 AD3d 194, 194 [1st Dept 2004] [“Conflicting expert affidavits raise issues of fact and credibility that cannot be resolved on a motion for summary judgment”]; accord Manswell v Montefiore Med. Ctr., 144 AD3d 564 [1st Dept 2016].)

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Significantly also, the Synthetic Warehouse Agreement contains separate provisions—sections 5 and 6, respectively—for calculation of CDS Losses at closing and in the event closing does not occur. Section 5 expressly provides: “To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.” Section 6, however, employs the defined term for CDS Losses from section 5. On this record, it is unclear whether it is reasonably possible, consistent with settled precepts of contract interpretation, to read section 6 so that it is not rendered meaningless. (See generally Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007].)<sup>6</sup> Put another way, it is unclear what independent purpose section 6 serves if the calculation of CDS Losses is the same as that under section 5.

The parties must also address whether, in construing the Synthetic Warehouse Agreement, the court should read that Agreement together with the contemporaneous Engagement Letter and Cash Warehouse Agreement. (See Brax Capital Group, LLC v WinWin Gaming, Inc., 83 AD3d 591, 592 [1st Dept 2011] [contemporaneous documents governing the same transaction should generally be read together]; Gulf Ins. Co. v Transatlantic Reins. Co., 69 AD3d 71, 81 [1st Dept 2009] [same].) For example, the parties must address whether the differing terms of the Cash Warehouse Agreement regarding the Fund

<sup>6</sup> As held in Beal, a court presented with a contractual interpretation issue should “construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose.” (8 NY3d at 325-325 [internal quotation marks and citations omitted].)

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Counterparties' liability in the event of failure to close are relevant to, or instructive regarding, the interpretation of the definition of CDS Losses in the Synthetic Warehouse Agreement.

In sum, the court cannot find as a matter of law on this record that UBS is not entitled to recover unrealized losses. Determination as to whether the Synthetic Warehouse Agreement is ambiguous in this regard must await further clarification by the parties at trial.<sup>7</sup>

The court turns to the Fund Counterparties' further contentions that UBS received hedging gains of approximately \$128 million following the Fund Counterparties' alleged December 2008 breach, and that, if these gains are offset against any losses, UBS sustained no damages. (Fund Counterparties' Memo. In Supp. at 6-7, 19.)<sup>8</sup> Determination of the effect of UBS's hedging on its damages claim can only be determined on a record that is fully factually

<sup>7</sup> UBS relies on what it characterizes as defendants' "contemporaneous business records" showing that "the parties intended and expected that unrealized CDS losses would be included in Defendants' liability in the event of Termination." (UBS Memo. In Opp. at 9.) These documents include the following: "Cash Forecast" from September 2008, showing a "Transaction Amount" of "(50,000,000)" on March 20, 2009, which was noted to be "[b]ased on total unrealized losses of \$100mm" (Landis Aff., Ex. 27); SOHC's Income Statement, which noted a "[c]hange in unrealized losses of \$(53.9)m" (*id.*, Ex. 28 at 3.) In addition, UBS submits a document titled "Review Knox Transaction and contract ammendment [sic] (Interim Audit Procedures)," prepared by Highland Financial's accountant for the period ending March 31, 2008. (*Id.*, Ex. 29.) This document contained a statement that "[u]nrealized gains/losses are included in the warehouse economics that are absorbed by SOHC and CDO Fund." (*Id.* at PWC-HCM00011538.) It further stated that, "[i]f the transaction does not take place (i.e. CDO securities are not issued), then CDO Fund and SOHC will share economics (both gain and loss) of the warehouse period based on a 51% (CDO Fund) and 49% (SOHC) split." (*Id.* at PWC-HCM00011539.)

The court declines to consider this evidence prior to determination of whether the Synthetic Warehouse Agreement is ambiguous as to the Fund Counterparties' liability for unrealized losses related to CDSs. (See generally *Greenfield*, 98 NY2d at 569.)

<sup>8</sup> Although the Fund Counterparties contend that unrealized losses are not recoverable, they calculate realized losses of approximately \$20-21 million. (Fund Counterparties' Memo. In Supp. at 16.)



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developed as to the types of hedging transactions as well as the relationship between the Fund Counterparties' alleged breaches, the losses on the warehouse assets, and the gains on the hedges. Moreover, as noted above, the parties submit sharply conflicting expert reports on the items to be included in calculating UBS's damages. These reports dispute not only the Fund Counterparties' liability for unrealized losses, but also the extent of required offsets, including offsets for UBS's hedging gains. (See Corcoran Aff., Ex. 39 A [Report of Defs.' Expert Adam Warren]; Corcoran Aff., Ex. 33 [Report of UBS's Expert Louis Dudney].) To the extent that expert testimony is required on the offset issue, its assessment will require credibility determinations that are not properly made on this motion.

The branch of the Fund Counterparties' motion for summary judgment, based on UBS's inability to prove damages, will accordingly be denied.

#### Prior Material Breaches by UBS

The Fund Counterparties argue that, prior to their alleged breach, UBS had already breached the parties' agreements by, among other things, miscalculating losses using "undocumented 'Dummy Swaps'" to inflate losses and "refusing to pay CDS Gains." (Fund Counterparties' Memo. In Supp. at 22.) The Fund Counterparties claim that UBS also recorded changes in exposure attributable to swaps involving Lehman Brothers, even after Lehman Brothers' bankruptcy filing caused the CDS agreements to terminate. (*Id.* at 22-23.) According to the Fund Counterparties, these improper calculations ultimately resulted in unfounded margin calls by UBS, and UBS's premature termination of the parties' agreements when the Fund Counterparties failed to satisfy the third margin call. (*Id.* at 23.) The Fund Counterparties claim that these breaches by UBS were material and excused the Fund

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Counterparties' performance under the parties' agreements (*id.* at 19-20), thereby warranting dismissal of UBS's third and fourth causes of action for breach of the Cash and Synthetic Warehouse Agreements, respectively.

A material breach of a contract may excuse a non-breaching party's performance. (See Grace v Nappa, 46 NY2d 560, 567 [1979].) The court assumes, without deciding, that this doctrine is applicable under these circumstances in which defendants did not repudiate the contract—an issue the parties have not addressed. The court holds, however, that the Fund Counterparties fail to make a prima facie showing that UBS's conduct was impermissible under the Warehouse Agreements. As discussed above, the parties submit conflicting affidavits and evidence concerning the propriety of UBS's damages calculation, which resulted in the underlying margin calls. With each party “cast[ing] the other party in the role of the primary contract offender,” issues of fact preclude summary judgment. (See Boston Concessions Group, Inc. v Criterion Ctr. Corp., 200 AD2d 543, 545 [1st Dept 1994]; W. E. Blume, Inc. v City of New York, 78 AD2d 608, 608 [1st Dept 1980].) Moreover, a factual issue exists as to whether any breach was material. (See generally Garofalo Elec. Co. Inc. v New York Univ., 300 AD2d 186, 189 [1st Dept 2002] [“The question of whether there has been substantial performance—or a breach—is to be determined, whenever there is any doubt, by the trier of fact”]; WILJEFF, LLC v United Realty Mgt. Corp., 82 AD3d 1616, 1617 [4th Dept 2011] [“Generally, the question whether a breach is material is for the finder of fact,” unless “the evidence concerning the materiality is clear and substantially uncontradicted” (internal quotation marks and citation omitted)].) Accordingly, the branch of the Fund Counterparties' motion for summary judgment, based upon UBS's purported prior material breaches, will also be denied.

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UBS's Reliance Upon Omissions or Misrepresentations

The Fund Counterparties also seek dismissal of UBS's first and second causes of action for fraud, on the ground that UBS cannot establish the justifiable reliance element of a fraud claim.

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." (Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 [2009]; Lama Holding Co. v Smith Barney, 88 NY2d 413, 421 [1996].) A fraud claim must be pleaded with particularity pursuant to CPLR 3016 (b).

In New York, sophisticated parties have an affirmative duty to protect themselves from misrepresentations made in arm's length business transactions by undertaking a reasonable investigation of the details of the transactions. (ACA Fin. Guar. Corp. v Goldman, Sachs & Co., 25 NY3d 1043, 1044 [2015] [ACA]; DDJ Mgt., LLC v Rhone Group L.L.C., 15 NY3d 147, 154 [2010] [DDJ].) "Moreover, 'when the party to whom a misrepresentation is made has hints of its falsity, a heightened degree of diligence is required of it. It cannot reasonably rely on such representations without making additional inquiry to determine their accuracy.'" (ACA, 25 NY3d at 1044-1045, quoting Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V., 17 NY3d 269, 279 [2011] [Centro].) Thus, where a plaintiff is aware that it has not been provided with financial information to which it is entitled, its duty to perform a "heightened degree of diligence" is triggered. (ACA, 25 NY3d at 1045 [internal quotation marks and citations omitted].) As the Court of Appeals has emphasized, "the question of what constitutes reasonable reliance is not generally a question to be resolved as a matter of law on a motion to

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dismiss.” (ACA, 25 NY3d at 1045; DDJ, 15 NY3d at 155 [“The question of what constitutes reasonable reliance is always nettlesome because it is so fact-intensive” (internal quotation marks and citation omitted)].)

In support of their contention that UBS cannot prove justifiable reliance, the Fund Counterparties argue that UBS assessed their credit rating as “D3, the lowest available rating for a party not already in default, when it entered into the Restructured Transaction.” (Fund Counterparties’ Memo. In Supp. at 24, 3, citing, e.g., Corcoran Aff., Ex. 7 [Dep. of UBS’s David Bawden at 163, 256 [characterizing Fund Counterparties as “weak counterparties”].) According to the Fund Counterparties, “UBS mandated a hedging strategy and the booking of a full reserve as conditions for internal approval, because it did not deem the Fund Counterparties as being capable of paying what UBS believed it would be owed upon execution of the contracts.” (Fund Counterparties’ Memo. In Supp. at 24, 3, citing, e.g., Corcoran Aff., Ex. 11 [Dep. of Michael Threadgold at 55] [conditioning approval on “appropriate hedging for counterparty risk”].) The Fund Counterparties conclude that, because UBS knew of their financial strength (or lack thereof), UBS could not have justifiably relied upon any misrepresentations or omissions regarding their creditworthiness or assets. (Fund Counterparties’ Memo. In Supp. at 24.)

In opposing the Fund Counterparties’ motion, UBS submits the affidavit of a former employee who was a member of the UBS team that worked on the Highland Capital engagement, stating that Highland Capital’s Philip Braner explained that Highland Capital “could (was willing to) exercise its control over the various Highland-affiliated funds to move assets between and among the affiliated funds, thereby making assets available to UBS from Highland-affiliated

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funds other than the Fund Counterparties.” (Landis Aff., Ex. 58 [Aff. of Timothy LeRoux, ¶¶ 46, 47.]) UBS also relies on the testimony of various employees as to their reliance upon the Fund Counterparties’ misrepresentations concerning their finances and assets when deciding whether to enter into the Warehouse Agreements. (See e.g. Landis Aff., Ex. 58 [Aff. of Timothy LeRoux, ¶¶ 5-6, 12-20, 30-48] [attesting, among other things, to alleged misrepresentations as to the Fund Counterparties’ ownership of assets posted as initial restructuring collateral]; *id.*, Ex. 59 [Dep. of Peter Chudy at 126-127]; *id.*, Ex. 60 [Dep. of David Bawden at 227-228]; *id.*, Ex. 61 [Dep. of Steve Marotta at 55-56] [depositions of UBS employees arguably supporting inference of reliance on financial information provided to UBS by defendants].)<sup>9</sup> The reasonableness of that reliance is not subject to summary disposition, as it requires development of the factual record as to the information provided to UBS and assessment of the UBS employees’ review of the information.

The branch of the Fund Counterparties’ motion for summary judgment dismissing UBS’s fraud claims will accordingly be denied.

#### Fraudulent Conveyance & Fraudulent Transferor Claims

The Fund Counterparties argue that because UBS suffered no damages it is therefore not a creditor with standing to assert a fraudulent conveyance claim. (Fund Counterparties’ Memo. In Supp. at 25.) Given this court’s finding that factual issues exist concerning the extent of UBS’s damages, this basis for dismissal of the claim must fail.

<sup>9</sup> This court advisedly uses the word “arguably.” Plaintiff and defendants support their factual claims on the instant motions with selected excerpts of deposition testimony, generally without describing the positions of the deponents and without the surrounding context. The meaning and import of the testimony therefore cannot be adequately evaluated on this record.



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The Fund Counterparties further argue that New York does not recognize a cause of action for fraudulent conveyance against an alleged fraudulent transferor. (*Id.*) The Fund Counterparties' reliance on Federal Deposit Ins. Corp. v Porco (75 NY2d 840, 842 [1990]), in support of this argument, is misplaced. There, the Court held that the Debtor and Creditor Law "cannot fairly be read as creating a remedy against nontransferees who . . . are not alleged to have dominion or control over [the debtor's] assets or to have benefited in any way from the conveyance." In the instant action, in contrast, UBS does not allege that the Fund Counterparties assisted another debtor in transferring property but, rather, that "cash and assets" were transferred from Highland Financial, SOHC's alter ego, or from the Fund Counterparties themselves. (Complaint, ¶¶ 168, 18.) The Fund Counterparties do not cite any authority that a fraudulent conveyance claim is not maintainable under these circumstances.

II. Motion of Highland Capital, Highland Financial, Crusader Fund, Credit Strategies, Credit Opp Fund, and Strand for Summary Judgment (mot seq 026)

Highland Capital, Highland Financial, Strand, and the Affiliated Transferee defendants (together, moving defendants) seek summary judgment dismissing all of the causes of action asserted against them.<sup>10</sup> UBS pleads claims, in the fifth cause of action of the complaint, against all moving defendants for fraudulent conveyance. In addition, UBS seeks to hold Highland Financial liable, under the eighth cause of action, as SOHC's alter ego, for SOHC's alleged fraudulent conveyances and breaches of the Warehouse Agreements.

UBS claims that, as a result of its first margin call in September 2008, the Highland entities began commingling assets to generate short-term liquidity for the Fund Counterparties.

<sup>10</sup> As noted above, this motion was brought before UBS settled its claims against Credit Strategies and Crusader Fund.

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(Id., ¶ 80.) The complaint alleges that, in the fall of 2008, Highland Capital caused Highland Financial to take on additional debt in exchange for cash-generating assets that were to be used by SOHC to satisfy obligations that SOHC had to nonparty Barclays Bank. (Compl., ¶ 82.) In September 2008, Highland Financial acquired \$321 million in “risky” CLO assets and life settlement insurance contracts from the Affiliated Transferee defendants in exchange for senior secured notes in a principal amount of \$316 million with a maturity date of 2018. (Id., ¶ 83.) This note offering (the September 2008 Note Offering) required Highland Financial to make amortized quarterly payments of \$15 million to the Affiliated Transferee defendants, starting in February 2009. (Id.) Highland Financial was also required to transfer a security interest to the Affiliated Transferee defendants in the shares of two wholly owned subsidiaries into which Highland Financial transferred the newly acquired assets. (Id.)

In October 2008, Highland Capital allegedly proposed, and Highland Financial undertook, an additional note offering on the same terms as the September 2008 Note Offering, with Highland Financial issuing an additional \$55,488,000 of secured notes, also due in 2018, to Crusader Fund. This note offering (the October 2008 Note Offering) brought Highland Financial’s debt obligation to the Affiliated Transferee defendants to approximately \$371 million. (Id., ¶ 85.) UBS claims that the granting of these security interests and related asset transfers constituted fraudulent conveyances, and made it impossible for the Fund Counterparties and Highland Financial to satisfy their obligations to UBS. (Id., ¶¶ 84, 85.)

UBS maintains that, at the time of the September and October 2008 Note Offerings (together, Fall 2008 Note Offerings), Highland Financial, as SOHC’s alter ego, owed UBS hundreds of millions of dollars that it could not pay. (Id., ¶ 84.) Highland Capital allegedly

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caused “Highland Financial and SOHC to use the assets that they acquired to pay down a substantial portion of SOHC’s debt to Barclays [Bank] to the detriment of UBS.” (*Id.*, ¶ 86.) These payments to Barclays Bank were made at a time when SOHC and Highland Financial were allegedly insolvent or within the zone of insolvency, and constituted fraudulent conveyances. (*Id.*, ¶ 88.) UBS also claims that CDO Fund used the notes it received to satisfy obligations to Citibank, NA at a time when CDO Fund was insolvent, thereby also making a fraudulent conveyance. (*Id.*, ¶ 89.)

UBS further claims that in December 2008, after UBS terminated the restructured Transaction, Highland Capital ensured that Highland Financial and SOHC were insolvent by transferring assets to the Affiliated Transferee defendants, and then sought to hide these conveyances by tying them to the cancellation of the notes issued in the Fall 2008 Note Offerings. (*Id.*, ¶¶ 108-109.)

UBS commenced the instant action on February 24, 2009. According to the complaint, on March 17, 2009, Highland Capital caused SOHC’s parent and alleged alter ego, Highland Financial, to transfer all of its and SOHC’s assets to Highland Capital and the Affiliated Transferee defendants. These assets were allegedly valued at \$239 million and included assets of two of Highland Financial’s subsidiaries that had no obligations to the Affiliated Transferee defendants. (*Id.*, ¶ 111.) As a result of the transfer, these funds were unavailable to SOHC to satisfy the debt owed to UBS under the parties’ agreements. (*Id.*, ¶ 113.) UBS refers to this transfer as the “March 2009 Fraudulent Conveyance.” (*Id.*, ¶ 111.)

Moving defendants sharply dispute that the transfer of assets in March 2009 was a fraudulent conveyance. In an affidavit submitted by moving defendants, Phillip Braner states

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that toward the end of 2008, the assets that secured the notes issued in fall 2008 were subject to significant credit downgrades. According to Mr. Braner, these downgrades had a negative impact on the cash flows available to Highland Financial as dividends, and the decreased cash flows made it unlikely that Highland Financial would be able to meet its debt service obligations under the notes, or its obligation to pay premiums on the life settlement contracts it had acquired. (Braner Aff., ¶ 13.) As a result, Highland Financial assertedly approved the unwinding of the notes to relieve it of these obligations (*id.*), and “transferred the collateral securing the Secured Notes back to the Funds.” (Moving Defs.’ Memo. In Supp. at 5.) Mr. Braner claims that the decision to unwind the notes was not related to debts owed by SOHC. (Braner Aff., ¶ 13.)

The Fall 2008 notes were terminated and the collateral was transferred pursuant to a “Termination, Settlement and Release Agreement,” dated March 20, 2009, between Highland Financial, HFP Asset Funding II, Ltd., and HFP Asset Funding III, Ltd., as Issuers, and various Noteholders, including Credit Strategies, Crusader Fund, a successor to the note purchased by Credit Opp Fund, and Highland Capital. (Landis Aff., Ex. 65.) Moving defendants refer to the March 2009 transaction as the March 2009 Note Termination. (Moving Defs.’ Memo. In Supp. at 5.)

Moving defendants argue that UBS’s inability to establish damages precludes any claims against them. They further argue that UBS cannot establish Highland Financial’s alter ego liability and that, in any event, the March 2009 Note Termination was not a fraudulent conveyance. Finally, they contend that UBS’s claim against Highland Capital for breach of the covenant of good faith and fair dealing is without merit.

#### Lack of Damages

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In support of their claim that UBS cannot establish damages, moving defendants rely on the Fund Counterparties' damages argument. As the Fund Counterparties' motion for summary judgment based on lack of damages has been denied, moving defendants' argument likewise fails.

#### Alter Ego Liability

Moving defendants argue that because claims arising before the commencement of this action on February 24, 2009 are barred by res judicata, the only remaining claim against them is based on the March 2009 Note Termination—a transaction that involved SOHC's shareholder, Highland Financial, not SOHC itself. Moving defendants further argue that because UBS cannot establish that Highland Financial is SOHC's alter ego, the fraudulent conveyance claim involving this Note Termination must be dismissed. (Moving Defs.' Memo. In Supp. at 11-12, 16.)

The standards for liability under an alter ego or veil piercing theory are well settled:

“... [P]iercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury.

While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business, such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required. The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene.”

(Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135, 141-142 [1993])



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[internal citations omitted].)

As a threshold matter, the court notes that the Appellate Division determined that UBS's substantially similar allegations in an earlier complaint in this action were sufficient to plead a claim for alter ego liability. (UBS Secs. LLC, 93 AD3d at 490.) This court previously held that UBS's alter ego claim in the second amended complaint in this action is based on substantially similar allegations to those upheld by the Appellate Division. These allegations include not only general allegations as to Highland Capital's commingling of the Highland entities' funds and disregard of corporate formalities, but also Highland Capital's pre-February 2009 conduct, in connection with the Fall 2008 Note Offerings, in causing Highland Financial to acquire Credit Strategies' and Crusader's assets, which were later the subject of the alleged March 2009 fraudulent conveyance. (UBS Secs. LLC, 42 Misc 3d at 587-588.)

Moving defendants contend that UBS's alter ego claim is barred by res judicata based on the Appellate Division's decision in this and a subsequent related action, holding that UBS's claims against Highland Capital were barred by res judicata to the extent they "implicate events alleged to have taken place before the filing of the original complaint" (i.e., the filing on February 24, 2009 of the complaint in the instant action). (UBS Secs. LLC, 86 AD 3d at 474; see Moving Defs.' Memo. In Supp. at 9-10.) Moving defendants also rely on a subsequent decision of the Appellate Division which dismissed claims for fraudulent conveyance "arising before February 2009" against Highland Financial and other Highland entities, on the ground that these entities were in privity with Highland Capital. (UBS Secs. LLC, 93 AD3d at 490.)

Citing these decisions, moving defendants assert that the March 2009 Note Termination is the only alleged wrongdoing on which the fraudulent conveyance claim can be based.

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(Moving Defs.' Memo. In Supp. at 11.) They also assert that UBS cannot establish that Highland Financial is SOHC's alter ego because "the only allegations UBS makes regarding the relationship between HFP and SOHC concern events alleged to have occurred before February 24, 2009." (*Id.* at 12, 12 n 55 [citing UBS's allegations as to pre-February 2009 encumbrances and commingling of Highland entities' assets].)

This court previously rejected the contention, advanced by moving defendants here, that UBS cannot rely on events or conduct occurring before February 2009 to support its alter ego and fraudulent conveyance claims. As held in the prior decision, the Appellate Division decisions preclude any fraudulent conveyance claims arising before February 24, 2009. They therefore preclude UBS from recovering for any alleged fraudulent conveyances made before that date. However, proof of pre-February 24, 2009 transfers, and of other conduct involving the operation of the Highland entities, is not prohibited to the extent necessary to prove UBS's claims for post-February 24, 2009 fraudulent conveyances, which are maintainable under the Appellate Division decisions on an alter ego theory. (*UBS Secs. LLC*, 42 Misc 3d at 587.) The court adheres to this decision here.<sup>11</sup>

In upholding UBS's alter ego claim, the court also rejects moving defendants' contention that "UBS was not harmed by any alleged fraud of SOHC caused by HFP's purported domination, because . . . UBS did not rely on any alleged misrepresentations by SOHC." (Moving Defs.' Memo. In Supp. at 16.) This contention rests, in turn, on moving defendants' claim that UBS "assumed the risk of doing business with the Fund Counterparties," and

<sup>11</sup> It is noted that moving defendants' briefing on these motions was largely completed before issuance of the decision.

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“bargained for SOHC as a counterparty with its eyes wide open as to SOHC’s lack of creditworthiness.” (Id. at 17-18.) Moving defendants fails to establish this claim as a matter of law, for the reasons discussed above in connection with the Fund Counterparties’ motion. (See supra at 16-18.)

Favour Mind Ltd. v Pacific Shores, Inc. (2004 WL 97649, 2004 US Dist LEXIS 637 [SD NY 2004]), on which moving defendants rely, is not to the contrary. There, the Court applied the doctrine that “[w]here a party is aware of the risks of dealing with a corporation, that party has assumed the risk of such dealings.” (2004 WL 97649, at \* 7.) The Court rejected the plaintiff’s alter ego claim, based on the findings that the plaintiff knew, when it decided to do business with the defendant, of the defendant’s poor credit ranking, its losses, and its limited initial capital investment; that the plaintiff continued to do business with the defendant after issues arose regarding payment of bills; and that there was no evidence that the plaintiff “ever had any reasonable expectation that [the party sought to be held] would be personally liable for payment.” (Id.) Here, in contrast, as discussed above (supra at 16-18), factual issues exist as to the extent to which UBS assigned value to the Fund Counterparties and concluded that they had the ability to meet obligations upon a default, and as to the reasonableness of UBS’s reliance on information provided to it by the Highland entities in connection with the Transaction.

Moreover, a factual issue exists on this record as to whether SOHC, through Highland Financial as alter ego, perpetrated a wrong against UBS. UBS submits evidence that Highland Financial and SOHC engaged in various transfers, shifting funds from SOHC to other Highland entities. (See e.g. Landis Aff., Ex. 26 [Dep. of Highland Financial’s Todd Travers at 182, acknowledging that Highland Financial and SOHC were treated interchangeably for purposes of

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borrowing money or repaying debts]; Landis Aff., Ex. 87 at PWC-HCM00017088 [accounting report for Highland Financial, stating that “sales activity in SOHC is driven by cash needs at [the Highland Financial] level for the closing of new CDOs”]; Landis Aff., Ex. 88 [Dep. of Gene McQwown at 446-447, stating that, at the time of the September 2008 Notes Offering, Highland Financial was undercapitalized and that it would not have been possible to issue these notes on the same terms with unaffiliated entities].) As discussed above (supra at 17-18), Highland Capital’s Braner also allegedly made representations to UBS regarding Highland Capital’s willingness to make assets available from various Highland entities to satisfy the Fund Counterparties’ obligations. Evaluation of this testimonial evidence involves credibility determinations, which are not properly made on a motion for summary judgment.

Moving defendants next argue that “over the life of the Restructured Transaction . . . , [Highland Financial] contributed more to SOHC than it received from SOHC,” and therefore that “[t]he net balance of these transactions was to UBS’ benefit, not detriment.” (Moving Defs.’ Memo. In Supp. at 18; Aff. of Clifford Stoops [Highland Capital’s Chief Accounting Officer and Highland Financial’s Interim Chief Financial Officer], ¶ 5.) However, as set forth in UBS’s expert report, UBS disputes moving defendants’ methodology for reviewing transfers, claiming that defendants improperly considered the transfers at an “aggregate, net level rather than analyzing individual transfers at the transactional level and separately evaluating whether fair consideration was exchanged.” (Landis Aff., Ex. 36 [Report of Louis Dudley at 23-24].) The parties also dispute whether cash transfers and loan repayments by SOHC to Highland Capital and Highland Financial in fact exceeded Highland Financial’s contributions to SOHC. (See UBS’s Memo. In Opp. at 17.)

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Moving defendants thus fail to demonstrate as a matter of law that Highland Financial is not the alter ego of SOHC.

#### Fraudulent Conveyance

Moving defendants seek dismissal of UBS's constructive fraudulent conveyance claim on the ground that the March 2009 Note Termination was made for "fair consideration" under section 273 of the Debtor and Creditor Law, and was therefore not a fraudulent conveyance. (Moving Defs.' Memo. In Supp. at 19.) Specifically, they argue that the underlying notes were "secured debt" (*id.* at 20-23), and that the March 2009 Note Termination "repaid antecedent secured debt to non-insiders," and therefore constituted fair consideration under New York law. (*Id.* at 23.) They also argue that, even if certain Affiliated Transferee defendants were "insiders," the payments to these noteholders were for fair consideration because the payments "satisfied secured debt." (*Id.* at 24.)

Moving defendants fail to demonstrate entitlement to judgment as a matter of law with respect to UBS's allegations of constructive fraud. Debtor and Creditor Law (DCL) sections 273, 273-a, 274, and 275, which govern constructive fraud, all require a showing that fair consideration was lacking.

Under section 272 of the DCL:

"Fair consideration is given for property, or obligation,

a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained."



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As the Court of Appeals has explained, “[i]t is well settled that an evaluation of whether fair consideration is given for property under Debtor and Creditor Law § 272 must be determined upon the facts and circumstances of each particular case.” (Commodity Futures Trading Commn. v Walsh, 17 NY3d 162, 175 [2011] [internal quotation marks and citation omitted].) “Good faith is required of both the transferor and the transferee, and it is lacking when there is a failure to deal honestly, fairly, and openly. Transfers to a controlling shareholder, officer or director of an insolvent corporation are deemed to be lacking in good faith and are presumptively fraudulent.” (Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership, 25 AD3d 301, 303 [1st Dept 2006] [internal quotation marks and citations omitted].)

Here, the parties dispute whether the transfers were made to “insiders,” and, therefore, whether the “presumptively fraudulent” standard was triggered. (Moving Defs.’ Memo. In Supp. at 23-24; UBS’s Memo. In Opp. at 19-20.) According to Mr. Braner, CDO Fund and Crusader Fund held 9.71% and 9.07% limited partner interests in Highland Financial, respectively, at the time of the Fall 2008 Note Offerings. (Braner Aff., ¶ 5.) Mr. Braner also admitted that Highland Capital held a 20.96% limited partner interest in Highland Financial, and Highland Capital’s president, James Dondero (Dondero), held a 0.15% limited partner interest in Highland Financial. (Id., ¶ 8; Landis Aff., Ex. 103 [chart showing ownership interests in Highland entities].) UBS submits deposition testimony and an ownership chart prepared by defendants, showing that Mr. Dondero also owned approximately 70% of Highland Capital. (Landis Aff., Ex. 78 [Dondero Dep. at 15-16]; id., Ex. 136 [Dep. of Mark Okada at 9-10]; id., Ex. 137 [chart entitled “Highland Equity Ownership”].) Moreover, UBS submits an “Amended and Restated Management Agreement,” and several “Investment Management Agreements,”

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executed by the Highland defendants, by which Highland Capital was designated “Manager” of Highland Financial, SOHC, CDO Fund, Crusader Fund, Credit Strategies, and Credit Opp Fund, with discretion and authority to manage the assets and operations of these entities. (Landis Aff., Exs. 81, 105-108.)

In addition, Mr. Dondero signed the original “Note Purchase Agreement,” dated September 26, 2008, on behalf of Highland Capital, CDO Fund, the Affiliated Transferee defendants and Highland Capital as their sole member, Strand, and HFP Asset Funding II and III, Ltd. (Stoops Aff., Ex. 42.) UBS also relies on the “Termination, Settlement and Release Agreement,” discussed above, which effectuated the March 20, 2009 Note Termination by extinguishing the parties’ obligations under the fall 2008 notes and transferring the assets back to the noteholders. The Agreement was signed by Mr. Dondero on behalf of Highland Financial, Highland Capital, HFP Asset Funding II and III, Ltd., CDO Fund, Credit Strategies, Crusader Fund, “Highland Credit Opportunities CDO, Ltd.,” and Strand, among other entities.<sup>12</sup> (*Id.*, Ex. 44; Landis Aff., Ex. 26 [Dep. of Todd Travers at 228-229, stating that Mr. Dondero negotiated on behalf of all parties to the Note Purchase Agreement with respect to the retirement of the notes].)

On this record, moving defendants fail to demonstrate as a matter of law that the termination of the fall 2008 notes repaid debt to “non-insiders.” At a minimum, whether Mr. Dondero, through Highland Capital, managed and controlled Highland Financial, the Fund Counterparties, and the Affiliated Transferee defendants, thereby placing himself, Highland

<sup>12</sup> If Highland Credit Opportunities CDO, Ltd. is in fact the same entity as Highland Credit Opportunities CDO, L.P., Mr. Dondero would have signed on behalf of all Affiliated Transferee defendants.

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Capital, and Highland Financial on “both sides” of the Fall 2008 Note Offerings and the March 2009 Note Termination, raises a factual issue as to whether the transaction “was effected in good faith.” (See Farm Stores, Inc. v School Feeding Corp., 102 AD2d 249, 254 [2d Dept 1984], affd in part 64 NY2d 1065 [1985] [rejecting argument that shareholder was an “outside lender” with no control, where “he exercised his influence as a shareholder in decisions which directly affected his investments,” and it was “undisputed that [he] gave his consent to all distributions of funds collected . . . , including those distributions challenged as fraudulent”]; PalmOne, Inc. v R.C.S. Computer Experience, L.L.C., 15 Misc 3d 1127 [A], 2007 NY Slip Op 50873 [U], \*7 [Sup Ct, NY County 2007] [finding that factual issue existed concerning transferee’s good faith, where “transferee [was] controlled by a person who is also an insider of, and/or has control over, the transferor”].)

Moving defendants rely upon Matter of Dreier LLP v Westford Asset Mgt. LLC (462 BR 474 [Bankr SD NY 2011]) in support of their argument that “transfers to a group of affiliated funds, their agents, and managers for the repayment of principal investment could not be a fraudulent conveyance because they were not insiders.” (Moving Defs.’ Memo. In Supp. at 23.) However, Dreier LLP involved investments by a third-party group of affiliated hedge funds in a Ponzi scheme by the principal of Dreier LLP. (462 BR at 479.) Here, in contrast, the transfers were made by an affiliated transferor to affiliated transferees, and therefore raise issues, which are not resolved on this record, as to the “good faith” of the transferees. (See id. at 488.)

Moving defendants further argue that, even if the noteholders were insiders, the transfers were for fair consideration because they repaid secured debt. (Moving Defs.’ Memo. In Supp. at 24.) In support of this argument, moving defendants rely upon Matter of Northstar Dev.

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Corp. v Buchheit (465 BR 6 [Bankr WD NY 2012]), in which the Court applied the New York Debtor and Creditor Law. The Court held that this law “allows the avoidance of preferential transfers to directors, officers and shareholders of insolvent corporations.” (*Id.* at 13, quoting Farm Stores, Inc. v School Feeding Corp., 102 AD2d at 254.) The Court further explained: “As a general rule, however, no preference occurs upon the payment of a secured debt. For a preference to arise, a creditor must realize some improvement in position.” (*Id.* at 13-14.)

In Matter of Northstar Dev. Corp., the Court held that payment to discharge mortgages held by an insider of the debtor satisfied the good faith element of fair consideration, for purposes of a constructive fraud claim under the Debtor and Creditor Law. (*Id.* at 14-15.) In the instant action, the parties dispute whether the March 2009 Note Termination involved secured debt. Even assuming that a security interest was created, the Highland entities initiated the disputed transaction only five to six months before terminating it. In Matter of Northstar Dev. Corp., in contrast, the secured debt was created many years before the disputed transaction by which it was discharged.

Although the fraudulent conveyance claim here arose upon the March 2009 Note Termination, the Fall 2008 Note Offerings are integrally related. Assessment of the fraudulent conveyance claim will therefore require factual development of the record as to the circumstances under which the Fall 2008 Note Offerings were made. Even in the face of a claim by a transferee that it was a secured creditor, a court considering a constructive fraud claim must evaluate whether the transfer was made for fair consideration—that is, for a fair equivalent and in good faith. (See e.g. Farm Stores, 102 AD2d at 251-252 [finding transfers fraudulent even though transferees contended “that they were secured investing or lending shareholder-

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creditors”]; Northpark Assoc., L.P. v S.H.C. Mergers, Inc., 8 AD3d 642, 643-644 [2d Dept 2004] [finding question of fact as to whether transfer by the defendant judgment debtor to defendant’s parent company and sole shareholder was made in good faith, although parent company contended that it was a secured creditor and that the transfer was made in payment of an antecedent debt].) On this record, moving defendants do not demonstrate as a matter of law that the good faith element of a constructive fraud claim cannot be satisfied.

Finally, moving defendants argue that UBS cannot establish a fraudulent conveyance claim based on actual fraud. (Moving Defs.’ Reply Memo. at 6-9.) Even assuming that the court may entertain this argument, which was made for the first time on the reply (but see Ritt v Lenox Hill Hosp., 182 AD2d 560, 562 [1st Dept 1982]), moving defendants fail to demonstrate as a matter of law that UBS cannot establish that Highland Financial acted with actual intent to defraud in effectuating the March 2009 Note Termination. The assertion of Highland Capital’s Braner that the Termination was made for legitimate business reasons (see Braner Aff., ¶ 13) must be evaluated on a fully developed record.

The branch of moving defendants’ motion for summary judgment dismissing UBS’s fraudulent conveyance claims will accordingly be denied.

#### Good Faith and Fair Dealing

Highland Capital seeks summary judgment dismissing UBS’s claim for breach of the covenant of good faith and fair dealing (third cause of action), asserted in the action under Index Number 650752/10. This claim is based upon allegations that Highland Capital used its control over the Fund Counterparties to orchestrate the transfer of Highland Financial’s assets to Highland Capital and the Affiliated Transferee defendants, as part of the March 2009 Note



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Termination. (Complaint under Index Number 650752/10, ¶¶ 158-166; UBS's Memo. In Opp. at 7-8, 25.)

Highland Capital argues that it cannot be liable for this conduct unless Highland Financial is the alter ego of SOHC. As moving defendants' motion for summary judgment dismissing UBS's alter ego claim has been denied, this basis for dismissal of the implied covenant claim fails.

Highland Capital also argues that UBS terminated the parties' agreements months before the acts that allegedly breached the covenant of good faith and fair dealing, thereby ending Highland Capital's obligations. The court agrees. The implied covenant of good faith and fair dealing "embraces a pledge that 'neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract,'" and it "encompass[es] 'any promises which a reasonable person in the position of the promisee would be justified in understanding were included.'" (511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 153 [2002] [internal citations omitted].)

Here, UBS concedes that it terminated the parties' agreements in December 2008 (Compl., ¶ 99), and its cause of action is based upon the March 2009 Note Termination several months later. UBS cannot state a claim for breach of the implied obligation of good faith absent an existing contract. (See e.g. Levine v Yokell, 258 AD2d 296, 296-297 [1st Dept 1999]; American-European Art Assocs., Inc. v Trend Galleries, Inc., 227 AD2d 170, 171 [1st Dept 1996] Lakeville Pace Mech., Inc. v Elmar Realty Corp., 276 AD2d 673, 676 [2d Dept 2000]; Beninati v Federal Deposit Ins. Corp., 55 F Supp 2d 141, 149 [ED NY 1999] [implied duty of good faith and fair dealing does not "extend beyond the termination of the contract"].)

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Highland Capital's motion for summary judgment dismissing UBS's third cause of action for breach of the covenant of good faith and fair dealing, in the pleading under Index Number 650752/10, will therefore be granted.

It is accordingly hereby

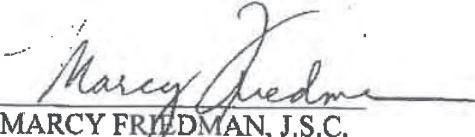
ORDERED that the motion for summary judgment of defendants Highland Capital Management, L.P., Highland Financial Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. (motion sequence number 026) is granted to the extent that the third cause of action in the complaint under Index Number 650752/10 is dismissed, and the motion is otherwise denied; and it is further

ORDERED that the motion for summary judgment of defendants Highland Special Opportunities Holding Company and Highland CDO Opportunity Master Fund, L.P. (motion sequence number 027) is denied.

This constitutes the decision and order of the court.

Dated: New York, New York  
March 13, 2017

ENTER:

  
MARCY FRIEDMAN, J.S.C.

## **EXHIBIT 27**

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CONFIDENTIAL MATERIAL SUBJECT TO THE STIPULATION AND ORDER FOR THE PROTECTION AND EXCHANGE OF  
CONFIDENTIAL INFORMATION ENTERED IN UBS SECURITIES LLC, ET AL. V. HIGHLAND CAPITAL MANAGEMENT,  
L.P., ET AL., INDEX NO. 650097/2009 HAS BEEN REDACTED.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
UBS SECURITIES LLC and UBS AG, LONDON  
BRANCH,

Plaintiffs,

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND SPECIAL OPPORTUNITIES HOLDING  
COMPANY, HIGHLAND CDO OPPORTUNITY  
MASTER FUND, L.P., HIGHLAND FINANCIAL  
PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES  
MASTER FUND, L.P., HIGHLAND CRUSADER  
OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT  
OPPORTUNITIES CDO, L.P., and STRAND  
ADVISORS, INC.,

Defendants.  
-----X

Index No. 650097/2009

Assigned to:  
Hon. Marcy S. Friedman

Commercial Division  
Part 60

Mot. Seq. 030

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFFS' OMNIBUS MOTION IN LIMINE**

Dated: June 13, 2017  
New York, New York

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*Attorneys for Defendants*

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**DEFENDANTS' MEMORANDUM OF LAW IN  
OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE**

**A323**

002995

A.D.2d 34, 45-46 (2d Dep’t 1984) *aff’d*, 66 N.Y.2d 642 (1985) (applying section 15-108 even though the claims at issue were “essentially contractual in nature”); *Mathis v. United Homes, LLC*, 607 F. Supp. 2d 411, 430 (E.D.N.Y. 2009) (stating Section 15-108 is “applicable to any situation in which two or more persons can be held liable for causing the same injury”); *Jamison Bus. Sys., Inc. v. Unique Software Support Corp.*, No. CV 02-4887 (ETB), 2005 WL 1262095, at \*19 (E.D.N.Y. May 26, 2005) (applying offset and discharging defendant of liability pursuant to 15-108 where prior settlement was for the same injury as that caused by the remaining defendant). Accordingly, section 15-108 provides an additional basis for applying an offset based on USB’s prior settlements.

The relevant settlement agreements with the Settling Defendants explicitly settled “any and all claims” related to the “Knox Agreement” and the “UBS Litigation,” which was explicitly defined to mean this case. The claims settled in those settlement agreements are premised on the same theories of liability, and the same alleged harm, as the claims alleged against the remaining Defendants. Accordingly, if any liability against Defendants is ultimately found, Defendants will be entitled to a substantial offset. Thus, UBS’s argument that the Court cannot hear evidence or argument regarding UBS’s prior settlements fails. The settlements likewise release Defendant Highland Capital Management, L.P. from any liability relating to the alleged fraudulent transfers with the Settling Defendants, and the Court will need to likewise enforce these provisions.

**C. Post-Breach Evidence May Be Considered in Determining UBS’s Damages, If Any.**

UBS’s position that the court cannot consider “post-breach” evidence of damages is unfounded. To the contrary, New York courts denounce such a “bright-line” exclusion as “too mechanical” and have held that fact-finders should be able to consider post-breach evidence in



**III.**  
**CONCLUSION**

For the reasons stated above, and at the hearing on this matter, Plaintiffs' Motion in Limine should be DENIED in its entirety.

Dated: June 13, 2017  
New York, New York

Respectfully submitted,

**LACKEY HERSHMAN, L.L.P.**

By: /s/ Kieran M. Corcoran

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***Attorneys for Defendants***

## **EXHIBIT 28**

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**THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION  
ENTERED IN THE UBS SECURITIES LLC, ET AL. V. HIGHLAND CAPITAL  
MANAGEMENT, L.P., ET AL., INDEX NO. 650097/2009, HAS BEEN REDACTED**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

UBS SECURITIES LLC and  
UBS AG, LONDON BRANCH,

Plaintiffs,

- against -

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND CDO OPPORTUNITY MASTER  
FUND, L.P., HIGHLAND SPECIAL  
OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND FINANCIAL PARTNERS, L.P.,  
HIGHLAND CREDIT STRATEGIES MASTER  
FUND, L.P., HIGHLAND CRUSADER  
OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., and  
STRAND ADVISORS, INC.,

Defendants.

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Hon. Marcy S. Friedman  
IAS Part 60

**PLAINTIFFS' PRE-TRIAL BRIEF IN SUPPORT OF BIFURCATION OF TRIAL**

Dated: April 18, 2018  
New York, NY

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### INTRODUCTION

Pursuant to the Court's request at the March 29, 2018 conference, Plaintiffs UBS Securities LLC and UBS AG, London Branch (collectively "UBS") submit this brief in support of the plan for the trial that is currently set as a bench trial to commence on June 4, 2018.<sup>1</sup> UBS urges this Court to keep that scheduled date, as previously agreed to by the parties and the Court. That agreement (as discussed with the Court on March 9, 2018) contemplates a trial on certain claims (those to be tried by the Court) while postponing the resolution of the other claims (those to be tried by a jury).

In light of the recent decision by the Appellate Division, which reinstated UBS's fraudulent conveyance claims against certain Highland Defendants, UBS now is willing to simplify the upcoming trial even more by postponing the claims against Highland Capital Management, L.P. ("HCM") to the later phase. Thus, what the parties had estimated to the Court would be a two to three week trial, should now last only about a week or so. And, depending upon the resolution of the first phase, it could considerably narrow the scope of the remaining issues, or lead to resolution of the case altogether.

Meanwhile, Defendants now take the position that *no* trial should proceed on the June 4 date, and further, that they no longer want to bifurcate the trial of bench and jury claims at all but want to throw all claims and defendants, bench and jury trial alike, together in one proceeding as long as that proceeding can be postponed until months from now (the earliest date they have offered is in October). But not only do they want this Court to ignore their previous commitment, they also wish to ignore the fact that if bifurcation does not occur, it will require the Court to conduct additional evidentiary proceedings, including a hearing on the interpretation and potential

<sup>1</sup> The parties met and conferred on April 12, 2018 and April 17, 2018, but have not been able to reach an agreement concerning the trial of this action.

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ambiguity of various contract provisions and *Frye* proceedings to test expert qualifications, not to mention hearings on outstanding motions *in limine*. It is entirely inefficient and only serves Defendants' ongoing interest in delay to abandon what would likely be a four- or five-day bench trial on the contract claim, and instead require the Court to hold what is likely to be a several-day evidentiary hearing on contract and expert issues—which will present overlapping factual issues and would ensure that witnesses and evidence would be put on twice. UBS requests that the Court not allow Defendants to reverse course on the eve of trial and instead proceed with the bench trial already set for June 4—except that UBS agrees trial of the implied covenant claim against HCM may appropriately be postponed until a second trial phase.

\* \* \*

After Defendants hired new counsel, in early 2018, the parties agreed to bifurcate the trial. At the time the parties made this agreement, the Appellate Division had issued its October 2017 decision affirming this Court's denial of summary judgment on all claims except for the fraudulent conveyance claims against parties other than the Fund Counterparties. The claims that remained in the case were the breach of contract claims against Highland CDO Master Fund, L.P. ("CDO Fund") and Highland Special Opportunities Holding Company ("SOHC", collectively, the "Fund Counterparties"), the alter ego claim against Highland Financial Partners, L.P. ("HFP"), the breach of implied covenant of good faith and fair dealing claim against HCM, the general partner liability claim against Strand Advisors, Inc. ("Strand"), the fraudulent inducement claim against the Fund Counterparties, and fraudulent conveyance claims against the Fund Counterparties. The parties agreed that they would conduct a bifurcated trial of these claims, trying the bench claims (breach of contract and breach of implied covenant) in June 2017 and trying the remaining claims to a jury in fall 2017. The Court accordingly set a June 2017 trial date for a bifurcated trial.



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In March 2018, the Appellate Division reversed its decision on the fraudulent conveyance claims, thus reinstating the previously-dismissed fraudulent conveyance claims against HFP, HCM, and Highland Credit Opportunities CDO, L.P. (“Credit Opp.”). Highland’s new counsel now claims that this ruling somehow vitiates the need for bifurcation. But, if anything, the ruling makes bifurcation even more important. UBS has already offered to try the discrete breach of contract claims in front of the bench in the June trial, and move the breach of the implied covenant claim to the second trial to be tried along with the myriad other remaining claims against the Highland Defendants. The implied covenant claim, which involves HCM’s role in the March 2009 fraudulent conveyances, overlaps factually with the reinstated fraudulent conveyance claims. Given UBS’s offer, there is no justification whatsoever for Highland’s contention that the reinstatement of the fraudulent conveyance claims justifies postponing trial of *all* claims even longer. The fraudulent conveyance claims have little to do with the contract claims. And without bifurcation, the Court and the parties would still be left with multiple proceedings, namely, the evidentiary hearing on the contract claim, a *Frye* hearing and a hearing on motions *in limine*, and then a jury trial that includes the discrete contract claim that is brought against just the Fund Counterparties. The proposed bifurcation is the far simpler and more efficient course.

The reasons why bifurcation is necessary and efficient here are more true now than they were before the Appellate Division reinstated the fraudulent conveyance claims against three other defendants. To begin, the first trial only requires a minimal amount of time (just days) and witnesses (just four), and will avoid any evidence relating to alter ego (including the nine-factor test), fraudulent conveyance (including the fall 2008 notes issuance and March 2009 fraudulent transfers), and fraudulent inducement (including Highland’s misrepresentations and UBS’s

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reliance). The second trial promises weeks of testimony, many more documents submitted into evidence, over ten more witnesses, and four additional defendants.

And bifurcation may obviate the need for the second trial at all. Depending on the outcome of the first trial, as UBS has already indicated, UBS may decide not to move forward with some of its claims, or the parties, [REDACTED] may decide to resolve their claims once there is a judgment on the contract claims. Not only does this promote a more prompt (or less unprompt) resolution of the case, but it will also conserve judicial resources and avoid the possibility of empaneling a jury.

But even if a jury is empaneled, bifurcation will have the added benefit of streamlining the issues for the jury, reducing the amount of time needed for the jury to serve, and sparing the jury from hearing overly complicated, lengthy and irrelevant (as to the issues the jury needs to decide) evidence concerning the contract claims that will instead be presented in the first trial.

Ignoring the obvious benefits, Highland has provided a list of excuses, none of which withstands scrutiny. Highland first expresses concern that they have had to spend time on certain matters, including this bifurcation brief and its motion for permission to appeal the Appellate Division's recent order to the Court of Appeals. This makes no sense. For one, Highland (its *current counsel*) agreed to a more complex first trial in June (*i.e.*, one that would have included the implied covenant claim and its evidence relating to the March 2009 fraudulent conveyances); it is Highland, by virtue of reversing course on its position concerning bifurcation, that has necessitated this briefing (and of course, the work that has gone into this briefing is necessary for trial anyway). In any event, being new counsel (since February, four months before any trial) and being busy cannot be a reasonable basis to delay trial, particularly where a case has been pending for *over nine years*.

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Highland also expresses concern that there is still, as of April 2018, lack of clarity concerning the scope of trial. But Highland has known since early March that any trial in June would at least relate to the discrete contract issues. Nor is it a reasonable excuse that Highland's last-chance effort at another layer of appellate review may not be decided before a June 2018 trial. Highland already had review in the Appellate Division and has already used that review to delay trial by nearly a year—it cannot use a motion *for permission to appeal* to the *Court of Appeals* as reason to delay trial any further.

Highland's excuses to get out of its prior agreement cannot stand in the face of the obvious benefits of bifurcation, such as saving considerable time and resources for the parties and the Court, bringing a speedy resolution to the case, and making any second trial simpler for the jury without much duplication of evidence and issues. Highland particularly should not be allowed to evade bifurcation and cause trial of all claims to be punted once more—notably, Highland has never offered to hold a single trial proceeding *in June* (which UBS is more than willing to do). This is only further evidence that its new-found opposition to bifurcation is a guise for delay. UBS respectfully requests that the Court bifurcate the trial, leaving the implied covenant claim to the later trial, and proceeding on the Court's calendar the week of June 4, 2018.

### **BACKGROUND**

#### **A. The Parties' Claims.**

The breach of contract claims against the Fund Counterparties arise out of three agreements entered into on March 14, 2008 between UBS, HCM, and the Fund Counterparties—the Restructured Engagement Letter, the Restructured Cash Warehouse Agreement, and the Restructured Synthetic Warehouse Agreement (collectively, the “Restructured Agreements”)—which restructured an expired 2007 engagement involving the same parties (the “Original Agreements”) and whereby UBS agreed to hold \$818 million worth of assets for a securitization

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transaction called a “CLO squared offering.” *See* Exs. 1-3.<sup>2</sup> As part of the restructuring, SOHC and CDO Fund, in accordance with their respective allocation percentages, promised to post initial restructuring collateral and to post \$10 million more in collateral each time the underlying losses on the warehouse assets increased by \$100 million. *See* Ex. 3, § 12.

Highland posted the initial collateral, *see id.*, and in fall 2008, UBS issued three \$10 million collateral calls. *See* Exs. 4-6 [REDACTED]. After meeting the first two, the Fund Counterparties did not satisfy the third collateral call, and in December 2008, UBS terminated the Restructured Agreements. *See* Exs. 7-8 [REDACTED]. UBS demanded payment under the Restructured Agreements and Highland refused to pay. *See* Exs. 9-10 (demand letters). In February 2009, UBS filed its original lawsuit against the Fund Counterparties and HCM. D.E. No. 2 (Original Complaint).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus in 2010, UBS added a fraudulent inducement claim against CDO Fund and SOHC and also added an alter ego claim against HFP. *Id.* ¶¶ 115-144, 193-197.

<sup>2</sup> “Ex. \_\_\_” refers to Exhibit \_\_\_ to the Affirmation of Michael A. Onufer (“Onufer Aff.”), submitted herewith.

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One month after UBS filed its original lawsuit in February 2009, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In 2010, UBS added claims [REDACTED]

[REDACTED] against HFP as transferor, and against the remaining Highland parties as transferees. *Id.* ¶¶ 174, 178.<sup>3</sup> UBS also added its implied covenant claim against HCM, [REDACTED] Ex. 12 (HCM Complaint) ¶¶ 111-122, 158-166.

UBS additionally learned that prior to filing its original complaint, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*See* Ex. 11 (2d Am. Compl.) ¶¶ 167-179.

UBS accordingly filed fraudulent conveyance claims against CDO Fund and SOHC as well. *Id.*<sup>4</sup>

UBS's claims are contained in its Second Amended Complaint against CDO Fund, SOHC, HFP, Credit Opp., and Strand (Index No. 650097/2009) (Ex. 11), and in its Complaint against HCM (Index No. 650752/2010) (Ex. 12). Those actions were consolidated in November 2010 and Justice Fried ordered that the pleadings in the actions "stand as the pleadings in the consolidated action." D.E. 213 (Consolidation Order) at 2.

<sup>3</sup> UBS later settled its claims against Crusader, Crusader HoldCo, and Credit Strategies and dismissed its claims against them with prejudice in July 2015 (Credit Strategies) and January 2016 (the Crusader entities).

<sup>4</sup> UBS also filed a cause of action against Strand seeking a declaratory judgment that Strand is the general partner of HCM, and therefore liable for HCM's obligations in this lawsuit. Highland does not dispute that Strand is the general partner of HCM.



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In November 2009, HCM filed its Amended Answer and Counterclaims, which included counterclaims for breach of contract and declaratory judgment against UBS Securities LLC for its alleged breach of HCM's right of first refusal under the Restructured Cash Warehouse Agreement. Ex. 13. A motion to dismiss HCM's counterclaims was rendered moot in March 2010 as the parties contemplated amending their pleadings. D.E. 107. On May 7, 2010, the Court held the motion to dismiss in abeyance. D.E. 160-1 at 82:9-25.<sup>5</sup>

#### **B. Current Posture.**

On September 3, 2013, UBS filed its note of issue. D.E. 320. On October 17, 2013, Highland moved for summary judgment. D.E. 332 & 338. In March 2017, the Court issued its ruling denying Highland's motion as to every claim except the implied covenant claim. D.E. 411 & 412. Following UBS's motion to reargue, the Court reinstated the implied covenant claim. D.E. 444. Highland appealed those orders. D.E. 416, 418, & 446.

Meanwhile, in 2017, the parties prepared for trial. The Court held two pretrial conferences—April 4, 2017 and June 27, 2017—and scheduled a trial for September 2017. At the June conference, the Court asked counsel to confer “on the issues of whether they would agree to an evidentiary hearing before the Court in advance of the jury trial with respect to whether the synthetic warehouse provision on CDS losses is ambiguous.” Ex. 16, at 3:9-13. As the Court correctly noted, the parties were “working towards an agreement to such a hearing,” *id.* at 3:13-14, and had tentatively agreed that such a hearing would occur, *Onufer Aff.* ¶ 21. On June 27, 2017, the Appellate Division issued a stay pending Highland's appeal. *Id.* ¶ 22.

<sup>5</sup> In fall 2014, the parties agreed that for purposes of not waiving their rights to later file answers to outstanding claims, that they would exchange answers to claims that had not yet been filed. For its part, on November 13, 2014, UBS sent Highland a copy of its answer to HCM's counterclaims. *See* Ex. 15. And on November 10, 2014, Highland sent UBS its answer to the Crusader HoldCo Complaint (Index No. 652646/2011) (the claims against Crusader HoldCo have since been settled and dismissed with prejudice). *See* Ex. 14. Neither party objected to the Answers. Nor did either party file the Answer, but both agreed they would at the appropriate time while treating each as the operative Answer.

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On October 31, 2017, the Appellate Division issued an order (the “October 2017 Order”) that affirmed this Court’s summary judgment decisions in large part, but dismissed UBS’s fraudulent conveyance claims against HFP, HCM, and Credit Opp. *See* Ex 17. Both parties filed motions to reargue. Onufer Aff. ¶ 24.

On March 15, 2018, the Appellate Division issued a decision and order (the “March 2018 Order”) that vacated the October 2017 Order, affirmed this Court’s summary judgment decisions, and reinstated all of UBS’s claims. Ex. 18. Among other things, the Appellate Division noted that “neither our prior decisions nor the doctrine of res judicata bar plaintiffs from introducing evidence of pre-February 24, 2009 conduct to the extent necessary to prove, with respect to post-February 24, 2009 conduct, their alter ego, fraudulent conveyance and breach of implied covenant claims.” *See id.* at 4.

Since the beginning of 2018, the parties have had numerous calls with the Court to discuss preparations for trial and to schedule a trial date. Onufer Aff. ¶ 26. Prior to the March 2018 Order, the parties had agreed orally to bifurcate the trial into two phases: (1) Phase I would relate to the bench issues (the breach of contract claims and implied covenant claim); and (2) Phase II would relate to the jury issues (alter ego, fraudulent inducement, general partner liability, and what remained of the fraudulent conveyance claims). *Id.* ¶ 27. A trial was set for June. *Id.* ¶ 28; *see also* Ex. 19 (Mar. 13, 2018 joint letter) (D.E. 459) (“[T]he parties confirm that they are available for the bench trial phase of the above-referenced case to proceed on June 4, 2018.”).

Following the March 2018 Order, Highland reversed course, and stated its preference to try all the claims at the same time. Onufer Aff. ¶ 29. UBS proposed that the trial still proceed in two phases, with the first phase relating to just the breach of contract claims, leaving the implied covenant claim to the second phase. *Id.* ¶ 30.

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CPLR 603 provides that “[i]n furtherance of convenience or to avoid prejudice[,] the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue.” *See also* CPLR 4011 (“The court may determine the sequence in which the issues shall be tried and otherwise regulate the conduct of the trial in order to achieve a speedy and unprejudiced disposition of the matters at issue in a setting of proper decorum.”). A trial court has discretion to bifurcate a trial when it would streamline issues and “serve the convenience of the parties and the court.” *Mirabella v. Banco Industrial de la Republica Argentina*, 29 A.D.2d 940, 940 (1st Dep’t 1968) (ordering separate trials on a threshold issue); *see also Cross v. Cross*, 112 A.D.2d 62, 64 (1st Dep’t 1985) (holding that “where it will facilitate the ‘speedy, unprejudiced disposition’ of a case, severance is appropriate in the sound exercise of discretion”) (citation omitted). Bifurcation of trial is also appropriate when resolving a relatively simple issue would either moot or prompt the settlement of other, more complex issues. *See* 3 N.Y. Prac., Com. Litig. in New York State Courts § 15:13 (4th ed.). Although courts should also consider whether separate proceedings will be repetitive, ordinarily bifurcation is only improper where the separate proceedings involve “complex issues [that] are inextricably interwoven and intertwined.” *Id.* at § 15:20.

As the proposed trial plan makes clear, bifurcation of the contract claims against the Fund Counterparties into a Phase I bench trial will efficiently and fairly expedite resolution of this action, which has been pending for more than nine years.

**A. The Two Trials Will Have Minimal Overlap In Evidence And Issues, And Bifurcation Will Not Lead To Repetitive Proceedings.**

The facts relevant to the claims in the two trials are distinct. As discussed further below, the contract claims will only require a week of trial time, a handful of witnesses and small amount of deposition designations to present evidence concerning the salient terms of the Restructured

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Agreements, the negotiation of the Restructured Agreements, the termination and breach of the Restructured Agreements, and damages arising therefrom. The second trial will last several weeks and will likely involve around 15 live witnesses, and significant designations from about 20 deposition transcripts. The second trial involves more claims and more parties. Although there might be some duplication in the witnesses and evidence at both trials, the issues and evidence are largely separate and certainly will not be inextricably interwoven and intertwined.

Highland suggested at the March 29, 2018 conference that the damages evidence for breach of contract and fraudulent inducement will be duplicative, but that is not so. As Highland has previously asserted, its damages evidence will relate to (1) whether losses on certain warehouse assets called “CDS Losses”, a defined contractual term, count toward UBS’s damages; and (2) whether there are any “offsets” to UBS’s damages, such as UBS’s hedging gains, removal of losses on 20 CDS assets where UBS was the protection buyer (what Highland misleadingly refers to as “dummy swaps”), and UBS’s post-breach disposition of the warehouse assets. In 2017, Highland stated to this Court and during the parties’ meet and confers that CDS Losses, which arise from the contract, and damages offsets evidence are judge-only issues related to contract damages. So at base, these issues can only relate to the first trial. Even there, though, the issues should not be considered, because they are legally irrelevant to contract damages given that any gains on the purported offsets would have occurred independent of the Fund Counterparties’ breach.

As requested by the Court, the following provides UBS’s proposed trial plans for the two phases of trial, including the witnesses it intends to call and what each witness will testify about.

**1. UBS’s Proposed Trial Plan For The First Trial On The Contract Claims.**

UBS believes it can present its case in chief in two to two and a half trial days. UBS intends to call only two live witnesses in its case-in-chief: (1) [REDACTED]; and (2) [REDACTED].

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[REDACTED]

UBS also anticipates that it will offer limited deposition designations. While UBS does not yet know the exact testimony that it will designate, UBS does not anticipate that it will designate from more than five people and expects that it will be less than one day of testimony.

Highland has indicated that it intends to call numerous witnesses to testify at the first trial, including [REDACTED]

[REDACTED]

[REDACTED] Highland's plan is excessive and difficult to understand, given the discrete contract issues. Highland only needs testimony from

[REDACTED]



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The other proposed witnesses are unnecessary. For some of the witnesses, the testimony is duplicative. [REDACTED]

The remaining Highland witnesses are only necessary if the Court permits evidence relating to (i) Highland's material breach defense, (ii) Highland's efforts to avoid certain damages, and (iii) Highland's right of first refusal counterclaim. Each of these arguments is tainted by threshold legal flaws that this Court may resolve before trial, in order to avoid extending the trial by several days—flaws that will be fully briefed in pre-trial briefs to be filed before the June 4 trial. Based on discussions and the briefing, we believe that Highland intends to offer evidence in support of the following legally flawed arguments:

**a. Material Breach**

Highland argues that UBS materially breached the Restructured Agreements because its collateral calls were premature, and this breach came *prior* to any Highland breach and thus excuses Highland's own breach. According to Highland, UBS issued collateral calls prematurely, because, among other things, UBS improperly included losses for certain CDS transactions (*i.e.*, 20 assets where UBS was the protection buyer) in its calculations of the warehouse asset losses that triggered a collateral call. Whether or not UBS's calculations are correct, however, is legally irrelevant, because (i) a premature collateral call is not a breach, let alone a material breach, of any obligation UBS owed under the contract, and (ii) Highland does not dispute that losses exceeded \$300 million (the amount required for a third margin call) by December 2, 2008, which is prior to termination.

**b. Right Of First Refusal**

Highland argues in support of its counterclaim that UBS breached Highland's contractual right of first refusal. This argument is also legally flawed, because the right of first refusal

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belonged to HCM, not its designee, and the undisputed record evidence is that HCM never attempted to exercise that right. Instead, a different Highland fund—Highland CLO Value Fund—sought to exercise that right, but it could not do so. [REDACTED]

[REDACTED]

[REDACTED]

**c. Hedging**

Highland intends to offer evidence of UBS's hedges as a purported offset to its contract damages. This evidence is likewise irrelevant as a matter of law, because the "hedges" were all entered into prior to the breach, and because, in any event, UBS would have realized gains on these "hedges" regardless of whether the Fund Counterparties breached the contract.

**d. Post-Breach Values Of The Assets**

Highland also intends to offer evidence concerning the value of the warehouse assets after Highland's breach of contract as another purported offset, and supposedly as a basis to re-measure the value of the warehouse assets as of the date of the breach. As with hedging, this argument is flawed because, under New York law, contract damages are intended to return the parties to the position they would have been in absent the breach. What happens after the breach is legally irrelevant. This is especially the case in contract matters, such as here, that involve securities, and assets that frequently fluctuate in value—both up and down.

**e. CDS Losses**

Highland argues that unrealized losses on the credit default swap assets should not be included in UBS's damages under the Restructured Synthetic Warehouse Agreement. This argument is also legally flawed, because when the three restructured warehouse agreements are read together—as they must be—it is clear that the unrealized losses must be included in UBS's damages. To read otherwise would render meaningless numerous contractual provisions.

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\* \* \*

Even if the Court was inclined to allow these issues to be part of the first trial, UBS does not anticipate that it will need many additional witnesses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6

## 2. UBS's Proposed Trial Plan For The Second Trial.

The second trial, which will relate to new parties and different claims, will involve new factual issues that will not be addressed at all in the first trial. The claims to be tried in the second trial are: fraudulent inducement, fraudulent conveyance, alter ego, general partner liability, and implied covenant. These claims are brought against SOHC, CDO Fund, HCM, Credit Opp., HFP, and Strand, only two of which are defendants in the first trial.

The additional evidence needed for the new factual issues include:

Fraudulent Inducement: (1) evidence regarding Highland's misrepresentations to UBS prior to entering into the Restructured Agreements; (2) evidence regarding whether UBS justifiably relied on those misrepresentations; and (3) [REDACTED].

Alter Ego: (1) evidence relating to each of the nine alter ego factors, including [REDACTED]

[REDACTED]

<sup>6</sup> Highland has indicated that it foresees scheduling conflicts with a number of its witnesses over the summer. Even assuming that it is appropriate for Highland to call all of its proposed witnesses at the first trial, the only witness that appears to have a conflict with the first two weeks in June is [REDACTED]. As we discussed with the Court last month, if there is a witness or two who need to be presented the following week—the week of June 18, 2018—then the parties can do so without having to delay the trial.

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[REDACTED]

[REDACTED]

Fraudulent Conveyance:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Breach of Implied Covenant: (1) evidence relating to HCM's contractual obligations and

[REDACTED]

[REDACTED]

UBS estimates that the second trial will require 15 – 20 trial days. The witnesses that UBS may call at the second trial in its case-in-chief are reflected in the following chart:

Witness	Time	Title	Anticipated Subject of Testimony
[REDACTED]	1/2 day	[REDACTED]	[REDACTED]
[REDACTED]	1 day	[REDACTED]	[REDACTED]
[REDACTED]	1/4 day	[REDACTED]	[REDACTED]
[REDACTED]	3/4 day	[REDACTED]	[REDACTED]
[REDACTED]	1/2 day	[REDACTED]	[REDACTED]

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[REDACTED]	1/8 day	[REDACTED]	[REDACTED]
[REDACTED]	1/2 day	[REDACTED]	[REDACTED]
[REDACTED]	1/4 day	[REDACTED]	[REDACTED]
[REDACTED]	1/4 day	[REDACTED]	[REDACTED]
[REDACTED]	1/2 day	[REDACTED]	[REDACTED]
[REDACTED]	1/2 day	[REDACTED]	[REDACTED]
[REDACTED]	1/4 day	[REDACTED]	[REDACTED]

In addition to the live testimony, UBS anticipates that it will designate deposition testimony. While UBS does not yet know the exact testimony that it will designate, UBS anticipates that it will designate from about 15 depositions, which may take several trial days.

For its case, Highland indicated that it might seek testimony from over 15 live witnesses, including (as relevant to the second trial): [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



UBS also expects that Highland will designate a significant amount of deposition testimony.

As the foregoing shows, the parties, witnesses, and issues in the second trial will be significantly different and more numerous than those in the first.

**B. Bifurcation Makes Issues Easier For The Jury, Is Likely To Lead To A Speedy Resolution Of The Case, And Conserves Judicial Resources.**

Bifurcation here provides numerous other advantages. *First*, bifurcation will plainly streamline the issues and make it easier for the jury to keep issues straight in the second trial. As illustrated above, the second trial will not be about the Restructured Agreements. Instead,

For the most part, the second trial will relate to claims—fraudulent conveyance, alter ego, and general partner liability—that hinge on liability—and thus are only an issue if there is a liability finding. The bulk of the evidence about the Restructured Agreements will be in the first trial, which will focus on a detailed discussion of the provisions of those agreements, including evidence concerning the meaning of the CDS Losses term and Highland’s overly complex (and legally irrelevant) material breach defenses.

*Second*, bifurcation will result in a speedier resolution of the case and conserve judicial resources. To begin, the first trial will obviate the need for a separate evidentiary hearing on contract issues; the first trial will resolve all the discrete contract issues altogether. Moreover, depending on the outcome of the first trial, it is highly likely that the parties will resolve the remaining claims without a trial, either by dropping or settling remaining claims and pursuing an appeal. For example, if UBS does not prevail on its contract claims, UBS will consider whether to drop any claims or whether instead it will seek an appeal.

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[REDACTED], which could obviate the need for a second trial (and later appeals). If the second trial does not occur at all, then the Court will have saved the several weeks UBS anticipates will be necessary for the second phase and avoided empaneling a jury. This will also save time and resources for the parties and for the numerous additional witnesses that would be called for a second phase.

### CONCLUSION

For the foregoing reasons, UBS respectfully requests that the Court exercise its broad discretion and bifurcate the trial into two phases, with the first phase relating just to the breach of contract claims, and the second phase relating to UBS's remaining claims.

Dated: April 18, 2018  
New York, New York

Respectfully submitted,  
  
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## **EXHIBIT 29**

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1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: TRIAL TERM PART 60

- - - - - X

UBS SECURITIES LLC and  
UBS AG, LONDON BRANCH,

Plaintiffs,

- against -

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650097/09

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND CDO OPPORTUNITY MASTER  
FUND, L.P., HIGHLAND SPECIAL  
OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND FINANCIAL PARTNERS, L.P.,  
HIGHLAND CREDIT STRATEGIES MASTER  
FUND, L.P., HIGHLAND CRUSADER OFFSHORE  
PARTNERS, L.P., HIGHLAND CREDIT  
OPPORTUNITIES CDO, L.P., and  
STRAND ADVISORS, INC.,

Defendants.

- - - - - X

60 Centre Street  
New York, New York  
May 1, 2018

TELEPHONE CONFERENCE

BEFORE:

HONORABLE MARCY S. FRIEDMAN,

Justice

APPEARANCES: (Via Telephone)

\*\*\* CONTINUED ON NEXT PAGE \*\*\*

Bonnie Piccirillo - Official Court Reporter

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Bonnie Piccirillo  
Official Court Reporter

Bonnie Piccirillo - Official Court Reporter



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1 Proceedings

2

3 THE COURT: On the record.

4 Good afternoon, counsel. This is Judge Friedmann.

5 May I have the appearances of every counsel who is on the

6 line, please.

7 MR. CLUBOK: Good afternoon, Justice Friedman.

8 This is Andrew Clubok for plaintiffs, and I'm on the line

9 with Elizabeth Deeley, Susan Engel, Kuan Huang and Alysha

10 Naik.

11 MS. KLEIN: Good afternoon, your Honor, this is

12 Gayle Klein from McKool Smith for the defendants, and also

13 joining me this afternoon is Gary Cruciani,

14 C-R-U-C-I-A-N-I, and Michael Fritz, F-R-I-T-Z.

15 THE COURT: Thank you.

16 Will Mr. Clubok and Ms. Klein be the only two

17 attorneys who will be speaking?

18 MR. CLUBOK: I think so for us, your Honor.

19 MS. KLEIN: I believe so, your Honor, unless you

20 start talking about scheduling in which case we might need

21 Mr. Cruciani to speak, as well.

22 THE COURT: That's fine. If anyone other than the

23 two of you speaks, that person should say their name before

24 they start speaking.

25 We have reviewed the parties' submissions on the

26 bifurcation issue. I have quite a few questions.

Bonnie Piccirillo - Official Court Reporter

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1 Proceedings

2 The first question is what are the parties'  
3 positions on whether the damages for breach of contract  
4 would be decided by the Court at the bench trial if we  
5 were to bifurcate as between a bench trial and a jury  
6 trial?

7 Let's start with UBS, please.

8 MR. CLUBOK: The Court would decide the damages  
9 for breach of contract.

10 THE COURT: Ms. Klein, do you disagree?

11 MS. KLEIN: We do not disagree with that, your  
12 Honor.

13 THE COURT: The next question is as follows:

14 Is it correct that it is plaintiffs' position that  
15 the implied covenant claim would be for the Court, but  
16 would be tried in the jury trial phase?

17 (Interrupted by a voicemail recording)

18 MR. CLUBOK: Your Honor, we had previously -- this  
19 is your voicemail, your Honor. Somehow there's a way to  
20 delete this message, if you'd just give me a second.

21 (Interrupted by a voicemail recording)

22 Originally, we called in and they put us into the  
23 Court's voicemail. So if there's a message, should be from  
24 us, but I think I deleted it. I'm not sure.

25 THE COURT: If there is a message from you in  
26 this -- we weren't able to transcribe it right now.

Bonnie Piccirillo - Official Court Reporter

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1 Proceedings

2 So, all right --

3 MR. CLUBOK: You can just delete it. It was  
4 just trying to reach you a few minutes ago when they  
5 originally put us through to your voicemail. You can just  
6 delete it.

7 THE COURT: Ms. Klein, do you agree with that?

8 MS. KLEIN: Yes, your Honor.

9 THE COURT: So is it correct that it is  
10 plaintiffs' position that the implied covenant claim would  
11 be for the Court, but would be tried in the jury trial  
12 phase?

13 MR. CLUBOK: Yes, your Honor.

14 THE COURT: And is it also the plaintiffs'  
15 position that the implied covenant claim relates to the  
16 fraudulent conveyance claim and not to the fraudulent  
17 inducement?

18 MR. CLUBOK: Absolutely, yes.

19 THE COURT: Is it the defendants' position that  
20 the implied covenant claim implicates events leading up to  
21 the transaction and, therefore, relates to the fraudulent  
22 inducement claim?

23 I am referring to a statement that I read on  
24 page 2 of the defendants' brief, which seemed to indicate  
25 that that was the defendants' position.

26 MS. KLEIN: That is the defendants' position, your

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2 Honor.

3 THE COURT: Would you explain in detail the basis  
4 for claiming that the implied covenant claim relates to the  
5 fraudulent inducement claim? And then I will hear a  
6 response. I'd like you to address the evidence that would  
7 be heard on both the implied covenant and the fraudulent  
8 inducement claim.

9 That said, I don't expect you to address the  
10 evidence exhaustively, but I do expect you to give me some  
11 specific examples, and you will not be waiving any  
12 arguments that might be raised in the future by only  
13 highlighting certain evidence on this conference call.  
14 Have I allayed any anxiety?

15 MS. KLEIN: You have not, your Honor. Thank you  
16 for that.

17 In the implied covenant of good-faith and  
18 fair-dealing claim relates to a claim that the defendants  
19 somehow had promised with respect to the negotiation of the  
20 Agreements that they would, in fact -- some of the  
21 defendants would make sure that the Fund Counterparties  
22 were sufficiently flourished with assets such that they  
23 would pay for breach of contract damages, and that they  
24 would undertake no action that would render them unable to  
25 pay. And, that there is sufficient or substantial evidence  
26 relating to the due-diligence process in which UBS

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undertook a review of the Fund Counterparties' ability to pay and found it lacking.

Specifically, they found that the Fund Counterparties had no ability to pay and, therefore, they aired into the transaction fully aware that if there were a breach of contract, they would not be made whole -- "they" being UBS.

And, therefore, any suggestion under an implied covenant of good faith and fair dealing that the defendants somehow promised that the Fund Counterparties would have sufficient assets to pay a breach of contract claim is false, and that is the type of evidence that we would elicit in defense to the implied covenant claim, also in defense of the fraudulent inducement claim.

THE COURT: Ms. Klein, isn't the implied covenant claim as pleaded based solely on post entry into transaction alleged wrongful or fraudulent conveyances?

MS. KLEIN: The inability to pay for the breach of contract certainly is, in part, related to the fraudulent conveyance; but the promise or the alleged promise to make sure that there would be assets to pay and that there would not be actions undertaken that would diminish that comes from the contract negotiation and the understanding of the defendants at the time the contract was negotiated, as well as it implicates the assets that

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2 were offered in the margin calls during the contract  
3 performance, which the defendants were offered as security  
4 and which they refused.

5 THE COURT: Mr. Clubok, will you respond.

6 MR. CLUBOK: I will try, your Honor. I'm having a  
7 little hard time tracking this, just to be honest.

8 But, so I think what I'm hearing -- and I have not  
9 heard this or had this until we read their briefs and now  
10 I'm hearing this explanation like you are.

11 Our claim is that there's a contract and there is  
12 pretty unambiguous requirements that two parties make  
13 payments. There's disputes over how much they have to pay,  
14 and what the total amounts are going to be, and whether we  
15 count this transaction or not; and you're going have to  
16 decide those details, but there's a contract for at least  
17 some activity, two of the defendants --

18 THE COURT: Just one moment, please. The court  
19 reporter needs those names.

20 MR. CLUBOK: I'm sorry. There's two defendants,  
21 CDO Fund and SOHC, the so-called Fund Counterparties who  
22 are obligated and under a contract to make certain  
23 payments. There's disputes over how much they have to pay  
24 and what's the trigger for those payments, all of those  
25 things are part of the breach of contract back and forth.

26 But, if we win, if we prove our case against those

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two, they will have had to pay us money. And there's a third party, HCM, that also signed on to those contracts, but didn't have a direct obligation to pay; yet nevertheless, we say they had an implied covenant of good faith and fair dealing not to, for example, commit fraudulent conveyances that, that made it possible for the two parties who had owed us the money to pay.

First of all, there's no defense against that because before we signed the contract, internally our folks wondered whether, ultimately, the two parties were good credit risks. You wouldn't be able to defend against a breach of contract claim under these circumstances with that theory. So it is kind of manufactured anyway.

THE COURT: Can you slow down a little bit, please, so we can get a record. Thank you.

MR. CLUBOK: Sure, your Honor.

We're talking about the possibility of some parol evidence prior to contract formation about whether or not -- notwithstanding if your Honor finds there were payment terms and monies owed -- that somehow parol evidence from before the contract vitiate the actual obligation to pay because my client was worried that the two parties who promised to pay wouldn't be able to pay. I have a hard time believing your Honor is going to accept that kind of parol evidence if there's no basis for it.

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Until this bifurcation breach, I don't think we had ever in the nine years I've litigated the case ever heard that theory. I don't think it is legally valid. It is just kind of thrown out there.

But, even if there was such a legally valid theory and let's pretend for purposes of this argument that it's true, that my clients thought, Gee, if things go south, these two Fund Counterparties that have promised to pay will not be able to in fact pay the total amount, the total \$500 million of damages; does that mean then that they expected there to be fraudulent conveyances which is -- is basically, you know, the implied covenant of good-faith and fair-dealing claim that we now have is that they shouldn't have committed fraudulent conveyances to make it certain that these two parties couldn't have paid.

I mean, the defendants are just trying to interject a really far-afield defense that I doubt your Honor is going to even entertain and then expand it to a point that it just sort of is something I've never heard of in a contract dispute and, certainly, we never heard of in this case until two weeks ago when we saw this brief and now as I've heard it explained.

So that's -- to make that the bootstrap for now there's such substantial overlap that we have to bifurcate the trial, with all due respect the defendants, I think is

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a stretch.

The other thing I would say is even if you credit this, all I've heard is that there's overlap between fraudulent inducement and implied covenant of good faith and fair dealing, all of which we are proposing to put into the next phase. So even if your Honor is going to do that stuff, it is going to be in the next phase.

But I just think that this is not an argument that can be seriously used -- you know, we can have a motion practice on whether you're going to ever entertain that kind of parol evidence, or we could stipulate for the sake of argument that let's say were even true, that our clients -- the credit risk people that my clients worried that the two Fund Counterparties wouldn't be able to pay or assumed they wouldn't be able to pay and said, Gee, this is a risky contract that these two won't be able to pay, that doesn't -- because people internally are worrying about that, that doesn't strip the obligation to actually pay and it certainly doesn't give license to a signatory to the contract, Highland, to violate either express obligations or to implied duty of good faith and fair dealing by insuring that the two parties can't pay.

THE COURT: Mr. Clubok, when you refer to the possibility of parol evidence, you are talking about parol evidence that the defendants would possibly introduce

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2 regarding the lack of assets of the Fund Counterparties or  
3 regarding UBS's due diligence unit's knowledge of the lack  
4 of assets of the Fund Counterparties; is that correct?

5 MR. CLUBOK: Correct. On this particular species  
6 of parol evidence, it's something that plaintiffs would  
7 never put into the case. We don't think it is legally  
8 relevant. It's not something that the parties have ever  
9 talked about in this context as ever being potentially  
10 relevant to the breach and implied covenant good-faith and  
11 fair-dealing claim, and I just think it is just -- yes, in  
12 short, it is a theory that defendants say they're going to  
13 try to interject as a supposed defense to our implied  
14 covenant of good-faith and fair-dealing claim, which is  
15 really about how Highland Capital dealt with the aftermath  
16 of the breach of contract and whether they fraudulently  
17 transferred assets.

18 THE COURT: All right, but you are not intending  
19 on your implied covenant claim, am I correct, to put in any  
20 evidence that relates to the fraudulent inducement claim;  
21 is that right?

22 MR. CLUBOK: Absolutely not; you are correct.

23 THE COURT: Okay.

24 All right, now, let's --

25 MS. KLEIN: May I interject one --

26 THE COURT: Yes, of course. Go ahead.

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2 MS. KLEIN: First of all, we don't agree,  
3 obviously, that there is a fraudulent conveyance or any  
4 fraudulent inducement. But, more importantly, in order to  
5 survive an implied covenant claim, the plaintiffs are going  
6 to have to prove what the implied covenant is and that in  
7 fact exists, and the evidence that they're calling parol,  
8 which we don't think is parol, goes to vitiate the --

9 THE COURT: Just a moment. Just a moment. I know  
10 there's a lag. The reporter didn't get it. She lost you  
11 at "vitate," so can you repeat your last sentence, please,  
12 and the reporter is asking that it be a little slower.

13 MS. KLEIN: The evidence that we intend to  
14 introduce vitiates the fact of any implied covenant of good  
15 faith and fair dealing because the plaintiffs new and  
16 understood that the Fund Counterparties did not have the  
17 ability to pay and that the Highland Capital Management  
18 also disputed that in the event the Fund Counterparties  
19 could not pay, it was in any way liable.

20 THE COURT: I don't think I'm going to hear  
21 anything more on that at this time.

22 Now, let me go to my next question.

23 How can -- withdrawn.

24 Mr. Clubok, is it your position that it is for the  
25 Court to decide the implied covenant claim?

26 MR. CLUBOK: Yes. Yes, your Honor.

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THE COURT: Yes, just give me a minute, please.

Is that not an equitable claim? And if not, what happens if the Court and the jury reach different conclusions on whether action was taken to transfer assets that would have been used to satisfy a judgment, assuming for purposes of argument only that the Court would have previously concluded that there was to be a judgment?

MR. CLUBOK: Well, there's two different legal standards. So, the facts that relate to this are the same, the same body of facts. Mostly overlapping, I would say.

There are slightly different legal tests. One being for implied covenant of good faith and fair dealing is a legal standard that your Honor would have to apply to those facts; and there's a different standard, I think generally a higher standard -- you could argue is different standard. Let's just say different standard on fraudulent conveyance that largely you take the same set of facts and the jury apply the different, you know, jury instruction to the standard for them to decide whether it constitutes a fraudulent conveyance, then the court and the jury could decide they are both breach of implied covenant good faith and fair dealing and fraudulent conveyances; or, your Honor could decide it is breach of implied duty of good faith and fair dealing, but it doesn't rise to the level of fraudulent conveyance or vice versa.

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2 They're just two different legal tests, but  
3 substantially overlapping facts.

4 That's why we would propose moving that one -- now  
5 that the fraudulent conveyance is back in the case, that's  
6 why we would say that the trial that was currently set for  
7 June where we were going to have -- where we all agreed  
8 that agree your Honor would do the implied covenant  
9 good faith and fair dealing along with the breach of  
10 contract; we're now saying, Okay, that substantially  
11 overlaps. It is a very discrete set of facts so put that  
12 for the second phase of the case.

13 THE COURT: Ms. Klein.

14 MS. KLEIN: Your Honor, we agree that there are  
15 two different legal standards and, of course, the two  
16 different triers of fact can decide it differently. We do  
17 disagree that the parties emphatically agree that the case  
18 could be bifurcated if the fraudulent conveyance claim came  
19 back into the case; and, in fact, it was Mr. Clubok who  
20 represented to Ms. Barnett that if the 1st Department  
21 reversed course and added the claims back in and that the  
22 parties wanted to reconsider whether or not a bifurcation  
23 was appropriate, which is what has lead to this exercise.

24 MR. CLUBOK: If I may, just to be clear, I wasn't  
25 suggesting otherwise. What the parties agreed to on  
26 March 9th during the conference with the Court was that

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we were going to -- at that time fraudulent conveyance was out of the case because of the 1st Department's original decision; and the parties had agreed we would do the breach of contract and the breach of implied covenant of good faith and fair dealing; but we would bifurcate out the fraudulent inducement to a later time and alter ego to a later time. That's the status quo.

And then we did say, Gee, if the Court puts back in the fraudulent conveyance, we'll have to reassess and so now that the fraudulent conveyance is back in, we have a couple of options. One is to do everything all together, but for a number of reasons that makes less sense than just saying, Okay, fraudulent conveyance, it substantially overlaps and I didn't hear Ms. Klein disagree with that. It overlaps with the breach of implied covenant of good faith and fair dealing.

So the smart thing to do is to put that one to the later part of the case. No one had agreed to it before. We said we would reassess, and that's what we're doing and our proposal is we'll make this trial even easier and now we put off one issue that we thought we were going to be trying in June, but now we don't have to try in June because it substantially overlaps with this fraudulent conveyance and we will try the second phase under plaintiffs' proposal.

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THE COURT: Mr. Clubok, I really must ask you again to speak more slowly because this is proving very difficult for the reporter.

I think we got everything down there, but it's difficult to do it repeatedly at that rate.

Ms. Klein, do you have anything that you want to add in response to the last statement of Mr. Clubok?

MS. KLEIN: Yes, your Honor. Just briefly, and that is that as our submission demonstrates upon evaluation after the 1st Department's decision, we think there's substantial overlap not only of the evidence, but also of the witnesses that we would bring; and, therefore, we think that fairness dictates that this all be done at the same time.

THE COURT: All right, I was actually going to ask you to elaborate on that, on the overlap of witnesses.

The briefing on this, it is not expansive, shall we say. So can you elaborate on which witnesses would overlap and with respect to what issues?

MS. KLEIN: Certainly, your Honor.

There are several witnesses on both sides who had involvement in the deal and throughout the process.

On the defense side for the Highland Capital Management parties is Philip Braner and on the plaintiffs' side is Mr. LeRoux, L-E-R-O-U-X, and Mr. Grimaldi,

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G-R-I-M-A-L-D-I and Mr. Bawden, B-A-W-D-E-N.

Those three gentlemen participated in the negotiation and the meaning of the Agreements. They participated throughout the performance of the Agreements and some were also involved in the -- what we'll call post termination conduct.

So we anticipate that those three gentlemen have ultimately evidence relevant to all of the claims.

The complicating factor, of course, is that Mr. Braner is no longer an employee of a Highland entity. He is now working for a wholly separate company in Dallas; and Mr. LeRoux is no longer working for UBS and he's working for a wholly separate company in North Carolina. And, therefore, if we are not to do this all at the same time, even if Mr. Braner and Mr. LeRoux come to a first trial, it is unknown whether or not that they would participate in a second trial.

Therefore, given that they have knowledge of anything that happened before, during and after the performance of this Agreement, we think that there's substantial overlap.

The damages experts also have substantial overlap. On our side, it is a gentleman named Mr. Warren, and on the other side it is a gentleman named Mr. Dudney. So both of those experts would be called to testify in both phases of

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a trial.

And then, also, the Highland defendants allege that there's something called hedging. That is an offset to damages regardless whether it is breach of contract or fraudulent conveyance or otherwise. He testifies about hedging and about the risks and the process related thereto.

UBS claims that Mr. Mammola's testimony is not relevant to a breach-of-contract claim because the hedging occurred at the outset of the contract; not at the outset of the alleged breach.

But, the hedging did occur at the outset of the alleged fraudulent inducement; and, therefore, Mr. Mammola's testimony would be relevant to all of the claims or at least to a discussion in his testimony about whether or not he should be permitted to testify at trial on breach of contract, as the plaintiffs have alleged that he is not.

Mr. Mammola lives in London and, therefore, it is quite costly to bring him to testify to trial. So that is another witness who is overlapping on a different claim.

THE COURT: Is there a reason why I couldn't hear the hedging offset issue insofar as it bears on the contract claim at the time we had the jury trial?

MS. KLEIN: Well, we believe that the hedging

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2 offset, obviously, completely offsets any damages; and,  
3 therefore, if your Honor were to do that, that at the  
4 outset of the first stage of any trial, you would only  
5 decide whether or not there's liability and you would move  
6 all damages into a second phase of a trial.

7 THE COURT: Can you give me a bit more detail on  
8 what this overlap is in the testimony that the three UBS  
9 witnesses and the one Highland witness would be giving?

10 MS. KLEIN: Certainly. Mr. Braner, who is the  
11 Highland former employee, negotiated and restructured the  
12 transaction; and he has knowledge regarding the signed  
13 Counterparties' performance including, without limitation,  
14 the offering of certain assets for the margin calls, as  
15 well as the participation of the defendants in the Highland  
16 Financial Partnerships or HFP.

17 In those margin calls and the unwinding of a note  
18 transaction, which the defendants claim is the basis for  
19 their fraudulent conveyance claim. So Mr. Braner has  
20 knowledge and testimony that relates to all aspect of the  
21 claim.

22 Mr. LeRoux and Mr. Grimaldi also negotiated the  
23 restructured transaction and have knowledge of the  
24 emphasis, which Mr. Grimaldi and Mr. Bawden have knowledge  
25 of assessment of the risk and whether or not the parties  
26 would have the ability to pay. And Mr. LeRoux and Mr.

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Grimaldi also determined when to issue margin calls, and Mr. Grimaldi was involved in the decision to refuse certain assets that were offered by the margin call that relate to the note unwind that is alleged to be the basis for the fraudulent conveyance.

THE COURT: Is there any reason to believe that Mr. Braner will not appear at two phases of a bifurcated trial?

MS. KLEIN: Currently, your Honor, no. He has told us that he will participate; but, of course, he is actively involved with another job and his time is limited, and he is beyond the subpoena power of the Court. And the situation that we seriously want to guard against is Mr. Braner's participation in the first phase; but his refusal in the second phase because he doesn't have time or he's already been generous with his time or because his employer suggests that he should not be able to participate because he's not properly devoting his duties to his new employer, in that instance we would be dealing with a witness who doesn't want to be there and, of course, that is -- if we were to try to force him to come, that would substantially prejudice the defendants because we would have a witness who is uncooperative presenting our main case in front of a jury.

THE COURT: And where is Mr. Braner located?

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2 MS. KLEIN: He is located in Dallas, Texas.

3 THE COURT: All right, let's hear from Mr. Clubok  
4 on these overlap issues, please.

5 MR. CLUBOK: Sure. Mr. Braner was going to have  
6 this same issue when we agreed to bifurcate the first time.

7 Mr. Braner is involved in pretty much all aspects  
8 of the case from Highland. So when we agreed to bifurcate  
9 for the first time, Highland signed up for the fact that  
10 Mr. Braner would have to come twice.

11 Now, the hassle of the flying twice from Dallas,  
12 Texas to New York -- I've done it many times and I think  
13 Gayle probably has, too -- it is not the worst trip in the  
14 world. It's pretty minimal compared to what will happen  
15 now and there will be a certain, much easier to identify  
16 exactly when Mr. Braner will have to testify in the first  
17 phase and in a narrower band of when he testifies in the  
18 second.

19 Also, if our whole bifurcation plan is upset now  
20 because Mr. Braner no longer -- well, I just heard that  
21 he's willing to come for both so it is like he was willing  
22 to do it before. We still think he's willing, but,  
23 theoretically, possibly, Mr. Braner might change his mind  
24 later and that's why we shouldn't bifurcate now. That's,  
25 basically, the thrust of the defendants' argument and we  
26 disagree with that as being much of a fact for the Court

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should consider.

Having said that, worst case scenario and notwithstanding what Mr. Braner committed to before when we all told the Court we would bifurcate; but notwithstanding what Mr. Braner has recently reconfirmed what he's willing to do and notwithstanding the fact that we have video deposition testimony from him, so we're just happy to designate that testimony. It's easier not to come.

Another way to go about this is if he all of a sudden changes his mind or his employer won't let him make that trip from Dallas to New York for any day for the second phase of the trial, we could just do a trial deposition of him. If we really have to accommodate Mr. Braner and he's got to do it live from Dallas, we can make that work.

That would not be a reason to un-bifurcate or to un-bifurcate the whole trial. It is true that Mr. Braner overlaps. That's the one witness on their side of the fact witness that overlaps, but the evidence that has to come into play for the fraudulent conveyance and the alter ego and fraudulent inducement in the second trial is so -- most of it is totally different and separate and has nothing to do with the straight breach of contract.

There is a four-factor test for fraudulent conveyance. There is a nine-factor test for actual fraud.

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2 There is a seven-factor test for whether or not the  
3 transaction issue was actually an equity infusion, which  
4 undercuts their defense was a secured loan and there is a  
5 nine-factor test for alter ego. I just did quick math, and  
6 that is twenty-nine factors.

7 All those factors are factual issues with lots and  
8 lots of facts. If you recall the summary judgment, much of  
9 that PowerPoint that I think I was able to use covered  
10 facts because those twenty-nine factors that have nothing  
11 to do with the breach of contract that have lots of  
12 witnesses and lots of internal documents and lots of stuff  
13 of which Mr. Braner is a very small part of.

14 So all of that stuff should be in the second phase  
15 of the trial and just because Mr. Brian might,  
16 theoretically, change his mind is not a reason to not  
17 bifurcate.

18 With respect to everything else, you know, there  
19 are three UBS witnesses. Okay, that's on us. If our  
20 witnesses want to make two trips down to the courthouse,  
21 that we appreciate defendants' concern for those witnesses,  
22 but that's not a concern they need to worry themselves  
23 with.

24 THE COURT: Excuse me, I thought maybe -- let me  
25 clarify this.

26 Ms. Klein, were you saying that you are going to

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2 want to call any of those three UBS witnesses?

3 MS. KLEIN: Yes, your Honor.

4 THE COURT: All of them?

5 MS. KLEIN: We have not yet decided all of them.

6 Obviously, our presentation of evidence as defendants  
7 depends upon what the plaintiffs present in their case in  
8 chief; but, certainly, the current intent is to call all of  
9 them and that is what we would like to do.

10 If I may, just one point, and that is UBS is  
11 seeking hundreds of millions of dollars in recovery from my  
12 client. It is a jury trial, and we will be substantially  
13 and unfairly prejudiced if we cannot call our witnesses  
14 live in a jury phase of a trial. We all know that juries  
15 respond much better to live witnesses, and we would be at  
16 substantial and unfair disadvantage if we were to try to  
17 call any witnesses by deposition or by remote feed.

18 And, the difference here with respect to  
19 Mr. Braner is he has testimony that relates to the note  
20 unwind that is alleged to be part of the fraudulent  
21 conveyance claim, which wasn't in the bifurcated proposed  
22 trial previously and it is now in; and, therefore,  
23 Mr. Braner has essential testimony and it is essential to  
24 my client's ability to be able to defend themselves against  
25 these claims to have him appear live, and any chance that  
26 he will not do that that's caused by bifurcation is

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2 substantial and unfair harm to my clients.

3 MR. CLUBOK: Well, I have a solution --

4 THE COURT: Just a moment, please. Mr. Clubok,  
5 can you represent that you have the control to insure that  
6 not only Mr. Grimaldi and Mr. Bawden appear in both  
7 phases, but also that Mr. LeRoux appears in both phases if  
8 Highland wants to call them and you don't in the second  
9 phase?

10 MR. CLUBOK: When Grimaldi and Bawden, they live  
11 in New York, I can represent to you and they work for UBS,  
12 as long as they do which -- the defendants want this trial  
13 to be in October. There is some risk I suppose they could  
14 quit their jobs and move out of town before October, but  
15 that doesn't get solved by not bifurcating.

16 So in as much as good faith I can represent that  
17 things don't change between now and October, yes, they will  
18 show up for the October trial. But Mr. LeRoux, I can't  
19 guarantee that anymore that he'd show up in October or not.

20 I can tell you we are not going to call him even  
21 in the first phase. So whether he comes in October and  
22 he's currently had indicated that he will cooperate and try  
23 to make himself available, but that I can't guarantee  
24 outside of subpoena power.

25 He was deposed by defendants. They do have his  
26 video deposition testimony just like any witness who is

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2 unavailable. So whether we bifurcate or not doesn't  
3 increase my chances of getting Mr. LeRoux to show up in  
4 October. Either he will or he won't. And as defendants  
5 put in their papers, we had represented to them that our --  
6 the indication to us in good faith just like their  
7 representation about Mr. Braner which we accept, are that  
8 he is willing to try to cooperate. So that's about the  
9 best I can say about Mr. LeRoux; but bifurcating or not  
10 doesn't affect that and I'm not planning to call him in our  
11 case in the first phase which, by the way, same thing with  
12 Mr. Braner. We're not asking to call Mr. Braner.

13 If Mr. Braner -- what defense are, basically,  
14 saying is, Oh, we can't guarantee that Braner will show up.  
15 We want to try this case in October when I guess we can  
16 guarantee he'll show up somehow, even though I just heard  
17 all the stuff about his employer maybe will change their  
18 mind. But, okay, they want to show up for the jury trial,  
19 make that the time they show up.

20 If he also doesn't want to come to New York in  
21 front of your Honor, I'm sure your Honor will not take  
22 offense if he does a videotaped trial deposition if he  
23 needs to do more testimony and he doesn't want to make the  
24 trip the New York. Your Honor will be able to distinguish  
25 that and will not hold it against him.

26 So, the fact that Mr. Braner may not want to make

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2 a second trip to New York is not a reason to upset, to  
3 totally change this case.

4 Furthermore, if I could just continue with the  
5 other argument that defendants had made. On this hedging  
6 issue, they say that their expert doesn't want to come here  
7 twice to talk about hedging, which he might theoretically  
8 have to do. Your Honor proposed a solution for that, which  
9 I think is perfectly fine. But, look, if we have a jury  
10 trial, he's going to have to come here twice. This was one  
11 of the points we made in our brief.

12 If we just have a jury trial in the fall, we are  
13 going to use a Frye motion because the hedging issue, that  
14 threshold question is a legal one, does its hedging even a  
15 possible offset for these damages or not? And does Mammola  
16 meet the standards articulated in Frye for providing expert  
17 testimony on this subject?

18 We say no. There will be a Frye hearing or  
19 presumably he will testify, so he still would have to  
20 testify twice. It is just now instead of having to do a  
21 Frye hearing -- by the way, all these people, a lot of  
22 these experts and your Honor will have to have a Frye  
23 hearing and a motion-in-limine hearing which we will avoid  
24 to a large extent if we just do those things in what is,  
25 essentially, the first phase of the case.

26 By the way, I heard vigorously, vigorously,

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2 vigorously the defendants say that they believe they will  
3 win the breach-of-contract claim; or because of the hedging  
4 arguments or the other offsets, they will prove there are  
5 no damages.

6 If that's the case, we'll never have a second  
7 phase. If there are no breach-of-contract damages, we will  
8 agree to take an appeal if necessary. If we believe  
9 there's no legal error, we'll just drop the case. We'll  
10 settle it.

11 We will not insist on a trial on fraudulent  
12 inducement if we lose all the breach-of-contract claim; and  
13 so if the defendants are right, then hedging can prove the  
14 offset, we'll just have this one-week long proceeding in  
15 June and the case will be over or it will be potentially  
16 subject to appeal if we have any appellate grounds on that  
17 score.

18 THE COURT: Let me stop you, please.

19 Ms. Klein, would you like to reply to any of that  
20 and, also, I would offer you a further and final  
21 opportunity to say anything you think is important to say  
22 in support of your claim that we should not bifurcate.

23 MS. KLEIN: Certainly, your Honor.

24 First of all, I just want to make sure that the  
25 record is clear we did not say that Mr. Mammola is not  
26 willing to come twice. I just mentioned that he lives in

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2 London and having have him come to New York twice  
3 potentially increases the cost and burden to the defendants  
4 in defending against these claims.

5 Same thing with having a bifurcated trial. We  
6 believe that given the overlap of evidence and witnesses,  
7 it substantially increases the amount of money my clients  
8 have to spend to defend against these claims, which we  
9 think are wholly defensible.

10 I also heard Mr. Clubok say that if the defense  
11 wins on breach of contract, we may not have a second phase;  
12 and he mentions specifically dropping the fraudulent  
13 inducement claim. He didn't talk about the fraudulent  
14 conveyance claim, the alter ego, the general partner  
15 liability claims.

16 We have a great concern that the case will not  
17 stop even if the defense does prove that there is no breach  
18 of contract or no damages.

19 THE COURT: I can't understand that position.  
20 What would there be to try if there was no breach in terms  
21 of alter ego or any damages issue?

22 MS. KLEIN: Well, I guess with respect to the  
23 fraudulent inducement claim, they could come back and say  
24 that they were fraudulently induced, and that --

25 THE COURT: But that's not what I just heard you  
26 say; and Mr. Clubok just represented that if there is a

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2 finding of no breach of contract, they will not proceed  
3 with the fraudulent inducement claim.

4 MS. KLEIN: And so I guess the concern then is,  
5 your Honor, what does defense victory mean? What is going  
6 up on appeal? What is -- what does it mean that there is  
7 no damages? What if the Court finds that there was, for  
8 example, \$44 million in damages? I was just pulling a  
9 number out of the air. Does that then mean that we have to  
10 move forward with the second phrase of trial?

11 It's just uncertain to us what he means by "if we  
12 win." If the win is no liability or zero damages, that  
13 doesn't vitiate the fact that there's a possibility that  
14 there would be a trial or a second phase if in fact it is  
15 not a -- it's a zero dollar verdict.

16 THE COURT: Yes, I understand and that is  
17 absolutely correct. That would not vitiate a second phase.

18 I don't mean to cut you off. Is there anything  
19 else that you want to bring to my attention?

20 MS. KLEIN: The only other thing that I bring to  
21 your attention, your Honor, is that if you do, in fact,  
22 determine that you would like to bifurcate the trial, we  
23 think that the trial should proceed in the fall instead of  
24 on June 4th for the reasons that were set forth in our  
25 submission.

26 THE COURT: Mr. Clubok, also, a final opportunity

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2 to you to bring to my attention anything you think  
3 important to bring to my attention. I'd ask you to please  
4 be brief.

5 MR. CLUBOK: I'll be very clear and I'll try to  
6 speak very slowly.

7 If there is no liability or if there are zero  
8 damages, we will not proceed to a second phase of trial on  
9 any of our claims, including fraudulent inducement,  
10 fraudulent conveyance or alter ego. We will preserve our  
11 right to take an appeal if we think it is appropriate.

12 If there is something like \$44 million in damages,  
13 I think there's a pretty good chance the parties can --  
14 there's a pretty good chance the parties will resolve the  
15 case, knowing what I know about these parties and about  
16 just trials in general. So, anyway so that's the first  
17 thing I would say.

18 The second thing I would just say is that, again,  
19 I'd just like to end on the simple fact that the parties  
20 have agreed months ago -- when new counsel came along, we  
21 were wary that this would be used for a massive delay. I  
22 was assured by defense counsel that it was not their  
23 intention to do that; and I for my part said, you know  
24 what, we will be reasonable. We understand, you guys  
25 already have vacations, this trial coming up or that trial  
26 coming up.

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2 Let's find a reasonable time. My client would  
3 have liked to go to trial in March. We, ultimately, agreed  
4 to go forward in June on breach of contract and breach of  
5 implied covenant of good faith and fair dealing.

6 Now, we are saying let's go forward surely on  
7 breach of contract. It means no Frye hearing. It means no  
8 motions in limine. It means we don't have to have the  
9 initial proceeding the Court had once talked about where we  
10 talk about the contract or we talk about hedging in advance  
11 of a real trial.

12 It is a trial that we have been super specific  
13 about, exactly who we would call. We have exactly two  
14 witnesses in our case in chief: One company witness and  
15 one expert and then some deposition testimony we want to  
16 designate.

17 It's a case that we think could be tried in a week  
18 or less; and because it's easier than what had previously  
19 been agreed to which we agreed to in good faith to wait  
20 till June, we do not think it is appropriate now when the  
21 case is even simpler than we had agreed to to move  
22 everything to October. We think the case should go forward  
23 as scheduled. It will either end the case or it will frame  
24 the next phase of the case and, perhaps, it will lead to a  
25 resolution either way.

26 MR. CLUBOK: Thank you.

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2 THE COURT: Ms. Klein, was there anything new  
3 there that you feel a need to respond to?

4 MS. KLEIN: Yes, your Honor. Just very, very,  
5 briefly, which is we did come in as new counsel in  
6 February. This case has been going on for nine years.  
7 I've been practicing law for well over twenty, and it is  
8 literally the most complicated case I have ever been  
9 involved in.

10 For the last several weeks we have been involved  
11 in reviewing evidence and putting forth the submission to  
12 your Honor about why or why the case should be bifurcated  
13 or not and what the overlapping evidence is. And the 1st  
14 Department further on March 9th threw a monkey wrench into  
15 the whole case when it added back in the fraudulent  
16 conveyance claim.

17 Therefore, we're not seeking to move the trial to  
18 the fall for purposes of delay, but so that we be given an  
19 adequate opportunity to prepare for a designed scope of  
20 trial and put together our defense.

21 We have been focused on the briefing as of  
22 May 1st. We don't have clarity regarding the scope of the  
23 trial, and we are in fact seeking leave to appeal the  
24 1st Department's recent reversal of the prior opinion and  
25 we put those papers in last Friday on the -- I'm sorry on  
26 the 20th.

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2 Therefore, we are moving forward as quickly and  
3 expeditiously as possible. We just think that a little  
4 more time given the pendency and the complication and  
5 history of this case would not unfairly prejudice UBS in  
6 the slightest, but to force us to a trial on June 4th would  
7 be prejudicial to my clients.

8 MR. CLUBOK: Your Honor, may I briefly respond to  
9 a couple new things I heard?

10 THE COURT: I think that I've heard what I need to  
11 hear today.

12 Let's just take a five-minute recess.

13 (Whereupon, at this time a short recess was  
14 taken.)

15 THE COURT: Let's go back on the record.

16 Back on the record.

17 Having read the parties' submissions and heard  
18 counsel for the parties on this conference call today, I am  
19 persuaded that the trial should be bifurcated and that that  
20 procedure will materially enhance the efficiency with which  
21 this matter is determined without causing prejudice to  
22 either party.

23 There are some complicated legal issues which need  
24 to be addressed on the breach-of-contract claim, including  
25 the computation of CDS losses as discussed in my summary  
26 judgment opinion and whether or not the contractual

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provisions regarding CDS losses are ambiguous and, therefore, expert testimony or evidence of custom and usage should be taken in interpreting those provisions.

In addition, there are complicated issues, among others, with respect to the hedging offset claims. Those issues will require further briefing, and determination of those issues if there were a jury trial could result in considerable delays to the jury and to the parties.

So, that is the principal reason I am going to bifurcate; but, in addition, I do not find that the inconvenience to witnesses is a basis for not bifurcating.

Counsel have had adequate opportunity to determine whether any of these witnesses would not cooperate with a second phase of trial and nothing is being put before the Court to indicate that there is not going to be cooperation of these witnesses; or that if there is not cooperation as it turns out, that the testimony cannot otherwise be obtained from the witnesses via videotaped depositions or otherwise and -- or rather videotaped trial testimony or otherwise.

And, in addition, I do not find that the fact that the defendants have chosen to retain new trial counsel on the eve of trial is a basis for deferring any longer the trial of this matter.

I appreciate that it has been difficult for new

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2 counsel to come in and prepare for this trial; but, if  
3 anything, new counsel's performance on this conference call  
4 today shows what an exceptional job counsel has done in a  
5 relatively short time in gaining mastery over the details  
6 of this complex case.

7 I am willing, however, to put the trial over for  
8 one month to early July to give counsel a further  
9 opportunity to prepare. I don't think that that delay  
10 would prejudice the plaintiff, and it would actually suit  
11 my schedule better than the June 4th trial date. Although,  
12 I could keep that date if it were absolutely necessary.

13 So, we have the defendants' list of trial  
14 conflicts. It does not appear that starting on July 2nd  
15 would cause a problem. There are some witnesses that are  
16 unavailable on certain days, but it doesn't look like the  
17 bench part of the trial will be so lengthy that we couldn't  
18 work around that.

19 Does the plaintiff have a problem with a July 2nd  
20 start date?

21 MR. CLUBOK: I think that should be fine, your  
22 Honor, with the caveat that with a little flexibility to  
23 carry into the next week as needed. Obviously, with the  
24 Fourth of July, we have to check, double check with people  
25 for that week. But, if July 2nd works for your Honor, then  
26 I think that would be fine.

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2 THE COURT: Is the Fourth of July midweek? It is,  
3 isn't it?

4 MR. CLUBOK: It is a Wednesday so it is possible,  
5 I suppose, that week could be tough for some people.

6 THE COURT: Maybe we should start the following  
7 week, the 9th. Does that work?

8 MR. CLUBOK: That's okay with us, I believe.

9 THE COURT: Ms. Klein, does that work for you?

10 MS. KLEIN: Mr. Cruciani, are you still on?

11 MR. CRUCIANI: I am, and it does.

12 MR. CLUBOK: I believe that should work for us,  
13 your Honor.

14 THE COURT: That's very good. And let me say,  
15 also, that another significant reason for bifurcating is so  
16 that I can very carefully consider the evidence in this  
17 case and the law that counsel will brief before I present  
18 any issues to the jury assuming without suggesting one way  
19 or the other or otherwise, of course, that there may be a  
20 judgment in favor of the plaintiff. And that probably is  
21 even more important than avoiding delays due to  
22 consideration of some of the complex issues that I outlined  
23 earlier.

24 So I think this really will work for the best, not  
25 only for the parties to receive a considered decision, but  
26 also from the point of view of avoiding jury delays.

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2 Now, I would like counsel to have the opportunity  
3 to brief whatever issues they wish to brief, but I think  
4 that counsel should confer on what issues they are going to  
5 brief so that each side will have the opportunity to  
6 address those issues.

7 And, I would also like to have counsel address the  
8 issue of the proper interpretation of CDS losses, whether  
9 the contract is ambiguous and whether parol evidence will  
10 need to be taken on that issue.

11 I would like to leave the call at this point and  
12 have you discuss with Ms. Barnett how long you need for  
13 this briefing, what page limits you think you need and what  
14 you want to do with the previously scheduled May 8th  
15 pretrial conference. It may be best to defer that until  
16 after we receive the briefs; but if there are other issues  
17 that you think you are going to need to deal with in the  
18 near future, we can go ahead.

19 So, I'm going to leave the call at this time.  
20 I'm requesting that the plaintiff obtain a copy of the  
21 transcript of today's proceedings, e-file it and file two  
22 hard copies with the clerk of the part.

23 The transcript will not be so ordered until I  
24 receive the hard copies.

25 Let me remind you that I reserve the right to  
26 correct errors in the transcript. Therefore, if it is

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needed for any further purpose, you should be sure you have  
a copy as so-ordered by me and not merely as signed by the  
court reporter.

Thank you.

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CERTIFIED TO BE A TRUE  
AND CORRECT TRANSCRIPT

BONNIE PICCIRILLO  
OFFICIAL COURT REPORTER

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BONNIE PICCIRILLO - OFFICIAL COURT REPORTER



## **EXHIBIT 30**

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**FILED: NEW YORK COUNTY CLERK - PENDING**

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RECEIVED NYSCEF: 06/28/2010

CONFIDENTIAL MATERIAL SUBJECT TO STIPULATION AND ORDER FOR THE  
PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION REDACTED

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

Index No.

**COMPLAINT**

Plaintiffs, UBS Securities LLC (“UBSS”) and UBS AG, London Branch (“UBS AG”) (collectively, “UBS”), for their Complaint allege against defendant Highland Capital Management, L.P. (“Highland Capital”), as follows:

**NATURE OF THE ACTION**

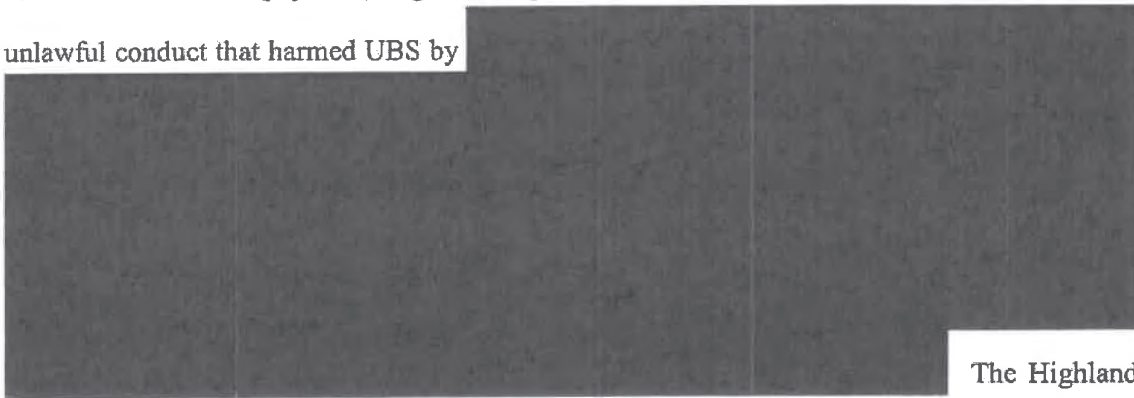
1. UBS brings this action to recover damages in excess of \$686 million resulting from the wrongful conduct of Highland Capital, based on causes of action for fraudulent inducement, breach of the duty of good faith and fair dealing, and fraudulent conveyance.

2. Highland Capital and two of its affiliates, Highland Special Opportunities Holding Company (“SOHC”) and Highland CDO Opportunity Master Fund, L.P. (“CDO Fund,” and together with SOHC, the “Fund Counterparties”), fraudulently induced UBS to restructure a transaction to avoid Highland Capital’s and the Fund Counterparties’ contractual obligation to pay UBS over \$86 million. Once Highland Capital and the Fund Counterparties succeeded in misleading UBS into restructuring the original transaction, Highland Capital and its affiliates made it impossible for the Fund Counterparties to meet their obligations to UBS by stripping the

003068

Fund Counterparties of their valuable assets through fraudulent conveyances and otherwise dealing in bad faith with their contractual obligations to UBS.

3. When UBS finally terminated the restructured transaction and demanded payment from Highland Capital and the Fund Counterparties, it was owed in excess of \$686 million that the Fund Counterparties could not pay because of the misappropriations and improper transfers of assets directed by Highland Capital and the Fund Counterparties. Even after UBS demanded payment, Highland Capital and certain of its affiliates engaged in further unlawful conduct that harmed UBS by



The Highland Entities are defendants in the separate but related action commenced by UBS on or about February 24, 2009 (the “Highland Entity Action”). In accordance with this Court’s June 17, 2010 Order, UBS filed the First Amended Complaint in the Highland Entity Action concurrently with filing this Complaint.

#### **SUMMARY OF THE ACTION**

4. This action arises out of defendant Highland Capital’s efforts in the Spring of 2007 to sponsor a collateralized debt obligation (“CDO”) securitization (the “Original Engagement”). In connection with the Original Engagement, UBS agreed to finance the purchase of various collateralized loan obligation (“CLO”) securities, as well as credit default swap obligations that referenced similar CLO securities. UBS agreed to hold or “warehouse” the

CLO securities and credit default swaps (collectively, the “Warehouse Assets” or “Warehouse Facility”) for Highland Capital’s benefit.

5. On or about August 15, 2007, the Original Engagement terminated by its terms without the contemplated securitization having occurred. As a result of the termination, Highland Capital and two of its affiliates, the Fund Counterparties, owed UBS in excess of \$86 million related to the decline in the value of the Warehouse Assets.

6. Instead of paying UBS what it was owed, Highland Capital and the Fund Counterparties fraudulently induced UBS to restructure the Original Engagement by providing UBS with false, incomplete and otherwise misleading information concerning the Fund Counterparties’ finances and assets. Using both affirmative material misrepresentations and omissions (material facts or information needed to be disclosed to make the statements actually made not misleading, and which were not disclosed, are referred to hereinafter as “Omissions”), Highland Capital, its principals and the Fund Counterparties misled UBS regarding the financial health of the Fund Counterparties and their creditworthiness, thereby causing UBS to forego recovering its losses from Highland Capital in favor of agreeing to restructure the terms of the parties’ prior agreements (the “Restructured Transaction”).

7. For example, the strength of the Fund Counterparties’ financial statements, and their purported ability to use the hundreds of millions of dollars worth of assets reflected therein to satisfy future obligations to UBS under the Warehouse Agreements were material to UBS’s decision to agree to the restructuring. Consequently, in connection with negotiating the Restructured Transaction, UBS conditioned any restructuring on the Fund Counterparties’ ability to post \$70 million in cash and securities as collateral (the “Initial Restructuring Collateral”) with State Street Bank and Trust Company (“State Street”), in which UBS would hold a security interest. [REDACTED]

[REDACTED]

Highland Capital and the Fund Counterparties were able to conceal important information about the Fund Counterparties' financial weakness that was both quantitatively and qualitatively material to UBS, and which would have caused UBS not to enter the Restructured Transaction.

8. Similarly, while negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties provided UBS with financial reports and statements for the Fund Counterparties. The financial information that Highland Capital and the Fund Counterparties provided to UBS contained materially false and misleading information and Omissions concerning the financial condition of the Fund Counterparties. Among other things, Highland Capital and the Fund Counterparties misrepresented [REDACTED]

[REDACTED]

9. In reliance on material misstatements and Omissions made by Highland Capital and the Fund Counterparties, UBS agreed to restructure the Original Engagement, and thereby were fraudulently induced to give up contractual rights under the terms of the Original Engagement. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe that Highland Capital and its affiliates would provide it with false, incomplete or



otherwise misleading information about the Fund Counterparties' finances and assets, as they in fact did.

10. Had UBS known that the Fund Counterparties could not [REDACTED]

[REDACTED] it would not have gone forward with the Restructured Transaction. UBS never would have agreed to the Restructured Transaction had it known prior to entering the Restructured Transaction the true status of the Fund Counterparties' financial condition and the true fair market value of the Fund Counterparties' holdings that would have been available to satisfy their then-existing and future obligations to UBS. UBS's losses described herein were directly and proximately caused by the conduct of Highland Capital and the Highland Entities described herein.

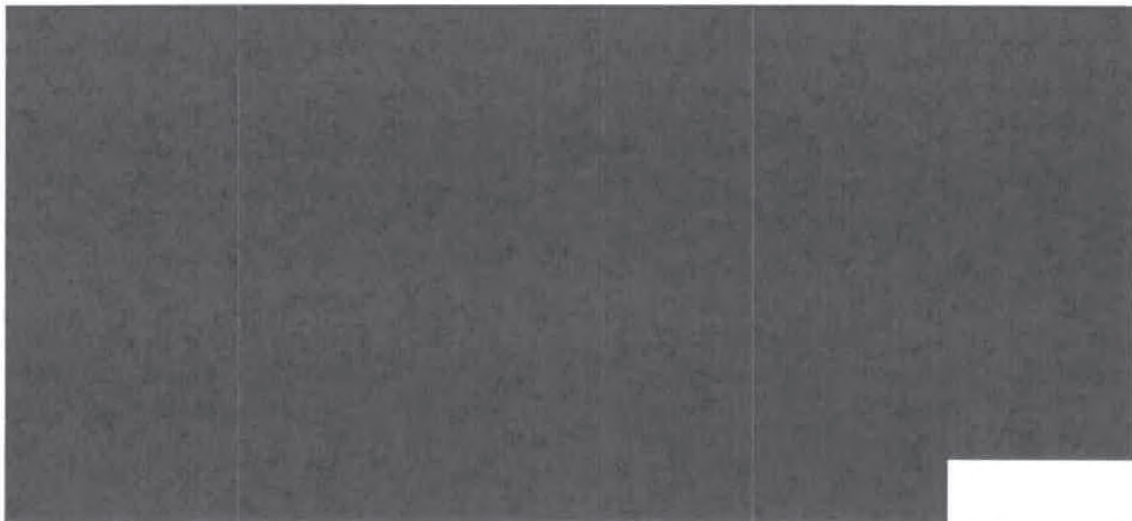
11. Almost immediately after UBS agreed to the Restructured Transaction, Highland Capital began the process of making it impossible for the Fund Counterparties to ever repay UBS what they owed. In particular, exercising its control over the Fund Counterparties, Highland Capital caused the Fund Counterparties to transfer cash for the benefit of Highland Capital and its principals, and, separately, in violation of UBS' rights, [REDACTED] all during a time when the Fund Counterparties owed UBS hundreds of millions of dollars.

12. For example, in or around May 2008, Highland Capital caused the dissipation of approximately \$100 million in cash that CDO Fund held after it sold a long position in a company called SunCom Wireless. Highland Capital drained CDO Fund's cash resources despite CDO Fund's ever-increasing obligations to UBS. Highland Capital's bad faith conduct caused injury to UBS by making it impossible for the Fund Counterparties to satisfy their contractual obligations to UBS.

13. In September 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Because Highland Capital had routinely taken cash out of the Fund Counterparties, the Fund Counterparties were undercapitalized and lacked assets and liquidity to meet UBS's demands for additional collateral.

14. Highland Capital and its principals, including its president and founder, James D. Dondero, knew that if the Fund Counterparties defaulted on their obligations to UBS (or any other creditor), Highland Capital's ability to conduct business in the financial community and to keep or solicit investors would be harmed. Investors in Highland Capital's hedge fund family would withdraw their investments. In addition, creditors would take actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights. Highland Capital and its principals were concerned that upon the disclosure of the true state of their affairs, their business would collapse.

15. To avoid that result, Highland Capital and its principals resorted to

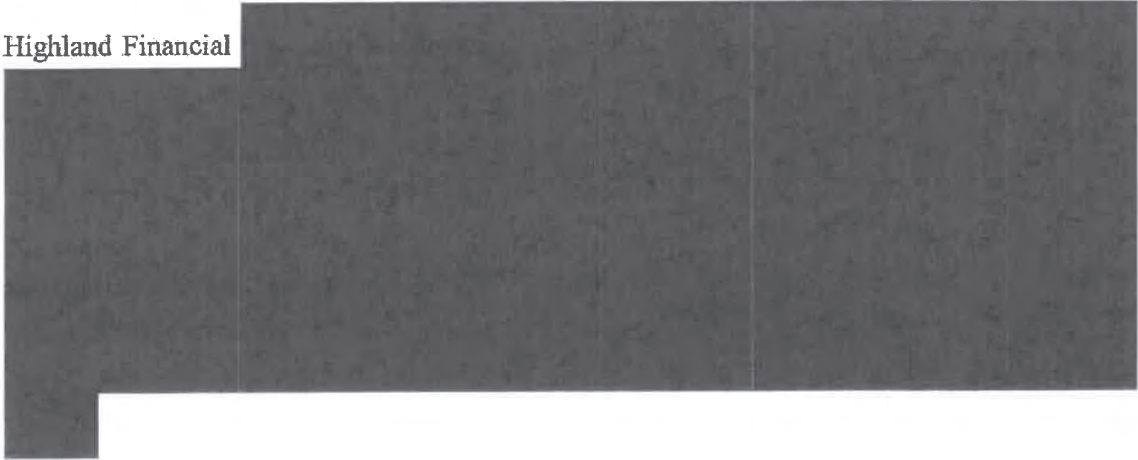


16. Highland Capital's and its principals' belated attempt to protect their reputation by continuing to fraudulently portray the Fund Counterparties as viable independent

entities was ultimately unsuccessful. By late October 2008, Highland Capital could no longer continue to prop up the Fund Counterparties.

17. On or about November 11, 2008, UBS demanded additional collateral from the Fund Counterparties. The Fund Counterparties defaulted. On December 3, 2008, UBS terminated the Restructured Transaction. As a result of UBS's termination of the Restructured Transaction, the Fund Counterparties were contractually obligated to pay UBS in excess of \$686 million.

18. On or about February 24, 2009, UBS commenced the Highland Entity Action by filing a complaint in this Court against the Fund Counterparties for breach of the Warehouse Agreements that had been entered in connection with the Restructured Transaction. By that time, the Fund Counterparties and SOHC's alter ego, Highland Financial, had been insolvent and unable to pay their creditors for some time. Nonetheless, Highland Capital and Highland Financial



19. In sum, after fraudulently inducing UBS to agree to the Restructured Transaction, Highland Capital and its principals exercised their domination over the Fund Counterparties to improperly transfer substantial assets from the Fund Counterparties for their own personal gain, i.e., solely and improperly to protect and enhance the value of Highland Capital and its principals by wrongful and improper means. In the process, they made it

impossible for the Fund Counterparties to pay UBS the losses they had agreed to pay on the Warehouse Facility.

### **THE PARTIES**

#### **A. The Plaintiffs**

20. Plaintiff UBS AG, London Branch, is a banking corporation organized under the laws of Switzerland with its principal place of business at Finsbury Avenue, London, United Kingdom.

21. Plaintiff UBSS is a limited liability company organized under the laws of Delaware with its principal places of business at 677 Washington Blvd., Stamford, Connecticut, and 299 Park Avenue, New York, New York.

#### **B. The Defendant**

22. Defendant Highland Capital Management, L.P. (“Highland Capital”) is a limited partnership organized under the laws of Delaware, with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240, and an office at 9 West 57th Street, New York, New York. Highland Capital is registered to do business in New York. Highland Capital describes itself as a 100% employee-owned partnership. Highland Capital is an investment adviser that manages a large number of investment entities that operate as hedge funds for Highland Capital’s principals and affiliates, as well as unaffiliated investors. Highland Capital currently manages over \$25 billion in various assets, including structured financial products. Highland Capital also holds direct and indirect equity and ownership interests in the entities that it manages, including in Highland Financial, the Fund Counterparties and the Affiliated Transferees. James D. Dondero is the President of Highland Capital, as well as one of its founders. Highland Capital is a counterclaim-plaintiff in a separate but related action (the

“Highland Entity Action”) commenced by UBS concurrently with the filing of this Complaint in accordance with this Court’s June 17, 2010 Order with Memorandum.

**C. Other Parties**

**1. Strand**

23. Strand Advisors, Inc. (“Strand”) is Highland Capital’s general partner. Strand is a Delaware corporation principally engaged in the business of serving as the general partner of Highland Capital. As Highland Capital’s general partner, Strand is responsible for Highland Capital’s liabilities and obligations and regularly conducts business in New York, or causes its affiliates to conduct business in New York. Strand is a defendant in the Highland Entity Action.

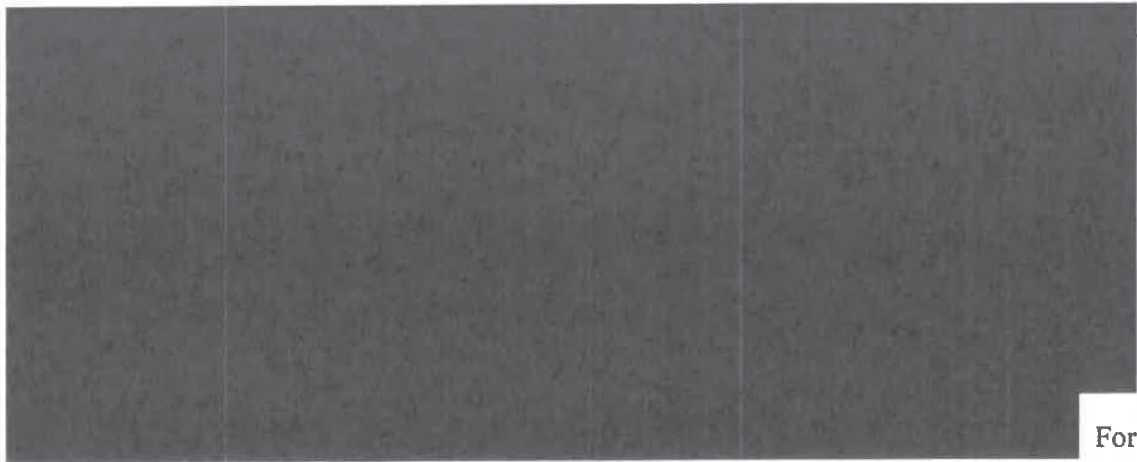
**2. Highland Financial and SOHC**

24. Highland Special Opportunities Holding Company (“SOHC”) is a company organized under the laws of the Cayman Islands, with its offices at Walker House, PO Box 908GT, Mary Street, George Town, Grand Cayman, Cayman Islands. SOHC is a wholly-owned subsidiary of Highland Financial Partners, L.P. (a Delaware limited partnership) (“Highland Financial”). SOHC has six sister subsidiaries, all of which are owned in whole or in part by Highland Financial. Highland Capital serves as investment manager to Highland Financial, SOHC and its sister subsidiaries. Highland Financial and SOHC are defendants in the Highland Entity Action.

25. Highland Financial is SOHC’s alter ego.







For all purposes relevant to this action, Highland Financial and SOHC should be treated as a single entity and as alter egos of one another.

**3. CDO Fund**

26. Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) is a Bermuda exempted limited partnership, with its principal place of business at 52 Reid Street, Hamilton, Bermuda. Defendant Highland Capital controls CDO Fund’s investment decisions through an investment management agreement. Between January 31, 2007 and August 31, 2008, Highland Capital’s and its affiliates’ aggregate ownership interest in CDO Fund ranged between 43.36% and 56.44%. Highland CDO Opportunity Fund, L.P. and Highland CDO Opportunity Fund, Ltd. serve as so-called “feeder funds” for CDO Fund. CDO Fund is a defendant in the Highland Entity Action.

**4. The Affiliated Transferees**

27. Highland Credit Strategies Fund (“HCF Trust”) is a Delaware statutory trust, and a closed-end management investment company registered under the Investment Company Act of 1940. It is publicly traded on the New York Stock Exchange under the ticker: “HCF.” HCF Trust’s principal place of business is 13455 Noel Road, Suite 800, Dallas, Texas

75240. R. Joseph Dougherty of Highland Capital is HCF Trust's President and CEO. Highland Capital serves as the investment advisor to HCF Trust. HCF Trust is a defendant in the Highland Entity Action.

28. Highland Crusader Offshore Partners, L.P. (the "Crusader Fund") is a Bermuda limited partnership with its principal place of business at Magnolia House Building, 1<sup>st</sup> Floor, 119 Front Street, Hamilton HM 12, Bermuda. The Crusader Fund also has an office located at 13455 Noel Road, Suite 800, Dallas, Texas 75240. The Crusader Fund transacts business within New York, and derives substantial revenue from interstate and international commerce. Crusader Fund is a defendant in the Highland Entity Action.

29. Highland Credit Opportunities CDO, L.P. (the "Credit Opp. Fund") is a Delaware limited partnership with its principal place of business at 13455 Noel Road, Suite 800, Dallas, Texas 75240. Credit Opp. Fund is a defendant in the Highland Entity Action.

30. HCF Trust, the Crusader Fund and the Credit Opp. Fund are referred to herein collectively as the "Affiliated Transferees"

The Affiliated Transferees, Highland Financial, the Fund Counterparties and Strand are referred to herein collectively as the "Highland Entities."

**D. Non-Parties Affiliated With Highland Capital In Which The Fund Counterparties Invested**

31. The Fund Counterparties held investments in several Highland Capital-affiliated funds, including Highland Credit Opportunities CDO, L.P., Highland Legacy, Highland Loan Funding V, Highland Park CDO I, Ltd., Highlander Euro CDO B.V. and Highlander Euro CDO III B.V. Highland Capital served as the investment manager for these affiliated funds, and received valuable fees derived from the valuations of these funds' assets, which it managed.

### **JURISDICTION AND VENUE**

32. Venue in this Court is proper under CPLR 503 because plaintiff UBSS has a principal place of business in New York County.

33. Venue is also proper under CPLR 501, and this Court may exercise jurisdiction over Highland Capital because UBS, Highland Capital and the Fund Counterparties all agreed in writing, before this action was commenced, to submit to such jurisdiction and venue, in connection with any dispute that may arise out of, in connection with, or related to, the Agreements (defined below), or any of the matters contemplated thereby.

34. This Court also may exercise jurisdiction over Highland Capital pursuant to CPLR 301 and 302(a)(1) and (3), because Highland Capital has an office in New York, is a foreign limited partnership registered to do business in New York, regularly transacts and solicits business in New York, committed tortious acts causing injury in New York, should reasonably have expected that its tortious acts would have consequences in New York, the effect of its wrongful conduct was felt in New York, and/or derives substantial revenue from interstate or international commerce.

### **FACTUAL BACKGROUND**

#### **A. The Original Engagement**

35. In or around April 2007, Highland Capital approached UBS for short-term financing in connection with a securitization that Highland Capital wanted to sponsor. UBS agreed to do so (the “Original Engagement”).

36. On or about April 20, 2007, UBSS and Highland Capital entered into an engagement letter (the “Original Engagement Letter”), which contemplated that UBSS would act as the exclusive financial arranger and placement agent for a type of collateralized debt obligation transaction (“CDO”), known as a collateralized loan obligation (“CLO”) squared or

“CLO Squared” transaction. (A copy of the Original Engagement Letter is annexed hereto as Exhibit A.)

37. CLOs are a form of securitization where interest and principal payments on corporate loans made to multiple mid-sized and large businesses are pooled together by a lender or the owner of the loans, and then passed on through a securitization structure to investors. CLOs typically involve multi-million dollar loans known as syndicated loans, or leveraged loans made to new businesses or existing businesses, often to acquire other companies. The loan originators are able to spread risk through the CLO securitization, and simultaneously free up capital to make new loans to other businesses. The Original Engagement contemplated the securitization of CLO securities. Thus, the securitization contemplated by Highland Capital would have been a “CLO Squared” transaction.

38. On or about May 22, 2007, as contemplated by the Original Engagement Letter, UBSS and Highland Capital entered into a warehouse agreement (the “Original Cash Warehouse Agreement”). (A copy of the Original Cash Warehouse Agreement is annexed hereto as Exhibit B.) In accordance with the terms of the Original Engagement Letter and the Original Cash Warehouse Agreement, UBSS agreed to acquire securities as directed by Highland Capital. Highland Capital instructed UBS to acquire various CLO securities issued in connection with prior CLO transactions involving other sponsors and issuers (the “Cash Portfolio”).

39. In a separate but related synthetic warehouse agreement (the “Original Synthetic Warehouse Agreement,” and together with the “Original Cash Warehouse Agreement,” the “Original Warehouse Agreements”), UBS AG agreed to enter into credit default swaps (the “CDS Portfolio,” and together with the Cash Portfolio, the “Warehouse Assets”), pursuant to which UBS AG sold credit protection to various third parties. (A copy of the Original Synthetic Warehouse Agreement is annexed hereto as Exhibit C.)

40. For Highland Capital's benefit, UBS held the Warehouse Assets on its balance sheet (the "Warehouse Facility"). UBS was expected to hold the Warehouse Assets until such time as the parties could arrange for the assets to be securitized as part of the contemplated securitization. In particular, if the parties believed that a securitization was economically feasible, they would create a special purpose entity that would acquire the Warehouse Assets from UBS using the proceeds from the sale of securities to investors. The special purpose entity's debt securities would be secured by those Warehouse Assets.

41. Under the Original Warehouse Agreements, if the Original Engagement terminated without a securitization, Highland Capital and the Fund Counterparties were obligated to pay UBS for losses on the Warehouse Assets. In particular, under the terms of the Original Cash Warehouse Agreement, Highland Capital was directly responsible for the first \$50 million in losses in the Cash Portfolio, and under the terms of the Original Synthetic Warehouse Agreement, the Fund Counterparties were obligated to pay UBS for any and all losses suffered on the CDS Portfolio.

42. The Original Engagement Letter expired by its terms on August 15, 2007 without a securitization occurring. The Original Warehouse Agreements expired on the same date in accordance with their respective terms.

43. As of August 15, 2007, the Warehouse Assets in the Warehouse Facility had lost in excess of \$86 million in value. Although they had sufficient capital to do so, Highland Capital and the Fund Counterparties failed and refused to pay UBS what it was owed under the Original Warehouse Agreements.

44. As a result of extensive negotiations as well as representations and warranties made by Highland Capital on its own behalf, and on behalf of the Fund



Counterparties as their investment manager, UBS agreed to restructure the terms of the Original Engagement.

**B. Highland Capital And The Fund Counterparties Resort To Fraud To Avoid Highland Capital's Obligations To UBS**

45. As alleged above, as a result of the termination of the Original Engagement, Highland Capital was directly liable to UBS under the Original Warehouse Agreement for in excess of \$86 million.

46. Between August 2007 and March 14, 2008, UBS and Highland Capital had discussions and negotiations concerning a restructuring of the terms of the Original Engagement. Those negotiations resulted in agreements to restructure the Original Engagement (the "Restructured Transaction"), including a release by UBS of its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement. (The terms of the Restructured Transaction are set forth in the Engagement Letter and Warehouse Agreements described below (collectively, the "Agreements"), which are annexed hereto as Exhibits D, E and F, respectively.)

47. During the course of negotiations and before March 14, 2008, Highland Capital and the Fund Counterparties made several material misrepresentations to UBS concerning the creditworthiness of the Fund Counterparties. Dondero, Highland Capital and the Fund Counterparties also failed to disclose to UBS information which would have been material to UBS's decision to enter the Restructured Transaction ("Omissions," as defined above). As Highland Capital and the Fund Counterparties knew, UBS reasonably relied upon those material misrepresentations and, due to the Omissions, a misstated assessment of the Fund Counterparties, all to its detriment in deciding whether to enter the Restructured Transaction. UBS reasonably and justifiably relied on these misrepresentations and Omissions of facts and

information that were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS reasonably believed that Highland Capital and the Fund Counterparties would not provide it with false, incomplete or otherwise misleading information about the Fund Counterparties' finances and assets as it in fact did.

48. For example, on or about December 28, 2007, to induce UBS to enter the Restructured Transaction and related Agreements, Gibran Mahmud of Highland Capital sent SOHC financial statements to UBS. On or about January 29, 2008, UBS requested additional financial information related to SOHC. Later that same day, to induce UBS to enter the Restructured Transaction and related Agreements, Phil Braner of Highland Capital emailed UBS a copy of SOHC's Statement of Financial Condition, dated December 31, 2007.

49. As described with more particularity below, the SOHC financial information that Highland Capital and the Fund Counterparties provided to UBS, which Highland Capital was responsible for preparing, was materially false and misleading. Highland Capital and the Fund Counterparties knew that UBS would rely upon SOHC's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

50. On or about February 4, 2008, Matt Killebrew of Highland Capital provided UBS with financial reports via email that reflected financial summaries, and aggregate valuations for CDO Fund's assets as of December 31, 2007. On or about March 4, 2008, Mr. Killebrew sent UBS similar reports for the period ended January 31, 2008. As described with more particularity below, these financial reports, which Highland Capital prepared, also were materially false and misleading. Highland Capital and the Fund Counterparties knew that

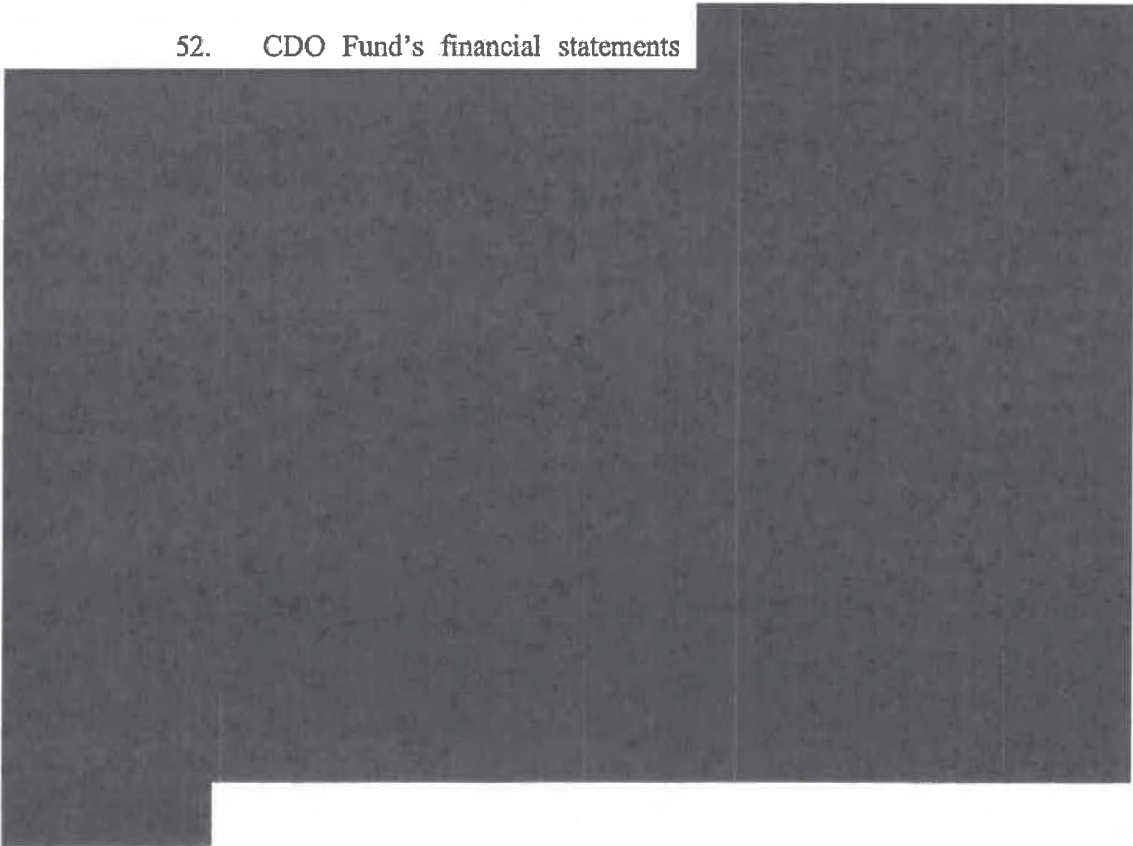
UBS would rely upon CDO Fund's financial information in connection with deciding whether to agree to the Restructured Transaction and the terms of the Agreements being negotiated.

51. The Fund Counterparties' financial statements

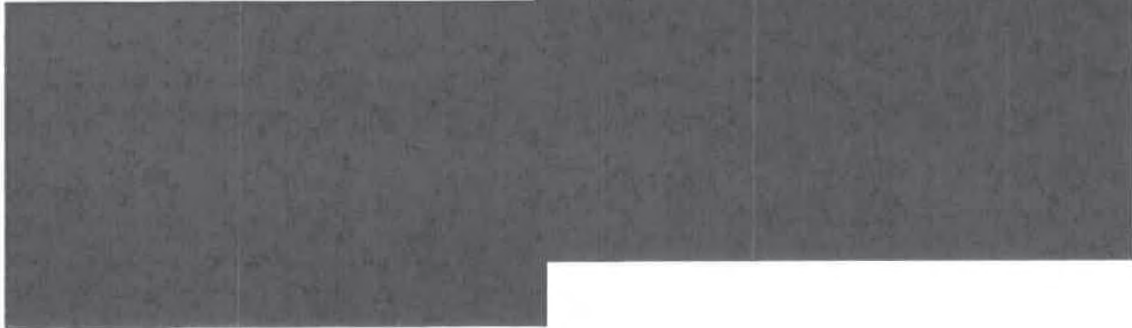


These facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties.

52. CDO Fund's financial statements



53. Similarly, Highland Capital and the Fund Counterparties concealed from UBS the fact that the Fund Counterparties

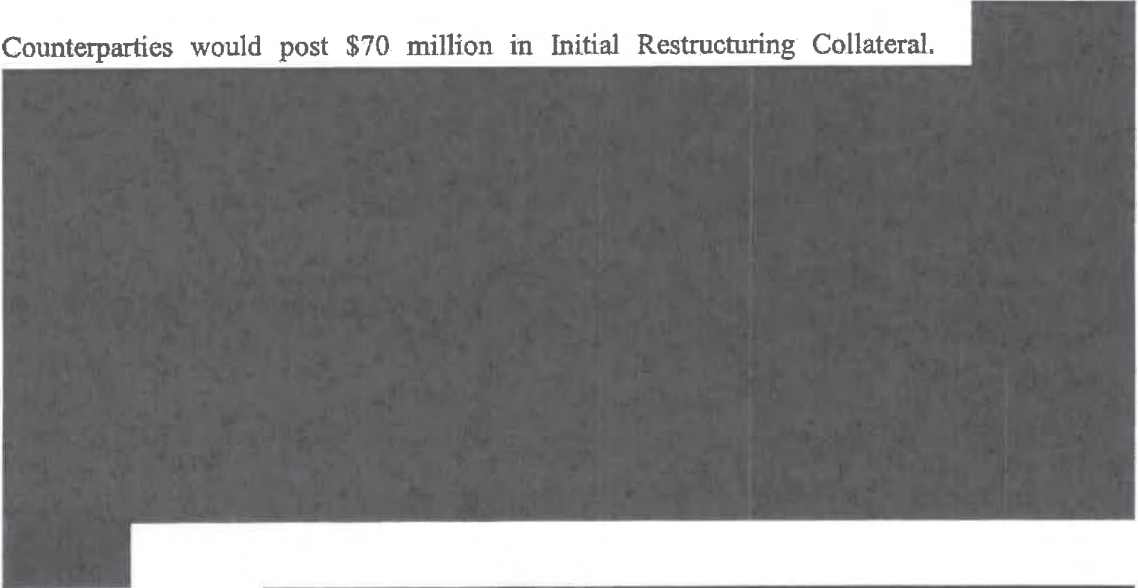


54. In addition, the Fund Counterparties' financial statements that Highland Capital and the Fund Counterparties provided to UBS in advance of the Restructured Transaction contained



55. During the course of negotiations concerning the restructuring, UBS also insisted that the Fund Counterparties have the ability to post \$70 million in cash and securities as collateral, which would be held at State Street Bank (the “Initial Restructured Transaction Collateral”), and in which UBS would hold a security interest. The Fund Counterparties’ ability to do so using their own assets was qualitatively and quantitatively material to UBS. Among other things, it demonstrated the strength of their balance sheets, and by extension, their ability to satisfy future obligations to UBS.

56. Highland Capital and the Fund Counterparties agreed that the Fund Counterparties would post \$70 million in Initial Restructuring Collateral.



57.





58.

[REDACTED]

As the Fund Counterparties' investment manager, Highland Capital maintained the Fund Counterparties' accounting records, and knew [REDACTED]

[REDACTED] Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to believe, and reasonably did not believe, that Highland Capital would provide it with false, incomplete or otherwise misleading information about [REDACTED]

59. If UBS had known that the Fund Counterparties

[REDACTED]

It also would have drawn into question the Fund Counterparties' liquidity.

[REDACTED]

60. But for Dondero's, Highland Capital's and the Fund Counterparties false and misleading statements and Omissions concerning the Fund Counterparties' finances and assets, and [REDACTED] UBS would not have entered into the Restructured Transaction or the Agreements that memorialized its terms. Given the Fund Counterparties' weak credit quality, additional adverse information about their collective or individual creditworthiness would have deterred UBS from going forward with the Restructured Transaction and putting more assets at risk. These misrepresentations and Omissions proximately caused harm to UBS.

61. UBS would not have entered into a transaction with parties that made misrepresentations as Highland Capital and the Fund Counterparties did. UBS also would not have agreed to release its valuable claims arising out of the Original Engagement under such circumstances. Because of, and in reliance on, the false and misleading information about the Fund Counterparties provided by Dondero, Highland Capital and the Fund Counterparties, UBS entered into the Restructured Transaction memorialized in the Agreements. Because each of the misrepresentations and Omissions identified above disguised the Fund Counterparties' inability to satisfy their obligations to UBS, the misrepresentations and Omissions proximately caused harm to UBS.

**C. The Restructured Transaction Agreements**

**1. The Engagement Letter**

62. On or about March 14, 2008, the parties reached agreement on the terms of a restructured engagement, which were memorialized in a new engagement letter (the "Engagement Letter," annexed hereto as Exhibit D). Pursuant to the Engagement Letter,

Highland Capital re-engaged UBSS to act as placement agent in the event that market conditions improved, and the parties could go forward with securitizing the Warehouse Assets already held by UBS in the Warehouse Facility. UBS agreed to continue holding the Warehouse Assets in the Warehouse Facility, which had a notional value of approximately \$818 million.

63. Under the terms of the Engagement Letter, UBS released claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

## **2. The Restructured Warehouse Agreements**

64. On March 14, 2008, UBSS, the Fund Counterparties and Highland Capital also entered into a cash warehouse agreement (the “Cash Warehouse Agreement”), pursuant to which UBSS agreed to continue to hold the Cash Portfolio. (A true and correct copy of the Cash Warehouse Agreement is annexed hereto as Exhibit E.)

65. UBS AG, the Fund Counterparties and Highland Capital also entered into a synthetic warehouse agreement, dated as of March 14, 2008 (the “Synthetic Warehouse Agreement,” and together with the Cash Warehouse Agreement, the “Warehouse Agreements”), pursuant to which UBS AG agreed to continue warehousing credit protection that it sold, *i.e.*, the CDS Portfolio. (A true and correct copy of the Synthetic Warehouse Agreement is annexed hereto as Exhibit F.)

66. Section 13(B) of the Cash Warehouse Agreement and § 11(B) of the Synthetic Warehouse Agreement make Highland Capital liable for losses, including losses in the Warehouse Facility, by reason of acts or omissions constituting bad faith, willful misconduct, or gross negligence.

67. Under § 12 of the Synthetic Warehouse Agreement, the Fund Counterparties agreed to transfer to State Street the Initial Restructuring Collateral to partially secure their respective obligations to UBS under the Warehouse Agreements. Annex C to the

Synthetic Warehouse Agreement identified the six assets that the Fund Counterparties purportedly transferred to State Street to satisfy their Initial Restructuring Collateral obligations, along with \$20 million in cash.

68. The Warehouse Agreements also contained releases whereby UBS agreed to release claims it had against Highland Capital and the Fund Counterparties for losses arising out of the Original Engagement.

**D. Highland Capital Uses Its Control Over The Fund Counterparties To Dissipate Their Assets Without Regard For The Fund Counterparties' Growing Obligations To UBS**

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69. Almost immediately after the Restructured Transaction Agreements were executed, Highland Capital and the Fund Counterparties knowingly began to dissipate the Fund Counterparties' assets and make it impossible for the Fund Counterparties to ever repay UBS what they owed. Highland Capital and the Fund Counterparties did so at various times when the Fund Counterparties owed UBS hundreds of millions of dollars.

70. For example, on or about March 26, 2008, just days after entering the Restructured Transaction, Highland Capital caused certain SOHC assets to be encumbered by entering into a transaction with Barclays Bank, plc. ("Barclays"). At or around the same time, CDO Fund was negotiating financing arrangements with Morgan Stanley & Co. International Ltd. and Highland Capital IV SPC, whereby it granted a security interest in its assets to those entities. By granting a security interest in the Fund Counterparties' assets to other creditors, Highland Capital unfairly and improperly reduced the assets available to satisfy the Fund Counterparties' obligations to UBS in bad faith and in violation of UBS's rights.

71. Similarly, on or about April 2, 2008, Highland Capital advised UBS that CDO Fund had recently monetized a \$129 million long position in SunCom Wireless. When Highland Capital and CDO Fund subsequently provided UBS with additional financial

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 13**



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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Thru Vol. 9  
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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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and Get Good Trust*



**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

information about CDO Fund, however, UBS discovered that Highland Capital had caused CDO Fund to transfer approximately \$100 million of the cash proceeds from the SunCom Wireless sale out of CDO Fund.

72. By improperly removing such a substantial amount of cash from CDO Fund, Highland Capital interfered in bad faith with CDO Fund's ability to satisfy its steadily increasing financial obligations to UBS. In particular, in or around May 2008, when the cash proceeds from the SunCom Wireless position were siphoned off, the Fund Counterparties owed UBS in excess of \$166 million related to losses in the Warehouse Facility, approximately 50% of which CDO Fund was obligated to pay.

73. Highland Capital also repeatedly caused SOHC's cash to be transferred by Highland Financial. In particular, during the first five months of 2008, SOHC's cash position was reduced by over \$10 million at a time when its obligations to UBS were increasing substantially.

**E. In the Fall of 2008, Losses Mount And The Fund Counterparties Face Collateral Calls From Creditors Including UBS That They Cannot Meet Despite Highland Capital's Belated Efforts To Do So** [REDACTED]

74. Under the terms of the Warehouse Agreements, the Fund Counterparties were required to post additional collateral with UBS if the combined market value of (a) the Warehouse Assets and (b) the Initial Restructured Transaction Collateral, declined below a certain amount.

75. By September 2008, losses in the Warehouse Facility had increased significantly. At the same time, the value of the Initial Restructuring Collateral had declined substantially, as had the value of the assets held by the Fund Counterparties.

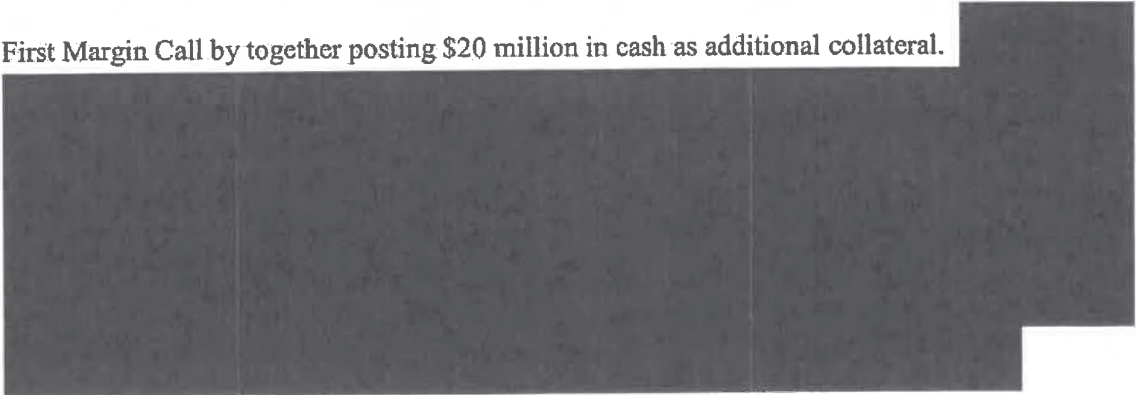
76. Highland Capital was desperate to avoid a default by any of its affiliates, including the Fund Counterparties. If a Highland Capital affiliate defaulted on its obligations to a creditor, Highland Capital's reputation in the investment community would be damaged, and there was a risk that Highland Capital's business would collapse. Highland Capital feared that a public default would lead investors in Highland Capital's hedge fund family to withdraw their capital, and lead creditors to take aggressive actions to protect themselves, including foreclosing on collateral and aggressively enforcing their contractual rights.

**1. The First Margin Call**

77. On or about September 16, 2008, as losses in the Warehouse Facility continued to grow, UBS began to exercise its contractual rights and make margin calls demanding additional collateral from the Fund Counterparties. Specifically, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties were each required to post \$10 million in cash or equivalent securities (the "First Margin Call").

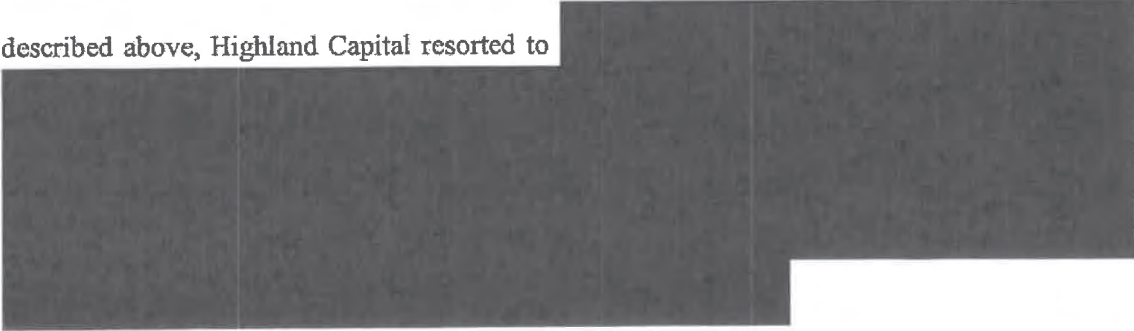
78. Because Highland Capital had routinely drained cash from the Fund Counterparties, the Fund Counterparties lacked the liquidity to meet UBS's demands using their own assets.

79. On or about September 19, 2008, the Fund Counterparties satisfied the First Margin Call by together posting \$20 million in cash as additional collateral.



**2. UBS Is Harmed By Highland Capital's Response To The Fund Counterparties' Liquidity Crisis**

80. In the wake of the First Margin Call, the Fund Counterparties remained starved for liquidity. Still desperate to avoid defaults to creditors and the consequences described above, Highland Capital resorted to



81. Highland Capital and the individuals that directed the Fund Counterparties knew that they had caused the Fund Counterparties to become incapable of satisfying their obligations to all of their respective creditors when they came due, and that they were insolvent or, at the very least, within the zone of insolvency.

82. For example, on or about September 26, 2008, Dondero and Highland Capital improperly



83.



84.

85.



86.

Highland Capital executed this plan at UBS's expense to protect their substantial personal stake in Highland Financial and prevent negative publicity associated with defaulting

Implementing this plan, however, caused SOHC (and its alter ego, Highland Financial) to improperly and in bad faith breach duties and obligations to UBS.

87.

SOHC's expected obligations to UBS were well in excess of \$250 million, which were due and owing to UBS no later than March 14, 2009. Thus,

Highland Capital and the Fund Counterparties made a fraudulent conveyance and interfered in bad faith with the Fund Counterparties' ability to meet their contractual obligations to UBS.

88. Given the state of the financial markets at the time, Highland Capital, Highland Financial and SOHC had no expectation that SOHC would be able to satisfy its obligations to UBS when they came due.

89.

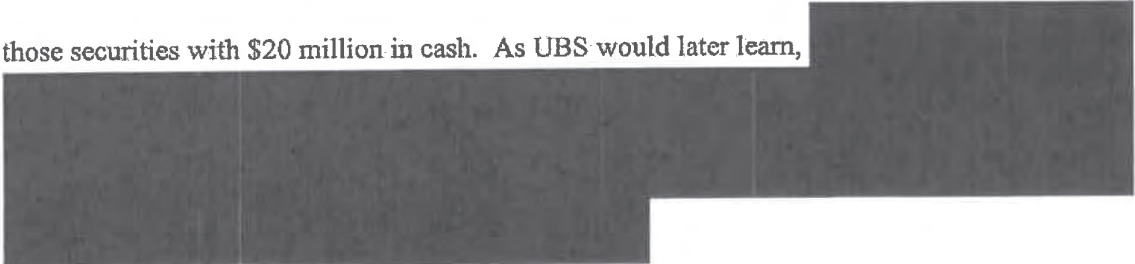


### 3. The Second Margin Call


90. On or about October 21, 2008, UBS notified Highland Capital that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties each owed another \$10 million (the “Second Margin Call”).

91. In response to the Second Margin Call, Highland Capital offered UBS numerous assets as collateral. UBS rejected those offers for various business-related reasons. As UBS would later learn, however, at the time Highland Capital was offering the assets to UBS, the Fund Counterparties did not own them.

92. On or about October 24, 2008, the Fund Counterparties satisfied the Second Margin Call by together posting assets with a notional value of \$49.97 million (but a market value of approximately \$20 million), with the understanding that UBS would authorize State Street to return the securities if and when the Fund Counterparties were able to replace those securities with \$20 million in cash. As UBS would later learn,



93. Moreover, at the same time that Highland Capital was telling UBS that the Fund Counterparties did not have sufficient cash assets to meet the Second Margin call,



[REDACTED]

**4. The Third Margin Call**

94. On or about November 7, 2008, UBS notified Highland Capital and the Fund Counterparties that, pursuant to § 12(C) of the Synthetic Warehouse Agreement, the Fund Counterparties had an obligation to post another \$10 million as collateral (the “Third Margin Call”).

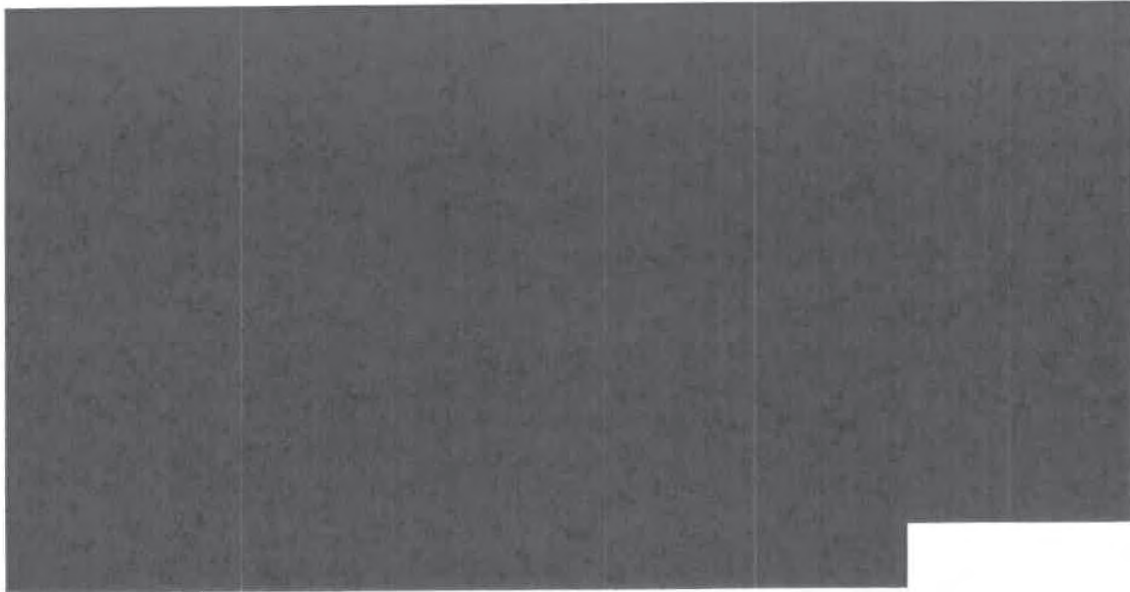
95. On or about November 11, 2008, Highland Capital and the Fund Counterparties offered to post various securities to satisfy the Third Margin Call. In response to the Third Margin Call, Phil Braner of Highland Capital emailed UBS a list of proposed collateral including eight securities with a purported market value of approximately \$20 million (i.e., twice the amount of cash due to satisfy the Third Margin Call).

96. Pursuant to the Warehouse Agreements, UBS was authorized to reject proposed collateral. UBS determined that the proposed additional collateral offered by Highland Capital and the Fund Counterparties was unacceptable. On or after November 13, 2008, UBS formally rejected the offered securities, and requested that the Fund Counterparties provide cash or cash equivalent collateral to satisfy their obligations under § 12(C) of the Synthetic Warehouse Agreement.

97. UBS would later learn that [REDACTED]

[REDACTED]

98. When UBS confronted Highland Capital about this issue Mr. Braner of Highland Capital explained that [REDACTED]



**F. Termination Of The Agreements And Demand For Payment of Losses**

99. As of December 3, 2008, the Fund Counterparties still had not met the Third Margin Call in accordance with § 12(C) of the Synthetic Warehouse Agreement. This failure resulted in UBS's declaration of a termination date ("Termination Date") under the Agreements.

100. On December 3, 2008, UBS delivered a letter (the "Termination Date Letter") to Highland Capital and the Fund Counterparties notifying them of such failure and the occurrence of a Termination Date under each Agreement. (A true and correct copy of the Termination Date Letter is annexed hereto as Exhibit G.)

101. Sections 5 and 7 of the Cash Warehouse Agreement provided that if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, UBSS could, in its sole discretion, retain any of the securities in the Warehouse Facility or sell such securities to one of UBSS's affiliates or an unaffiliated party.

102. Pursuant to the terms of the Agreements, if the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to

March 14, 2009, each of the Fund Counterparties was obligated to pay to UBS its pro rata share of any market value losses on the Warehouse Assets, which UBS determined it had experienced and so notified Highland Capital and the Fund Counterparties.

103. On December 19, 2008, UBSS delivered a letter (the “Cash Warehouse Demand Letter”) to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Cash Warehouse Demand Letter is annexed hereto as Exhibit H.) UBSS demanded that Highland Capital and the Fund Counterparties wire that required amount to UBSS no later than 5:00 pm on December 24, 2008 (i.e., the third business day after the date of the Cash Warehouse Demand Letter) (the “Final Payment Date”). Highland Capital and the Fund Counterparties failed to make the required payment to UBSS.

104. The Synthetic Warehouse Agreement provided that in the event the closing date of the securitization contemplated by the Restructured Transaction failed to occur on or prior to March 14, 2009, the Fund Counterparties would be collectively responsible for 100% of the aggregate amount of losses on the CDS Portfolio and each of the Fund Counterparties would pay, after notice of such amount due from UBS, its pro rata share of such amount to UBS within three business days.

105. On December 19, 2008, UBS AG delivered a letter (the “Synthetic Warehouse Demand Letter”) to Highland Capital and the Fund Counterparties demanding payment for its losses. (A true and correct copy of the Synthetic Warehouse Demand Letter is annexed hereto as Exhibit I.) UBS AG demanded that the Highland Capital and the Fund Counterparties wire the required amount to UBS AG no later than 5:00 PM on the Final Payment Date (i.e., December 24, 2008 — the third business day after the date of the Synthetic Warehouse Demand Letter). Highland Capital and the Fund Counterparties failed to make the required payment to UBS AG.



**G. Notice of Failure To Pay, Auction And Final Accounting Letter**

106. On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to make the requisite payments when due pursuant to the Agreements and the applicable demand letters. On or about January 16, 2009, in connection with unwinding the Warehouse Facility, UBS conducted the auction contemplated by the Warehouse Agreements.

107. On or about March 19, 2009, UBS delivered a letter to Highland Capital and the Fund Counterparties concerning a final accounting concerning the auction and the losses in the Warehouse Facility. UBS determined that Highland Capital and the Fund Counterparties owed it \$686,853,290.26.

**H. Highland Capital Renders The Fund Counterparties Judgment-Proof To Avoid Their Obligations To UBS**

108. 

109. In December 2008, immediately after UBS terminated the Restructured Transaction, Dondero and Highland Capital 

110. On or about February 24, 2009, UBS commenced the Highland Entity Action against Highland Capital and the Fund Counterparties. At the time, SOHC and Highland Financial, as its alter ego, owed UBS approximately \$345 million.

Undeterred, on or about March 17, 2009, Dondero and Highland Capital



112. As a result, Highland Capital (a) further interfered in bad faith with UBS's contractual rights and the Fund Counterparties' contractual obligations under the Warehouse Agreements, thereby breaching the covenants of good faith and fair dealing inherent in the Warehouse Agreements; and (b)

113.

The full extent of UBS's

injury should be determined at trial.

114.

**FIRST CAUSE OF ACTION**  
**(Fraud)**

115. UBS repeats and realleges the allegations set forth in paragraphs 1 through 114 of this Complaint as if fully set forth herein.

116. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

117. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

118. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties as well as information about their finances and assets, including, but not limited to, information regarding the following:

(a)

[REDACTED]

119. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions,

Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

120. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances and assets when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

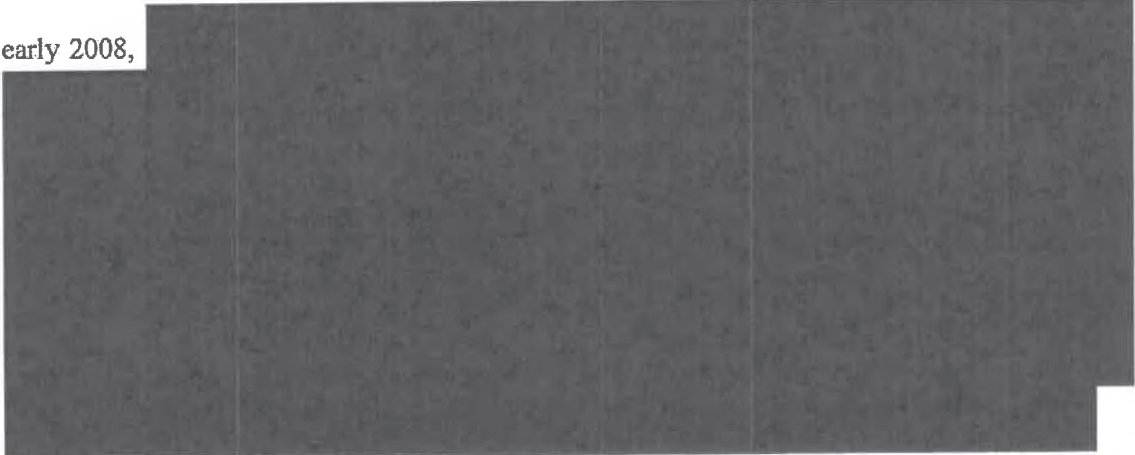
121. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

122. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances and assets. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Fund Counterparties to complete or clarify the information that it provided to UBS concerning the Fund Counterparties' finances and assets. Consequently, Highland Capital's and the Fund Counterparties' concealment of the Fund Counterparties' finances and assets was fraudulent.

123. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund Counterparties' financial condition and assets. In particular, UBS reasonably and justifiably



relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties' finances and assets. UBS also had no reason to believe that the financial information that Highland Capital provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008,



124. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

125. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

126. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of \$686 million in losses that the Fund Counterparties cannot pay to UBS.

127. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(Fraud)**  
**(Pled Solely To Preserve For Appeal)**

128. UBS repeats and realleges the allegations set forth in paragraphs 1 through 127 of this Complaint as if fully set forth herein.

129. In connection with restructuring the Original Engagement, and negotiating the terms of the Agreements and Restructured Transaction, Highland Capital and the Fund Counterparties had a duty to communicate accurate and complete information to UBS.

130. As alleged above, in connection with negotiating the Restructured Transaction, Highland Capital and the Fund Counterparties intentionally misrepresented material facts and made Omissions (as defined earlier herein).

131. As set forth in more detail above, prior to the restructuring being completed, and the Agreements being executed, Highland Capital and the Fund Counterparties misrepresented information and made Omissions to UBS concerning the creditworthiness of the Fund Counterparties and information about their finances, assets and business practices, including, but not limited to, information regarding the following:

(a)

[REDACTED]

132. Highland Capital and the Fund Counterparties acted knowingly and purposefully in making the materially false representations and Omissions to UBS in connection with negotiating the Restructured Transaction to induce UBS to enter the Agreements. Highland Capital and the Fund Counterparties knew that their representations and Omissions were materially false and misleading. Knowingly using material misrepresentations and Omissions,

Highland Capital and the Fund Counterparties intended to induce, and fraudulently induced UBS into entering the Agreements.

133. These Omissions rendered the Fund Counterparties' representations, statements and financial statements materially misleading. Because Highland Capital and the Fund Counterparties concealed this information from UBS, UBS could not properly evaluate SOHC's ability to satisfy its obligations to UBS. For instance, UBS received financial reports from Highland Capital for the Fund Counterparties that suggested that the Fund Counterparties held hundreds of millions of dollars worth of assets that could be used to satisfy their obligations to UBS. However, a substantial portion of the assets that UBS reasonably believed would be available, were, in fact, not going to be available to pay UBS because they were going to be encumbered as a result of other transactions. In other words, because Highland Capital concealed its intentions, the financial reports that it provided to UBS were misleading as they provided UBS with false and illusory comfort regarding the Fund Counterparties' capacity to fulfill their contractual obligations to UBS. As the Fund Counterparties' investment manager, Highland Capital would have led the negotiations related to the other financing arrangements.

134. Similarly, during negotiations concerning the Initial Restructuring Collateral, Highland Capital and SOHC made an additional Omission by not disclosing to UBS the fact that SOHC had a serious liquidity problem. SOHC had to borrow cash from Highland Capital to satisfy the cash portion of its Initial Restructuring Collateral obligation. On or about December 18, 2007, while the parties were negotiating the restructuring, Highland Capital loaned \$30 million to SOHC, which Highland Capital and SOHC's alter ego, Highland Financial, earmarked for SOHC to use as collateral in connection with negotiating extensions of warehouse facilities, including the one with UBS. As Highland Financial's and SOHC's investment manager, Highland Capital knew about SOHC's liquidity problems since they were

discussed openly at Highland Financial board meetings attended by Highland Capital. The failure to fully disclose SOHC's liquidity problem, and its inability to meet the Initial Restructuring Collateral obligation using its own cash assets was an Omission, because it was indicative of the strength of SOHC's finances and assets, and SOHC's ability to satisfy obligations to UBS.

135. Highland Capital and the Fund Counterparties also concealed from UBS that Highland Capital had to commingle assets among its various affiliates and disregard corporate formalities to satisfy the Fund Counterparties' liquidity needs. Facts and information concerning these business practices, including Highland Capital's commingling of assets and disregard of corporate formalities was information solely and peculiarly within the knowledge of Highland Capital and its affiliates. As the investment manager to Highland Financial, SOHC and CDO Fund (as well as the Affiliated Transferees), Highland Capital knowingly arranged and caused the asset transfers between and among the various affiliates in disregard of corporate formalities.

136. Highland Capital and the Fund Counterparties also knew that their false representations and Omissions were material to and caused UBS's decision to enter the Agreements. In particular, the misrepresentations and Omissions were both quantitatively and qualitatively material to UBS inasmuch as UBS would have acted differently had it known the truth about the Fund Counterparties' finances, assets and business practices when UBS made the decision to go forward with the restructuring and releasing, among other things, valuable claims against Highland Capital.

137. In addition, if UBS had known that Highland Capital and the Fund Counterparties ignored corporate formalities or that Highland Capital freely transferred assets



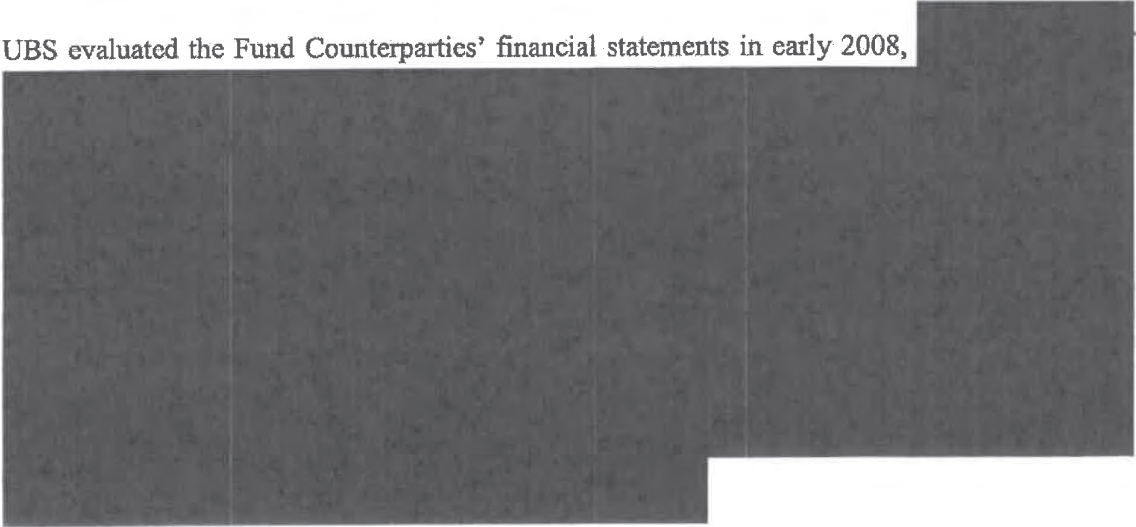
among its controlled entities, UBS would not have entered the Restructured Transaction. These misrepresentations and Omissions proximately caused harm to UBS.

138. UBS was not aware and could not have been aware of the falsity and misleading nature of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions. The facts and information underlying the false, inaccurate and incomplete financial reports that Highland Capital and the Fund Counterparties provided to UBS in connection with negotiating the Restructured Transaction were peculiarly within Highland Capital's and the Fund Counterparties' knowledge.

139. Highland Capital and the Fund Counterparties had superior knowledge compared to UBS about Highland Capital's and the Fund Counterparties' finances, assets and business practices. Indeed, such facts and information were solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Moreover, it was necessary for Highland Capital and the Highland Entities to complete or clarify the information that it provided to UBS concerning the Fund Counterparties' finances, assets and business practices. Consequently, Highland Capital's and the Fund Counterparties' concealment about the Fund Counterparties' finances, assets and business practices was fraudulent.

140. UBS reasonably and justifiably relied to its detriment on Highland Capital's and the Fund Counterparties' misrepresentations and Omissions regarding the Fund Counterparties' financial condition, assets and business practices. In particular, UBS reasonably and justifiably relied on misrepresentations and Omissions of facts and information solely and peculiarly within the knowledge of Highland Capital and the Fund Counterparties. Given UBS's prior dealings with Highland Capital and its affiliates, as well as Highland Capital's size and presence in the market, UBS had no reason to question the veracity and completeness of the financial information that Highland Capital provided to UBS about the Fund Counterparties'

finances, assets and business practices. UBS also had no reason to believe that the financial information that Highland Capital and the Fund Counterparties provided to it to induce UBS to enter the Restructured Transaction would be false, incomplete or otherwise misleading. When UBS evaluated the Fund Counterparties' financial statements in early 2008,



141. But for Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS would not have entered the Agreements, or released its claims against Highland Capital and the Fund Counterparties arising out of the Original Engagement.

142. In reasonable and justifiable reliance on the foregoing material misrepresentations and Omissions, UBS also surrendered and released valuable claims against Highland Capital and the Fund Counterparties at a time when UBS could have been made whole for the losses that it had suffered to that point as a result of the Original Engagement. Nor would UBS have suffered the additional losses in the Warehouse Facility.

143. UBS reasonably relied to its detriment on Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions. As a direct and proximate result of Highland Capital's and the Fund Counterparties' misrepresentations and Omissions, UBS

continued to maintain the Warehouse Facility through, at least, December 3, 2008, suffering in excess of \$686 million in losses that the Fund Counterparties cannot pay to UBS.

144. Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions were the direct and proximate cause of UBS's losses complained of herein. As a direct result of, and in reliance upon, Highland Capital's and the Fund Counterparties' material misrepresentations and Omissions, UBS was induced to, among other things, (a) enter the Agreements; (b) release its pre-existing claims against Highland Capital and the Fund Counterparties related to the Original Engagement; and (c) assume the credit-risk of the Fund Counterparties; and as a direct result, caused UBS to incur substantial losses and damages in an amount to be determined at trial.

145. Paragraphs 145 to 156 have been intentionally left blank.

**THIRD CAUSE OF ACTION**  
**(Breach of Covenant of Good Faith and Fair Dealing)**

157. UBS repeats and realleges the allegations set forth in paragraphs 1 through 156 of this Complaint as if fully set forth herein.

158. The Agreements are valid and binding contracts. As such, they each contain an implied covenant of good faith and fair dealing. UBS has fully performed all of its obligations under the Agreements.

159. Highland Capital controlled the Fund Counterparties through both its direct and indirect ownership and other interests in various entities, including the Fund Counterparties, and its role as investment manager for the Fund Counterparties.

160. When it entered the Agreements, Highland Capital agreed that UBS would not have to bear the risk of loss in connection with the Warehouse Assets that UBS held in the Warehouse Facility. Instead, Highland Capital agreed that the Fund Counterparties, which

Highland Capital controlled, would bear 100% of the risk of loss in connection with the Restructured Transaction.

161. Highland Capital had an implied duty of good faith not to take (or fail to take) any actions that would frustrate the clear intent of the parties that UBS would not have to bear any of the risk of losses in the Warehouse Facility. In particular, the implied covenant of good faith and fair dealing inherent in the Agreements barred Highland Capital from taking affirmative measures that increased the likelihood that the Fund Counterparties would be unable to bear losses in connection with the Restructured Transaction.

162. Highland Capital breached the implied covenant of good faith and fair dealing implied in the Agreements by taking affirmative actions (and refraining from taking other actions) that impaired UBS's ability to recover losses from the Fund Counterparties as contemplated by the Agreements, and by making it impossible for the Fund Counterparties to pay UBS what they owed it under the terms of the Warehouse Agreements.

163. Specifically, as described above, between March 14, 2008 and December 3, 2008, as losses in the Warehouse Facility grew, Highland Capital exercised its control over the Fund Counterparties to dissipate the Fund Counterparties' assets and transfer their assets [REDACTED], thereby impairing the Fund Counterparties' ability to bear losses in the Warehouse Facility. Highland Capital transferred assets out of the Fund Counterparties during the course of the Restructured Transaction in bad faith, and to UBS's detriment. Given its knowledge of the Fund Counterparties' obligations to UBS, the transfers caused by Highland Capital violated the duty of good faith and fair dealing owed by Highland Capital to UBS under the Agreements.

164. Highland Capital [REDACTED]

[REDACTED] violated the duty of good faith and fair dealing owed by Highland Capital to UBS under the Agreements.

165. Highland Capital also used its control over the Fund Counterparties to

[REDACTED]

166. As a result of Highland Capital's breaches of the duty of good faith and fair dealing implied in the Agreements, UBS has incurred losses that should have been borne by the Fund Counterparties. UBS has suffered and will continue to suffer losses and damages in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(Fraudulent Conveyances)**

167. UBS repeats and realleges the allegations set forth in paragraphs 1 through 166 of this Complaint as if fully set forth herein.

168. Between March 14, 2008 and December 3, 2008, as losses in the Warehouse Facility grew, Highland Capital exercised its control over the Fund Counterparties and caused the Fund Counterparties to transfer valuable cash and assets out of the Fund Counterparties, thereby impairing their ability to bear losses in the Warehouse Facility, and otherwise satisfy their obligations to creditors, including UBS.

[REDACTED]



169.

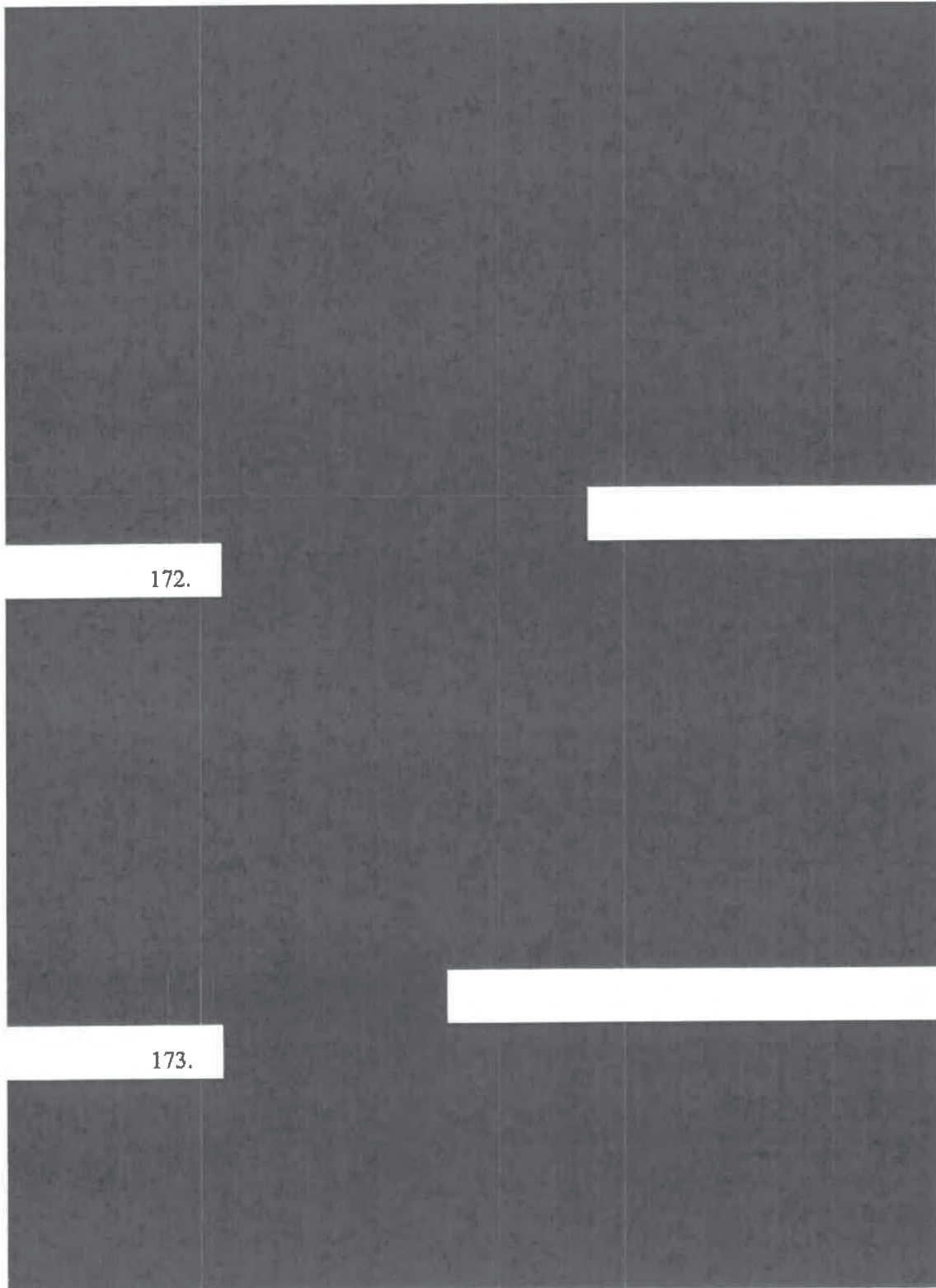


170. For example,



171.





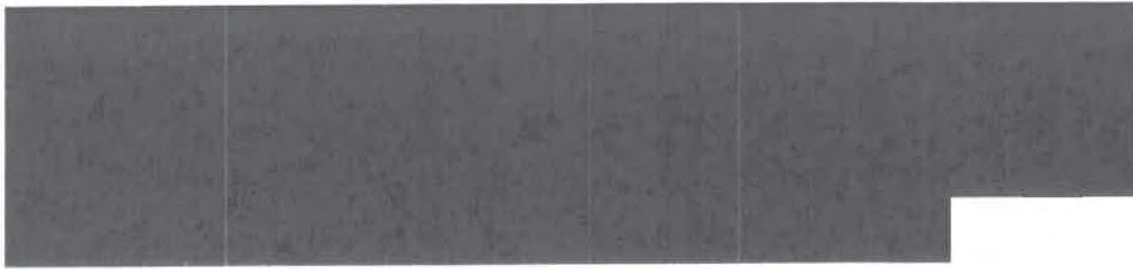
174.

175.

176.

177.

178.



179. As a result of the foregoing fraudulent conveyances, the Fund Counterparties were unable to satisfy their obligations to UBS. As a result of the foregoing fraudulent conveyances, UBS has been harmed in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**(Tortious Interference With Contractual Relations)**  
**(Pled Solely To Preserve For Appeal)**

180. UBS repeats and realleges the allegations set forth in paragraphs 1 through 179 of this Complaint as if fully set forth herein.

181. The Agreements are valid and binding contracts.


182. The parties agreed that UBS would not bear the risk of any losses in connection with the Restructured Transaction. As a direct result of the Fund Counterparties' breach of the Warehouse Agreements, UBS suffered no less than \$686,853,290.26 in damages. Under the terms of the Warehouse Agreements, the Fund Counterparties' obligation to pay UBS for losses in the Warehouse Facility expressly survived the termination of the Agreements.

183. Highland Capital knew of the Agreements, and were familiar with their terms, including the Fund Counterparties' obligations to UBS thereunder. The Affiliated Transferee Defendants, also knew of the Agreements, and their terms, including the Fund Counterparties' obligations to UBS thereunder.



184. Highland Capital and the Affiliated Transferee Defendants intentionally and improperly caused and ensured a breach of the Warehouse Agreements by the Fund Counterparties, thereby tortiously interfering with UBS's rights under the Agreements.

185. Specifically, in 2008 and 2009 Highland Capital wrongfully caused the improper and fraudulent asset transfers, payments, distributions and dividends described above, and thereby tortiously interfered with UBS's contractual relationship with the Fund Counterparties by knowingly impairing UBS's contractual right under the Warehouse Agreements to be reimbursed by the Fund Counterparties for the losses on the Warehouse Assets. For example, Highland Capital wrongfully caused the March 2009 Fraudulent Conveyance for which there was no legitimate purpose. The Affiliated Transferee Defendants



186. Highland Capital and the Affiliated Transferee Defendants



187. Highland Capital and the Affiliated Transferee Defendants engaged in the foregoing unlawful and improper conduct, and tortiously interfered with UBS's contractual rights under the Warehouse Agreements, for their own improper personal gain by knowingly violating UBS's rights and making it impossible for the Fund Counterparties to perform under the Warehouse Agreements. In particular, the foregoing conduct constitutes independent torts and predatory acts directed at UBS for Highland Capital's and the Affiliated Transferee Defendants' own personal gain.

188. As a direct and proximate result of Highland Capital's and the Affiliated Transferee Defendants' tortious interference with UBS's contractual rights under the Agreements, UBS has suffered damages in an amount to be determined at trial. Had Highland Capital and the Affiliated Transferee Defendants not tortiously interfered with UBS's contractual rights, the Fund Counterparties would have been able to make payments to UBS of the amount they owed to UBS under the Warehouse Agreements.

189. Paragraphs 189 to 197 have been intentionally left blank.

**RELIEF DEMANDED**

WHEREFORE, plaintiffs UBSS and UBS AG demand judgment:

(a) On the first cause of action, declaring that UBS was induced to enter the Agreements as a result of fraud committed by Highland Capital, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than \$686,853,290.26;

(b) On the second cause of action, which is pled solely to preserve UBS's appellate rights, declaring that UBS was induced to enter the Agreements as a result of fraud committed by Highland Capital, and awarding damages to UBS for all losses and liabilities incurred by UBS, and that UBS incurs, with respect to the Agreements and the Warehouse Facility, including, without limitation, interest, reasonable attorneys' and accountants' fees and expenses and any other losses, fees and expenses that UBS incurred or incurs, in an amount to be determined at trial but in any event, no less than \$686,853,290.26;

(c) On the third cause of action, declaring that Highland Capital breached the duty of good faith and fair dealing implied in the Agreements, and awarding UBS an amount to be determined at trial;

(d) On the fourth cause of action, (i) declaring that the dispositions of the Fund Counterparties' and Highland Financial's assets, as directed by Highland Capital, constituted fraudulent conveyances; (ii) appointing a receiver over Highland Capital; (iii) directing that a full accounting be had of Highland Capital's affairs and finances; (iv) imposing a constructive trust over Highland Capital's assets until such an accounting is completed; and/or (v) awarding UBS damages in an amount to be determined at trial, but no less than the value of the assets fraudulently and improperly transferred, or, alternatively, directing that Highland Capital and its partners, members or shareholders return to the Fund Counterparties any assets or consideration received from Highland Financial or the Fund Counterparties, directly or indirectly, as distributions, dividends, consideration, compensation, fees, interest, principal or otherwise, between March 14, 2008 and the present.

(e) On the fifth cause of action, which is pled solely to preserve UBS's appellate rights, declaring that Highland Capital is liable for tortiously interfering with UBS's contractual rights under the Warehouse Agreements, and awarding UBS an amount to be determined at trial;

(f) Awarding UBS punitive damages in an amount to be determined at trial;

(g) Granting UBS its costs and disbursements, including reasonable attorneys' fees and expenses of this action;

(h) Granting UBS pre-judgment interest; and

(i) Granting such other and further relief as the Court deems just and proper.

New York, New York  
June 28, 2010

CADWALADER, WICKERSHAM & TAFT LLP

By: /s/ Gregory A. Markel

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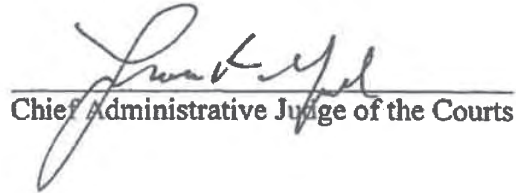
*Attorneys for Plaintiffs UBS Securities LLC  
and UBS AG, London Branch*

## **EXHIBIT 31**



ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, in light of the emergency circumstances caused by the continuing COVID-19 outbreak in New York State and the nation, and consistent with the Governor of New York's recent executive order suspending statutes of limitation in legal matters, I direct that, effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A. This directive applies to both paper and electronic filings.

  
Chief Administrative Judge of the Courts

Dated: March 22, 2020

AO/78/20

## Exhibit A

Essential Proceedings  
Administrative Order AO/78/20  
March 22, 2020

- A. Criminal matters
  - 1. arraignments
  - 2. bail applications, reviews and writs
  - 3. temporary orders of protection
  - 4. resentencing of retained and incarcerated defendants
  - 5. essential sex offender registration act (SORA) matters
- B. Family Court
  - 1. child protection intake cases involving removal applications
  - 2. newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof
  - 3. emergency family offense petitions/temporary orders of protection
  - 4. orders to show cause
  - 5. stipulations on submission
- C. Supreme Court
  - 1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
  - 2. MHL hearings addressing the involuntary administration of medication and other medical care
  - 3. newly filed MHL applications for an assisted outpatient treatment (AOT) plan
  - 4. emergency applications in guardianship matters
  - 5. temporary orders of protection (including but not limited to matters involving domestic violence)
  - 6. emergency applications related to the coronavirus
  - 7. emergency Election Law applications
  - 8. extreme risk protection orders (ERPO)
- D. Civil/Housing matters
  - 1. applications addressing landlord lockouts (including reductions in essential services)
  - 2. applications addressing serious code violations
  - 3. applications addressing serious repair orders
  - 4. applications for post-eviction relief
- E. All Courts
  - 1. any other matter that the court deems essential

This list of essential proceedings is subject to ongoing review and amendment as necessary.

## **EXHIBIT 32**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed June 19, 2020

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

) Chapter 11

) Case No. 19-34054 (SGJ)

) Related to Docket Nos. 644, 687, 692,  
694, 701 and, 733

**ORDER DENYING UBS'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
TO PROCEED WITH STATE COURT ACTION**

Upon the *Motion for Relief from the Automatic Stay to Proceed with State Court Action* [D.I. 644] ("Motion") filed by UBS Securities LLC and UBS AG, London Branch (collectively "UBS") (the "Motion")<sup>2</sup> seeking an order granting relief from the automatic stay provided by Section 362 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.



Code”), to allow UBS to continue litigation against the Debtor pending in New York State Court [Docket No. 644]; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may issue a final order consistent with Article III of the United States Constitution; and venue of this Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and having considered the objections [Docket Nos. 687, 692, 694 and 701] filed by the Debtor, the Official Committee of Unsecured Creditors, Acis Capital Management, L.P. and Acis Capital Management GP, and the Redeemer Committee, and the omnibus reply to objections [Docket No. 733] filed by UBS; and oral argument in connection therewith; and for the reasons stated upon the record herein, it is  
**HEREBY ORDERED THAT:**

1. The Motion seeking relief from the automatic stay is DENIED.
2. The deadline for UBS to file a proof of claim shall be, and hereby is, extended to and including June 26, 2020.
3. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

**## END OF ORDER ##**

## **EXHIBIT 33**



## Why Not Arbitrate? Breaking the Backlog in State and Federal Courts

New York Law Journal

May 15, 2020 Friday

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### New York Law Journal

**Section:** PERSPECTIVE; Pg. p.6, col.4; Vol. 263; No. 94

**Length:** 737 words

**Byline:** SHIRA A. SCHEINDLIN

#### Body

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New York's state and federal courts have worked hard in these unprecedented times to provide essential services. This means that criminal cases and civil cases involving health and safety have been considered "essential" and are being heard through remote or virtual means. But matters considered "nonessential" have been put on hold. When the courts reopen, there will be a large backlog of civil matters. With the best of intentions, it is apparent that civil trials will not go forward for many months, particularly if there has been a jury demand. Some have predicted that there will be no civil juries in New York until 2021.

In most cases, such a significant delay is bad for everyone. Businesses need certainty. Does a new product infringe a patent? Does a product infringe a trademark? Will an insurance company need to continue to place a large reserve on an outstanding claim? Does a company need to continue to disclose a potential liability on public filings? Will an employee be reinstated or can her position be filled? Many more questions like these could be asked. The point is that while delay is sometimes welcome to avoid the unwelcome news that monies are owed, in many business disputes what is most needed is a determination and closure.

If the courts cannot resolve commercial disputes due to the priority that must be accorded to matters involving danger to the community-including criminal matters, domestic violence, and health and safety issues-then the parties to commercial disputes might wish to consider other options for dispute resolution.

One option, of course, is to negotiate directly in an attempt to settle the lawsuit. When this fails, mediation with the help of an experienced neutral is the next step. But at the end of the day, if neither direct or

Why Not Arbitrate? Breaking the Backlog in State and Federal Courts

facilitated negotiations work, the parties in commercial disputes should consider designing their own dispute resolution process by consenting to arbitration.

Arbitration does not have to be agreed to in advance of a dispute. Many parties bring their dispute to court, only to decide after years of high cost litigation, and long waits for a trial date, that they should leave court and agree to a confidential and expeditious arbitration. Arbitration can be a very flexible process. The parties can design whatever process they wish. They do not have to be subject to the rules of any particular provider of dispute resolution services. Parties can choose to retain a sole arbitrator or can choose a panel of three arbitrators. They can determine the selection process and they can agree on the required qualifications of the arbitrator. They can agree on whether discovery will be permitted, whether there will be live testimony or written submissions, whether there will be a post-hearing briefing, and even whether an appeal would go before an arbitral appellate panel. In short, the parties have much more control over the process of resolving a dispute than they do in court.

Experienced arbitrators are ready to assist in designing a process that can be tailored to the needs of a particular dispute. Many arbitrators are affiliated with law firms and can provide the space needed for in-person arbitrations, or can host a virtual arbitration.

As a former federal judge, and now an experienced arbitrator, I have served several times as an arbitrator in cases where the parties designed their own process. In those matters the parties achieved a speedy and efficient resolution. Some examples may be helpful. In one arbitration the parties agreed that the arbitrators could only award one of two amounts. They wanted nothing more than that number after a full week of hearings. No reasoning, no long decision-just a low number or a high number. That was their choice. In another case, involving many millions of dollars, counsel agreed to a timed trial, with no direct examination of any witness-only cross-examination and re-direct. The point is that the parties have the freedom to design a process that best fits their case.

I suggest to you that, given the realities of the current situation, arbitration is something all parties in commercial disputes should consider if they wish to resolve their dispute and return to the business of doing business.

SHIRA A. SCHEINDLIN, U.S.D.J. (Ret.) is affiliated with AAA, CPR, FedArb and NAM. In addition to arbitration, she is available for mediations and to serve as a special master.

**Load-Date:** May 15, 2020

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End of Document

## **EXHIBIT 34**



This list will be updated with new information as it becomes available. Latest updates include Texas, Vermont, Washington and Wisconsin.



### **New Mexico**

The District of New Mexico postponed all civil and criminal jury trials set to begin on or before May 29. Grand jury proceedings were permitted to resume at the discretion of the U.S. attorney for the District of New Mexico as of May 4. All naturalization ceremonies through May 29 are canceled.

In the state court system, no more than 15 people will be allowed in each courtroom. Judges must conduct civil and criminal proceedings remotely except when an emergency requires an in-person appearance. Civil and criminal jury trials that had not started as of March 17 are suspended until May 29, and payment deadlines for fines and fees between March 19 and May 29 are extended by 30 days.

### **New York**

The Southern District of New York has suspended notice all civil and criminal jury trials until further. While case-related activities and naturalizations will continue, other noncase activities such as Continuing Legal Education events and school visits are canceled until further notice. All bankruptcy hearings and conferences scheduled to be held in the courthouses of the Manhattan Division, White Plains Division and Poughkeepsie Division of the bankruptcy court will be conducted by telephone unless the presiding judge decides otherwise.

The court urges counsel to check individual judges' webpages for possible orders, including orders extending time in civil matters and adjourning conferences.

The Southern District is prohibiting those who have visited China, Italy, Iran, Japan or South Korea along with a slew of European countries, according to signs posted at courthouse entrances on March 12. The European countries are Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Vatican City, Iceland, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden, Switzerland, San Marino and Spain.

The court is also barring those with a fever, cough or shortness of breath, and the executive office in that district will not be issuing new attorney service passes until further notice. Access to courthouses is restricted to certain groups, including those with

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official court business, courthouse employees, certain contractors, mail carriers, law enforcement, credentialed press, family members of criminal defendants and jurors in ongoing trials.

In bankruptcy court, debtors with Chapter 13 cases before Chief Judge Cecelia G. Morris and Judge Sean H. Lane are waived from in-person court appearances. Attorneys and unrepresented debtors who are showing signs of illness must adjourn their cases. The contact for Judge Morris is Vanessa Ashmeade, (845) 451-6367. The contact for Judge Lane is Arturo Tavaréz at (914) 467-7094.

In the Eastern District of New York, all petit jury selections and jury trials scheduled to start between April 27 and June 15 are postponed, as are grand jury selections. Compliance with trial deadlines is left to the presiding judge's discretion. All naturalization ceremonies are suspended for 45 days as of March 16. In-person attorney admission ceremonies at all courthouses are suspended until further notice. For all criminal matters that had preliminary hearings before magistrate judges scheduled for April 27 through June 15, preliminary hearing deadlines are extended 60 days after the initial appearance.

The district is allowing video or telephone conferencing for several types of proceedings, including detention hearings, initial appearances and arraignments.

Access to court buildings is restricted to "those whose presence is essential," according to an order. The court is prohibiting those who have traveled to China, Italy, Iran, Japan or South Korea and a slew of European countries in the past two weeks. Also prohibited are those who have come into close contact with anyone who has traveled to those countries within the past two weeks, have been asked to self-quarantine, tested positive for the coronavirus or have come into contact with someone who has tested positive.

In the Northern District of New York, all civil and criminal jury selections and trials — including for grand juries — scheduled to begin through June 15 are postponed until further notice. Other criminal matters before magistrate judges will continue to take place as usual. All mass public gatherings, including naturalization ceremonies, are suspended. Those who have tested positive for the coronavirus, have symptoms or may have been exposed to the virus are prohibited from entering any courthouse. Face masks are required in courthouses.

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In the Western District of New York, all civil jury trials and grand jury selections are postponed until June 15. The court encouraged judges to reduce personal appearances for all other proceedings as much as they can. No naturalization ceremonies will be conducted until June 15. Those who have tested positive for the coronavirus, have symptoms or may have been exposed to the virus are prohibited from entering any courthouse. Anyone not wearing a mask will also be prohibited.

For state courts, new civil and criminal jury trials are suspended as of March 16. Jury selection is also halted, and grand juries will not be empaneled "absent exceptional circumstances," although current grand juries will remain on duty along with some trial jurors. Starting May 18, courts in 30 upstate counties will gradually begin to reopen as judges, clerks and staff return to their courthouses. Cases may be filed electronically in those counties starting May 18. Social distancing and other measures will be enforced, and anyone entering the courthouses will be required to wear a mask. Nonemployee court visitors will be required to undergo COVID-19 screening before entering a courthouse. Starting May 25, the state is allowing electronic filings in all state courts.

The New York Attorney General's Office is encouraging parties to effect personal service by mail. For New York City service, the address is 28 Liberty St., 15th Floor, New York, NY 10005, Attn: managing attorney's office/personal service. For Albany, the address is The Capitol Albany, NY 12224-0341, Attn: A&O/personal service. And for emergency applications, the office requests parties to email applications to [Service@ag.ny.gov](mailto:Service@ag.ny.gov) and call the managing attorney's office main line at 212-416-6157.

The U.S. Court of International Trade in Manhattan is prohibiting entry to those who have visited China, Italy, Iran or South Korea in the past two weeks, as well as those who have been asked to self-quarantine. The restriction also applies to those who have tested positive for the coronavirus or have come into close contact with someone who has tested positive. The court is allowing teleconferencing and video conferencing with the approval of a presiding judge.

### **North Carolina**

In the Eastern District of North Carolina, certain proceedings may be conducted remotely. Those who have tested positive for the coronavirus, have symptoms of COVID-19 or may have been exposed to the virus are prohibited from visiting any courthouse

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## **EXHIBIT 35**



**Elissa A. Wagner**

---

**From:** Angela Somers <asomers@rctlegal.com>  
**Sent:** Monday, December 02, 2019 1:39 PM  
**To:** Scott Ellington; Andrew.Clubok@lw.com  
**Cc:** Jeff Gross; Kuan.Huang@lw.com  
**Subject:** RE: Confirmation of our understanding

Thanks Scott. We already had a call with the Court and they understand these to be the terms, subject to client confirmation which you have now given. We only contact the Court if something is different.

Andy-Debtor's bankruptcy counsel should be on the stay relief stipulation.

**From:** Scott Ellington <SELLington@HighlandCapital.com>  
**Sent:** Monday, December 2, 2019 4:17 PM  
**To:** Andrew.Clubok@lw.com  
**Cc:** Angela Somers <asomers@rctlegal.com>; Jeff Gross <jgross@rctlegal.com>; Kuan.Huang@lw.com  
**Subject:** Re: Confirmation of our understanding

Yes approved.

Sent from my iPhone

On Dec 2, 2019, at 2:09 PM, Andrew.Clubok@lw.com <Andrew.Clubok@lw.com> wrote:

Scott:

Thanks for speaking today. Please respond "confirmed" if you agree this reflects our discussion.

(1) We're going to tell the Court today that we are committed to having good faith settlement discussions, and we ask the Court to hold the opinion (and the attached judgment, the form of which we have already agreed to and advised her of such during our last call) for another 10 business days from today (with the possibility we will extend further as needed)

(2) We also will tell the Court that we plan to enter into the attached stipulation which is an agreed upon request for relief from automatic stay, such that IF we can't resolve things we agree that "Phase II" can/should go forward in Justice Friedman's court

(3) We are going to tell the Court that even if we cannot reach an overall settlement, we may not need "Phase II" because we may just stipulate to the debtor being responsible for the verdict

(4) BUT, if none of those efforts to settle work, we will be asking the Court for a "Phase II" trial in about 6 months (although, again, we all in good faith will do everything we can to avoid that)

Does that cover it?

ABC

A127

**Andrew Clubok**

**LATHAM & WATKINS LLP**  
555 Eleventh Street, NW  
Suite 1000  
Washington, D.C. 20004-1304  
Direct Dial: +1.202.637.3323  
Fax: +1.202.637.2201

885 Third Avenue  
New York, NY 10022-4834  
Direct Dial: +1.212.906.1272  
Email: [andrew.clubok@lw.com](mailto:andrew.clubok@lw.com)  
<http://www.lw.com>

---

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---

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<Highland UBS - Stipulation for Relief from Automatic Stay\_12-2-19.DOC>

<2019-11-22 CLEAN DRAFT UBS Notice of Proposed Judgment Proposed Judgment.docx>

---

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## **EXHIBIT 36**

Case 1:21-cv-01295-X Document 22-13 Filed 09/14/21 Entered 09/14/21 16:11:49 Page 2 of 6

**Elissa A. Wagner**

---

On 3/6/20, 4:51 PM, "Jeff Pomerantz" <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)> wrote:

The state court litigators who were copied on your email?

I don't recall you reaching out to anyone at PSZJ to discuss the issue.

In any event, we will discuss with the Board and revert.

Jeff

On 3/6/20, 4:40 PM, "Andrew.Clubok@lw.com" <[Andrew.Clubok@lw.com](mailto:Andrew.Clubok@lw.com)> wrote:

Jeff:

Angela Somers and Jeff Gross -- as indicated in the email chain I forwarded you. And we reiterated this agreement many times with them and with Scott.

Andrew Clubok

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Washington, D.C. 20004-1304  
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New York, NY 10022-4834  
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Email: [andrew.clubok@lw.com](mailto:andrew.clubok@lw.com)  
[https://protect-us.mimecast.com/s/Ykp\\_C5yWXyf02k6JUzkunX](https://protect-us.mimecast.com/s/Ykp_C5yWXyf02k6JUzkunX)

-----Original Message-----

From: Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>  
Sent: Friday, March 6, 2020 7:21 PM  
To: Clubok, Andrew (DC) <[Andrew.Clubok@lw.com](mailto:Andrew.Clubok@lw.com)>  
Cc: Robert Feinstein <[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)>; Bjork, Jeff (LA) <[Jeff.Bjork@lw.com](mailto:Jeff.Bjork@lw.com)>; Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>  
Subject: Re: Confirmation of our understanding

Andy - other than Scott Ellington what counsel of the debtor are you referring to in your email? It wasn't anyone from Pachulski.

We will talk about your request with the board and get back to you. No need to speak before we do.

Jeff

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Case 1:20-cv-01295-X Document 22-13 Filed 09/14/21 Page 61 of 207 PageID 3352

Sent from my iPhone

On Mar 6, 2020, at 4:17 PM, "Andrew.Clubok@lw.com" <Andrew.Clubok@lw.com> wrote:

Robert

I trust you misunderstood me (as you said, I caught you unawares and you weren't really following), as what you are saying below about our conversation is inaccurate. As you said when we spoke, you were not following our discussion (I'm not blaming you at all).

Anyway, before this gets further afield, let's set up a call either over the weekend or Monday morning. To be clear about our position: we already have an agreement with Highland to enter into this stipulation. We made that agreement months ago with Highland, who was represented by counsel. And we communicated it to the Court (and reaffirmed it a number of times since then).

That said, we do continue to believe/hope that we will be able to reach a negotiated resolution that will make further litigation unnecessary. But because we are now approaching the deadline for submitting proofs of claim, we need to go ahead and execute this agreement as we agreed (and reconfirmed).

Again, it is probably better that we discuss all of this live rather than continue any further back and forth, so please let us know whether your team is available this weekend or on Monday.

Thanks

ABC

Andrew Clubok  
Latham & Watkins LLP  
202-637-3323 (DC)  
212-906-1272 (NY)

From: Robert Feinstein <rfeinstein@pszjlaw.com<mailto:rfeinstein@pszjlaw.com>>  
Date: Friday, Mar 06, 2020, 6:24 PM  
To: Clubok, Andrew (DC) <Andrew.Clubok@lw.com<mailto:Andrew.Clubok@lw.com>>  
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com<mailto:jpomerantz@pszjlaw.com>>, Bjork, Jeff (LA) <Jeff.Bjork@lw.com<mailto:Jeff.Bjork@lw.com>>  
Subject: RE: Confirmation of our understanding

Andrew, this matter is going to get a fresh look with the benefit of bankruptcy counsel. I also note that in our call today, you started by saying UBS wants to discuss settlement but would like the debtor to agree now to a stipulation that provides that if settlement efforts fail, then the stay will be lifted. Yet what you sent provides for immediate stay relief. I will await client instruction but I seriously doubt we will be signing what you have tendered.

Robert Feinstein  
Pachulski Stang Ziehl & Jones LLP  
Direct Dial: 212.561.7710  
Tel: 212.561.7700 | Cell: 917-533-1996 | Fax: 212.561.7777  
rfeinstein@pszjlaw.com<mailto:rfeinstein@pszjlaw.com>

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vCard<<https://protect-us.mimecast.com/s/rZmrC68048foqLyNu6U0Zq>> | Bio<<https://protect-us.mimecast.com/s/ukDIC73A23CmwGZgIBa8sE>> | LinkedIn<<https://protect-us.mimecast.com/s/APiUC82902UjENYGHM77VV>>

<<https://protect-us.mimecast.com/s/GmiEC9r2PrSmD420IPwFug>>

<image001.jpg>

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

From: Andrew.Clubok@lw.com [mailto:Andrew.Clubok@lw.com]

Sent: Friday, March 06, 2020 6:16 PM

To: Robert Feinstein

Cc: Jeff Pomerantz; Jeff.Bjork@lw.com

Subject: RE: Confirmation of our understanding

Robert:

As you know, we dealt with inside and outside counsel for highland on this (and presumed you were in the loop to whatever extent highland thought was appropriate). I understand you may not personally have been involved.

Anyway, we would like to finalize this on Monday. If you'd like to discuss, happy to carve out time then.

Andrew Clubok  
Latham & Watkins LLP  
202-637-3323 (DC)  
212-906-1272 (NY)

From: Robert Feinstein <rfeinstein@pszilaw.com<mailto:rfeinstein@pszilaw.com>>

Date: Friday, Mar 06, 2020, 6:02 PM

To: Clubok, Andrew (DC) <Andrew.Clubok@lw.com<mailto:Andrew.Clubok@lw.com>>

Cc: Jeff Pomerantz <jpomerantz@pszilaw.com<mailto:jpomerantz@pszilaw.com>>, Bjork, Jeff (LA) <Jeff.Bjork@lw.com<mailto:Jeff.Bjork@lw.com>>

Subject: RE: Confirmation of our understanding

Hi Andrew. Forgive my confusion when we spoke today, I now understand the context for you sending along this stipulation but I also must point out that there was no agreement discussed or made with our firm as Debtors' counsel with respect to bankruptcy stay relief, and as we are lead bankruptcy counsel it is appropriately in our bailiwick. Indeed, as you'll recall, when we met recently, I noted that the stipulation you had discussed with your counterparty to the litigation was not discussed with our firm as it should have been. We will review the stipulation with Highland and revert to you next week.

Robert Feinstein  
Pachulski Stang Ziehl & Jones LLP  
Direct Dial: 212.561.7710  
Tel: 212.561.7700 | Cell: 917-533-1996 | Fax: 212.561.7777  
[rfeinstein@pszilaw.com](mailto:rfeinstein@pszilaw.com)<mailto:rfeinstein@pszilaw.com>

vCard<<https://protect-us.mimecast.com/s/rZmrC68048foqLyNu6U0Zq>> | Bio<<https://protect-us.mimecast.com/s/ukDIC73A23CmwGZgIBa8sE>> | LinkedIn<<https://protect-us.mimecast.com/s/APiUC82902UjENYGHM77VV>>

<<https://protect-us.mimecast.com/s/GmiEC9r2PrSmD420IPwFug>>

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<image001.jpg>

Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

From: Andrew.Clubok@lw.com<mailto:Andrew.Clubok@lw.com> [mailto:Andrew.Clubok@lw.com]

Sent: Friday, March 06, 2020 5:36 PM

To: Robert Feinstein

Cc: Jeff Pomerantz; Jeff.Bjork@lw.com<mailto:Jeff.Bjork@lw.com>

Subject: FW: Confirmation of our understanding

Robert:

As discussed, here's our stipulation (and I'm forwarding you the exchange we had about this with Scott and Angela back in early December).

I'm attaching a "clean copy" and a copy showing "track" changes from the version we agreed to back in December (the only differences reflecting the change of court)

As discussed, we would like to get this on file on Monday. Please let us know who should be on the signature block for your side. Happy to discuss if you have any questions. Have a great weekend.

Thanks

ABC

From: Scott Ellington <SELLington@HighlandCapital.com<mailto:SELLington@HighlandCapital.com>>

Sent: Monday, December 2, 2019 4:17 PM

To: Clubok, Andrew (DC) <Andrew.Clubok@lw.com<mailto:Andrew.Clubok@lw.com>>

Cc: asomers@rctlegal.com<mailto:asomers@rctlegal.com>;

jgross@rctlegal.com<mailto:jgross@rctlegal.com>; Huang, Kuan (NY)

<Kuan.Huang@lw.com<mailto:Kuan.Huang@lw.com>>

Subject: Re: Confirmation of our understanding

Yes approved.

Sent from my iPhone

On Dec 2, 2019, at 2:09 PM, Andrew.Clubok@lw.com<mailto:Andrew.Clubok@lw.com>  
<Andrew.Clubok@lw.com<mailto:Andrew.Clubok@lw.com>> wrote:

Scott:

Thanks for speaking today. Please respond "confirmed" if you agree this reflects our discussion.

(1) We're going to tell the Court today that we are committed to having good faith settlement discussions, and we ask the Court to hold the opinion (and the attached judgment, the form of which we have already agreed to and advised her of such during our last call) for another 10 business days from today (with the possibility we will extend further as needed)

(2) We also will tell the Court that we plan to enter into the attached stipulation which is an agreed upon request for relief from automatic stay, such that IF we can't resolve things we agree that "Phase II" can/should go forward in Justice Friedman's court

(3) We are going to tell the Court that even if we cannot reach an overall settlement, we may not need

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Case 1:21-cv-01295-X Document 22-13 Filed 09/14/21 Entered 09/14/21 16:11:49 Page 6 of 6

“Phase II” because we may just stipulate to the debtor being responsible for the verdict

(4) BUT, if none of those efforts to settle work, we will be asking the Court for a “Phase II” trial in about 6 months (although, again, we all in good faith will do everything we can to avoid that)

Does that cover it?

ABC

Andrew Clubok

LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, D.C. 20004-1304  
Direct Dial: +1.202.637.3323  
Fax: +1.202.637.2201

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New York, NY 10022-4834  
Direct Dial: +1.212.906.1272

Email: [andrew.clubok@lw.com](mailto:andrew.clubok@lw.com)<<mailto:andrew.clubok@lw.com>>

[https://protect-us.mimecast.com/s/Ykp\\_C5yWXyf02k6JUzkunX](https://protect-us.mimecast.com/s/Ykp_C5yWXyf02k6JUzkunX)<[https://protect-us.mimecast.com/s/Ykp\\_C5yWXyf02k6JUzkunX](https://protect-us.mimecast.com/s/Ykp_C5yWXyf02k6JUzkunX)>

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<2019-11-22 CLEAN DRAFT UBS Notice of Proposed Judgment Proposed Judgment.docx>

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## **EXHIBIT 37**

Case 19-34054-sgj11 Doc 2331-37 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 2 of 6

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

In Re: ) **Case No. 19-34054-sgj-11**  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P., ) Dallas, Texas  
Debtor. ) Tuesday, October 6, 2020  
1:30 p.m. Docket  
STATUS CONFERENCE RE:  
OBJECTION TO CLAIM OF UBS  
SECURITIES, LLC AND UBS AG,  
LONDON BRANCH (#928)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor: Jeffrey N. Pomerantz  
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For the Debtor: Robert J. Feinstein  
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For UBS Securities, LLC: Andrew Clubok  
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5 For Redeemer Committee of Mark B. Hankin  
6 the Highland Crusader JENNER & BLOCK, LLP  
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(212) 891-1600

8 For Redeemer Committee of Mark A. Platt  
9 the Highland Crusader FROST BROWN TODD, LLC  
10 Fund: 100 Crescent Court, Suite 350  
Dallas, TX 75201  
(214) 580-5852

11 For the Official Committee Matthew A. Clemente  
12 of Unsecured Creditors: SIDLEY AUSTIN, LLP  
13 One South Dearborn  
Chicago, IL 60603  
(312) 853-7539

14 Recorded by: Michael F. Edmond, Sr.  
15 UNITED STATES BANKRUPTCY COURT  
16 1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

17 Transcribed by: Kathy Rehling  
18 311 Paradise Cove  
19 Shady Shores, TX 76208  
(972) 786-3063

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21

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1 trial. That was all that was left to do. Summary judgment  
2 had been argued. This res judicata and the other -- and I'll  
3 get to the settlement issues in a second -- had all been  
4 argued. There was no further chance for them to get another  
5 bite at that apple. And that's the reason why, Your Honor, we  
6 do object to this. And we get it if Your Honor wants to hear  
7 them out and we'd have to respond and we'll do it in a  
8 reasonable schedule.

9 But what we propose instead, Your Honor, is that this  
10 matter just be set for resolution. We would be ready, and  
11 Highland has -- Highland had told Justice Friedman they'd be  
12 ready to try this case in June. We know from their papers  
13 they've spent I think close to two million dollars now getting  
14 ready for this. We're all ready to try the case as  
15 expeditiously as possible, but certainly before the plan  
16 confirmation. We would say let's just adjudicate our claim  
17 in, you know, November, whether it's mid-November or late  
18 November, sometime so that our claim is just resolved.

19 What Highland proposed to us yesterday is, you know, they  
20 get to do another summary judgment bite at the apple. They  
21 get another chance to convince you to do something different  
22 than the New York Court of Appeals and Justice Friedman told  
23 them they could do when they said denied, go forward to trial.  
24 So they want -- they hope to somehow convince you to do  
25 something different than what the New York courts were -- had

1           THE COURT: -- it almost sounded like you're agreeing  
2 with their res judicata argument, that there are no claims for  
3 conduct arising before February 24, 2009. Did I  
4 misunderstand?

5           MR. CLUBOK: I'm not entirely sure what their  
6 argument is. I do not -- cannot imagine there can be a  
7 dispute over res judicata unless they're trying to relitigate  
8 what happened. What the Court has said, and I'm paraphrasing  
9 this, is that, against Highland, the claims have to have  
10 arisen after February of 2009, but we can rely on evidence  
11 pre-February of 2009 to the extent that helps us support our  
12 claims. That is the sort of split-the-baby, if you want to  
13 call it, approach that the appellate courts took, that the  
14 trial court took and the appellate courts affirmed, that, as  
15 long as the claim doesn't accrue -- in other words, for a  
16 claim to accrue, you know, it might be four steps for a claim  
17 to accrue, but it's that fourth final step that occurs after  
18 February of 2009, if that's the case, you can still talk about  
19 the three steps leading up to that fourth step, and that's the  
20 issue that Highland repeatedly tried to convince the Court we  
21 would not be allowed to do. That's what they were repeatedly  
22 shut down on. I actually am surprised. It's hard for me to  
23 imagine what's the remaining res judicata issue.

24           So, we agree that there are no claims pre-February 2009.  
25 The part that we disagree, and this is what Mr. Feinstein

1 said, you asked exactly the right question, okay, and I don't  
2 know if it was -- I assume it was unintentional on Mr.  
3 Feinstein's part. But he said, well, if they arise after  
4 February 2009. And you said, oh, does that mean all that's  
5 left are fraudulent conveyance claims? And he, I think he  
6 said yes or indicated yes to that question. What he didn't  
7 tell you, and this is the rub, was that it's not just  
8 fraudulent conveyance claims after February 2009; it's also  
9 breach of implied duty of the covenant of good faith and fair  
10 dealing, because Highland was a contractual party to UBS  
11 directly.

12 Highland had a contract with UBS, and they had an implied,  
13 under New York law, duty of good faith and fair dealing. And  
14 the actions they took after February 2009 to frustrate the  
15 ability of the parties to fulfill their contractual  
16 obligations, that supports not just fraudulent transfer but a  
17 separate claim of the breach of the implied duty of good faith  
18 and fair dealing, and that's the issue that we won time and  
19 time again.

20 Every time Highland tried to do -- Highland, in the past,  
21 did the same thing basically that Mr. Feinstein just did:  
22 They would talk about the obvious res judicata issue -- that  
23 is, claims that arose before February 2009. There's no  
24 dispute that that's what the appellate court ruled were out of  
25 the case. At least the (inaudible) Court of Appeals in New

## **EXHIBIT 38**



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**From:** Robert Feinstein <rfeinstein@pszjlaw.com>  
**Sent:** Friday, October 2, 2020 6:40 PM  
**To:** Clubok, Andrew (DC)  
**Cc:** Jeff Pomerantz; Ira Kharasch; Tomkowiak, Sarah (DC); McLaughlin, Shannon (NY); Bjork, Jeff (LA); Posin, Kimberly (LA); Attarwala, Asif (CH); Elissa A. Wagner  
**Subject:** Re: Highland/UBS Claim  
**Attachments:** image001.jpg

Thanks for your email, Andrew. Can your team be available for a call on Monday at 2:30ET?

Robert J. Feinstein  
Pachulski Stang Ziehl & Jones LLP  
780 Third Avenue, 34th Floor  
New York, NY 10017  
(o) (212) 561-7710  
(c) (917) 533-1996  
rfeinstein@pszjlaw.com

On Oct 2, 2020, at 12:13 PM, "Andrew.Clubok@lw.com" <Andrew.Clubok@lw.com> wrote:

Rob:

We should certainly discuss. Let's find a time to talk early next week. In advance of that call, I must say I am surprised to hear about where things stand with regards to producing HFP's documents. As you know, we requested such documents months ago and received repeated assurances from Jim Seery (which he also conveyed to the Court under oath) that such requests would move forward expeditiously even without formal discovery requests. It sounds, however, as though there's been no progress whatsoever on obtaining any HFP documents. Is that really the case? We certainly will want to add that to our discussions. Please suggest some open windows on Monday and Tuesday for a discussion.

Also, please make sure that in all correspondence about this case you copy my colleagues whom I've added here.

Thanks, and I hope everybody has a nice (and safe) weekend  
ABC

Andrew Clubok

LATHAM & WATKINS LLP  
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Washington, D.C. 20004-1304  
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885 Third Avenue  
New York, NY 10022-4834

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Direct Dial: +1.212.906.1272  
Email: [andrew.clubok@lw.com](mailto:andrew.clubok@lw.com)<<mailto:andrew.clubok@lw.com>>  
<http://www.lw.com><<http://www.lw.com>>

From: Robert Feinstein <[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)>  
Sent: Friday, October 2, 2020 12:04 PM  
To: Clubok, Andrew (DC) <[Andrew.Clubok@lw.com](mailto:Andrew.Clubok@lw.com)>  
Cc: Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>; Ira Kharasch <[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)>  
Subject: Highland/UBS Claim

Andrew –

I am writing to you on the Debtor's behalf with respect to the document request UBS served on the Debtor dated September 28, 2020 calling for the production of various categories of documents on or before October 8, 2020, and the further litigation of UBS's claim generally.

First, with respect to the document requests, notwithstanding objections to the requests we could interpose on the Debtor's behalf, including that you have not provided the Debtor with the statutory amount of time to respond and produce the documents, in the interest of expediency and transparency, the Debtor will do its best produce the requested documents, subject to applicable privileges and related objections that will be set forth in a formal response to the document request. As for timing, the Debtor believes with one exception that the documents UBS has requested can be produced by October 8, 2020 and will endeavor to do so, although it is not committing to do so in that time frame if it's not able to. The one exception is request number 8, seeking documents relating to HFP. As you are aware, HFP no longer has any employees which will make it difficult to gather the requested documents in the requested time frame. The Debtor will provide those as and when they can be retrieved and reviewed.

Second, we wanted to let you know that, as we previously raised on the record, the Debtor is planning on filing a motion for partial summary judgment as to UBS's claims in the next week or two, to be heard prior to plan confirmation, and we would like to work out a briefing schedule with you in that regard. Hopefully, we can agree to a schedule and present it to the Court at the October 6th hearing.

Finally, we wanted to raise the potential of UBS filing a motion pursuant to Bankruptcy Rule 3018 seeking to have its claim temporarily allowed for voting purposes. Certainly that is UBS's right to file such a motion, our only concern is the timing. Given the identity of issues, we suggest that any such motion be heard at the same time as the Debtor's partial summary judgment motion.

We are happy to discuss these matters with you in advance of the upcoming status conference in the hope that we can come up with an agreed-upon schedule to announce to the Court at that time.

Best regards,

Rob Feinstein

Robert Feinstein  
Pachulski Stang Ziehl & Jones LLP  
Direct Dial: 212.561.7710  
Tel: 212.561.7700 | Cell: 917-533-1996 | Fax: 212.561.7777  
[rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)<<mailto:rfeinstein@pszjlaw.com>>  
vCard<<http://www.pszjlaw.com/vcard-70.vcf>> | Bio<<http://www.pszjlaw.com/attorneys-robert-j-feinstein.html>> |  
LinkedIn<<https://www.linkedin.com/profile/view?id=28944649>>

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## **EXHIBIT 39**

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**Elissa A. Wagner**

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**From:** Gregory V. Demo  
**Sent:** Thursday, October 08, 2020 2:50 PM  
**To:** 'Shannon.McLaughlin@lw.com'; John A. Morris  
**Cc:** Ira Kharasch; Jeff Pomerantz; Sarah.Tomkowiak@lw.com; Jeff.Bjork@lw.com; Kim.posin@lw.com; Asif.Attarwala@lw.com; Andrew.Clubok@lw.com; Hayley R. Winograd; Robert Feinstein; Elissa A. Wagner  
**Subject:** RE: Highland Bankruptcy - Document Requests  
**Attachments:** Highland - Responses and Objections to UBS's First Requests for Production.pdf

Shannon,

Please see attached.

Please also keep my colleagues, Rob Feinstein, Elissa Wagner, and Hayley Winograd, copied on any emails concerning UBS's discovery requests. I've copied them on this email.

Best,  
Greg

**Gregory V. Demo**  
Pachulski Stang Ziehl & Jones LLP  
Tel: 212.561.7730 | Fax: 212.561.7777  
[GDemo@pszilaw.com](mailto:GDemo@pszilaw.com)  
[vCard](#) | [Bio](#) | [LinkedIn](#)



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**From:** Shannon.McLaughlin@lw.com [mailto:Shannon.McLaughlin@lw.com]  
**Sent:** Monday, September 28, 2020 5:57 PM  
**To:** Gregory V. Demo; John A. Morris  
**Cc:** Ira Kharasch; Jeff Pomerantz; Sarah.Tomkowiak@lw.com; Jeff.Bjork@lw.com; Kim.posin@lw.com; Asif.Attarwala@lw.com; Andrew.Clubok@lw.com  
**Subject:** Highland Bankruptcy - Document Requests

Good evening Greg & PSZJ Team,

Please see the attached document requests. Thank you all.

Shannon

**Shannon E. McLaughlin**

**LATHAM & WATKINS LLP**  
885 Third Avenue



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New York, NY 10022-4834  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
	)	

**DEBTOR'S RESPONSES AND OBJECTIONS TO UBS'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO HIGHLAND**

The above-captioned debtor and debtor in possession (the "Debtor") hereby responds to *UBS's First Requests for Production of Documents to Highland* (the "Requests").<sup>2</sup> The Debtor's responses and objections to the Requests (the "Responses") are made pursuant to Rule 7026 and 7034 of the Federal Rules of Bankruptcy Procedure.

**GENERAL OBJECTIONS**

The following general objections and caveats are applicable to each and every Response unless otherwise specified and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Debtor.
2. The Debtor does not concede that any of its Responses are, or will be, admissible into evidence. The Debtor does not intend to waive, but rather intends to preserve, appropriate objections to the use and admissibility of any information or documents that may be produced by the Debtor in response to the Requests.

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

<sup>2</sup> Capitalized terms not defined herein shall have the meanings set forth in the Requests.

3. The Debtor objects to each Request to the extent that it seeks information or the production of documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity.

4. In responding to the Requests, the Debtor makes no admission or concession concerning the relevance or materiality of any Response or document to the subject matter of this litigation, and reserves all objections on those grounds.

5. The Debtor objects to each Request to the extent it calls for the production of “[a]ll Documents” on the grounds that such Requests are overly broad, unduly burdensome, and fail to comply with Federal Rule of Civil Procedure 26(b). The Debtor has previously made numerous and substantial document productions to UBS (both informally and formally), as part of settlement discussions and negotiations, and to the unsecured creditors committee appointed in the Debtor’s bankruptcy proceeding (the “Committee”), many of which include documents that are responsive to the Requests and are available to UBS. The Debtor, therefore, objects (a) to the duplicative nature of certain aspects of the Requests, and (b) to the extent that any Request seeks information or documents that are already in the possession, custody, or control of UBS or the Committee or that are equally accessible to UBS from third parties or publicly available sources.

6. The Debtor objects to each Request that calls for a legal conclusion.

7. The Debtor objects to each Request to the extent that it seeks to impose obligations on the Debtor beyond the scope of Federal Rule of Civil Procedure 26(b)(1), which

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provides express limitations on discovery, including that a party may only seek discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense.”

8. The Debtor objects to each Request to the extent that it seeks information unrelated to the *Debtor’s Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [Docket No. 928] (the “UBS Objection”) as UBS has not filed a responsive pleading with respect to the Debtor’s Amended Plan and Disclosure Statement [Docket Nos. 1079, 1080] and UBS is not entitled to discovery with respect thereto or with respect to any other matter not contested by UBS.

9. The Debtor objects to the Requests to the extent that UBS is seeking production on a timeline other than that imposed by Federal Rule of Civil Procedure 26.

10. The Debtor objects to the Requests as premature to the extent they seek financial information in support of a punitive damages claim.

11. Certain documents responsive to the Requests may be the property of third parties or otherwise subject to confidentiality restrictions that prohibit disclosure without prior notice. If the Debtor identifies any such documents, the Debtor shall inform the applicable third party that it intends to produce the documents within five (5) business days absent a court order or UBS’s written consent to treat the documents in another manner.

12. For the avoidance of doubt, any materials produced in response to any Request will be produced pursuant to the *Agreed Protective Order* [Docket No. 382].

13. The Debtor reserves its right to amend or supplement the objections and Responses set forth herein. The following Responses are given without prejudice to the Debtor’s right to modify such responses based on additional information hereafter obtained or evaluated.

**SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS**

**REQUEST NO. 1:** A complete itemized asset listing corresponding to the following accounts, affiliates of the Debtor, or other assets, including updated asset values as of August 31, 2020:

- a. Highland Capital Management, L.P. (internal account)
- b. Highland Select Equity Fund (Master-Jefferies account)
- c. Highland Select Equity Fund (Feeder account)
- d. Highland Multi Strategy Credit Fund
- e. Highland Restoration Capital Partners
- f. Other balance sheet assets listed for:
  - i. Crusader
  - ii. Petrocap Partners II
  - iii. Petrocap Partners III
  - iv. Highland Capital Management Korea
  - v. Maple Avenue Holdings
  - vi. Highland Capital Management Singapore
  - vii. Penant Management
  - viii. Petrocap Incentive Partners III
- g. Cash balances for the entities listed above.

**Response to Request for Production No. 1**

The Debtor objects to Request No. 1(a), (b), (c), (d), (e), (f), and (g) on the grounds that it is overly broad, unduly burdensome, and seeks documents and information unrelated to the UBS Objection. Subject to the General Objections and these specific objections, the Debtor (a) has produced all or substantially all of the requested information for earlier dates in 2020, including



the Bates Numbers listed below and (b) shall otherwise produce documents responsive to Request No. 1.

Highland006409	Highland013918	Highland022006
Highland010711	Highland013920	Highland033431
Highland010731	Highland013921	Highland033435
Highland010746	Highland013923	
Highland010757	Highland013945	

**REQUEST NO. 2:** All Documents, including monthly NAV statements, bank statements, brokerage statements, valuation reports, etc., supporting the valuations of the assets and loan receivables reported in response to Request No. 1 as of August 31, 2020.

**Response to Request for Production No. 2**

The Debtor objects to Request No. 2 on the grounds that it is overly broad, unduly burdensome, and seeks documents and information unrelated to the UBS Objection. Subject to the General Objections and these specific objections, the Debtor (a) has produced all or substantially all of the requested information for earlier dates in 2020, including the Bates Numbers listed below and (b) shall otherwise produce documents responsive to Request No. 2.

Highland033217	Highland003436	Highland003307	Highland003229
Highland003444	Highland003193	Highland003255	Highland003231
Highland003453	Highland003292	Highland003278	Highland003233
Highland003462	Highland003243	Highland032835	Highland003235
Highland033229	Highland003270	Highland003205	Highland003237
Highland003472	Highland003193	Highland003311	Highland003239
Highland003482	Highland003292	Highland003280	Highland003241
Highland032838	Highland003243	Highland003208	Highland003096
Highland003492	Highland003270	Highland003258	Highland003104
Highland003502	Highland003296	Highland003283	Highland003115
Highland003511	Highland003246	Highland003211	Highland003125
Highland003521	Highland003272	Highland003261	Highland003134
Highland003530	Highland003196	Highland003286	Highland003147
Highland003326	Highland003300	Highland003214	Highland003156
Highland003336	Highland003249	Highland003264	Highland003164

Highland003349	Highland003274	Highland003289	Highland003175
Highland003365	Highland033226	Highland003217	Highland003183
Highland003382	Highland003199	Highland003267	Highland033256
Highland003395	Highland003304	Highland003220	Highland033265
Highland003406	Highland003252	Highland003223	
Highland003416	Highland003276	Highland003225	
Highland003427	Highland003202	Highland003227	

**REQUEST NO. 3:** An itemized listing of all fund liabilities, including updated asset values as of August 31, 2020, for those accounts, affiliates, and other assets listed in Request No.

1.

**Response to Request for Production No. 3**

The Debtor objects to Request No. 3 on the grounds that it is overly broad, unduly burdensome, and seeks documents and information unrelated to the UBS Objection. The Debtor further objects to Request No. 3 on the ground that the term “fund liabilities” is vague and ambiguous. Subject to the General Objections and these specific objections, the Debtor (a) has produced all or substantially all of the requested information for earlier dates in 2020, including the Bates Numbers listed below and (b) shall otherwise produce documents responsive to Request No. 3.

Highland006376	Highland011636	Highland011935	Highland012127
Highland006380	Highland011638	Highland011989	Highland012131
Highland006384	Highland011722	Highland011993	Highland012135
Highland006388	Highland011726	Highland011997	Highland021802
Highland006392	Highland011728	Highland011999	Highland021970
Highland006396	Highland011876	Highland012003	Highland022003
Highland006400	Highland011880	Highland012005	Highland025649
Highland006404	Highland011882	Highland012009	Highland025653
Highland010765	Highland011929	Highland012013	
Highland011636	Highland011933	Highland012017	

**REQUEST NO. 4:** Documents evidencing updated principal and interest and the present value of loan receivables as of August 31, 2020.

**Response to Request for Production No. 4**

The Debtor objects to Request No. 4 on the grounds that it is overly broad, unduly burdensome, seeks documents and information unrelated to the UBS Objection. The Debtor further objects to Request No. 4 on the ground that the terms “[d]ocuments evidencing” and “loan receivables” are vague and ambiguous. Subject to the General Objections and these specific objections, the Debtor (a) has produced all or substantially all of the requested information for earlier dates in 2020, including at Highland003738, Highland010364, Highland010365, Highland010367, Highland01037, Highland010674, Highland013205, and Highland021807 and (b) shall otherwise produce documents responsive to Request No. 4.

**REQUEST NO. 5:** Documents evidencing the most recent trial balances, as of August 31, 2020, and corresponding asset listing for the following entities and their subsidiaries, including mapping where applicable:

- a. Highland Select Equity Master Fund L.P. (Select)
- b. Highland Select Equity Fund L.P. (Select)
- c. Highland Restoration Capital Partners Offshore L.P.
- d. Highland Restoration Capital Partners L.P. (RCP)
- e. Highland Multi-Strategy Credit Fund L.P.
- f. Highland Multi-Strategy Master Fund L.P.
- g. Highland Multi Strategy Holdings
- h. HCO Holdings, LLC
- i. HCOF Preferred Holdings, Ltd.
- j. HCOF Preferred Holding, L.P.

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- k. Highland Credit Opportunities CDO Financing, LLC
- l. Highland Credit Opportunities CDO, Ltd.
- m. Hibiscus HoldCo, LLC
- n. Highland Credit Opportunities CDO Asset Holdings GP, Ltd.
- o. Highland Credit Opportunities CDO Asset Holdings, L.P.
- p. Highland Capital Management (Singapore) Pte, Ltd.
- q. Highland Capital Management Korea, Ltd
- r. Highland Capital Management Latin America L.P.
- s. HE Capital LLC
- t. Eames, Ltd
- u. Penant Management L.P.
- v. Highland Diversified Credit Fund L.P.
- w. Maple Avenue Holdings LLC

**Response to Request for Production No. 5**

The Debtor objects to Request No. 5(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) on the grounds that it is overly broad, unduly burdensome, and unrelated to the UBS Objection. The Debtor further objects to Request No. 5 on the ground that the term “trial balances” is vague and ambiguous. Subject to the General Objections and these specific objections, the Debtor (a) has produced all or substantially all of the requested information for earlier dates in 2020, including the Bates Numbers listed below and (b) shall otherwise produce documents responsive to Request No. 5.

Highland011850	Highland033279	Highland033347	Highland033404
Highland011954	Highland033281	Highland033351	Highland033404
Highland033218	Highland033385	Highland033365	Highland033439
Highland033220	Highland033289	Highland033369	Highland033441

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Highland033273	Highland033301	Highland033370	Highland033445
Highland033275	Highland033334	Highland033373	Highland035655
Highland033277	Highland033336	Highland033374	

**REQUEST NO. 6:** Documents showing trial balances and a detailed listing of the assets and liabilities as of December 31, 2017, December 31, 2018, December 31, 2019, March 31, 2020, June 30, 2020, and August 31, 2020 of Rand Advisors, LLC and Rand PE Fund I, LP.

**Response to Request for Production No. 6**

The Debtor objects to Request No. 6 on the grounds that it is overly broad, unduly burdensome, and unrelated to the UBS Objection. The Debtor objects to the extent that this Request seeks from the Debtor information and materials more appropriately sought from Rand Advisors, LLC and Rand PE Fund I, LP. The Debtor further objects to Request No. 6 on the ground that the term “trial balances” is vague and ambiguous. The Debtor notes that Rand Advisors, LLC and Rand PE Fund I, LP are unaffiliated entities, and will give notice to those entities so that they may interpose their own objections, if any. Subject to the General Objections and these specific objections, the Debtor (a) incorporates by reference Highland025413, Highland025429, Highland025445, and Highland025461 and (b) shall otherwise produce documents responsive to Request No. 6.

**REQUEST NO. 7:** Documents related to the Debtor’s rabbi trusts, including any Documents evidencing the date and reason for termination of any insurance policies contributed to such trusts that are no longer in force, for the period of January 1, 2011 through the present.

**Response to Request for Production No. 7**

The Debtor objects to Request No. 7 on the grounds that it is overly broad, unduly burdensome, and unrelated to the UBS Objection. Subject to the General Objections and these specific objections, the Debtor (a) has already produced documents sufficient to evidence the



reason for the termination of the insurance policies in the Debtor's rabbi trusts, and (b) incorporates by reference the Bates Numbers listed below.

Highland033566	Highland033907	Highland033994	Highland033893
Highland013958	Highland033910	Highland034006	Highland033895
Highland033449	Highland033913	Highland034017	Highland033898
Highland033879	Highland033884	Highland034030	Highland033901
Highland033556	Highland033916	Highland034042	Highland033904
Highland033797	Highland033934	Highland034054	Highland034066
Highland013985	Highland033944	Highland033887	
Highland033881	Highland033955	Highland033890	

**REQUEST NO. 8:** All Documents pertaining to the assets and liabilities of HFP, CDO Fund, and SOHC, including, but not limited to:

- a. consolidated and stand-alone audited annual financial statements for the twelve months ending December 31, 2007 through December 31, 2019, or through the most recent period available;
- b. unaudited monthly financial statements for the periods ending December 31, 2007 through August 31, 2020, or through the most recent period available;
- c. consolidating schedules (balance sheet and income statements) that reconcile the stand-alone financial statements for the entities / subsidiaries and periods listed in items (a) and (b) to their corresponding consolidated financial statements;
- d. itemized detail of minority interests, if any, reported within the audited / unaudited financial statements requested in items (a) and (b) and the corresponding percentage owned by the individual entities and subsidiaries referred to therein;

- e. monthly trial balances for the periods ending December 31, 2007 through August 31, 2020, or through the most recent period available (please ensure field names are displayed in full and not partially cut-off);
- f. mapping of trial balance accounts requested in item (e) to the asset / liability / equity categories included in the audited / unaudited financial statements requested in items (a) and (b);
- g. general ledger detail for the period January 1, 2008 through December 1, 2019, or the most recent period available;
- h. complete itemized asset listings, including assets and corresponding values as of December 31, 2007 which correspond with the values reported in the audited financial statements for each corresponding entity and subsidiary for the period ending December 31, 2007;
- i. a monthly roll-forward of the itemized asset listing and corresponding values requested in item (h) from December 31, 2007 through August 31, 2020, or the most recent period available, indicating each asset addition and disposal;
- j. for all activity (additions / disposals) associated with the itemized assets requested in items (h) and (i), a transaction listing of all related party or affiliated transactions (including date and amount of transaction, asset, and specific affiliate and/or related party to the transaction); and
- k. any information (including third party support such as bank or brokerage statements, third party valuation reports, marks, etc.) supporting the values of the itemized asset listings reported in items (h) and (i) for each corresponding period.

**Response to Request for Production No. 8**

The Debtor objects to Request No. 8(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k) on the grounds that it is overly broad and unduly burdensome. The Debtor further objects to Request No. 8 to the extent that the documents relating to the period between December 31, 2007 and May 31, 2009 are duplicative of what the Debtor has already produced in UBS Securities LLC et al. v. Highland Capital Management, L.P., et al., Index No.650097/2009 (the “Highland-UBS Litigation”). Furthermore, any documents dated after May 31, 2009 are not relevant to the UBS Objection. Subject to the General Objections and these specific objections, the Debtor (a) incorporates by reference the numerous responsive documents produced in the Highland-UBS Litigation, (b) states that such documents are too numerous to list individually, and (c) provides the following examples of such documents previously produced:

H_0011961	H_0753582	H_0888600
H_0304995	H_0772697	H_0888708
H_0426862	H_0779017	H_0953345
H_0443254	H_0779019	H_0967079
H_0444573	H_0786374	H_0967079
H_0445479	H_0840048	H_0967146
H_0448151	H_0840241	H_0967146
H_0449477	H_0850193	H_0982835
H_0451562	H_0850242	H_1763062
H_0454494	H_0857087	H_1764611
H_0456015	H_0883106	H_1788658
H_0456259	H_0887516	H_1799013
H_0741085	H_0888594	H_1799459

Furthermore, the Debtor shall produce additional documents responsive to Request No. 8.

**REQUEST NO. 9:** Documents related to the Greenbriar CLO, Ltd. asset held by CDO

Fund:

~~Case 1:19-cv-01295-X Document 22-13 Filed 05/18/21 Entered 05/18/21 16:12:59 Page 16 of 19~~

- a. an itemized listing of any affiliates or related parties that own any of the remaining tranches in Greenbriar CLO, Ltd. (Class E Notes, Class I Preference Shares, and/or Class II Preference Shares), including the current principal balance held or number of Class I or Class II Preference Shares owned;
- b. an itemized listing of any affiliates or related parties that previously owned any tranches in Greenbriar CLO, Ltd. (Class A – E Notes, Class I Preference Shares, and/or Class II Preference Shares) that were paid off, transferred, or otherwise disposed. Include the Class of Notes or Shares owned, principal balance held or number of shares owned, and disposition of asset (matured / paid-in-full, sold, transferred, etc.). If sold or transferred, include the name of the entity the asset was sold or transferred to, date sale or transfer occurred, and amount of proceeds received from sale or transfer; and
- c. all Documents forecasting the estimated recovery of the remaining tranches in Greenbriar CLO, Ltd. (Class E Notes, Class I Preference Shares, and/or Class II Preference Shares) through maturity.

**Response to Request for Production No. 9**

The Debtor objects to Requests 9(a), (b), and (c) on the grounds that they are overly broad, unduly burdensome, and unrelated to the UBS Objection. The Debtor objects to the extent that this Request seeks from the Debtor information and materials more appropriately sought from Greenbriar CLO, Ltd, and other third parties. Subject to the General Objections and these specific objections, the Debtor (a) incorporates by reference Highland006609, Highland-UBS000017, Highland-UBS002905, Highland-UBS002908, Highland-UBS002909, Highland-UBS002910, Highland-UBS002911, and Highland-UBS002912 and (b) shall otherwise produce documents responsive to Request No. 9.

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**REQUEST NO. 10:** All Documents related to redemption payables liability of Highland Multi-Strategy Credit Fund, L.P. for the period of January 1, 2009 through the present.

**Response to Request for Production No. 10**

The Debtor objects to Request No. 10 on the grounds that it is overly broad, unduly burdensome, and seeks documents and information unrelated to the UBS Objection. The Debtor further objects to Request No. 10 on the ground that the term “redemption payables liability” is vague and ambiguous. Subject to the General Objections and the specific objections set forth herein, the Debtor shall produce documents sufficient to identify “redemption payables liability” of Highland Multi-Strategy Credit Fund, L.P., from January 1, 2009 through the present, to the extent known by, and in the custody of, the Debtor.

**REQUEST NO. 11:** All Documents related to the Crusader Fund asset that was included in the “Other Balance Sheet Assets” reported on Slide 2 of the Debtor’s presentation to the Committee dated April 16, 2020, attached hereto as Exhibit A, for the period of January 1, 2011 through the present.

**Response to Request for Production No. 11**

The Debtor objects to Request No. 11 on the grounds that it is overly broad, unduly burdensome, and is unrelated to the UBS Objection. The Debtor further objects to the extent this Request seeks information derived from settlement discussions and negotiations under Federal Rule of Evidence 408. Subject to the General Objections and these specific objections, the Debtor will produce documents sufficient to identify the “Crusader Fund asset that was included in the other ‘Balance Sheet Assets,’” to the extent known to the Debtor.

**REQUEST NO. 12:**

Documents related to Cornerstone Healthcare Group:



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- a. All Documents provided to or relied upon by Houlihan Lokey for its June 30, 2020 valuation of Cornerstone Healthcare Group;
- b. All Documents provided to or relied upon by Houlihan Lokey for prior valuations of Cornerstone Healthcare Group that were incorporated into or relied upon for its June 30, 2020 valuation of Highland Cornerstone Healthcare Group; and
- c. All Documents provided to or relied upon by Houlihan Lokey for subsequent valuations of Cornerstone Healthcare Group.

**Response to Request for Production No. 12**

The Debtor objects to Request No. 12(a), (b), and (c) on the grounds that it is overly broad, unduly burdensome, and seeks documents and information unrelated to the UBS Objection. The Debtor further objects to this Request to the extent that it seeks information not within the Debtor's possession, custody, or control. Subject to the General Objections and these specific objections, the Debtor will produce documents sufficient to identify documents provided to Houlihan Lokey with respect to Houlihan Lokey's valuations of Cornerstone Healthcare Group, to the extent known to the Debtor.

~~Case 1:19-cv-00544-sgjl Document 23-13-39 Filed 05/18/21 Entered 05/18/21 16:12:59 Page 19 of 19~~

Dated: October 8, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

/s/ Gregory V. Demo

Jeffrey N. Pomerantz (CA Bar No. 143717)

Robert J. Feinstein (NY Bar No. 1767805)

Alan J. Kornfeld (CA Bar No. 130063)

Gregory V. Demo (NY Bar No. 5371992)

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-and-

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10501 N. Central Expy, Ste. 106

Dallas, Texas 75231

Tel: (972) 755-7100

Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

## **EXHIBIT 40**

---

**From:** Tomkowiak, Sarah (DC)  
**Sent:** Friday, October 30, 2020 6:48 PM  
**To:** Gregory V. Demo; McLaughlin, Shannon (NY); Jeff Pomerantz; Robert Feinstein; Alan Kornfeld; John A. Morris; Ira Kharasch; Hayley R. Winograd; Elissa A. Wagner; Clubok, Andrew (DC); Posin, Kimberly (LA); Bjork, Jeff (LA); Attarwala, Asif (CH)  
**Subject:** RE: Highland - UBS Discovery

Thanks Greg. Confirming receipt of this. We will review and revert if we have further questions.

---

**From:** Gregory V. Demo <GDemo@pszjlaw.com>  
**Sent:** Friday, October 30, 2020 6:23 PM  
**To:** Tomkowiak, Sarah (DC) <Sarah.Tomkowiak@lw.com>; McLaughlin, Shannon (NY) <Shannon.McLaughlin@lw.com>; Jeff Pomerantz <jpomerantz@pszjlaw.com>; Robert Feinstein <rfeinstein@pszjlaw.com>; Alan Kornfeld <akornfeld@pszjlaw.com>; John A. Morris <jmorris@pszjlaw.com>; Ira Kharasch <ikharasch@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>; Elissa A. Wagner <ewagner@pszjlaw.com>; Clubok, Andrew (DC) <Andrew.Clubok@lw.com>; Posin, Kimberly (LA) <Kim.posin@lw.com>; Bjork, Jeff (LA) <Jeff.Bjork@lw.com>; Attarwala, Asif (CH) <Asif.Attarwala@lw.com>  
**Subject:** Highland - UBS Discovery

Sarah,

Following up on our call today, Highland Capital Management has conducted a diligent review of its records and has determined that its production in response to UBS's discovery requests is substantially complete. If HCMLP finds that any additional documents are responsive to UBS's requests, it will provide those documents; however, HCMLP believes that it has fulfilled its obligations and that no additional searches in response to UBS's requests are warranted.

Please see below with respect to your specific questions.

RFP 8: HCMLP has produced the last audited financial statements for each of HFP and CDO Fund (Highland061892 and H\_1015941, respectively). Additional documents responsive to RFP 8 can be found at, among other places, Highland 036089 – Highland055915, Highland035845-Highland078170, and Highland-UBS000001-Highland-UBS00445

RFP: 9(a), (b): Documents responsive to this request were produced at Highland057674 - Highland057870.

RFP 9(c): HCMLP produced documents responsive to this request today (10/30/20).

Please feel free to call with any questions.

Best,  
Greg

**Gregory V. Demo**  
Pachulski Stang Ziehl & Jones LLP  
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Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

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## **EXHIBIT 41**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

**DECLARATION OF JOHN A. MORRIS  
IN SUPPORT OF THE DEBTOR'S OBJECTION TO PATRICK HAGAMAN DAUGHERTY'S  
MOTION FOR TEMPORARY ALLOWANCE OF CLAIM FOR VOTING PURPOSES  
PURSUANT TO BANKRUPTCY RULE 3018**

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

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

1. I am a partner in the law firm Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Objection to Patrick Hagaman Daugherty Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018* (the "Objection") being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as Exhibit 1 is a true and correct copy of the *Expert Report of C. Paul Wazzan, Ph.D.*, dated July 26, 2019, and prepared on behalf of Patrick Hagaman Daugherty in connection with the Delaware Action (as that term is defined in the Objection).

3. Attached as Exhibit 2 is a true and correct copy of section 3.9 of the *Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management L.P.*, effective as of February 29, 2004.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: November 9, 2020

/s/ John A. Morris  
John A. Morris

## **EXHIBIT 1**

HIGHLY CONFIDENTIAL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PATRICK DAUGHERTY,  
*Plaintiff*

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC, HIGHLAND  
ERA MANAGEMENT LLC, and JAMES  
DONDERO,

*Defendants.*

and

HIGHLAND EMPLOYEE RETENTION  
ASSETS LLC,

*Nominal Defendant.*

C.A. No. 2017-0488-MTZ

EXPERT REPORT OF  
C. PAUL WAZZAN, PH.D.

July 26, 2019

003184



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**I. QUALIFICATIONS**

1. I have a Ph.D. in Finance from the University of California, Los Angeles, and a Bachelor of Economics from the University of California, Berkeley. I am a Senior Managing Director at FTI Consulting, Inc. I am also President and CEO of Wazzan & Co. Investment LLC, a venture capital firm providing seed-level funding to firms specializing in semiconductor, optical networking, bio-mechanical, bio-medical, and related technologies. I have served as an adjunct assistant professor of business and economics at California State University, Los Angeles and have also taught MBA classes at the University of Southern California, Marshall School of Business.
2. I specialize in providing financial, economic, and statistical expertise in the areas of complex damages, finance, (e.g., valuation, corporate finance, securities fraud/10b-5, option valuation, class certification, pricing of mortgage risk and MBS/CDOs, commodities price manipulation), intellectual property (e.g., patent, trademark and copyright infringement, theft of trade secrets), labor and employment (e.g., class certification, managerial misclassification, wage and hour, discrimination), antitrust and competition policy (e.g., market definition, merger analysis, predatory pricing, price fixing, exclusionary conduct, price discrimination, attempted monopolization), and public policy.
3. My analyses have covered a wide range of industries, including basic manufacturing (e.g., automotive, mining, oil and gas, steel, food processing and distribution); high tech (e.g., aircraft and avionics, semiconductors, digital signal processors, computer peripherals); real estate (e.g., appropriate interest rates in bankruptcy settings, lending discrimination); financial services (e.g., banking, metals and other commodities trading, organized financial markets); and pharmaceuticals (e.g., pricing of proteins, drugs and the modeling of expected sales).
4. As set forth in the Curriculum Vitae included as Appendix A to this report, my research has been published in peer-reviewed economics journals and law reviews and I have testified in a wide range of matters in Federal, State, and Bankruptcy Courts, the International Trade Commission, domestic and international arbitration proceedings, and in front of legislative bodies. In addition, my testimony has been featured and relied upon in published judicial decisions. FTI is being compensated in this matter at my customary rate of \$825 per hour.

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## II. INTRODUCTION

### A. The Parties

5. Patrick Daugherty is an individual who resides in Dallas, Texas. Mr. Daugherty was a partner and senior executive of Highland Capital Management, L.P., a Delaware limited partnership (“Highland Capital”), and certain of its affiliates from 1998 until 2011.<sup>1</sup>
6. Highland Capital’s principal place of business is in Dallas, Texas.<sup>2</sup> Highland Employee Retention Assets LLC is a Delaware limited liability company (hereinafter, “HERA”).<sup>3</sup> Highland ERA Management LLC (hereinafter, “Highland ERA Management”) is a Delaware limited liability company.<sup>4</sup> James Dondero is the president of Highland Capital and one of its co-founders.<sup>5</sup> Mr. Dondero is the president and sole member of Highland ERA Management.<sup>6</sup>

### B. Background

7. Highland Capital is a multibillion-dollar, SEC-registered investment adviser.<sup>7</sup> Jim Dondero and Mark Okada founded Highland Capital in 1993.<sup>8</sup> The headquarter of Highland Capital is in Dallas, Texas and Highland Capital has offices in Buenos Aires, Rio de Janeiro, and Seoul.<sup>9</sup> Highland Capital describes itself as “a pioneer” in the leveraged loan market.<sup>10</sup> In the 25 years following its creation, Highland Capital has expanded into other asset classes.<sup>11</sup> Highland Capital now has investment capabilities in various sectors, including

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<sup>1</sup> Daugherty v. Highland Capital Mgmt, L.P. “Second Amended Complaint,” (hereinafter, “Complaint”), May 15, 2018, par. 10.

<sup>2</sup> Complaint, par. 11.

<sup>3</sup> Complaint, par. 12.

<sup>4</sup> Complaint, par. 13.

<sup>5</sup> Complaint, par. 11.

<sup>6</sup> Complaint, par. 13.

<sup>7</sup> Complaint, par. 11.

<sup>8</sup> “About Us,” Highland Capital Management, <https://www.highlandcapital.com/about-us/>.

<sup>9</sup> “About Us,” Highland Capital Management, <https://www.highlandcapital.com/about-us/>.

<sup>10</sup> “About Us,” Highland Capital Management, <https://www.highlandcapital.com/about-us/>.

<sup>11</sup> “About Us,” Highland Capital Management, <https://www.highlandcapital.com/about-us/>.

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public equities, real estate, and private equity.<sup>12</sup> Highland Capital's investment platform currently serves institutional and retail investors around the world.<sup>13</sup>

8. During the financial crisis of 2009, Highland Capital performed poorly and had little cash available for incentive-compensation purposes.<sup>14</sup> In October 2009, Highland Capital created HERA in an effort to retain, reward, and incentivize employees.<sup>15</sup> Upon formation, Highland Capital transferred nine types of assets to HERA, including 96.40% of Highland Capital's funded ownership of its limited partner interest in Highland Restoration Capital Partners, L.P. (hereinafter, "Restoration Capital Partners" or "RCP").<sup>16</sup>
9. The initial board of directors of HERA included five people, including Mr. Daugherty.<sup>17</sup>
10. Upon formation, 10,000 Series A Preferred Units in HERA were available to be issued to employees.<sup>18</sup> These shares vested and became non-forfeitable on May 15, 2011.<sup>19</sup> At the time of his departure from Highland Capital in September 2011, Mr. Daugherty held 1,909.69 (approximately 19.1%) vested Series A Preferred Units in HERA.<sup>20</sup>
11. Following the resignation of Mr. Daugherty from Highland Capital in September 2011, the remaining HERA board members removed Daugherty as a director effective February 16, 2012.<sup>21</sup> The HERA LLC Agreement was amended in February 2012 and February 2013.<sup>22</sup>
12. The 2012 amended HERA LLC Agreement contained a dispute resolution provision, section 12, which was not in the original HERA LLC Agreement. This provision stated

<sup>12</sup> "About Us," Highland Capital Management, <https://www.highlandcapital.com/about-us/>.

<sup>13</sup> "About Us," Highland Capital Management, <https://www.highlandcapital.com/about-us/>.

<sup>14</sup> Complaint, par. 14.

<sup>15</sup> Complaint, par. 15. See, also, Limited Liability Company Agreement of Highland Employee Retention Assets LLC dated October 26, 2009, Exhibit A to the Complaint.

<sup>16</sup> Assignment Agreement between Highland Capital Management, L.P. and Highland Employee Retention Assets LLC dated October 26, 2009, Exhibit A to the Complaint. Exhibit A to this agreement lists the assets assigned to HERA.

<sup>17</sup> Limited Liability Company Agreement of Highland Employee Retention Assets LLC dated October 26, 2009, section 3.1, Exhibit A to the Complaint.

<sup>18</sup> Limited Liability Company Agreement of Highland Employee Retention Assets LLC dated October 26, 2009, Exhibit A, Rights of Common Units and Series A Preferred Units, Exhibit A to the Complaint.

<sup>19</sup> Limited Liability Company Agreement of Highland Employee Retention Assets LLC dated October 26, 2009, Exhibit A, Rights of Common Units and Series A Preferred Units, Exhibit A to the Complaint. See, also, Complaint, par. 18.

<sup>20</sup> Complaint, par. 20-21; HCM0045784, tab Unit Rollforward.

<sup>21</sup> Written Consent of the Board of Directors of Highland Employee Retention Assets LLC dated February 16, 2012, Exhibit B to the Complaint.

<sup>22</sup> Complaint, par. 22 and 33.

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that if any HERA member initiates a dispute or makes a claim against HERA or Highland Capital, then “all pending and future distributions to the Disputing Party shall be immediately suspended and held in escrow” until the dispute is resolved.<sup>23</sup>

13. Nearly two months after HERA agreement was amended in 2012, Highland Capital commenced an action against Mr. Daugherty in the District Court of Dallas County, Texas, 68<sup>th</sup> Judicial District (Dallas) against Mr. Daugherty (the “Texas Action”).<sup>24</sup> Mr. Daugherty responded with counterclaims against Highland Capital and third-party claims against HERA and others.<sup>25</sup>
14. In early 2013, Highland Capital bought out the remaining shareholders in HERA, except Mr. Daugherty.<sup>26</sup>
15. On April 30, 2013, HERA transferred the remaining assets that were said to have value, its ownership interest in Restoration Capital Partners and shares of NHF, to Highland Capital.<sup>27</sup>

#### **C. December 2013 Escrow Agreement**

16. On December 13, 2013, Highland Capital entered into an escrow agreement in which it agreed to deposit the assets listed below with an escrow agent.<sup>28</sup>

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<sup>23</sup> Second Amended and Restated Limited Liability Company Agreement of Highland Employee Retention Assets LLC, February 16, 2012, section 12.1, Exhibit C to the Complaint. A similar provision appears in Section 11.1 of the Third Amended and Restated Limited Liability Company Agreement of Highland Employee Retention Assets LLC, February 1, 2013, Exhibit D to the Complaint.

<sup>24</sup> Complaint, par. 1 and 25. Highland Capital Management, L.P. v. Daugherty, 12-04005, District Court of Dallas County, Texas, 68<sup>th</sup> Judicial District (Dallas).

<sup>25</sup> Complaint, par. 26.

<sup>26</sup> Complaint, par. 28-29, 31, 37, 44.

<sup>27</sup> Assignment Agreement between Highland Employee Retention Assets LLC and Highland Capital Management, L.P., April 30, 2013, HCM0015192-HCM0015201 at ‘15235. According to an email between Highland Capital Employees David Klos and Helen Kim dated April 24, 2013, “Only two have value[;] 100% of HERA’s RCP onshore interest [and] NHF Shares (5,424 shares)” (HCM0015191).

<sup>28</sup> Escrow Agreement between Highland Capital Management, L.P. and Abrams and Bayliss, LLP, dated December 13, 2013, Exhibit G to the Complaint.



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<u>Asset</u>	<u>Amount</u>
Cash (USD)	\$ 1,210,502.03
Highland Restoration Capital Partners, L.P. limited partner interest (USD as of 9/30/2013)	\$ 1,820,050.49
Cash equivalent of NexPoint Credit Strategies Deposit Assets (such amount to be updated at the end of each calendar month)	1,088.42 shares

17. The escrow agreement was entered into one month before trial in the Texas Action.<sup>29</sup> If Mr. Daugherty were to prevail in the Texas Action, then the escrowed funds were to be transferred to HERA and then to Mr. Daugherty.<sup>30</sup> As described below, a judgment against HERA was reached in July 2014 and affirmed on appeal on December 1, 2016.
18. The escrow agent resigned on December 2, 2016 and transferred the escrowed assets to Highland Capital on December 5, 2016.<sup>31</sup>

**D. Judgment in the Texas Action**

19. On July 14, 2014, the trial court judge in the Texas Action ordered “that Daugherty have and recover \$2,600,000 from HERA.”<sup>32</sup> Additionally, Highland Capital was awarded \$2.8 million from Mr. Daugherty related to legal fees in the Texas Action.<sup>33</sup> The judgment also excluded language that would have divested Mr. Daugherty of his HERA interest.<sup>34</sup> The judgment in the Texas action was appealed, and on December 1, 2016 the appellate court affirmed the trial court judgment.<sup>35</sup> The mandate of the appellate court was filed with the trial court in the Texas Action on December 8, 2016.
20. The July 2014 judgment specified that the \$2.6 million award “will bear prejudgment interest at the rate of 5% simple interest from May 22, 2012, until the day before this

<sup>29</sup> Complaint, par. 41.

<sup>30</sup> Complaint, par. 41.

<sup>31</sup> Letter from Kevin Abrams, Abrams & Bayliss LLP to Bruce E. Jameson, Esq., Prickett, Jones & Elliot, P.A. Re: Highland Capital Management L.P. Escrow Agreement, February 16, 2017, Exhibit J to the Complaint.

<sup>32</sup> Final Judgment in the matter Highland Capital Management, L.P. v. Daugherty, 12-04005, District Court of Dallas County, Texas, 68th Judicial District, July 14, 2014, (Exhibit H to Complaint).

<sup>33</sup> Final Judgment in the matter Highland Capital Management, L.P. v. Daugherty, 12-04005, District Court of Dallas County, Texas, 68th Judicial District, July 14, 2014, (Exhibit H to Complaint).

<sup>34</sup> Final Judgment in the matter Highland Capital Management, L.P. v. Daugherty, 12-04005, District Court of Dallas County, Texas, 68th Judicial District, July 14, 2014, (Exhibit H to Complaint).

<sup>35</sup> Complaint, par. 49.

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judgment is signed.” The judgment also specified the award would bear interest at 5% per annum, compounded annually, from the date of judgment until payment.

**E. Restoration Capital Partners**

21. Restoration Capital Partners (“RCP”) is a limited partnership organized under Delaware state laws. RCP was created in November 2007 and commenced operations on September 2, 2008.<sup>36</sup> Highland Restoration Capital Partners GP LLC is RCP’s general partner,<sup>37</sup> and Highland Capital Management LP is its investment manager.<sup>38</sup> Highland Restoration Capital Partners GP LLC is a wholly owned subsidiary of Highland Capital Management LP.<sup>39</sup>
22. Highland Capital Management LP also serves as the investment manager for Highland Restoration Capital Partners Master, L.P. and an offshore feeder partnership, Highland Restoration Capital Partners Offshore, L.P.<sup>40</sup> The Master Partnership sought to invest *pari passu* with RCP in all investments.<sup>41</sup> In the materials reviewed by my staff and I, we observed that the results of RCP were reported separately from those of the offshore entity.
23. RCP’s investment strategy was to invest in undervalued senior secured loans and debt obligations of financially troubled companies, although it was permitted to invest in all levels of the capital structure of a portfolio company.<sup>42</sup> After investing in a troubled

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<sup>36</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

<sup>37</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

<sup>38</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

<sup>39</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

<sup>40</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

<sup>41</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

<sup>42</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at ‘527.

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company, RCP's intention was to influence the turnaround process, obtain equity control, and create value through operational and financial improvements.<sup>43</sup>

24. The limited partners in RCP committed \$135 million to the fund.<sup>44</sup> The largest limited partner, the California Public Employees' Retirement System (CalPERS), committed \$100 million.<sup>45</sup>
25. Exhibit 1 reports RCP's holdings and their estimated fair values as of September 30, 2018, the date of the latest RCP investment schedule I have been provided.<sup>46</sup> Approximately 96% of RCP's holdings, by reported value, are common stock, with approximately 72% of the portfolio consisting of stock in Metro-Goldwyn-Mayer, Inc.<sup>47</sup> The remaining holdings include corporate bonds, syndicated bank loans, LLC units, rights and warrants. The estimated fair value of RCP's holdings as reported was \$143.3 million as of September 30, 2018.<sup>48</sup>

#### F. Assignment

26. First, Counsel for Mr. Daugherty ("Counsel") has asked me to calculate the value of the assets that were placed in escrow related to Mr. Daugherty's interest in HERA as of December 8, 2016 and the date of my report, as if they were transferred to Mr. Daugherty. The assets consist of an interest in RCP, 1,088.42 shares of NexPoint Credit Strategies Fund, taking into account any stock splits of NexPoint Credit Strategies Fund since December 2013,<sup>49</sup> and cash.

<sup>43</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at '527.

<sup>44</sup> Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2012, HCM0000518-HCM0000539 at '527.

<sup>45</sup> Statement of Capital Account for the Period Ended March 31, 2018 for CalPERS, HCM0056296-HCM0056298 at '56296.

<sup>46</sup> Highland Restoration Capital Partners, L.P., unaudited condensed schedule of investments as of September 30, 2018, HCM0000158-HCM00162 at '161.

<sup>47</sup> See Exhibits 1, 1.A, and 1.B.

<sup>48</sup> Highland Restoration Capital Partners, L.P., unaudited condensed schedule of investments as of September 30, 2018, HCM0000158-HCM00162 at '161.

<sup>49</sup> Assignment Agreement between Highland Employee Retention Assets LLC and Highland Capital Management, L.P., April 30, 2013, HCM0015192-HCM0015201 at '15235. NexPoint Credit Strategies Fund changed its name to NexPoint Strategic Opportunities Fund in March 2018 ("NexPoint Credit Strategies Fund Announces Name Change to NexPoint Strategic Opportunities Fund," NexPoint press release, March 14, 2018, <https://www.nexpointfunds.com/nexpoint-credit-strategies-fund-announces-name-change-nexpoint-strategic-opportunities-fund/>).

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27. Second, Counsel has requested that I calculate the value to Highland Capital of the assets that were placed in escrow related to Mr. Daugherty's interest in HERA as of December 8, 2016 and the date of my report.
28. Third, Counsel has asked me to calculate prejudgment and post-judgment interest on the \$2.6 million awarded to Mr. Daugherty in the Texas Matter in July 2014 as of the date of this report.
29. In performing the assignments described above, my staff and I were provided access to all the documents produced in this matter and provided on a document production database, Relativity. My staff and I have also reviewed publicly available sources. Documents and information relied upon are cited in this report. If other relevant information becomes available to me, I may revise my report to reflect this information. A list of the materials that I have relied upon in connection with this assignment is presented in Appendix B.

### III. METHODOLOGIES FOR DETERMINING VALUE OF RCP INTEREST

30. RCP is an investment partnership which collects funds from individual investors and invests such funds in a range of securities or other assets. Typically, the fair market value of such an investment entity or fund is equal to the fair market value of its individual holdings minus its liabilities. Determining the fair market value of publicly traded holdings (e.g., Apple or Microsoft common stock, U.S. Treasury bonds) is relatively straight forward; one simply multiplies the security's price by the number of units.
31. The analysis can be more complicated when an investment fund holds assets that are not publicly traded. One alternative is to separately value each holding. An alternative, which is often used by institutional investors, is to rely upon valuations done by the investment fund itself. For example, CalPERS, one of the largest public pension funds in the U.S and the largest limited partner in RCP, specifically states that it relies upon financial statements received from general partners when reporting the market value of its partnership interests.<sup>50</sup> Additional public pension funds, which rely upon valuations done by general

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<sup>50</sup> See, e.g., CalPERS Public Employees Retirement Fund (PERF) Portfolio & Partnership Report as of December 31, 2018; CalPERS CIO Investment Report for the period ending June 30, 2018, Section III.

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partners, include the New York State Teachers' Retirement System and the Washington State Department of Retirement Systems.<sup>51</sup>

32. General partners have an incentive to accurately report the values of assets which are not publicly traded. A general partner with a reputation for reporting inflated asset values may be unable to raise sufficient capital for a subsequent fund and forced to cease operations once its current funds terminate. Academic studies find that institutional investors are largely able to discern asset value manipulation. Brown, Gredil and Kaplan (2019) find that general partners, which appear to inflate returns, are ultimately unable to raise a new fund.<sup>52</sup> On the other hand, they find that general partners of highly performing funds tend to underreport returns.
33. Moreover, in the present matter, I understand that RCP relies upon valuations provided by independent third-parties. For example, Mr. David Klos testified that RCP uses broker quotes from the Markit pricing service in order to value its MGM investment.<sup>53</sup>
34. The RCP audited annual reports contain detailed information about valuation methodologies employed and a disclosure of each asset's value for the period being reported.<sup>54</sup> For example, RCP disclosed that it may be difficult to exit some of its investments "at attractive prices, if at all."<sup>55</sup> The reported value of RCP's reported assets, which drive the value of the RCP, also take into account various valuation assumptions, including a minority discount and discount for lack of marketability.<sup>56</sup>
35. With respect to RCP, CalPERS' reporting of the market value of its partnership interest in RCP for the fiscal year ending June 30, 2018, was \$97,396,217.<sup>57</sup> The value reported by

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<sup>51</sup> See, e.g., New York State Teachers' Retirement System, 2018 Annual Report for the period ending June 30, 2017 and 2018; Washington State Department of Retirement Systems, Comprehensive Annual Financial Report for the period ending June 30, 2018.

<sup>52</sup> Brown, Gregory W., Gredil, Oleg R., and Kaplan, Steven N., "Do Private Equity Funds Manipulate Reported Returns?," *Journal of Financial Economics*, Vol. 132 (2019), pp. 267-297.

<sup>53</sup> Deposition of David Klos, June 27, 2019, pp. 85-86.

<sup>54</sup> See, for example, Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2017, HCM0000095-HCM0000113 at '106-'109.

<sup>55</sup> See, for example, Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2017, HCM0000095-HCM0000113 at '106.

<sup>56</sup> See, for example, Highland Restoration Capital Partners, L.P., audited financial statements for the year ended December 31, 2017, HCM0000095-HCM0000113 at '109.

<sup>57</sup> CalPERS 2017-2018 Annual Investment Report, section Domestic Equity.



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CalPERS is within 1% of the March 31, 2018 and June 30, 2018 ending balances in the RCP statements of capital account for these periods.<sup>58</sup>

#### A. Fair Market Value and Fair Value

36. RCP reports the “estimated fair value” of its holdings on its financial statements. While commonly seen as synonymous, “fair market value” and “fair value” can have different meanings, and the value of the RCP interest that were placed in escrow related to Mr. Daugherty’s interest in HERA differ under the fair market value and fair value standard.
37. An asset’s fair market value is the price at which it would change hands between a knowledgeable, willing buyer and a knowledgeable, willing seller, when neither party is under a compulsion to buy or sell.<sup>59</sup> When calculating fair market value, two adjustments may need to be made to reflect the ownership rights associated with the asset being valued.
38. The first adjustment concerns the discount for lack of marketability (“DLOM”). When valuing minority, non-marketable interests, a DLOM is applied to calculate the value of closely held and restricted shares. The DLOM takes into consideration a valuation discount in restricted stock compared to publicly traded stock. Investments with less liquidity that can take longer to sell and with greater uncertainty have a diminution in value in comparison to highly liquid investments such as shares in a publicly traded company.
39. The second adjustment concerns the discount for lack of control (“DLOC”). The DLOC accounts for the fact that minority shareholders typically do not have the authority to make either strategic or financial decisions for the company. Also, minority shareholders may have limited or no voting power for decisions such as electing company directors. There may also be limitations on selling shares. As a result, because there is a premium for the benefits associated with having a controlling ownership interest, the DLOC applies a discount for minority interests.

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<sup>58</sup> RCP Statement of Capital Account for the Period Ended March 31, 2018, HCM0024894-HCM0024898 at ‘24894 and RCP Statement of Capital Account for the Period Ended June 30, 2018, HCM0000211-HCM0000215 at ‘211.

<sup>59</sup> Internal Revenue Service (IRS) Revenue Ruling 59-60 defines fair market value as “The amount at which the property would change hands between a willing buyer and willing seller, when the former is not under any compulsion to buy, and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.”

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40. When calculating fair value, Counsel has asked me to calculate fair value in accordance with Delaware law regarding fair value and indicating the DLOM and DLOC do not apply.
41. To value the interest in RCP to Highland Capital (i.e. as part of the assignment in Paragraph 27), I used the fair value standard of value, as described in Section IV below. To value Mr. Daugherty's interest in RCP (i.e. as part of the assignment in Paragraph 26), I used the fair market standard of value, as described in Section V below.

#### IV. VALUATION OF INTEREST IN RCP TO HIGHLAND CAPITAL

42. The valuation of the interest in RCP contains two components. The first is to determine the value of the RCP interest as of the valuation date. The second is to determine the value of the RCP distributions to Highland Capital following the April 2013 assignment of the interest from HERA to Highland Capital.

##### A. Value of Existing Ownership in RCP

43. The most recent statement of capital for Highland Capital's interest in RCP is dated March 31, 2019.<sup>60</sup> The March 31, 2019 ending balance of Highland Capital's holdings in RCP is \$20,860,105 as reported by RCP. The March 31, 2019 statement of capital also reported Highland Capital's cumulative IRR is 10.80%. When it created HERA, Highland Capital transferred 96.40% of its funded interest in RCP to HERA. This constitutes 66.9% of Highland's eventual 14.76% interest in RCP.<sup>61</sup>
44. RCP was intended to be a ten-year fund with two optional extensions.<sup>62</sup> I have not identified a fund termination date and, instead, have estimated a termination date of May 2021, based on the fact the commitment period ending May 2010 and extension are permitted.<sup>63</sup> As such, the value of Highland Capital's ownership in RCP is equal to the

<sup>60</sup> Statement of Capital Account for the Period Ending March 31, 2019, HCM0067780.

<sup>61</sup> See Exhibit 6.

<sup>62</sup> Agreement of Limited Partnership of Highland Restoration Capital partners, L.P., HCM0051680- HCM0051755 at '51741. Highland Restoration Capital Partners, L.P. audited financial statements for the year ended December 31, 2016, HCM0000001-HCM0000019 at '015.

<sup>63</sup> I reserve the right to update my calculations if the court determines that an extension is appropriate or additional information is provided.

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present value of its expected or future distributions from RCP. I calculated this value using two general steps.

45. First, I calculated the future value of Highland Capital's ownership in RCP using (1) the March 31, 2019 ending balance of Highland Capital's holdings in RCP (\$20,860,105); and (2) the cumulative IRR reported in Highland Capital's March 31, 2019 statement of capital (10.80%).
46. Second, I discounted the future distributions using a weighted average cost of capital (WACC) which is based upon RCP's holdings. A company's WACC is comprised of its cost of equity and its cost of debt. The cost of equity is calculated based on the Capital Asset Pricing Model (CAPM), which reflects the risk of an investment relative to the market (e.g. S&P 500). The cost of equity takes into account the risk-free rate plus beta multiplied by equity risk premium. Beta measures the systematic risk of a security relative to the market. Thus, the CAPM model measures an asset's expected return based on its risk profile, ultimately determining the cost of equity.
47. Over 70% of RCP's holdings are in MGM common stock, a film and media company.<sup>64</sup> Most of RCP's remaining assets, or approximately 23% of its holdings, are in healthcare securities.<sup>65</sup> I have used industry specific betas when calculated the cost of equity. Because RCP has no debt, its WACC is entirely based on the cost of equity. As of the date of this report, the WACC is 9.90% and on December 31, 2016, the WACC is 11.30%. See Exhibits 4 and 5.
48. The value of Highland Capital's ownership interest in RCP as of July 26, 2019 is \$21,177,238 and is \$14,161,377 after adjusting for the 66.9% HERA allocation based on funding, as previously discussed. The value of the RCP interest as of July 26, 2019, that was placed in escrow related to Mr. Daugherty's HERA interest is \$2,703,407 to Highland Capital, representing 19.09% of the portion of the interest attributable to HERA. Exhibit 2 reports my calculations.
49. The value of Highland Capital's ownership interest in RCP as of December 31, 2016 as \$24,758,323 and is \$16,556,075 after adjusting for the 66.9% HERA allocation based on

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<sup>64</sup> See Exhibit 1.

<sup>65</sup> See Exhibit 1.B.

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funding, as previously discussed. The value of the RCP interest as of December 31, 2016 to Highland Capital, that was placed in escrow related to Mr. Daugherty's HERA interest is \$3,160,555, representing 19.09% of the portion of the interest attributable to HERA. Exhibit 3 reports my calculations.

**B. Value of Historical RCP Distributions to Highland Capital**

50. The March 31, 2019 statement of capital account reports the lifetime, cumulative contributions and distributions Highland Capital Management made to RCP.<sup>66</sup> The ending capital balance is the sum of contributions and gains or losses (both realized and unrealized) on investments less fees and distributions. To calculate the distributions to Highland Capital beginning April 30, 2013, I took the cumulative contributions and distributions as of March 31, 2019 and subtracted the contributions and distributions made prior to April 30, 2013. I was unable to identify contemporaneous account statements or distribution notices. Therefore, I estimated the cumulative contributions and distributions made prior to April 30 by using the 2012-2017 audited financial statements for RCP, unaudited financial statements for the first three quarters of 2018, and an Excel file supporting the 2013 RCP financial statements which contained historical annual data. Exhibit 7.B contains my analysis.
51. I calculated interest on the distributions at a rate of 5% over the Federal Reserve Discount rate, compounded quarterly, to calculate the value as of the valuation dates.
52. The value of the distributions (net of contributions) from April 30, 2013 through March 31, 2019 (the last date I have information for) and on July 26, 2019 is \$5,092,013 and is \$3,406,556 after adjusting for the 66.9% HERA allocation based on funding, as previously discussed.<sup>67</sup> The value of the cash distributions from April 30, 2013 through March 31, 2019, flowing from the RCP interest placed in escrow related to Mr. Daugherty's HERA interest is \$650,312, representing 19.09% of the portion of the interest attributable to HERA. Exhibit 8 reports my calculations.

<sup>66</sup> Statement of Capital Account for the Period Ending March 31, 2019, HCM0067780.

<sup>67</sup> There were no changes in cumulative contributions or cumulative distributions between the RCP Statements of Capital Account for the periods ending September 30, 2018 (HCM0000163- HCM0000167) and March 31, 2019 (Statement of Capital Account for the Period Ending March 31, 2019, HCM0067780) for Highland Capital's account.

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53. The December 31, 2016 value of the cash distributions through December 31, 2016 is \$4,011,733 and is \$2,683,849 after adjusting for the 66.9% HERA allocation based on funding, as previously discussed.<sup>68</sup> The value of the cash distributions from April 30, 2013 through December 31, 2016, flowing from the RCP interest placed in escrow related to Mr. Daugherty's HERA interest is \$512,347, representing 19.09% of the portion of the interest attributable to HERA. Exhibit 8 reports my calculations.

### C. Value of Existing RCP Interest and Historical Distributions

54. To arrive at the value of the Interest in RCP to Highland Capital and the portion attributable to Mr. Daugherty, I added the previously calculated value of ownership interest with the value of the distributions as of the valuation dates.
55. On July 26, 2019, the value of the interest in RCP, after adjusting for HERA allocation based on funding, is the \$14,161,377 value of the ownership interest plus the \$3,406,556 value of the distributions, which is \$17,567,933. The value of Mr. Daugherty's interest is \$3,353,718 based on his 19.09% interest in HERA.
56. On December 31, 2016, the value of the interest in RCP, after adjusting for HERA allocation based on funding, is the \$16,556,075 value of the ownership interest plus the \$2,683,849 value of the distributions, which is \$19,239,924. The value of Mr. Daugherty's interest is \$3,672,901 based on his 19.09% interest in HERA.

## V. VALUATION OF RCP'S INTEREST AS IF IN DAUGHERTY'S HANDS

57. In Mr. Daugherty's or HERA's hands, the RCP interest placed in escrow would be a non-marketable, minority interest in RCP. I therefore applied a discount for lack of marketability to the value of the RCP interests—which were originally transferred to HERA—before calculating the value of Mr. Daugherty's interest in RCP that was placed in escrow. I also applied a discount for lack of control.

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<sup>68</sup> Exhibit 6.



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58. I used the Stout Restricted Stock Study by Business Valuation Resources to calculate the appropriate DLOM. The Stout Restricted Stock Study is a quarterly-updated database of restricted stock transactions. The database provides empirical support to quantify marketability discounts in the context of business valuation, venture capital, and M&A.<sup>69</sup> It provides data on transaction discounts across many industries with associated data on various financial metrics and risk characteristics. The database also indicates the stock holding period and whether the stock has registration rights. I screened the database for restricted stock with a two-year holding period to reflect the expected two-year time horizon until a liquidation event. The median DLOM for this sample is 22.1%. See Exhibit 7. In calculating the July 26, 2019 fair market value of the interest in RCP that was originally transferred to HERA, I used a DLOM of 22.1%. When calculating the fair market value of this interest as of December 31, 2016, I use a DLOM of 31.0% in consideration of the longer holding period.<sup>70</sup>
59. In calculating the fair market value of the interest in RCP that was originally transferred to HERA, I used a DLOC of 20%<sup>71</sup> When determining the DLOC, I took several factors into consideration, including (1) RCP's general partner, Highland Restoration Capital Partners GP LLC, is a wholly owned subsidiary of Highland Capital Management LP, an adverse party in this matter; (2) RCP's general partner is constrained by the RCP Agreement of Limited Partnership;<sup>72</sup> and (3) RCP's general partner is constrained by the fact that CalPERS, one of the largest public pension funds in the U.S., is also an RCP limited partner.
60. After applying the DLOM and DLOC, the estimated fair market value of the interest in RCP that was originally transferred to HERA is  $\$14,161,377 \times ((1-.221) \times (1-.2))\% = \$8,825,370$  on July 26, 2019. Consequently, Mr. Daugherty's 19.09% share of this interest is worth \$1,684,763 as of July 26, 2019.

<sup>69</sup> Stout Restricted Stock Study, BVR, available at <https://www.bvresources.com/products/the-stout-restricted-stock-study>.

<sup>70</sup> The 31.0% figure corresponds to a time horizon of 48 months.

<sup>71</sup> This is at the lower end of the range reported in recent studies. See, e.g., Business Valuation Resources, *Update on Control Premiums, What the Experts Say*, 2015.

<sup>72</sup> Agreement of Limited Partnership of Highland Restoration Capital Partners, L.P. (HCM0051680- HCM0051755).

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61. After applying the DLOM and DLOC, the estimated fair market value of the interest in RCP that was originally transferred to HERA is  $\$16,556,075 \times ((1-.3 \times (1-.2)))\% = \$9,271,402$  on December 8, 2016. Consequently, Mr. Daugherty's 19.09% share of this interest is worth \$1,769,911 as of December 8, 2016.

**A. Value of Existing RCP Interest and Historical Distributions**

62. To arrive at the value of the Interest in RCP to Mr. Daugherty, I added the previously calculated share values with the value of the distributions as of the valuation dates.
63. On July 26, 2019, the value of the interest in RCP attributable to HERA \$8,825,370 plus the \$3,406,556 value of the distributions, which is \$12,231,926. The value of Mr. Daugherty's interest is \$2,335,075 based on his 19.09% interest in HERA.
64. On December 8, 2016, the value of the interest in RCP attributable to HERA \$9,271,402 plus the \$2,683,849 value of the distributions, which is \$11,955,251. The value of Mr. Daugherty's interest is \$2,282,257 based on his 19.09% interest in HERA.

**VI. VALUE OF NHF SHARES**

65. As of July 25, 2019, the close price for NHF was \$18.69.<sup>73</sup> Following a reverse stock split of 4 to 1 in October 2015,<sup>74</sup> the value of 1,088.24 NHF assigned to escrow in December 2013 is calculated by using 272.1 shares. The value of 272.1 shares of NHF on July 25, 2019 was \$5,086.
66. On December 30, 2016 (the last trading day of 2016), the close price for NHF was \$22.77.<sup>75</sup> and the value of 272.1 shares of NHF on that date was \$6,196.

<sup>73</sup> Close price on July 25, 2019. <https://www.nyse.com/quote/XNYS:NHF> accessed on July 25, 2019.

<sup>74</sup> "NexPoint Credit Strategies Fund Effects Reverse Stock Split," NexPoint press release, dated October 7, 2015.

<sup>75</sup> Historical NHF price history downloaded from Yahoo! Finance, <https://finance.yahoo.com/quote/NHF/history?p=NHF>.

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## VII. CASH IN ESCROW

67. I was asked to calculate the value of the \$ 1,210,502 cash that was assigned to escrow on December 13, 2013 at 5% over the Federal Reserve Discount rate, compounded quarterly.
68. The value of the \$1,210,502 is \$1,734,988 as of 7/26/2019.<sup>76</sup>
69. The value of the \$1,210,502 is \$1,439,202 as of 12/8/2016.<sup>77</sup>

## VIII. INTEREST ON DAMAGES PREVIOUSLY AWARDED

### A. Pre-Judgment Interest

70. Based on a pre-judgment simple interest rate of 5%, from May 22, 2012 to July 13, 2014, the total amount of pre-judgment interest on the \$2.6 million award in the Texas Action is \$279,500.<sup>78</sup>

### B. Post-Judgment Interest

71. Based on a post-judgment interest rate of 5%, compounded annually, from July 14, 2014 to July 26, 2019, the total amount of post-judgment interest on the \$2.6 million award in the Texas Action and the simple interest accrued through July 13, 2014 is \$802,805.<sup>79</sup>
72. Combined, the prejudgment and post-judgment interest on the \$2.6 million awarded to Mr. Daugherty in the Texas Action total \$1,082,305.

Respectfully submitted,



C. Paul Wazzan, Ph.D.  
July 26, 2019

---

<sup>76</sup> Exhibit 9.

<sup>77</sup> Exhibit 9.

<sup>78</sup> Exhibit 10.

<sup>79</sup> Exhibit 10.

## **EXHIBIT 2**

**SECOND AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.



**SECOND AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

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Attachments:

Exhibit A  
Exhibit B

### 3.9 Distributions.

(a) General. The General Partner shall review the Partnership's accounts at the end of each calendar quarter to determine whether distributions are appropriate. The General Partner may make such distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness. The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Except to the extent Sections 5.3 or 5.4 are applicable, all distributions pursuant to this Section 3.9 shall generally be made in proportion to the Partners' Capital Accounts; *provided, however*, the General Partner may, in its

sole and unfettered discretion, make a disproportionate distribution to a Partner to the extent that Partner has (or is anticipated to have by the end of the current Fiscal Year) a sufficient positive balance in his/her/its Capital Account therefor; *provided, further*, the maximum amount per Fiscal Year that the General Partner may distribute to a member of the Founding Partner Group in a disproportionate distribution is ten percent (10%) of Partnership Capital.

(b) Tax Distributions. The General Partner shall promptly declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "*Tax Distribution*"). To satisfy this requirement, the Partnership shall pay to each Partner on or before April 14 of each Fiscal Year, an amount at least equal to the product of (i) the sum of the Partnership's positive taxable income attributed to that Partner during the prior Fiscal Year (including without limitation, the taxable income attributable to the special allocation of Profits constituting the Reallocation Amount) multiplied by (ii) the sum of the highest federal and state individual income tax rates imposed on any Partner in effect that prior Fiscal Year. Any Tax Distribution to a Partner shall reduce the amount that Partner is otherwise entitled to receive on its next distribution pursuant to Section 3.9(a).

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above to be effective as of February 29, 2004.

GENERAL PARTNER:

**STRAND ADVISORS, INC.,**  
a Delaware corporation

By: \_\_\_\_\_

James D. Dondero,  
President

LIMITED PARTNERS:

\_\_\_\_\_  
**BRADFORD BORUD**

**CANIS MINOR TRUST**

By: \_\_\_\_\_

James D. Dondero,  
Trustee

\_\_\_\_\_  
**PATRICK DAUGHERTY**

\_\_\_\_\_  
**DAVIS DEADMAN**

\_\_\_\_\_  
**JAMES D. DONDERO**

\_\_\_\_\_  
**R. JOSEPH DOUGHERTY**

*Signatures Continued on Next Page.*



## **EXHIBIT 42**

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "*Agreement*") is entered into as of this 13th day of May, 2011 by Highland Employee Retention Assets LLC, a Delaware limited liability company (the "*Company*"), and Highland Capital Management, L.P., a Delaware limited partnership (the "*Initial Member*"), as the sole initial member of the Company.

WHEREAS, the original Limited Liability Company Agreement of the Company was entered into on October 26, 2009 (the "*Original Agreement*");

WHEREAS, at least 75% of the Board of Directors of the Company has recommended certain amendments to the allocation and tax provisions governing the Company;

WHEREAS, in order to incorporate such amendments and restate the current agreement among the Company, the Initial Member and the Board, such parties hereby approve the amendment and restatement of the Original Agreement on the terms set forth herein;

NOW THEREFORE, the Original Agreement of the Company is hereby amended and restated in its entirety as follows:

ARTICLE I

NAME AND PLACE OF BUSINESS

The name of the Company is Highland Employee Retention Assets LLC. Its registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, in the County of New Castle. The name of its registered agent at such address is The Corporation Trust Company. Its principal place of business is 13455 Noel Road, Suite 800, Dallas, TX 75240 or such other place or places as the Board of Directors may hereafter determine.

ARTICLE II

BUSINESS, PURPOSE, AND TERM OF COMPANY

Section 2.1 Purposes. The purpose of the Company shall be to receive and hold assets to be contributed by the Initial Member and to distribute the proceeds of such assets from time to time to certain employees of the Initial Member (or of affiliates of the Initial Member, as applicable) as the Board may from time to time determine in order to create a retention initiative for such employees and to engage in such other lawful purposes and activities in connection with the foregoing.

Section 2.2 Term of Company. The term of the Company shall commence on the date the Certificate of Formation is filed with the Delaware Secretary of State in accordance with the

provisions of the Act and shall continue on a perpetual basis unless dissolved pursuant to ARTICLE VI of this Agreement.

Section 2.3 Powers of the Company. In addition to the purpose set forth in Section 2.1 above and subject to Section 5.2, the Company shall have the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(b) to acquire, by purchase, mortgage, lease, contribution of property or otherwise, and to own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer or dispose of any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(c) to enter into, perform and carry out contracts of any kind, including, without limitation, contracts with the Initial Member or any person or other entity that directly or indirectly controls, is controlled by, or is under common control with the Initial Member, or any agent of the Company necessary to, in connection with, convenient to, or incidental to, the accomplishment of the purpose of the Company;

(d) to lend or borrow money and to invest its funds, in each case as necessary to, convenient to, or incidental to, the accomplishment of the purpose of the Company;

(e) to sue and be sued;

(f) to appoint employees and fix their compensation; and

(g) to indemnify any officer, director, employee, agent or holder of Series A Preferred Units of the Company.

### ARTICLE III

#### MEMBERSHIP UNITS; CAPITAL CONTRIBUTIONS

Section 3.1 Membership Units. The capital interests in the Company shall consist of (a) Common Units and (b) Series A Preferred Units, each having the respective rights set forth on Exhibit A, attached. No holder of Series A Preferred Units shall be deemed a member of the Company until such units vest in accordance with Exhibit A, thereafter, such vested holders together with the Initial Member shall be members of the Company (collectively, the "*Members*").

Section 3.2 Capital Contribution by Members. Capital Contributions shall be made, in cash or in kind, from time to time as the Board shall determine.

Section 3.3 Tax Contributions. To the extent the Company does not possess sufficient available cash to fund the current tax obligations of the Company, the Initial Member shall fund

to the Company the full amount of such deficiency in the form of either (a) one or more capital contributions or (b) one or more loans at the then prevailing prime rate maintained by the Company's primary banking institution.

Section 3.4 Capital Accounts. (a) The Company shall establish and maintain a separate Capital Account for each Member in accordance with Section 704 of the Code and the Treasury Regulations promulgated thereunder, including Treasury Regulations §1.704-a(b) (each such Capital Account, a "*Capital Account*"). The Capital Account maintained for each member shall be equal to:

- (i) the capital contributions made by such member to the Company, if any; *increased by*
- (ii) the aggregate amount of Net Income and other items of income and gain allocated to such Member pursuant to this ARTICLE III; *decreased by*
- (iii) the aggregate amount of distributions made by the Company to such Member; *decreased by*
- (iv) the aggregate amount of Net Loss and other items of deduction, expenditure and loss allocated to such member pursuant to this ARTICLE III.

(b) The maintenance of Capital Accounts pursuant to this ARTICLE III is intended to comply with the requirements of Section 704 of the Code and the Treasury Regulations promulgated thereunder, and the provisions of this Agreement regarding the maintenance of Capital Accounts shall be interpreted and applied consistently therewith. If, in the opinion of the Board, the manner in which the Capital Accounts are to be maintained pursuant to this ARTICLE III should be modified in order to comply with the requirements of Section 704 of the Code and the Treasury Regulations promulgated thereunder, then, notwithstanding anything to the contrary contained in this ARTICLE III, the Board may change the manner in which the Capital Accounts are maintained, and the Board shall have the right, upon delivery of written notice to each other Member and without obtaining the consent of any member, to amend this Agreement to reflect any such change in the manner in which the Capital Accounts are maintained; *provided, however*, that any such change in the manner of maintaining the Capital Accounts shall not alter materially the economic arrangement among the Members unless all adversely affected Members consent to the change.

Section 3.5 Allocation of Net Income and Net Loss. Except as otherwise provided in Section 3.6 hereof, Net Income and Loss shall be allocated as follows:

(a) *Net Income*. All Net Income shall be allocated (i) first, to holders of vested Series A Preferred Units with negative balances in their Capital Accounts, in proportion to, and to the extent of, such negative balances, and (ii) second, among the holders of vested Series A Preferred Units ownership of Series A Preferred Units.

(b) *Net Losses*. Net Losses shall be allocated (i) first, among the holders of vested Series A Preferred Units in accordance with their respective ownership of Series A Preferred Units unless and until the Capital Account of any such holder has been reduced to zero,

and (ii) second, among the holders of vested Series A Preferred Units who have positive Capital Account balances in proportion to and to the extent of those positive Capital Account balances, and (iii) third, to the holders of vested Series A Preferred Units in proportion to their respective ownership of Series A Preferred Units.

Section 3.6 Special Allocations. It is intended that allocations made under this Agreement shall be made incorporating the provisions of a “qualified income offset” within the meaning of Treasury Regulations §1.704-1(b)(2)(ii)(d), and this ARTICLE III shall be interpreted and applied consistently therewith.

Section 3.7 Other Allocation Rules. (a) When the tax book value of a Company asset is different from the adjusted tax basis for income tax purposes, then solely for federal, state and local income tax purposes and not for purposes of computing Capital Accounts, income, gain, loss, deduction and credit with respect to such assets shall be allocated among the holders of vested Series A Preferred Units to take this difference into account in accordance with the principles of Section 704(c) of the Code.

(b) The Members agree to be bound by the provisions of this ARTICLE III in reporting their shares of Company Net Income and Loss for tax purposes.

(c) The cost of performance of any special service required by any member shall be allocated and charged to and borne by such Member. Any Member allocated and charged a particular cost or expense shall be entitled to such deductions or credits as a re-attributable to such cost or expense in computing such Member’s taxable income or tax liability to the exclusion of any other Member.

#### ARTICLE IV

##### DISTRIBUTIONS

Section 4.1 Distributions. No other distributions of any cash or assets of the Company shall be made, except as (a) required by Section 4.2, (b) as permitted under paragraph 2 under Series A Preferred Units on Exhibit A, or (c) as required in connection with the dissolution of the Company.

Section 4.2 Tax Distributions. The Board shall promptly declare and make cash distributions pursuant hereto to the Members to allow the federal and state income tax attributable to the Company’s taxable income that is passed through the Company to the Members to be paid by such Member (a “*Tax Distribution*”). To satisfy this requirement, the Company shall pay to each Member on or before April 14 of each Fiscal Year, an amount at least equal to the product of (a) the sum of the Company’s positive taxable income attributed to that Member during the prior Fiscal year multiplied by (b) the sum of the highest federal and state individual income tax rates imposed on any Member in effect that prior Fiscal Year.



ARTICLE V

MANAGEMENT OF THE COMPANY

Section 5.1 General. The Company shall be managed by a Board of Directors (the “**Board**”), which shall at all times consist of seven members, consisting of the following individuals:

Patrick H. Daugherty  
R. Joseph Dougherty  
Paul Kauffman  
Patrick Boyce  
John Honis  
William L. Britain  
Amit Walia

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member shall cease to hold Series A Preferred Units or until such member’s death, resignation or removal from by Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by holder(s) of Series A Preferred Units elected by a majority of the remaining members of the Board, or if no such majority decision can be reached, by the holder(s) of the greatest number of Series A Preferred Units who are not then currently a member of the Board and who are willing to serve on the Board, or if no Series A Preferred Units remain outstanding, as determined by a majority of the remaining members of the Board.

Section 5.2 Delegation of Powers of the Board. (a) Subject to Section 5.2(b) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in the Board’s sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) amend, alter, change or repeal any of the provisions of this Agreement;

(v) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(vi) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

Section 5.3 Officers. The Board may appoint individuals with or without such titles as it may elect, including the titles of President, Vice President, Treasurer, and Secretary, to act on behalf of the Company with such power and authority as the Board may delegate in writing to any such persons.

Section 5.4 Powers of the Board. The Board shall have the sole right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts deemed by the Board to be necessary or appropriate to effectuate the business, purposes and objectives of the Company at the expense of the Company, including but not limited to the execution of all documents or instruments in all matters necessary, desirable, convenient or incidental to the purpose of the Company or the making of investments of Company funds.

Section 5.5 Reliance by Third Parties. Any person or entity dealing with the Company may rely on a certificate signed by the Board as to:

(a) the identity of the Board;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or are in any matter germane to the affairs of the Company;

(c) the persons who or entities which are authorized to execute and deliver any instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company.

Section 5.6 Tax Reporting. The Board shall endeavor to cause to be prepared after the end of each taxable year of the Company and filed, on or before their respective due dates (as the same may be extended), all federal and state income tax returns of the Company for such taxable year and shall take all action as may be necessary to permit the Company's regular accountants to prepare and timely file such returns. Form, 1065 (Schedule K-1) shall be sent to the Member and each holder of Series A Preferred Units after the end of each taxable year reflecting such member's or holders pro rata share of income, loss, credit and deductions for such taxable year.

Section 5.7 Tax Election. Any elections required or permitted to be made by the Company under the Code shall be made by the Board in such manner as the Board shall determine. In the event of an audit of the Company by the Internal Revenue Service, the Board shall act as the "tax matters partner" pursuant to Section 6231(a)(7) of the Code, and such tax matters partner shall comply with all of his obligations as such under the Code and the regulations promulgated thereunder. During such time as the Company has one Member, it intends to be treated as a "branch" of such Member for U.S. federal income tax purposes, and during such time as the Company has more than one member, it intends to be treated as a partnership for federal income tax purposes, and the Board shall make any such elections necessary for such purposes and neither the Member nor any holder of Series A Preferred Units shall do anything inconsistent with such characterization.

## ARTICLE VI

### DISSOLUTION

The Company shall be dissolved, and shall terminate and wind up its affairs, upon the first to occur of the following:

- (a) the determination by the Board to dissolve the Company; or
- (b) the entry of a decree of judicial dissolution pursuant to Section 18.802 of the Act.

## ARTICLE VII

### GOVERNING LAW AND JURISDICTION

This Agreement, including its existence, validity, construction and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of laws).

## ARTICLE VIII

### INDEMNIFICATION

Section 8.1 Indemnification and Liability. (a) To the maximum extent permitted by applicable law, no member of the Board, no officer of the Company nor the Member shall be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, or (iii) for losses due to any such mistakes, action or inaction.

(b) Except as may be restricted by applicable law, no member of the Board, no officer of the Company nor the Member shall be liable for and the Company shall indemnify each such person and/or the Member against, and agrees to hold each such person and/or the Member harmless from, all liabilities and claims (including reasonable attorney's fees and expenses in defending against such liabilities and claims) against each such person and/or the Member, arising from each such person's and/or the Member's performance of its duties in conformance with the terms of this Agreement.

(c) The Board, any officers and/or the Member may consult with legal counsel or accountants selected by the Board and/or the Member and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

#### ARTICLE IX

##### ASSIGNMENT OF INTERESTS

No interest in the Company, whether Common Units, Preferred Units or otherwise, may be assigned without the prior written consent of the Board, provided, however, that vested Series A Preferred Units may be assigned as set forth on Exhibit A.

#### ARTICLE X

##### WINDING UP AND DISTRIBUTION OF ASSETS

Section 10.1 Winding Up. If the Company is dissolved, the Board shall wind up the affairs of the Company.

Section 10.2 Distribution of Assets. Upon the winding up of the Company, subject to the provisions of the Act, the Board shall pay or make reasonable provision to pay all claims and obligations of the Company, including all costs and expenses of the liquidation and all contingent, conditional or unmatured claims and obligations that are known to the Board but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Any remaining cash and other assets shall be distributed to the holders of any Series A Preferred Units outstanding.

#### ARTICLE XI

##### SEPARATENESS AND OPERATING PROCEDURES

Section 11.1 Separateness; Operating Procedures. Until the date on which no Series A Preferred Units remain outstanding, the Company represents warrants and covenants as follows:



(a) The purpose for which the Company is organized shall be and remain limited solely to (i) directly owning and holding assets to be contributed by the Member and to distribute the proceeds of such assets from time to time to certain employees of the Member in order to create a retention initiative for such employees (the “*Retention Assets*”), (ii) distribute the proceeds of the Retention Assets in accordance with the terms of the Series A Preferred Units of the Company, and (iii) transacting any and all lawful business for which a limited liability company may be organized under Delaware law that is incident, necessary and appropriate to accomplish the foregoing.

(b) The Company will maintain all of its books, records, and bank accounts separate from those of any affiliate. The Company’s assets will not be listed as assets on the financial statement of any other entity. The Company’s assets will not be listed as assets on the financial statement of any other entity; provided, however, that its assets may be included in a consolidated financial statement of its parent if inclusion on such consolidated financial statement is required to comply with the requirements of GAAP, provided that such consolidated financial statements shall contain a footnote to the effect that the Company’s assets are owned by it and that they are being included on the financial statement of its parent solely to comply with the requirements of GAAP. The Company will file its own tax returns and will not file a consolidated federal income tax return with any other entity unless required to do so by applicable law or regulation.

(c) The Company will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any of its affiliates), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, and shall maintain and utilize separate stationery, invoices and checks.

(d) The Company shall maintain its bank accounts separate from any other person or entity other than a successor in interest and will not commingle its funds and other assets with those of any of its affiliates, other than any successor in interest, or any other person, and will not participate in a cash management system with any such party.

(e) The Company will not guarantee or become obligated for the debts of any other entity or person or pledge its assets for the benefit of any such entity or person and does not and will not hold itself out as being responsible for the debts or obligations of any other person, or hold out its credit as available to satisfy the obligations of any other person or entity.

(f) The Company shall allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(g) The Company shall hold regular meetings, as appropriate, to conduct its business, and has done or caused to be done and will do all things necessary to observe all customary organizational and operational formalities and to preserve its existence.

(h) The Company shall pay its own liabilities and expenses out of its own funds drawn on its own, or any successor in interest’s, bank account.



## ARTICLE XII

### DEFINITIONS

As used herein, the following terms shall have the indicated definitions.

***“Act”*** means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 et seq., as may be amended from time to time.

***“Agreement”*** means this Limited Liability Company Agreement, as may be amended from time to time.

***“Bankruptcy Action”*** means, with respect to any entity:

(a) Filing or consenting to the filing of any bankruptcy, insolvency or reorganization case or proceeding with respect to such entity;

(b) Instituting any proceedings with respect to such entity under any applicable insolvency law or otherwise seeking any relief under any laws relating to the relief from debts or the protection of debtors generally;

(c) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or a substantial portion of its properties;

(d) Making any assignment for the benefit of such entity’s creditors;

(e) Taking any action in furtherance of any of the foregoing; or

(f) Admitting in writing the inability of such entity to pay its debts generally as they become due.

***“Capital Contribution”*** means the contribution by the Member to capital of the Company.

***“Certificate of Formation”*** means the Certificate of Formation of the Company as filed with the Delaware Secretary of State on June 23, 2009, as the same may be amended from time to time.

***“Code”*** means the Internal Revenue Code of 1986, as amended.

***“Company”*** means Highland Employee Retention Assets LLC, a Delaware limited liability company.

***“Initial Member”*** means Highland Capital Management, L.P., a Delaware limited partnership, the holder of the Common Units of the Company.

***“Members”*** means the Initial Member and each holder of vested Series A Preferred Units.

***“Net Income”*** or ***“Net Loss”*** means, for any fiscal year of the Company, the taxable income or loss of the Company for such year, as well as any other taxable income or loss (as computed for federal income tax purposes), with the following adjustments: (i) expenditures of the Company that are neither deductible for federal income tax purposes nor allowable as additions to the basis of Company property (or that are so treated pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations) shall be subtracted from such taxable income or loss; and (ii) there shall not be taken into account any items specially allocated pursuant to Section 3.6.

***“Treasury Regulations”*** means the Treasury Regulations promulgated under the Code.


*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement the day and year first above written.

INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:   
Name: James D. Dondero  
Title: President

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

  
PATRICK H. DAUGHERTY

  
R. JOSEPH DOUGHERTY

  
JOHN HONIS

  
PAUL KAUFFMAN

  
PATRICK BOYCE

  
WILLIAM L. BRITAIN

  
AMIT WALIA

**Exhibit A**

**Rights of Common Units and Series A Preferred Units**

**I. COMMON UNITS**

**1. General.**

1.1 **Authorized/Issued Units.** The number of authorized Common Units shall consist of 100 Common Units, all of which shall be issued to Highland Capital Management, L.P.

1.2 **Transfer.** The Common Units shall be non-transferrable

2. **Dividend Rights.** No dividends shall be paid on any Common Units so long as any Series A Preferred Units remain outstanding.

3. **Rights on Liquidation.** The Common Units shall have a residual right to any assets available on liquidation, dissolution and winding up of the affairs of the Company following satisfaction of all creditor claims solely in the event no Series A Preferred Units remain outstanding.

4. **Voting Rights.** Each holder of shares of Common Units shall not be entitled to vote.

5. **No Other Rights.** No other rights shall be vested in the holders of the Common Units except as expressly provided in the Agreement.

**II. SERIES A PREFERRED UNITS**

**1. General.**

1.1 **Authorized/Issued Units.** The number of authorized Series A Preferred Units shall consist of 10,000 Series A Preferred Units. The Company shall issue (or reissue, in the case of forfeited units) Series A Preferred Units to such persons and in such amounts designated by the Member, provided that (i) each such person shall be an employee of the Member at the time of issuance, and (ii) each such recipient shall not hold greater than a 10% beneficial interest in the Member at the time of issuance, and (iii) the aggregate number of such issued units shall not exceed the number of authorized Series A Preferred Units provided above. No holder of any Class A Preferred Units of the Company shall have any preemptive right to purchase units sold or issued by the Company except to the extent that such a right may from time to time be set forth in a written agreement between the Company and a unitholder.

1.2 **Vesting.** Each Series A Preferred Unit issued shall be deemed a "***Restricted Series A Preferred Unit***" until such unit or units vest in accordance with this Section 1.2 or Section 1.3 below. The Restricted Series A Preferred Units shall vest and become non-forfeitable on May 15, 2011. The period commencing on the date of issuance and ending on the date the Restricted Series A Preferred Units vest is referred to as the "***Restricted Unit Period***" as

to those Restricted Series A Preferred Units. For purposes of this Exhibit and the attached Agreement, references to the Series A Preferred Units shall be deemed to include all such units, whether or not restricted, unless the context expressly provides otherwise. Notwithstanding anything contained herein to the contrary, the Company may provide for vesting terms different than those set forth herein if expressly set forth in the terms of any award letter or agreement pursuant to which Series A Preferred Units are issued or granted.

1.3 Change in Control. If a Change in Control occurs, any Restricted Series A Preferred Units, to the extent then outstanding and not vested, shall become fully vested and non-forfeitable as of the date of such Change in Control. For purposes of this Agreement, "*Change in Control*" shall mean any change in "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act of 1934, as amended) of at least a majority of the voting securities of the general partner of the Member.

1.4 Termination of Employment. In the event of the termination of any Series A Preferred Holder's employment or service with the Member or affiliate thereof, as applicable, for any reason prior to the lapsing of the restrictions in accordance with Section 1.2 above with respect to any of the Restricted Series A Preferred Units granted hereunder, the entire unvested portion of the Restricted Series A Preferred Units held by such person shall be automatically forfeited as of the date of termination. In the event of any forfeiture, such forfeited units will cease to remain outstanding unless reissued pursuant to Section 1.1 above. Neither the holder nor any of such holder's successors, heirs, assigns or personal representatives shall have any rights or interests in any Restricted Series A Preferred Units that are so forfeited.

1.5 Transfer. No Restricted Series A Preferred Units nor any interest therein, may be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of, except by will or the laws of descent and distribution, during the Restricted Unit Period. Any attempt to dispose of any Restricted Series A Preferred Units in contravention of the above restriction shall be null and void and without effect.

2. Dividend Rights. The Board may elect from time to time to make distributions, in cash or in kind, to the holders of the Series A Preferred Units, provided that (i) all such distributions shall be paid pro rata to each holder of Series A Preferred Units, and (ii) the Company shall provide to the Series A Holders at least 60 days advance written notice of any proposed in-kind distribution and each such holder shall be given the opportunity to forfeit, in whole or in part, its right to receive all or any portion of the assets proposed to be distributed in kind.

3. Rights on Liquidation. The Series A Preferred Units shall have no rights with respect to rights on liquidation, dissolution and winding up of the affairs of the Company, other than with respect to (i) payment of accrued and unpaid dividends through the date of liquidation or dissolution, and (ii) distribution of all other cash and assets of the Company remaining following such liquidation or dissolution.



4. **Voting Rights.** No holder of shares of Series A Preferred Units shall be entitled to vote.

5. **Miscellaneous.**

5.1 **Information Rights.** The Company will deliver to each holder of Series A Preferred Units quarterly reports that include (i) such holder's percentage interest in the outstanding Series A Preferred Units, (ii) a current listing of the Company's assets and the fair market values thereof, and (iii) the change in value of such assets since the last such report.

5.2 **No Right to Continued Employment.** Nothing in this Agreement shall confer upon any holder of Series A Preferred Units any right to continue in the employ of the Member nor of any affiliate thereof, or shall interfere with or restrict in any way the right of the Member or any such affiliate, which is hereby expressly reserved, to remove, terminate or discharge the holder at any time for any reason whatsoever, with or without cause and with or without advance notice.

## **EXHIBIT 43**

**SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "*Agreement*") is entered into as of this 16th day of February, 2012 by Highland Employee Retention Assets LLC, a Delaware limited liability company (the "*Company*"), and Highland Capital Management, L.P., a Delaware limited partnership (the "*Initial Member*"), as the sole initial member of the Company and the members of the Board of the Company set forth on the signature pages hereof.

WHEREAS, the original Limited Liability Company Agreement of the Company was entered into on October 26, 2009 (the "*Original Agreement*");

WHEREAS, the Original Agreement was amended and restated effective May 13, 2011 (as amended, the "*Restated Agreement*")

WHEREAS, at least 75% of the Board of Directors of the Company has recommended certain amendments to the Restated Agreement;

WHEREAS, in order to incorporate such amendments and restate the Restated Agreement, the parties hereto hereby approve the further amendment and restatement of the Restated Agreement on the terms set forth herein;

NOW THEREFORE, the Restated Agreement of the Company is hereby further amended and restated in its entirety as follows:

**ARTICLE I**

**NAME AND PLACE OF BUSINESS**

The name of the Company is Highland Employee Retention Assets LLC. Its registered office in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801, in the County of New Castle. The name of its registered agent at such address is The Corporation Trust Company. Its principal place of business is 13455 Noel Road, Suite 800, Dallas, TX 75240 or such other place or places as the Board of Directors may hereafter determine.

**ARTICLE II**

**BUSINESS, PURPOSE, AND TERM OF COMPANY**

Section 2.1 Purposes. The purpose of the Company shall be to receive and hold assets to be contributed by the Initial Member and to distribute the proceeds of such assets from time to time to certain employees of the Initial Member (or of affiliates of the Initial Member, as applicable) as the Board may from time to time determine in order to create a retention initiative

for such employees and to engage in such other lawful purposes and activities in connection with the foregoing.

Section 2.2 Term of Company. The term of the Company shall commence on the date the Certificate of Formation is filed with the Delaware Secretary of State in accordance with the provisions of the Act and shall continue on a perpetual basis unless dissolved pursuant to ARTICLE VI of this Agreement.

Section 2.3 Powers of the Company. In addition to the purpose set forth in Section 2.1 above and subject to Section 5.2, the Company shall have the power:

(a) to conduct its business, carry on its operations and have and exercise the powers granted to a limited liability company by the Act in any state, territory, district or possession of the United States, or in any foreign country that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(b) to acquire, by purchase, mortgage, lease, contribution of property or otherwise, and to own, hold, operate, maintain, finance, improve, lease, sell, convey, mortgage, transfer or dispose of any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

(c) to enter into, perform and carry out contracts of any kind, including, without limitation, contracts with the Initial Member or any person or other entity that directly or indirectly controls, is controlled by, or is under common control with the Initial Member, or any agent of the Company necessary to, in connection with, convenient to, or incidental to, the accomplishment of the purpose of the Company;

(d) to lend or borrow money and to invest its funds, in each case as necessary to, convenient to, or incidental to, the accomplishment of the purpose of the Company;

(e) to sue and be sued;

(f) to appoint employees and fix their compensation; and

(g) to indemnify any officer, director, employee, agent or holder of Series A Preferred Units of the Company.

### ARTICLE III

#### MEMBERSHIP UNITS; CAPITAL CONTRIBUTIONS

Section 3.1 Membership Units. The capital interests in the Company shall consist of (a) Common Units and (b) Series A Preferred Units, each having the respective rights set forth on Exhibit A, attached. No holder of Series A Preferred Units shall be deemed a member of the Company until such units vest in accordance with Exhibit A, thereafter, such vested holders together with the Initial Member shall be members of the Company (collectively, the "*Members*").

Section 3.2 Capital Contribution by Members. Capital Contributions shall be made, in cash or in kind, from time to time as the Board shall determine.

Section 3.3 Tax Contributions. To the extent the Company does not possess sufficient available cash to fund the current tax obligations of the Company, the Initial Member shall fund to the Company the full amount of such deficiency in the form of either (a) one or more capital contributions or (b) one or more loans at the then prevailing prime rate maintained by the Company's primary banking institution.

Section 3.4 Capital Accounts. (a) The Company shall establish and maintain a separate Capital Account for each Member in accordance with Section 704 of the Code and the Treasury Regulations promulgated thereunder, including Treasury Regulations §1.704-a(b) (each such Capital Account, a "***Capital Account***"). The Capital Account maintained for each member shall be equal to:

- (i) the capital contributions made by such member to the Company, if any; *increased by*
- (ii) the aggregate amount of Net Income and other items of income and gain allocated to such Member pursuant to this ARTICLE III; *decreased by*
- (iii) the aggregate amount of distributions made by the Company to such Member; *decreased by*
- (iv) the aggregate amount of Net Loss and other items of deduction, expenditure and loss allocated to such member pursuant to this ARTICLE III.

(b) The maintenance of Capital Accounts pursuant to this ARTICLE III is intended to comply with the requirements of Section 704 of the Code and the Treasury Regulations promulgated thereunder, and the provisions of this Agreement regarding the maintenance of Capital Accounts shall be interpreted and applied consistently therewith. If, in the opinion of the Board, the manner in which the Capital Accounts are to be maintained pursuant to this ARTICLE III should be modified in order to comply with the requirements of Section 704 of the Code and the Treasury Regulations promulgated thereunder, then, notwithstanding anything to the contrary contained in this ARTICLE III, the Board may change the manner in which the Capital Accounts are maintained, and the Board shall have the right, upon delivery of written notice to each other Member and without obtaining the consent of any member, to amend this Agreement to reflect any such change in the manner in which the Capital Accounts are maintained; *provided, however*, that any such change in the manner of maintaining the Capital Accounts shall not alter materially the economic arrangement among the Members unless all adversely affected Members consent to the change.

Section 3.5 Allocation of Net Income and Net Loss. (a) Except as otherwise provided in Section 3.5 hereof, Net Income and Loss shall be allocated pro rata in accordance with each vested Series A Preferred Unit holders Capital Account balance.

(b) The Members agree to be bound by the provisions of this ARTICLE III in reporting their shares of Company Net Income and Loss for tax purposes.



(c) The cost of performance of any special service required by any member shall be allocated and charged to and borne by such Member. Any Member allocated and charged a particular cost or expense shall be entitled to such deductions or credits as a re-attributable to such cost or expense in computing such Member's taxable income or tax liability to the exclusion of any other Member.

#### ARTICLE IV

##### DISTRIBUTIONS

Section 4.1 Distributions. No other distributions of any cash or assets of the Company shall be made, except as (a) required by Section 4.2, (b) as permitted under paragraph 2 under Series A Preferred Units on Exhibit A, or (c) as required in connection with the dissolution of the Company.

Section 4.2 Tax Distributions. The Board shall promptly declare and make cash distributions pursuant hereto to the Members to allow the federal and state income tax attributable to the Company's taxable income that is passed through the Company to the Members to be paid by such Member (a "*Tax Distribution*"). To satisfy this requirement, the Company shall pay to each Member on or before April 14 of each Fiscal Year, an amount at least equal to the product of (a) the sum of the Company's positive taxable income attributed to that Member during the prior Fiscal year multiplied by (b) the sum of the highest federal and state individual income tax rates imposed on any Member in effect that prior Fiscal Year.

#### ARTICLE V

##### MANAGEMENT OF THE COMPANY

Section 5.1 General. The Company shall be managed by a Board of Directors (the "*Board*"), which shall at all times consist of six members, consisting of the following individuals:

R. Joseph Dougherty  
Patrick Boyce  
John Honis  
William L. Britain  
Amit Walia  
Ted Dameris

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member shall cease to hold Series A Preferred Units or until such member's death, resignation or removal from by Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by holder(s) of Series A Preferred Units

elected by a majority of the remaining members of the Board, or if no such majority decision can be reached, by the holder(s) of the greatest number of Series A Preferred Units who are not then currently a member of the Board and who are willing to serve on the Board, or if no Series A Preferred Units remain outstanding, as determined by a majority of the remaining members of the Board.

**Section 5.2 Delegation of Powers of the Board.** (a) Subject to Section 5.2(b) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) amend, alter, change or repeal any of the provisions of this Agreement;

(v) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(vi) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

**Section 5.3 Officers.** The Board may appoint individuals with or without such titles as it may elect, including the titles of President, Vice President, Treasurer, and Secretary, to act on

behalf of the Company with such power and authority as the Board may delegate in writing to any such persons.

Section 5.4 Powers of the Board. The Board shall have the sole right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts deemed by the Board to be necessary or appropriate to effectuate the business, purposes and objectives of the Company at the expense of the Company, including but not limited to the execution of all documents or instruments in all matters necessary, desirable, convenient or incidental to the purpose of the Company or the making of investments of Company funds.

Section 5.5 Reliance by Third Parties. Any person or entity dealing with the Company may rely on a certificate signed by the Board as to:

- (a) the identity of the Board;
- (b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or are in any matter germane to the affairs of the Company;
- (c) the persons who or entities which are authorized to execute and deliver any instrument or document of or on behalf of the Company; or
- (d) any act or failure to act by the Company or as to any other matter whatsoever involving the Company.

Section 5.6 Tax Reporting. The Board shall endeavor to cause to be prepared after the end of each taxable year of the Company and filed, on or before their respective due dates (as the same may be extended), all federal and state income tax returns of the Company for such taxable year and shall take all action as may be necessary to permit the Company's regular accountants to prepare and timely file such returns. Form, 1065 (Schedule K-1) shall be sent to the Member and each holder of Series A Preferred Units after the end of each taxable year reflecting such member's or holders pro rata share of income, loss, credit and deductions for such taxable year.

Section 5.7 Tax Election. Any elections required or permitted to be made by the Company under the Code shall be made by the Board in such manner as the Board shall determine. In the event of an audit of the Company by the Internal Revenue Service, the Board shall act as the "tax matters partner" pursuant to Section 6231(a)(7) of the Code, and such tax matters partner shall comply with all of his obligations as such under the Code and the regulations promulgated thereunder. During such time as the Company has one Member, it intends to be treated as a "branch" of such Member for U.S. federal income tax purposes, and during such time as the Company has more than one member, it intends to be treated as a partnership for federal income tax purposes, and the Board shall make any such elections necessary for such purposes and neither the Member nor any holder of Series A Preferred Units shall do anything inconsistent with such characterization.

ARTICLE VI

DISSOLUTION

The Company shall be dissolved, and shall terminate and wind up its affairs, upon the first to occur of the following:

- (a) the determination by the Board to dissolve the Company; or
- (b) the entry of a decree of judicial dissolution pursuant to Section 18.802 of the Act.

ARTICLE VII

GOVERNING LAW AND JURISDICTION

This Agreement, including its existence, validity, construction and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to principles of conflicts of laws).

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Indemnification and Liability. (a) To the maximum extent permitted by applicable law, no member of the Board, no officer of the Company nor the Member shall be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, or (iii) for losses due to any such mistakes, action or inaction.

(b) Except as may be restricted by applicable law, no member of the Board, no officer of the Company nor the Member shall be liable for and the Company shall indemnify each such person and/or the Member against, and agrees to hold each such person and/or the Member harmless from, all liabilities and claims (including reasonable attorney's fees and expenses in defending against such liabilities and claims) against each such person and/or the Member, arising from each such person's and/or the Member's performance of its duties in conformance with the terms of this Agreement.

(c) The Board, any officers and/or the Member may consult with legal counsel or accountants selected by the Board and/or the Member and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

## ARTICLE IX

### ASSIGNMENT OF INTERESTS

No interest in the Company, whether Common Units, Preferred Units or otherwise, may be assigned without the prior written consent of the Board, provided, however, that vested Series A Preferred Units may be assigned as set forth on Exhibit A.

## ARTICLE X

### WINDING UP AND DISTRIBUTION OF ASSETS

Section 10.1 Winding Up. If the Company is dissolved, the Board shall wind up the affairs of the Company.

Section 10.2 Distribution of Assets. Upon the winding up of the Company, subject to the provisions of the Act, the Board shall pay or make reasonable provision to pay all claims and obligations of the Company, including all costs and expenses of the liquidation and all contingent, conditional or unmatured claims and obligations that are known to the Board but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Any remaining cash and other assets shall be distributed to the holders of any Series A Preferred Units outstanding.

## ARTICLE XI

### SEPARATENESS AND OPERATING PROCEDURES

Section 11.1 Separateness: Operating Procedures. Until the date on which no Series A Preferred Units remain outstanding, the Company represents warrants and covenants as follows:

(a) The purpose for which the Company is organized shall be and remain limited solely to (i) directly owning and holding assets to be contributed by the Member and to distribute the proceeds of such assets from time to time to certain employees of the Member in order to create a retention initiative for such employees (the "*Retention Assets*"), (ii) distribute the proceeds of the Retention Assets in accordance with the terms of the Series A Preferred Units of the Company, and (iii) transacting any and all lawful business for which a limited liability company may be organized under Delaware law that is incident, necessary and appropriate to accomplish the foregoing.

(b) The Company will maintain all of its books, records, and bank accounts separate from those of any affiliate. The Company's assets will not be listed as assets on the financial statement of any other entity. The Company's assets will not be listed as assets on the financial statement of any other entity; provided, however, that its assets may be included in a consolidated financial statement of its parent if inclusion on such consolidated financial statement is required to comply with the requirements of GAAP, provided that such consolidated



financial statements shall contain a footnote to the effect that the Company's assets are owned by it and that they are being included on the financial statement of its parent solely to comply with the requirements of GAAP. The Company will file its own tax returns and will not file a consolidated federal income tax return with any other entity unless required to do so by applicable law or regulation.

(c) The Company will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any of its affiliates), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, and shall maintain and utilize separate stationery, invoices and checks.

(d) The Company shall maintain its bank accounts separate from any other person or entity other than a successor in interest and will not commingle its funds and other assets with those of any of its affiliates, other than any successor in interest, or any other person, and will not participate in a cash management system with any such party.

(e) The Company will not guarantee or become obligated for the debts of any other entity or person or pledge its assets for the benefit of any such entity or person and does not and will not hold itself out as being responsible for the debts or obligations of any other person, or hold out its credit as available to satisfy the obligations of any other person or entity.

(f) The Company shall allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(g) The Company shall hold regular meetings, as appropriate, to conduct its business, and has done or caused to be done and will do all things necessary to observe all customary organizational and operational formalities and to preserve its existence.

(h) The Company shall pay its own liabilities and expenses out of its own funds drawn on its own, or any successor-in-interest's, bank account.

## ARTICLE XII

### DISPUTE RESOLUTION; CONFIDENTIALITY

Section 12.1 Dispute Resolution. In the event any Member or holder of units of the Company, including, without limitation, Series A Preferred Units (any such member or holder, a "**Disputing Party**"), commences litigation or, solely with respect to persons who have not executed a separation agreement in favor of the Initial Member unless such action constitutes a breach of such separation agreement, otherwise initiates any dispute or makes any claim, or takes any action that results in any third party making a claim, in each case related to the Company, or the management or operation thereof or the assets held thereby (each, a "**Dispute**") (i) against the Company, any Member thereof, any officer or director or other agent or representative or equity holder thereof (each, a "**Company Party**"), or (ii) that in any way does or could adversely impact any of the assets held by the Company, then with the consent of 75% of the Board, all pending and future distributions to the Disputing Party shall be immediately suspended and held in escrow by the Company (the "**Dispute Escrow**") until the final, non-appealable resolution of the

Dispute, it being understood that the expiration of any applicable statute of limitations (including any applicable tolling periods with respect thereto) shall constitute such a resolution (any such resolution, a “*Dispute Resolution Date*”). The full balance of the Dispute Escrow shall be distributed to the Disputing Party promptly following the Dispute Resolution Date, net of the sum of (A) the full costs and expenses incurred by any Company Party in connection with such Dispute, including without limitation, costs and expenses of legal counsel, unless a court of competent jurisdiction has ruled in favor of Disputing Party in a final non-appealable judgment, and (B) any diminution in value to the assets held by the Company resulting from or in connection with such Dispute, as determined by the Board in its sole discretion. Any amount deducted from a Disputing Party’s distribution pursuant to the preceding sentence shall be reallocated pro rata to the other Series A Preferred Unit Holders based on their respective holdings of Series A Preferred Units.

Section 12.2 Confidentiality. All matters and information regarding the Company and the assets held thereby are strictly confidential (all such information, “*Confidential Information*”). No holder of units of the Company, including, without limitation, the Series A Preferred Units, shall be permitted to disclose or to use for any purpose any Confidential Information, except as (i) required by law or (ii) as directed and authorized in writing by the Company. In the event any unit holder violates the provisions of this Section 12.2 as determined by 75% of the Board, then the dispute resolution provisions of Section 12.1 hereof shall be deemed to apply as if the violating holder was a “Disputing Party” thereunder pending the Company’s resolution of such violation, including, without limitation, the netting provisions under Section 12.1 with respect to the costs, expenses and diminution resulting from such violation.

### ARTICLE XIII

#### DEFINITIONS

As used herein, the following terms shall have the indicated definitions.

“*Act*” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 et seq., as may be amended from time to time.

“*Agreement*” means this Limited Liability Company Agreement, as may be amended from time to time.

“*Bankruptcy Action*” means, with respect to any entity:

(a) Filing or consenting to the filing of any bankruptcy, insolvency or reorganization case or proceeding with respect to such entity;

(b) Instituting any proceedings with respect to such entity under any applicable insolvency law or otherwise seeking any relief under any laws relating to the relief from debts or the protection of debtors generally;

(c) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or a substantial portion of its properties;

(d) Making any assignment for the benefit of such entity's creditors;

(e) Taking any action in furtherance of any of the foregoing; or

(f) Admitting in writing the inability of such entity to pay its debts generally as they become due.

**"Capital Contribution"** means the contribution by the Member to capital of the Company.

**"Certificate of Formation"** means the Certificate of Formation of the Company as filed with the Delaware Secretary of State on June 23, 2009, as the same may be amended from time to time.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Company"** means Highland Employee Retention Assets LLC, a Delaware limited liability company.

**"Initial Member"** means Highland Capital Management, L.P., a Delaware limited partnership, the holder of the Common Units of the Company.

**"Members"** means the Initial Member and each holder of vested Series A Preferred Units.

**"Net Income"** or **"Net Loss"** means, for any fiscal year of the Company, the taxable income or loss of the Company for such year, as well as any other taxable income or loss (as computed for federal income tax purposes), with the following adjustments: (i) expenditures of the Company that are neither deductible for federal income tax purposes nor allowable as additions to the basis of Company property (or that are so treated pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations) shall be subtracted from such taxable income or loss; and (ii) there shall not be taken into account any items specially allocated pursuant to Section 3.5.

**"Treasury Regulations"** means the Treasury Regulations promulgated under the Code.

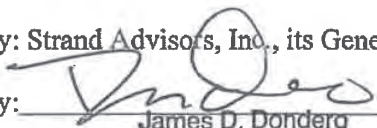
*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement the day and year first above written.

INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By:   
Name: James D. Dondera  
Title: President

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

\_\_\_\_\_  
R. JOSEPH DOUGHERTY

\_\_\_\_\_  
JOHN HONIS

\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

\_\_\_\_\_  
AMIT WALIA

\_\_\_\_\_  
TED DAMERIS

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement the day and year first above written.

INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

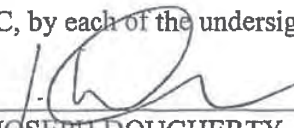
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

  
\_\_\_\_\_  
R. JOSEPH DOUGHERTY

\_\_\_\_\_  
JOHN HONIS

\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

\_\_\_\_\_  
AMIT WALIA

\_\_\_\_\_  
TED DAMERIS



IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement the day and year first above written.

INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

\_\_\_\_\_  
R. JOSEPH DOUGHERTY

  
\_\_\_\_\_  
JOHN HONIS

\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

\_\_\_\_\_  
AMIT WALIA

\_\_\_\_\_  
TED DAMERIS

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INITIAL MEMBER:

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By: Strand Advisors, Inc., its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

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\_\_\_\_\_  
JOHN HONIS

  
\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

\_\_\_\_\_  
AMIT WALIA

\_\_\_\_\_  
TED DAMERIS

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INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

\_\_\_\_\_  
R. JOSEPH DOUGHERTY

\_\_\_\_\_  
JOHN HONIS

\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

\_\_\_\_\_  
AMIT WALIA

\_\_\_\_\_  
TED DAMERIS

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement the day and year first above written.

INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

\_\_\_\_\_  
R. JOSEPH DOUGHERTY

\_\_\_\_\_  
JOHN HONIS

\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

  
\_\_\_\_\_  
AMIT WALIA

\_\_\_\_\_  
TED DAMERIS

IN WITNESS WHEREOF, the undersigned has executed and delivered this Agreement the day and year first above written.

INITIAL MEMBER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMPANY:

HIGHLAND EMPLOYEE RETENTION ASSETS  
LLC, by each of the undersigned directors thereof:

\_\_\_\_\_  
R. JOSEPH DOUGHERTY

\_\_\_\_\_  
JOHN HONIS

\_\_\_\_\_  
PATRICK BOYCE

\_\_\_\_\_  
WILLIAM L. BRITAIN

\_\_\_\_\_  
AMIT WALIA



\_\_\_\_\_  
TED DAMERIS



**Exhibit A**

**Rights of Common Units and Series A Preferred Units**

**I. COMMON UNITS**

**1. General.**

1.1 **Authorized/Issued Units.** The number of authorized Common Units shall consist of 100 Common Units, all of which shall be issued to Highland Capital Management, L.P.

1.2 **Transfer.** The Common Units shall be non-transferrable

**2. Dividend Rights.** No dividends shall be paid on any Common Units so long as any Series A Preferred Units remain outstanding.

**3. Rights on Liquidation.** The Common Units shall have a residual right to any assets available on liquidation, dissolution and winding up of the affairs of the Company following satisfaction of all creditor claims solely in the event no Series A Preferred Units remain outstanding.

**4. Voting Rights.** Each holder of shares of Common Units shall not be entitled to vote.

**5. No Other Rights.** No other rights shall be vested in the holders of the Common Units except as expressly provided in the Agreement.

**II. SERIES A PREFERRED UNITS**

**1. General.**

1.1 **Authorized/Issued Units.** The number of authorized Series A Preferred Units shall consist of 10,000 Series A Preferred Units. The Company shall issue (or reissue, in the case of forfeited units) Series A Preferred Units to such persons and in such amounts designated by the Member, provided that (i) each such person shall be an employee of the Member at the time of issuance, and (ii) each such recipient shall not hold greater than a 10% beneficial interest in the Member at the time of issuance, and (iii) the aggregate number of such issued units shall not exceed the number of authorized Series A Preferred Units provided above. No holder of any Class A Preferred Units of the Company shall have any preemptive right to purchase units sold or issued by the Company except to the extent that such a right may from time to time be set forth in a written agreement between the Company and a unitholder.

1.2 **Vesting.** Each Series A Preferred Unit issued shall be deemed a “*Restricted Series A Preferred Unit*” until such unit or units vest in accordance with this Section 1.2 or Section 1.3 below. The Restricted Series A Preferred Units shall vest and become non-forfeitable on May 15, 2011. The period commencing on the date of issuance and ending on the date the Restricted Series A Preferred Units vest is referred to as the “*Restricted Unit Period*” as

to those Restricted Series A Preferred Units. For purposes of this Exhibit and the attached Agreement, references to the Series A Preferred Units shall be deemed to include all such units, whether or not restricted, unless the context expressly provides otherwise. Notwithstanding anything contained herein to the contrary, the Company may provide for vesting terms different than those set forth herein if expressly set forth in the terms of any award letter or agreement pursuant to which Series A Preferred Units are issued or granted.

1.3 Change in Control. If a Change in Control occurs, any Restricted Series A Preferred Units, to the extent then outstanding and not vested, shall become fully vested and non-forfeitable as of the date of such Change in Control. For purposes of this Agreement, "*Change in Control*" shall mean any change in "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act of 1934, as amended) of at least a majority of the voting securities of the general partner of the Member.

1.4 Termination of Employment. In the event of the termination of any Series A Preferred Holder's employment or service with the Member or affiliate thereof, as applicable, for any reason prior to the lapsing of the restrictions in accordance with Section 1.2 above with respect to any of the Restricted Series A Preferred Units granted hereunder, the entire unvested portion of the Restricted Series A Preferred Units held by such person shall be automatically forfeited as of the date of termination. In the event of any forfeiture, such forfeited units will cease to remain outstanding unless reissued pursuant to Section 1.1 above. Neither the holder nor any of such holder's successors, heirs, assigns or personal representatives shall have any rights or interests in any Restricted Series A Preferred Units that are so forfeited.

1.5 Transfer. No Restricted Series A Preferred Units nor any interest therein, may be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of, except by will or the laws of descent and distribution, during the Restricted Unit Period. Any attempt to dispose of any Restricted Series A Preferred Units in contravention of the above restriction shall be null and void and without effect.

2. Dividend Rights. The Board may elect from time to time to make distributions, in cash or in kind, to the holders of the Series A Preferred Units, provided that (i) all such distributions shall be paid pro rata to each holder of Series A Preferred Units, and (ii) the Company shall provide to the Series A Holders at least 60 days advance written notice of any proposed in-kind distribution and each such holder shall be given the opportunity to forfeit, in whole or in part, its right to receive all or any portion of the assets proposed to be distributed in kind.

3. Rights on Liquidation. The Series A Preferred Units shall have no rights with respect to rights on liquidation, dissolution and winding up of the affairs of the Company, other than with respect to (i) payment of accrued and unpaid dividends through the date of liquidation or dissolution, and (ii) distribution of all other cash and assets of the Company remaining following such liquidation or dissolution.

4. **Voting Rights.** No holder of shares of Series A Preferred Units shall be entitled to vote.

5. **Miscellaneous.**

5.1 **Information Rights.** The Company will deliver to each holder of Series A Preferred Units quarterly reports that include (i) such holder's percentage interest in the outstanding Series A Preferred Units, (ii) a current listing of the Company's assets and the fair market values thereof, and (iii) the change in value of such assets since the last such report.

5.2 **No Right to Continued Employment.** Nothing in this Agreement shall confer upon any holder of Series A Preferred Units any right to continue in the employ of the Member nor of any affiliate thereof, or shall interfere with or restrict in any way the right of the Member or any such affiliate, which is hereby expressly reserved, to remove, terminate or discharge the holder at any time for any reason whatsoever, with or without cause and with or without advance notice.

## **EXHIBIT 44**

**AMENDMENT  
TO  
SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THIS AMENDMENT (this "*Amendment*") to the Second Amended and Restated Limited Liability Company Agreement of HIGHLAND EMPLOYEE RETENTION ASSETS LLC (the "*Company*") dated as of February 16, 2012 (the "*Company Agreement*") is entered into as of January 17, 2013 (the "*Effective Date*") by and among the members of the board of directors of the Company (the "*Board*"). All capitalized terms used but not defined in this Amendment and defined in the Company Agreement shall have the meanings ascribed to them in the Company Agreement.

WHEREAS, the Company desires to amend Section 5.1 of the Company Agreement;

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the Company requires the affirmative vote or written consent of at least 75% of the members of the Board in order to amend, alter, change or repeal any of the provisions of the Company Agreement.

NOW, THEREFORE, the Company amends the Company Agreement as follows as of the Effective Date:

1. Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the "*Board*"), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member shall cease to hold Series A Preferred Units or until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by holder(s) of Series A Preferred Units elected by a majority of the



remaining members of the Board, or if no such majority decision can be reached, by the holder(s) of the greatest number of Series A Preferred Units who are not then currently a member of the Board and who are willing to serve on the Board, or if no Series A Preferred Units remain outstanding, as determined by a majority of the remaining members of the Board.

2. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original, facsimile or scanned signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed document. All such fully executed original, facsimile or scanned counterparts will collectively constitute a single document.

3. Except as modified hereby, the Company Agreement shall remain in full effect and the Amendment shall be binding upon the Company and its successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Company Agreement, the Amendment shall prevail.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**



\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed  
as of the date first set forth above.

DIRECTORS:

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Monis

\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

  
\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

  
\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington



IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed  
as of the date first set forth above.

**DIRECTORS:**

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

  
Scott Ellington

## **EXHIBIT 45**

**SECOND AMENDMENT  
TO  
SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THIS SECOND AMENDMENT (this “*Amendment*”) to the Second Amended and Restated Limited Liability Company Agreement of HIGHLAND EMPLOYEE RETENTION ASSETS LLC (the “*Company*”) dated as of February 16, 2012 (the “*Company Agreement*”), as amended, is entered into as of January 17, 2013 (the “*Effective Date*”) by and among the members of the board of directors of the Company (the “*Board*”). All capitalized terms used but not defined in this Amendment and defined in the Company Agreement shall have the meanings ascribed to them in the Company Agreement.

WHEREAS, the Company desires to amend Article VIII of the Company Agreement;

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the Company requires the affirmative vote or written consent of at least 75% of the members of the Board in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, a majority-in-interest of the Company’s Series A Preferred Units have consented to and ratified the Company adopting the within Amendment.

NOW, THEREFORE, the Company amends the Company Agreement as follows as of the Effective Date:

1. Article VIII of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

**ARTICLE VIII**

**INDEMNIFICATION**

Section 8.1 Indemnification and Liability. (a) To the maximum extent permitted by applicable law, no current or future member of the Board, no current or future officer of the Company nor the Initial Member (each an “Indemnitee”) shall be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, (iii) for breach of fiduciary duty owed to the Company and/or its members or (iv) for losses due to any such mistake, action or inaction, or breach of fiduciary duty.

(b) To the fullest extent permitted by applicable law as the same exists or may hereafter be amended, the Company shall indemnify and hold harmless, and advance expenses including attorneys’ fees, to an Indemnitee against all liabilities and claims against each such person arising from such person’s performance of his duties in conformance with the terms of this Agreement. Notwithstanding the preceding sentence, the Company shall be required to indemnify, or advance expenses to, an Indemnitee in

connection with a proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such proceeding (or part thereof) by the Indemnitee was authorized by the Board and/or the Initial Member.

(c) An Indemnitee may consult with legal counsel or accountants selected by the Board and/or the Initial Member and, to the maximum extent permitted by applicable law, any action or omission suffered or taken in good faith in reliance and in accordance with the written opinion or advice of any such counsel or accountants (provided such counsel or accountants have been selected with reasonable care) shall be fully protected and justified with respect to the action or omission so suffered or taken.

(d) The rights conferred upon Indemnites in this Article VIII shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a member of the Board, an officer of the Company or the Initial Member and shall inure to the benefit of the Indemnitee's heirs, executors, administrators and successors. Any amendment, alteration or repeal of this Article VIII that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any liability or claim involving any occurrence or any alleged occurrence of any action or omission that took place prior to such amendment or repeal.

2. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original, facsimile or scanned signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed document. All such fully executed original, facsimile or scanned counterparts will collectively constitute a single document.

3. Except as modified hereby, the Company Agreement shall remain in full effect and the Amendment shall be binding upon the Company and its successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Company Agreement, the Amendment shall prevail.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**



Patrick Boyce



John Honis

William L. Britain

Ted Dameris

Scott Ellington



IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

  
\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

  
\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed  
as of the date first set forth above.

**DIRECTORS:**

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

## **EXHIBIT 46**

**THIRD AMENDMENT  
TO  
SECOND AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY AGREEMENT  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THIS THIRD AMENDMENT (this “*Amendment*”) to the Second Amended and Restated Limited Liability Company Agreement of HIGHLAND EMPLOYEE RETENTION ASSETS LLC (the “*Company*”) dated as of February 16, 2012 (the “*Company Agreement*”), as amended, is entered into as of January 18, 2013 (the “*Effective Date*”) by and among the members of the board of directors of the Company (the “*Board*”). All capitalized terms used but not defined in this Amendment and defined in the Company Agreement shall have the meanings ascribed to them in the Company Agreement.

WHEREAS, the Company desires to amend Sections 5.1 and 5.2 of the Company Agreement;

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the Company requires the affirmative vote or written consent of at least 75% of the members of the Board in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, a majority-in-interest of the Company’s Series A Preferred Units have consented to and ratified the Company adopting the within Amendment;

WHEREAS, the holders of a majority-in-interest of the Company’s Series A Preferred Units have accepted Highland Capital Management, L.P.’s Offer to Purchase dated January 18, 2013.

NOW, THEREFORE, the Company amends the Company Agreement as follows as of the Effective Date:

1. Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf



of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

2. Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board. (a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company.  
or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

3. This Amendment may be executed in multiple counterparts, each of which, when assembled to include an original, facsimile or scanned signature for each party contemplated to sign this Amendment, will constitute a complete and fully executed document. All such fully executed original, facsimile or scanned counterparts will collectively constitute a single document.

4. Except as modified hereby, the Company Agreement shall remain in full effect and the Amendment shall be binding upon the Company and its successors and assigns. If any inconsistency exists or arises between the terms of the Amendment and the terms of the Company Agreement, the Amendment shall prevail.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**



\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed  
as of the date first set forth above.

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

DIRECTORS:

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

  
\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington



IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

  
\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first set forth above.

**DIRECTORS:**


Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

A handwritten signature in dark ink, appearing to be "Scott Ellington", written over the printed name.

## **EXHIBIT 47**

**WRITTEN CONSENT  
OF BOARD OF DIRECTORS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

Effective as of January 18, 2013

THE UNDERSIGNED members of the board of directors (the “*Board*”) of Highland Employee Retention Assets LLC, a Delaware limited liability company (the “*Company*”), acting pursuant to the Delaware Limited Liability Company Act and the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended, do hereby adopt the following resolutions by written consent:

WHEREAS, the Company desires to amend Sections 5.1 and 5.2 of the Company Agreement in the form previously reviewed by the undersigned (the “*Amendment*”);

WHEREAS, pursuant to Section 5.2(b)(iv) of the Company Agreement, the affirmative vote or written consent of at least 75% of the members of the Board is required in order to amend, alter, change or repeal any of the provisions of the Company Agreement;

WHEREAS, pursuant to Article IX of the Company Agreement, the prior written consent of the Board is required to assign Series A Preferred Units of the Company;

WHEREAS, a majority-in-interest of the Company’s Series A Preferred Units have consented to and ratified the Company adopting the Amendment;

WHEREAS, the holders of a majority-in-interest of the Company’s Series A Preferred Units have accepted Highland Capital Management, L.P.’s (“*Purchaser*”) Offer to Purchase dated January 18, 2013 (the “*Offer*”);

WHEREAS, a majority-in-interest of the Company’s Series A Preferred Units have consented to and ratified the assignment of Series A Preferred Units of the Company to Purchaser pursuant to the Offer to Purchase dated January 18, 2013 (the “*Assignment*”).

NOW, THEREFORE, BE IT

RESOLVED, that, subject to and conditioned upon a majority-in-interest of the Company’s Series A Preferred Units having consented to and ratified the Amendment and having accepted the Offer, the Board approves the proposed Amendment;

RESOLVED FURTHER, that, subject to and conditioned upon a majority-in-interest of the Company’s Series A Preferred Units having consented to and ratified the Assignment and having accepted the Offer, the Board approves the Assignment;

RESOLVED FURTHER, that the Company’s directors be, and they hereby are, authorized, empowered and directed for, in the Company’s name and behalf, to do and perform all acts and deeds, to execute and deliver all documents, instruments and other

agreements, to waive any and all conditions and do all things necessary or helpful to carry out and comply with the terms and provisions of the foregoing resolutions; and that all acts and deeds of the directors and agents on behalf of the Company prior to the date hereof shall be, and they hereby are, in all respects, ratified, approved, confirmed and adopted as the Company's acts and deeds;

RESOLVED FURTHER, that this authorization shall remain in effect until further written notice from the Company.

*[Signature Page to Follow]*



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

**DIRECTORS:**

  
\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

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

**DIRECTORS:**

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

Scott Ellington

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

DIRECTORS:

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

  
\_\_\_\_\_  
William L. Britain

\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

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

**DIRECTORS:**

\_\_\_\_\_  
Patrick Boyce

\_\_\_\_\_  
John Honis

\_\_\_\_\_  
William L. Britain

  
\_\_\_\_\_  
Ted Dameris

\_\_\_\_\_  
Scott Ellington

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

**DIRECTORS:**

Patrick Boyce

John Honis

William L. Britain

Ted Dameris

  
Scott Ellington



## **EXHIBIT 48**

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: ADKINS PAUL NELSON  
By: [Signature]  
Number of Series A Preferred Units Held: 485.91  
Dated: 18 JAN 2013

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in



the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: P 12

By: PATRICK BOYCE

Number of Series A Preferred Units Held: 1,012.10

Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: William Lake Britain  
By: William Lake Britain  
Number of Series A Preferred Units Held: 370.11  
Dated: 1/18/13



**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 14**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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000680  
000752  
000761

Vol. 3  
000798  
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000815  
Thru Vol. 4  
Vol. 4  
001144  
001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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001174  
001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
05/18/2021	2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
05/20/2021	2339	Amended Exhibit List <i>Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
05/20/2021	2342	Amended Exhibit List <i>Supplemental Exhibit List</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)

Leslie A. Collins, La. Bar No. 14891

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New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: B. Clay Callen

By: \_\_\_\_\_

Number of Series A Preferred Units Held: 166.29

Dated: 1/18/13



**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: BRIAN COLLINS  
By: [Signature]  
Number of Series A Preferred Units Held: 51.94  
Dated: 1/18/2013

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the




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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name:   
By: Ted Dameris  
Number of Series A Preferred Units Held: 185.48  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: [Signature]

By: [Signature]

Number of Series A Preferred Units Held: 32,27

Dated: 1/18/13

WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "*Company Agreement*"), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the "*Board*"), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in



the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: 

By: \_\_\_\_\_

Number of Series A Preferred Units Held: 185,48

Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: \_\_\_\_\_

By: \_\_\_\_\_

Number of Series A Preferred Units Held: 716.29

Dated: 1/18/13



**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Tim Lander  
By: [Signature]  
Number of Series A Preferred Units Held: 82.43  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the "*Company Agreement*"), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the "*Board*"), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member's death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the



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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Marc Manze  
By: [Signature]  
Number of Series A Preferred Units Held: 11.13  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: [Signature]

By: Rajan Mittz

Number of Series A Preferred Units Held: 35.72

Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in



the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: W. Carl McLean  
By: Carl McLean  
Number of Series A Preferred Units Held: 82.43  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: [Signature]  
By: LEE B. PARKER, III  
Number of Series A Preferred Units Held: 106.46  
Dated: 1/18/13



**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: \_\_\_\_\_  
By: James J. [Signature]  
Number of Series A Preferred Units Held: 32,27  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the



Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Robert Powell  
By: Robert Powell  
Number of Series A Preferred Units Held: 35.72  
Dated: 1/18/2013

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: BR

By: \_\_\_\_\_

Number of Series A Preferred Units Held: 250

Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in



the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: DAVID F. SMITH  
By: David F. Smith  
Number of Series A Preferred Units Held: 103,60  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: C.L. Shors  
By: [Signature]  
Number of Series A Preferred Units Held: 32.27  
Dated: 1/18/12



**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: [Signature]  
By: Joshua N. Perry  
Number of Series A Preferred Units Held: 125  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the



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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Jake J. J. J.  
By: [Signature]  
Number of Series A Preferred Units Held: 54.55  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Joe Wllh  
By: \_\_\_\_\_  
Number of Series A Preferred Units Held: 32, 27  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in



the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

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Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Scott Wilson  
By: Scott Wilson  
Number of Series A Preferred Units Held: 75.01  
Dated: 1/18/13

**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.

(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name: Shawn Lederman  
By: [Signature]  
Number of Series A Preferred Units Held: 175,197  
Dated: 1/22/13



**WRITTEN CONSENT  
OF HOLDER OF SERIES A PREFERRED UNITS  
OF  
HIGHLAND EMPLOYEE RETENTION ASSETS LLC**

THE UNDERSIGNED holder of Series A Preferred Units of Highland Employee Retention Assets LLC hereby consents to and ratifies the below amendment to the Second Amended and Restated Limited Liability Company Agreement of the Company dated February 16, 2012 (the “*Company Agreement*”), as amended:

Section 5.1 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.1 General. The Company shall be managed by a Board of Directors (the “*Board*”), which shall at all times consist of five members, consisting of the following individuals:

Patrick Boyce  
John Honis  
William L. Britain  
Ted Dameris  
Scott Ellington

The Board shall have the sole right, power and authority to manage, direct and control all of the business and affairs of the Company, to transact business on behalf of the Company, to sign for the Company or on behalf of the Company or otherwise to bind the Company. The Board shall act by majority vote (either by meeting or written consent), unless a greater percentage is expressly required under this Agreement. Each member of the Board shall serve until such member’s death, resignation or removal from the Board by the unanimous affirmative vote of the remaining Board members. Any vacancies on the Board shall be filled by majority vote of the remaining members of the Board, or if no such majority decision can be reached, as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Section 5.2 of the Company Agreement is hereby amended and replaced in its entirety to read as follows:

Section 5.2 Delegation of Powers of the Board.  
(a) Subject to Sections 5.2(b) and 5.2(c) and ARTICLE XI hereof, the Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in

the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. Neither the Member nor any other unitholder shall have the authority to remove any member of the Board.

(b) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company shall not, and shall not have power or authority and shall not be authorized to, and the Board shall not, and shall not have power or authority and shall not be authorized to cause the Company to, take any of the following actions without the prior affirmative vote or written consent of at least 75% of the members of the Board:

(i) dissolve, wind-up or liquidate, in whole or in part, or cause or consent to the dissolution, winding up or liquidation, in whole or in part, of the Company;

(ii) be a party to any merger or consolidation or sell, transfer, assign, convey or lease any asset of the Company, or cause or consent to any merger or consolidation or sale, transfer, assignment, conveyance or lease of any assets of the Company;

(iii) directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity, or cause the Company to directly or indirectly purchase or otherwise acquire (other than via a contribution from the Member) all or substantially all of the assets, or any equity interest of any class, of any legal entity;

(iv) incur or assume any indebtedness or obligations except for liabilities under Section 3.3, or cause the Company, to incur or assume any indebtedness or obligations except for liabilities under Section 3.3; or

(v) take any Bankruptcy Action with respect to the Company, or take, cause or consent to any Bankruptcy Action with respect to the Company.


(c) Notwithstanding any other provision of this Agreement or any provision of law that otherwise so empowers the

Company, from and after the date of this Agreement and until the date on which all assets of the Company have been distributed in full, the Company may amend, alter, change or repeal any of the provisions of this Agreement (including, without limitation, the last sentence of Section 5.2(a) hereof) only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

THE UNDERSIGNED further consents to and ratifies the Board's approval of the assignment of Series A Preferred Units of the Company to Highland Capital Management, L.P. pursuant to the Offer to Purchase dated January 18, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Consent to be effective as of the date set forth below.

HOLDER OF SERIES A PREFERRED UNITS:

Name:   
By: STEVE STEWART  
Number of Series A Preferred Units Held: 32.27  
Dated: 1/31/13

## **EXHIBIT 49**

Schedule K-1  
(Form 1065)Department of the Treasury  
Internal Revenue Service

2004

Tax year beginning 01/01, 2004  
and ending 12/31, 2004Partner's Share of Income, Deductions,  
Credits, etc.

See back of form and separate instructions.

## Part I Information About the Partnership

A Partnership's employer identification number

75-2716725

B Partnership's name, address, city, state, and ZIP code

HIGHLAND CAPITAL MANAGEMENT, L.P.  
TWO GALLERIA TOWER, 13455 NOEL RD, SUITE 1300  
DALLAS, TX 75240

C IRS Center where partnership filed return

OGDEN

D Check if this is a publicly traded partnership (PTP)

E Tax shelter registration number, if any

F Check if Form 8271 is attached

## Part II Information About the Partner

G Partner's identifying number 10

H Partner's name, address, city, state, and ZIP code

PATRICK DAUGHERTY  
3621 CORNELL AVE.  
DALLAS, TX 75205I ☐ General partner or LLC  
member-manager☒ Limited partner or other LLC  
memberJ ☒ Domestic partner☐ Foreign partner

K What type of entity is this partner? INDIVIDUAL

L Partner's share of profit, loss, and capital:

Beginning		Ending	
Profit	%	VARIOUS	%
Loss	%	VARIOUS	%
Capital	%	0.381699	%

M Partner's share of liabilities at year end:

Nonrecourse	\$	2,940,421.
Qualified nonrecourse financing	\$	
Recourse	\$	

N Partner's capital account analysis:

Beginning capital account	\$	NONE
Capital contributed during the year	\$	
Current year increase (decrease)	\$	797,277.
Withdrawals & distributions	\$	( )
Ending capital account	\$	797,277.

☐ Tax basis ☒ GAAP ☐ Section 704(b) book  
Other (explain)

Final K-1

Amended K-1

OMB No. 1545-0099

Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items

1 Ordinary business income (loss)	15 Credits & credit recapture
2 Net rental real estate income (loss)	
* 142,152.	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income	
* 11,917.	
6a Ordinary dividends	
36,784.	
6b Qualified dividends	
628.	
7 Royalties	
8 Net short-term capital gain (loss)	
103,676.	
9a Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items
57,018.	
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
3.	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	C* 108.
A 2,069.	
F 995.	
12 Section 179 deduction	19 Distributions
* 513.	
13 Other deductions	20 Other Information
A 1,013.	
B 192.	A 50,770.
* STMT	B 184.
14 Self-employment earnings (loss)	

\*See attached statement for additional information.

For IRS Use Only

For Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2004

JSA  
4P1200 2.000

70011G 1707

003357



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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

SCH K-1 SUPPORTING SCHEDULES PARTNER # 10 PATRICK DAUGHERTY

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LINE 13 - OTHER DEDUCTIONS

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G DEDUCTIONS - PORTFOLIO (2% FLOOR)	106.
H DEDUCTIONS - PORTFOLIO (OTHER)	78.
I INVESTMENT INTEREST EXPENSE	13,320.
T* OTHER DEDUCTIONS	3,706.

STATEMENT #1

4PS000 1.000

70011G 1707

003358

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HIGHLAND CAPITAL MANAGEMENT, L.P.	75-2716725
SCH K-1 SUPPORTING SCHEDULES PARTNER # 10 PATRICK DAUGHERTY	
<hr/>	
ITEM N - RECONCILIATION OF INCOME	
<hr/>	
INCOME (LOSS) FROM SCH. K-1, LINES 1 - 11	354,609.
LESS: DEDUCTIONS FROM SCH. K-1, LINES 12, 13, 16L, AND 16M	18,928.
	<hr/>
TOTAL INCOME PER SCHEDULE K-1	335,681.
LESS: INCOME INCLUDED ON SCH. K-1, NOT RECORDED ON BOOKS:	
HIGHLAND COMMINGLED FUND, L.P. K-1	1,328.
HIGHLAND EQUITY FUND, L.P. K-1	6,044.
HIGHLAND EQUITY FOCUS FUND, L.P. K-1	6,843.
CDO OPPORTUNITY FUND SUBPART F INCOME	31,289.
PFIC ORDINARY INCOME	73,163.
PFIC CAPITAL GAINS	5,566.
TAX OVER BOOK GAINS ON SALES	62,581.
DISTRIBUTION IN EXCESS OF BASIS	621.
LESS: EXPENSES RECORDED ON BOOKS, NOT INCLUDED ON SCH. K-1:	
DEPRECIATION	116.
TRAVEL AND ENTERTAINMENT	108.
CONSOLIDATED ENTITIES EXPENSES	23,724.
MINORITY INTEREST IN CONSOLIDATED BOOK INCOME	136,916.
SLT DISTRIBUTION AMORTIZATION	3,179.
KEY MAN LIFE INSURANCE EXPENSE	951.
UNREALIZED LOSS ON WAREHOUSE CONTRACTS	4,413.
AMORTIZATION OF COMPUTER SOFTWARE	57.
PLUS: INCOME RECORDED ON BOOKS, NOT INCL. ON SCH. K-1:	
CONSOLIDATED ENTITIES INCOME	108,681.
CONSOLIDATED ENTITIES REALIZED GAIN	67,009.
UNREALIZED GAINS	555,243.
HIGHLAND CRUSADER FUND, L.P. K-1	59,008.
HIGHLAND REAL ESTATE FUND, L.P. K-1	33.
CALPERS INCENTIVE FEE - UNEARNED	20,353.
PLUS: DEDUCTIONS ON SCH. K-1, NOT CHARGED AGAINST BOOKS:	
AMORTIZATION OF MANAGEMENT CONTRACTS	8,168.
	<hr/>
TOTAL INCOME PER ITEM N, CURRENT YEAR INCR (DECR)	797,277.
<hr/>	
LINE 2 - NET INCOME FROM RENTAL REAL ESTATE ACTIVITIES	
<hr/>	
FROM PASS-THROUGH ENTITIES	-2.
	<hr/>
TOTAL NET INCOME FROM RENTAL REAL ESTATE ACTIVITIES	-2.
<hr/>	

STATEMENT #1

4P5000 1000

70011G 1707

003359

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HIGHLAND CAPITAL MANAGEMENT, L.P. 75-2716725  
 SCH K-1 SUPPORTING SCHEDULES PARTNER # 10 PATRICK DAUGHERTY

LINE 5 - INTEREST INCOMEOTHER INTEREST INCOME

FROM PASS-THROUGH ENTITIES

1,123.  
10,794.

TOTAL INTEREST INCOME

11,917.

LINE 12 - SECTION 179 EXPENSE DEDUCTION

FROM OTHER (GENERAL BUSINESS)

513.

TOTAL SECTION 179 EXPENSE DEDUCTION

513.

LINE 13T - OTHER DEDUCTIONSOTHER DEDUCTIONS INCLUDED IN ITEM N, CURRENT YEAR INCREASE (DECREASE)  
FROM PASS-THROUGH ENTITIES

3,706.

TOTAL OTHER DEDUCTIONS

3,706.

LINE 18C - NONDEDUCTIBLE EXPENSES

TRAVEL AND ENTERTAINMENT EXPENSE NONDEDUCTIBLE

108.

TOTAL NONDEDUCTIBLE EXPENSES

108.

PARTNER FOOTNOTES NOT INCLUDED IN ITEM N

INFORMATION REQUIRED TO FILE A FORM 926: RETURN BY  
 A U.S. TRANSFEROR OF PROPERTY TO A FOREIGN  
 CORPORATION. PLEASE CONSULT YOUR TAX ADVISOR.  
 ALL CONTRIBUTIONS WERE MADE BY THE PARTNERSHIP TO  
 THE FOLLOWING CONTROLLED FOREIGN CORPORATION:

NAME: HIGHLAND CDO OPPORTUNITY FUND, LTD.

EIN: N/A

ADDRESS: C/O PRIMATE MANAGEMENT LIMITED  
 12 CHURCH STREET, HAMILTON HM 11  
 BERMUDA

COUNTRY OF INCORPORATION: BERMUDA

YOUR PRO RATA SHARE OF THIS CONTRIBUTION WAS:

CASH CONTRIBUTIONS

169,482.

CONTRIBUTION OF INTEREST IN PAM CAPITAL FUNDING LP

14,008.

STATEMENT #2

4P900D 1.000

70011G 1707

003360

## **EXHIBIT 50**

**Schedule K-1  
(Form 1065)****2005**For calendar year 2005, or tax  
year beginning \_\_\_\_\_, 2005  
ending \_\_\_\_\_, 20\_\_Department of the Treasury  
Internal Revenue Service**Partner's Share of Income, Deductions,  
Credits, etc.** ▶ See back of form and separate instructions.**Part I Information About the Partnership****A** Partnership's employer identification number

75-2716725

**B** Partnership's name, address, city, state, and ZIP codeHIGHLAND CAPITAL MANAGEMENT, L.P.  
TWO GALLERIA TOWER, 13455 NOEL RD, SUITE 1300  
DALLAS, TX 75240**C** IRS Center where partnership filed return

OGDEN

**D** ☐ Check if this is a publicly traded partnership (PTP)**E** ☐ Tax shelter registration number, if any**F** ☐ Check if Form 8271 is attached**Part II Information About the Partner****G** Partner's identifying number 10**H** Partner's name, address, city, state, and ZIP codePATRICK DAUGHERTY  
3621 CORNELL AVE.  
DALLAS, TX 75205**I** ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member**J** ☒ Domestic partner ☐ Foreign partner**K** What type of entity is this partner? INDIVIDUAL**L** Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	VARIOUS %	VARIOUS %
Loss	VARIOUS %	VARIOUS %
Capital	0.381699 %	0.698216 %

**M** Partner's share of liabilities at year end:

Nonrecourse	\$ 15,597,036.
Qualified nonrecourse financing	\$
Recourse	\$

**N** Partner's capital account analysis:

Beginning capital account	\$ 797,277.
Capital contributed during the year	\$
Current year increase (decrease)	\$ 765,331.
Withdrawals & distributions	\$ (129,262.)
Ending capital account	\$ 1,433,346.

☐ Tax basis ☒ GAAP ☐ Section 704(b) book  
☐ Other (explain)

Final K-1 Amended K-1 OMB No. 1545-0099

**Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Ordinary business income (loss)	15	Credits & credit recapture
	363,306.		
2	Net rental real estate income (loss)		
*	2,887.		
3	Other net rental income (loss)	16	Foreign transactions
	9.		
4	Guaranteed payments		
5	Interest income		
*	48,883.		
6a	Ordinary dividends		
	124,997.		
6b	Qualified dividends		
	4,146.		
7	Royalties		
8	Net short-term capital gain (loss)		
	96,183.		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
	342,618.		
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)	C*	1,031.
A	138,860.		
F	6,832.		
12	Section 179 deduction	19	Distributions
*	731.	A	129,262.
13	Other deductions		
A*	1,396.	20	Other information
B*	952.	A	312,740.
*	STMT	B	3,279.
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

For IRS Use Only

For Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2005

5P1200 2.000

70011G 1707

V05-8.2

003362



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HIGHLAND CAPITAL MANAGEMENT, L.P.  
 SCH K-1 SUPPORTING SCHEDULES PARTNER # 10 PATRICK DAUGHERTY 75-2716725

=====

ITEM N - WITHDRAWALS AND DISTRIBUTIONS  
 =====

CASH DISTRIBUTIONS 129,262.  
 -----

TOTAL WITHDRAWALS AND DISTRIBUTIONS 129,262.  
 =====

LINE 2 - NET INCOME FROM RENTAL REAL ESTATE ACTIVITIES  
 =====

FROM PASS-THROUGH ENTITIES 2,887.  
 -----

TOTAL NET INCOME FROM RENTAL REAL ESTATE ACTIVITIES 2,887.  
 =====

LINE 5 - INTEREST INCOME  
 =====

OTHER INTEREST INCOME  
 -----

FROM PASS-THROUGH ENTITIES 3,777.  
 45,106.  
 -----

TOTAL INTEREST INCOME 48,883.  
 =====

LINE 12 - SECTION 179 EXPENSE DEDUCTION  
 =====

FROM TRADE/BUSINESS 731.  
 -----

TOTAL SECTION 179 EXPENSE DEDUCTION 731.  
 =====

LINE 13 - OTHER DEDUCTIONS  
 =====

A CASH CONTRIBUTIONS (50%)  
 -----

FROM TRADE\BUSINESS 1,396.  
 -----

TOTAL BOX A 1,396.  
 =====

B CASH CONTRIBUTIONS (30%)  
 -----

FROM TRADE\BUSINESS 952.  
 -----

TOTAL BOX B 952.  
 =====

F CAPITAL GAIN PROPERTY (20%)  
 -----

FROM TRADE\BUSINESS 127,688.  
 -----

TOTAL BOX F 127,688.  
 =====

STATEMENT #1

SP9000 1.000

70011G 1707

V05-8.2

003363

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HIGHLAND CAPITAL MANAGEMENT, L.P.  
 SCH K-1 SUPPORTING SCHEDULES PARTNER # 10 PATRICK DAUGHERTY  
 75-2716725

H - INVESTMENT INTEREST EXPENSE  
 -----  
 OTHER INVESTMENT INTEREST 37,790.  
 FROM PASS-THROUGH ENTITIES 65,945.  
 -----  
 TOTAL BOX H 103,735.  
 =====

K DEDUCTIONS - PORTFOLIO (2% FLOOR)  
 -----  
 FROM PASS-THROUGH ENTITIES 2,339.  
 -----  
 TOTAL BOX K 2,339.  
 =====

L DEDUCTIONS - PORTFOLIO (OTHER)  
 -----  
 FROM PASS-THROUGH ENTITIES 940.  
 -----  
 TOTAL BOX L 940.  
 =====

W OTHER DEDUCTIONS  
 -----  
 OTHER DEDUCTIONS INCLUDED IN ITEM N, CURRENT YEAR INCREASE (DECREASE)  
 FROM PASS-THROUGH ENTITIES 4,112.  
 -----  
 TOTAL BOX W 4,112.  
 =====

LINE 18C - NONDEDUCTIBLE EXPENSES  
 =====  
 TRAVEL AND ENTERTAINMENT EXPENSE NONDEDUCTIBLE 1,031.  
 -----  
 TOTAL NONDEDUCTIBLE EXPENSES 1,031.  
 =====

PARTNER FOOTNOTES NOT INCLUDED IN ITEM N  
 =====

INFORMATION REQUIRED TO FILE A FORM 926: RETURN BY  
 A U.S. TRANSFEROR OF PROPERTY TO A FOREIGN  
 CORPORATION. PLEASE CONSULT YOUR TAX ADVISOR.

THE PARTNERSHIP HAS MADE THE FOLLOWING INDIRECT  
 INVESTMENTS OF CASH INTO THE FOREIGN CORPORATIONS  
 LISTED BELOW DURING 2005. ALL CONTRIBUTIONS WERE  
 MADE BY THE PARTNERSHIP THROUGH THE FOLLOWING  
 CONTROLLED FOREIGN CORPORATION:

NAME: HIGHLAND CDO OPPORTUNITY FUND, LTD.  
 EIN: N/A  
 ADDRESS: C/O PRIMATE MANAGEMENT LIMITED

STATEMENT #2

SP9000 1.000

70011G 1707

V05-8.2

003364

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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

SCH K-1 SUPPORTING SCHEDULES PARTNER # 10 PATRICK DAUGHERTY

12 CHURCH STREET, HAMILTON HM 11  
BERMUDA

COUNTRY OF INCORPORATION: BERMUDA

YOUR PRORATA SHARE OF THE CONTRIBUTION WAS:

NAME OF TRANSFEREE: SOUTHFORK CLO, LTD

92,165.

ID #: N/A

ADDRESS: SOUTHFORK CLO, LTD

C/O MAPLES FINANCE LTD

PO BOX 1093GT, QUEENSGATE HSE, S CHURCH ST

GEORGE TOWN, CAYMAN ISLANDS

PLACE OF ORGANIZATION: CAYMAN ISLANDS

FOREIGN LAW CHARACTERIZATION: LTD LIABILITY CO

DESCRIPTION OF PROPERTY TRANSFERRED: CASH

NAME OF TRANSFEREE: JASPER CLO, LTD

192,009.

ID #: N/A

ADDRESS: JASPER CLO, LTD

PO BOX 1234, QUEENSGATE HSE, S CHURCH ST

GEORGE TOWN, CAYMAN ISLANDS

PLACE OF ORGANIZATION: CAYMAN ISLANDS

FOREIGN LAW CHARACTERIZATION: LTD LIABILITY CO

DESCRIPTION OF PROPERTY TRANSFERRED: CASH

NAME OF TRANSFEREE: GLENEAGLES CLO, LTD

135,454.

ID #: N/A

ADDRESS: GLENEAGLES CLO, LTD

C/O MAPLES FINANCE LTD

PO BOX 1093, QUEENSGATE HSE, S CHURCH ST

GEORGE TOWN, CAYMAN ISLANDS

PLACE OF ORGANIZATION: CAYMAN ISLANDS

FOREIGN LAW CHARACTERIZATION: LTD LIABILITY CO

DESCRIPTION OF PROPERTY TRANSFERRED: CASH

STATEMENT #3

SP9000 1.000

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Highland Capital Management LP  
December 31, 2005  
SCH K-1 SUPPORTING SCHEDULES

75-2716725

<u>DESCRIPTION</u>	<u>FMV *</u>	<u>COST BASIS *</u>
Nexpak common stock	0	0
	<u>0</u>	<u>0</u>

\* AS OF DATE OF DISTRIBUTION.

PROPERTY WAS DISTRIBUTED BY THE PARTNERSHIP TO YOU AS A  
RESULT OF YOUR INTEREST IN HIGHLAND CAPITAL MANAGEMENT LP.  
THE PARTNERSHIP DETERMINED THAT ITS COMMON STOCK  
INVESTMENT IN NEXPAK TO BE WORTHLESS PURSUANT TO IRC  
SECTION 165(g) PRIOR TO THE THE DISTRIBUTION OF THE  
PROPERTY. PLEASE CONSULT YOUR TAX ADVISOR.

STATEMENT #4

003366

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10

## **EXHIBIT 51**

003367



Schedule K-1  
(Form 1065)

Department of the Treasury  
Internal Revenue Service

2006

For calendar year 2006, or tax  
year beginning \_\_\_\_\_, 2006  
ending \_\_\_\_\_, 20\_\_

**Partner's Share of Income, Deductions, Credits, etc.** ▶ See back of form and separate instructions.

▶ See back of form and separate instructions.

Part I Information About the Partnership	
A	Partnership's employer identification number
75-2716725	
B	Partnership's name, address, city, state, and ZIP code
HIGHLAND CAPITAL MANAGEMENT, L.P. TWO GALLERIA TOWER, 13455 NOEL RD, SUITE 800 DALLAS, TX 75240	
C	IRS Center where partnership filed return
OGDEN	
D	Check if this is a publicly traded partnership (PTP)
E	Tax shelter registration number, if any
F	Check if Form 8271 is attached

Part II Information About the Partner	
G Partner's identifying number	9
H Partner's name, address, city, state, and ZIP code	
PATRICK DAUGHERTY 3621 CORNELL AVE. DALLAS, TX 75205	
I <input type="checkbox"/>	General partner or LLC member-manager
<input checked="" type="checkbox"/>	Limited partner or other LLC member
J <input checked="" type="checkbox"/>	Domestic partner
<input type="checkbox"/>	Foreign partner
K	What type of entity is this partner? <u>INDIVIDUAL</u>
L Partner's share of profit, loss, and capital:	
	Beginning <span style="float: right;">Ending</span>
Profit	VARIOUS % <span style="float: right;">VARIOUS %</span>
Loss	VARIOUS % <span style="float: right;">VARIOUS %</span>
Capital	0.698216 % <span style="float: right;">0.760779 %</span>
M Partner's share of liabilities at year end:	
Nonrecourse . . . . .	\$ _____
Qualified nonrecourse financing . . . . .	\$ _____
Recourse . . . . .	\$ _____
N Partner's capital account analysis:	
Beginning capital account . . . . .	\$ <u>1,433,346.</u>
Capital contributed during the year . . . . .	\$ _____
Current year increase (decrease) . . . . .	\$ <u>2,173,245.</u>
Withdrawals & distributions . . . . .	\$ <u>(288,335.)</u>
Ending capital account . . . . .	\$ <u>3,318,256.</u>
<input type="checkbox"/> Tax basis <input checked="" type="checkbox"/> GAAP <input type="checkbox"/> Section 704(b) book Other (explain) _____	

Final K-1

Amended K-1

OMB No. 1545-0099

**Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items**

1	Ordinary business income (loss)	15	Credits
	534,269.		
2	Net rental real estate income (loss)		
*	-2,174.		
3	Other net rental income (loss)	16	Foreign transactions
*	9.	A	VARIOUS
4	Guaranteed payments		
		B	1,584.
5	Interest income		
*	155,879.	C	225.
6a	Ordinary dividends		
*	14,741.	G	280.
6b	Qualified dividends		
*	4,487.	H	75.
7	Royalties		
8	Net short-term capital gain (loss)		
*	183,860.		
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
*	507,497.	A*	24.
9b	Collectibles (28%) gain (loss)		
		B*	11.
9c	Unrecaptured section 1250 gain		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
*	-50.		
11	Other income (loss)	C*	2,682.
A*	239,164.		
F*	34,972.		
		19	Distributions
12	Section 179 deduction	A	288,335.
13	Other deductions		
A*	2,593.	20	Other information
G*	51,415.	A	409,784.
*	STMT	B	34,292.
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

For IRS Use Only

For Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2006

Schedule K-1 (Form 1065) 2006

PARTNER # 9 PATRICK DAUGHERTY

Page 2

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

		Code	Report on
1. Ordinary business income (loss). You must first determine whether the income (loss) is passive or nonpassive. Then enter on your return as follows:		K Empowerment zone and renewal community employment credit	Form 8844, line 3
	Report on	L Credit for increasing research activities	See the Partner's Instructions
Passive loss	See the Partner's Instructions	M New markets credit	
Passive income	Schedule E, line 28, column (g)	N Credit for employer social security and Medicare taxes	
Nonpassive loss	Schedule E, line 28, column (h)	O Backup withholding	
Nonpassive income	Schedule E, line 28, column (j)	P Other credits	Form 1040, line 54
2. Net rental real estate income (loss)	See the Partner's Instructions	16. Foreign transactions	See the Partner's Instructions
3. Other net rental income (loss)		A Name of country or U.S. possession	Form 1116, Part I
Net income	Schedule E, line 28, column (g)	B Gross income from all sources	
Net loss	See the Partner's Instructions	C Gross income sourced at partner level	
4. Guaranteed payments	Schedule E, line 28, column (j)	Foreign gross income sourced at partnership level	Form 1116, Part I
5. Interest income	Schedule E, line 4	D Passive	
6a. Ordinary dividends	Form 1040, line 8a	E Listed categories	
6b. Qualified dividends	Form 1040, line 9a	F General limitation	Form 1116, Part I
7. Royalties	Schedule E, line 9b	Deductions allocated and apportioned at partner level	
8. Net short-term capital gain (loss)	Schedule D, line 5, column (f)	G Interest expense	
9a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)	H Other	Form 1116, Part I
9b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D Instructions)	Deductions allocated and apportioned at partnership level to foreign source income	Form 1116, Part I
9c. Unrecaptured section 1250 gain	See the Partner's Instructions	I Passive	
10. Net section 1231 gain (loss)	See the Partner's Instructions	J Listed categories	
11. Other income (loss)		K General limitation	Form 1116, Part I
Code		Other information	
A Other portfolio income (loss)	See the Partner's Instructions	L Total foreign taxes paid	
B Involuntary conversions	See the Partner's Instructions	M Total foreign taxes accrued	Form 1116, Part II
C Sec. 1256 contracts & straddles	Form 6781, line 1	N Reduction in taxes available for credit	Form 1116, line 12
D Mining exploration costs recapture	See Pub. 535	O Foreign trading gross receipts	Form 8873
E Cancellation of debt	Form 1040, line 21 or Form 982	P Extraterritorial income exclusion	Form 8873
F Other income (loss)	See the Partner's Instructions	Q Other foreign transactions	See the Partner's Instructions
12. Section 179 deduction	See the Partner's Instructions	17. Alternative minimum tax (AMT) items	See the Partner's Instructions and the instructions for Form 6251
13. Other deductions		A Post-1986 depreciation adjustment	
A Cash contributions (50%)	See the Partner's Instructions	B Adjusted gain or loss	
B Cash contributions (30%)		C Depletion (other than oil & gas)	
C Noncash contributions (50%)		D Oil, gas, & geothermal - gross income	
D Noncash contributions (30%)		E Oil, gas, & geothermal - deductions	
E Capital gain property to a 50% organization (30%)		F Other AMT items	
F Capital gain property (20%)	Form 4952, line 1	18. Tax-exempt income and nondeductible expenses	Form 1040, line 8b
G Investment interest expense	Schedule E, line 18	A Tax-exempt interest income	
H Deductions-royalty income	See the Partner's Instructions	B Other tax-exempt income	
I Section 59(e)(2) expenditures	Schedule A, line 22	C Nondeductible expenses	See the Partner's Instructions
J Deductions-portfolio (2% floor)	Schedule A, line 27	19. Distributions	See the Partner's Instructions
K Deductions-portfolio (other)	Schedule A, line 1 or Form 1040, line 29	A Cash and marketable securities	
L Amounts paid for medical insurance	See the Partner's Instructions	B Other property	See the Partner's Instructions
M Educational assistance benefits	Form 2441, line 12	20. Other information	Form 4952, line 4a
N Dependent care benefits	See the Partner's Instructions	A Investment income	
O Preproductive period expenses	See the Partner's Instructions	B Investment expenses	
P Commercial revitalization deduction from rental real estate activities	See Form 8582 Instructions	C Fuel tax credit information	Form 4136
Q Pensions and IRAs	See the Partner's Instructions	D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
R Reforestation expense deduction	See the Partner's Instructions	E Basis of energy property	
S Domestic production activities information	See Form 8903 Instructions	F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
T Qualified production activities income	Form 8903, line 7	G Recapture of low-income housing credit (other)	Form 8611, line 8
U Employer's W-2 wages	Form 8903, line 13	H Recapture of investment credit	Form 4255
V Other deductions	See the Partner's Instructions	I Recapture of other credits	See the Partner's Instructions
14. Self-employment earnings (loss)		J Look-back interest - completed long-term contracts	Form 8897
Note: If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.		K Look-back interest - income forecast method	Form 8898
A Net earnings (loss) from self-employment	Schedule SE, Section A or B	L Dispositions of property with section 179 deductions	See the Partner's Instructions
B Gross farming or fishing income	See the Partner's Instructions	M Recapture of section 179 deduction	
C Gross non-farm income	See the Partner's Instructions	N Interest expense for corporate partners	
15. Credits		O Section 453(j)(3) information	
A Low-income housing credit (section 42(j)(5))	See the Partner's Instructions	P Section 453A(c) information	
B Low-income housing credit (other)		Q Section 1260(b) information	
C Qualified rehabilitation expenditures (rental real estate)		R Interest allocable to production expenditures	
D Other rental real estate credits		S CCF nonqualified withdrawals	
E Other rental credits		T Information needed to figure depletion - oil and gas	
F Undistributed capital gains credit	Form 1040, line 70; check box a	U Amortization of reforestation costs	See the Partner's Instructions
G Credit for alcohol used as fuel	See the Partner's Instructions	V Unrelated business taxable income	
H Work opportunity credit	See the Partner's Instructions	W Other information	
I Welfare-to-work credit			
J Disabled access credit			

6P1300 1.000

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HIGHLAND CAPITAL MANAGEMENT, L.P.  
 SCH K-1 SUPPORTING SCHEDULES PARTNER # 9 PATRICK DAUGHERTY

75-2716725

=====

ITEM N - RECONCILIATION OF INCOME

=====

INCOME (LOSS) FROM SCH. K-1, LINES 1 - 11 1,668,167.  
 LESS: DEDUCTIONS FROM SCH. K-1, LINES 12, 13, 16L, AND 16M 97,700.

TOTAL INCOME PER SCHEDULE K-1 1,570,467.

LESS: INCOME INCLUDED ON SCH. K-1, NOT RECORDED ON BOOKS:

INCOME FROM ACCRUAL TO CASH ADJ. 275,425.  
 INCOME/LOSS FROM PASS THROUGH ENTITY 641,876.  
 REALIZED GAIN ON REDEMPTIONS 468,120.  
 481(A) ADJUSTMENT 33,238.  
 83(B) ELECTION 8,129.  
 ORDINARY PFIC INCOME 124,550.

LESS: EXPENSES RECORDED ON BOOKS, NOT INCLUDED ON SCH. K-1:

TRAVEL AND ENTERTAINMENT 1,594.  
 REVERSAL OF DEFERRED COMPENSATION 151,734.  
 NONDEDUCTIBLE EXPENSES 1,088.

PLUS: INCOME RECORDED ON BOOKS, NOT INCL. ON SCH. K-1:

ACCRUAL TO CASH ADJUSTMENT 1,498,067.  
 REVERSAL OF MGMT FEES FROM PASS-THROUGH 141,638.  
 BOOK INCENTIVE FEE REVERSAL 161,210.  
 UNREALIZED GAIN ON INVESTMENTS 735,466.  
 REALIZED GAIN ON INVESTMENTS 9,179.

PLUS: DEDUCTIONS ON SCH. K-1, NOT CHARGED AGAINST BOOKS:

DEPRECIATION 1,519.  
 AMORTIZATION 20,671.  
 LOSS FROM DISREGARDED ENTITY 5,180.

PLUS: OTHER INCREASES TO PARTNER'S CAPITAL  
 OTHER ADJUSTMENT

-264,398.

TOTAL INCOME PER ITEM N, CURRENT YEAR INCR(DEC) 2,173,245.

=====

ITEM N - WITHDRAWALS AND DISTRIBUTIONS

=====

CASH DISTRIBUTIONS 288,335.

TOTAL WITHDRAWALS AND DISTRIBUTIONS 288,335.

=====

LINE 2 - NET INCOME FROM RENTAL REAL ESTATE ACTIVITIES

=====

FROM PASS-THROUGH ENTITIES -2,174.

TOTAL NET INCOME FROM RENTAL REAL ESTATE ACTIVITIES -2,174.

STATEMENT #1

6P9000 1.000

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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

SCH K-1 SUPPORTING SCHEDULES PARTNER # 9 PATRICK DAUGHERTY

## =====

LINE 3 - NET INCOME FROM OTHER RENTAL ACTIVITIES

=====

FROM PASS-THROUGH ENTITIES

9.

TOTAL NET INCOME FROM OTHER RENTAL ACTIVITIES

9.

## =====

LINE 5 - INTEREST INCOME

=====

FROM PASS-THROUGH ENTITIES

155,879.

TOTAL INTEREST INCOME

155,879.

## =====

LINE 6A - DIVIDEND INCOME

=====

FROM PASS-THROUGH ENTITIES (QUALIFIED AND NON-QUALIFIED)

14,741.

TOTAL ORDINARY DIVIDENDS

14,741.

## =====

LINE 8 - NET SHORT-TERM CAPITAL GAIN(LOSS)

=====

FROM PASS-THROUGH ENTITIES

183,860.

TOTAL NET SHORT-TERM CAPITAL GAIN(LOSS)

183,860.

## =====

LINE 9 - NET LONG-TERM CAPITAL GAIN(LOSS)

=====

LINE 9B  
28% GAIN(LOSS)

=====

LINE 9A  
TOTAL

FROM PORTFOLIO ACTIVITIES

491,676.

FROM PASS-THROUGH ENTITIES

15,821.

TOTAL NET LONG-TERM CAPITAL GAIN(LOSS)

507,497.

## =====

LINE 10 - NET SECTION 1231 GAIN (LOSS)

=====

FROM PASS-THROUGH ENTITIES

-50.

TOTAL NET SECTION 1231 GAIN (LOSS)

-50.

STATEMENT #2

6P9000 1.000

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003371



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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

SCH K-1 SUPPORTING SCHEDULES PARTNER #

9 PATRICK DAUGHERTY

## =====

LINE 11 - OTHER INCOME(LOSS)

## =====

A OTHER PORTFOLIO INCOME(LOSS)

FROM PASS-THROUGH ENTITIES

239,164.

TOTAL BOX A

239,164.

## =====

F OTHER INCOME(LOSS)

OTHER INCOME INCLUDED IN ITEM N, CURRENT YEAR INCREASE (DECREASE):  
FROM PASS-THROUGH ENTITIES

34,972.

TOTAL BOX F

34,972.

## =====

LINE 13 - OTHER DEDUCTIONS

## =====

A CASH CONTRIBUTIONS (50%)

FROM TRADE\BUSINESS

2,593.

TOTAL BOX A.

2,593.

## =====

G - INVESTMENT INTEREST EXPENSE

FROM PASS-THROUGH ENTITIES

51,415.

TOTAL BOX G

51,415.

## =====

J DEDUCTIONS - PORTFOLIO (2% FLOOR)

FROM PASS-THROUGH ENTITIES

32,554.

TOTAL BOX J

32,554.

## =====

K DEDUCTIONS - PORTFOLIO (OTHER)

FROM PASS-THROUGH ENTITIES

1,738.

TOTAL BOX K

1,738.

## =====

V OTHER DEDUCTIONS

OTHER DEDUCTIONS INCLUDED IN ITEM N, CURRENT YEAR INCREASE (DECREASE)  
FROM PASS-THROUGH ENTITIES

9,400.

TOTAL BOX V

9,400.

=====

STATEMENT #3

RP8000 1.000

70011G 1707

V06-8

003372



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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

SCH K-1 SUPPORTING SCHEDULES PARTNER # 9 PATRICK DAUGHERTY

## =====

## LINE 17 - ALTERNATIVE MINIMUM TAX (AMT) ITEMS

## =====

## A POST-1986 DEPRECIATION ADJUSTMENT

FROM PASS-THROUGH ENTITIES

24.

TOTAL BOX A

24.

## =====

## B ADJUSTED GAIN OR LOSS

FROM PASS-THROUGH ENTITIES

11.

TOTAL BOX B

11.

## =====

## LINE 18C - NONDEDUCTIBLE EXPENSES

=====

KEYMAN INSURANCE

1,088.

TOTAL NONDEDUCTIBLE EXPENSES BEFORE TRAVEL AND ENTERTAINMENT

1,088.

TRAVEL AND ENTERTAINMENT EXPENSE NONDEDUCTIBLE

1,594.

TOTAL NONDEDUCTIBLE EXPENSES

2,682.

## =====

## PARTNER FOOTNOTES

## =====

## FORM 926 REPORTING

=====

HIGHLAND CAPITAL MANAGEMENT, L.P. HAS UNDERLYING INVESTMENTS WHICH TRANSFERRED CASH UNDER SECTION 351 OF THE INTERNAL REVENUE CODE TO FOREIGN CORPORATIONS DURING 2006. THE FOLLOWING INFORMATION IS PROVIDED FOR THOSE PARTNERS WHO MAY BE REQUIRED TO FILE FORM 926. PLEASE CONSULT YOUR TAX ADVISOR.

## FORM 926

## PART II

LINE 3: HIGHLAND GOLDFIELD PRESERVE HOLDING III, LTD.

LINE 4: 98-0511016

LINE 5: PO BOX 265 GT, GEORGE TOWN, GRAND CAYMAN

LINE 6: CAYMAN ISLANDS

LINE 7: CORPORATION

LINE 8: YES

LINE 9: N/A

LINE 10: SECTION 351

LINE 11: CASH, AMOUNT:.....\$1,094

LINE 12: NO

LINE 13: NO

LINE 14: NO

\$1,094 IS THE TOTAL CONTRIBUTION AMOUNT. MULTIPLY THIS TOTAL BY YOUR

CONTINUED ON NEXT PAGE

STATEMENT #4

GP8000 1,000

70011G 1707

V06-8

003373

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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

SCH K-1 SUPPORTING SCHEDULES PARTNER #

9 PATRICK DAUGHERTY

PARTNER FOOTNOTES (CONT'D)

PERCENTAGE OWNERSHIP TO DETERMINE YOUR SHARE.

FORM 926

PART II

LINE 3: HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY

LINE 4: N/A

LINE 5: PO BOX 908 GT, MARY STREET, GEORGE TOWN, GRAND CAYMAN

LINE 6: CAYMAN ISLANDS

LINE 7: CORPORATION

LINE 8: YES

LINE 9: VARIOUS

LINE 10: SECTION 351

LINE 11: CASH, AMOUNT:.....\$608,653

LINE 12: NO

LINE 13: NO

LINE 14: NO

\$608,653 IS THE TOTAL CONTRIBUTION AMOUNT. MULTIPLY THIS TOTAL BY  
YOUR PERCENTAGE OWNERSHIP TO DETERMINE YOUR SHARE.

FORM 926

PART II

LINE 3: HIGHLAND CDO HOLDING COMPANY

LINE 4: N/A

LINE 5: N/A

LINE 6: N/A

LINE 7: CORPORATION

LINE 8: YES

LINE 9: VARIOUS

LINE 10: SECTION 351

LINE 11: CASH, AMOUNT:.....\$752,358

LINE 12: NO

LINE 13: NO

LINE 14: NO

\$752,358 IS THE TOTAL CONTRIBUTION AMOUNT. MULTIPLY THIS TOTAL BY  
YOUR PERCENTAGE OWNERSHIP TO DETERMINE YOUR SHARE.

FORM 926

PART II

LINE 3: HIGHLAND CDO HOLDING COMPANY, C/O WALKERS SPV LIMITED

LINE 4: N/A

LINE 5: PO BOX 908 GT, MARY STREET, GEORGE TOWN, GRAND CAYMAN

LINE 6: CAYMAN ISLANDS

LINE 7: CORPORATION

LINE 8: YES

LINE 9: N/A

LINE 10: SECTION 351

LINE 11: CASH, AMOUNT:.....\$22,919,404

LINE 12: NO

LINE 13: NO

LINE 14: NO

CONTINUED ON NEXT PAGE

STATEMENT #5

6PS000 1.000

70011G 1707

V06-8

003374

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HIGHLAND CAPITAL MANAGEMENT, L.P.  
SCH K-1 SUPPORTING SCHEDULES PARTNER # 9 PATRICK DAUGHERTY

75-2716725

PARTNER FOOTNOTES (CONT'D)

\$22,919,404 IS THE TOTAL CONTRIBUTION AMOUNT. MULTIPLY THIS TOTAL BY YOUR PERCENTAGE OWNERSHIP TO DETERMINE YOUR SHARE.

FORM 926

PART II

LINE 3: HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY  
LINE 4: N/A  
LINE 5: PO BOX 908 GT, MARY STREET, GEORGE TOWN, GRAND CAYMAN  
LINE 6: CAYMAN ISLANDS  
LINE 7: CORPORATION  
LINE 8: YES  
LINE 9: N/A  
LINE 10: SECTION 351  
LINE 11: CASH, AMOUNT:.....\$18,541,646  
LINE 12: NO  
LINE 13: NO  
LINE 14: NO

\$18,541,646 IS THE TOTAL CONTRIBUTION AMOUNT. MULTIPLY THIS TOTAL BY YOUR PERCENTAGE OWNERSHIP TO DETERMINE YOUR SHARE.

FORM 8621 REPORTING

HIGHLAND CAPITAL MANAGEMENT, L.P. IS INVESTED IN SECURITIES WHICH ARE LIKELY TO BE TREATED AS A PASSIVE FOREIGN INVESTMENT COMPANY ("PFIC") FOR U.S. FEDERAL INCOME TAX PURPOSES. THE PARTNERSHIP HAS MADE QUALIFYING ELECTING FUND ("QEF") ELECTIONS WITH RESPECT TO THESE SECURITIES. BELOW IS THE INFORMATION YOU NEED TO COMPLETE FORMS 8621. PLEASE CONSULT YOUR TAX ADVISOR.

NAME OF PFIC: HIGHLAND CDO OPPORTUNITY FUND, LTD  
ADDRESS: 52 REID STREET, HAMILTON, BD  
EIN: N/A  
ORDINARY EARNING:.....16,371,475  
NET CAPITAL GAIN:.....NONE  
CASH & FMV OF PROPERTY DISTRIBUTED:.....NONE

THE PFIC(S) LISTED ABOVE WILL PERMIT INVESTORS TO INSPECT AND COPY THE PERMANENT BOOKS OF ACCOUNT, RECORDS AND OTHER SUCH DOCUMENTS AS MAY BE MAINTAINED BY THE PFIC THAT ARE NECESSARY TO TO ESTABLISH THAT THE PFIC'S ORDINARY EARNINGS AND NET CAPITAL GAINS, AS PROVIDED IN SECTION 1293(E) OF THE U.S. INTERNAL REVENUE CODE ARE COMPUTED IN ACCORDANCE WITH U.S. INCOME TAX PRINCIPLES.

THE AMOUNT(S) INCLUDED ABOVE REPRESENT A CONSOLIDATION OF HIGHLAND CDO OPPORTUNITY FUND, LTD. AND ALL PFICS IN WHICH IT IS INVESTED INCLUDING THE FOLLOWING:

RESTORATION FUNDING CLO, LTD  
PO BOX 1093 GT, S CHURCH ST, GEORGE TOWN, CJ

CONTINUED ON NEXT PAGE

STATEMENT #6

6P9000 1.000

70011G 1707

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HIGHLAND CAPITAL MANAGEMENT, L.P.  
SCH K-1 SUPPORTING SCHEDULES PARTNER # 9 PATRICK DAUGHERTY

75-2716725

=====

PARTNER FOOTNOTES (CONT'D)

=====

PAMCO CAYMAN LTD  
1093 GT, S CHURCH ST, GEORGE TOWN, CJ

VALHALLA CLO, LTD  
PO BOX 908GT, WALKER HOUSE, MARY ST, GEORGE TOWN, CJ

HIGHLAND LOAN FUNDING V, LTD  
PO BOX 1093GT, S CHURCH ST, GEORGE TOWN, CJ

HIGHLAND LEGACY LIMITED  
PO BOX 1093 GT, S CHURCH ST, GEORGE TOWN, CJ

GLENEAGLES CLO, LTD  
PO BOX 1093 GT, QUEENSGATE HOUSE, GEORGE TOWN, CJ

JASPER CLO, LTD  
PO BOX 1234, QUEENSGATE HOUSE, GEORGE TOWN, CJ

SOUTHFORK CLO, LTD  
PO BOX 1093 GT, QUEENSGATE HOUSE, GEORGE TOWN, CJ

STEIN ROE AND FARNHAM CLO I, LTD  
PO BOX 1093GT, COMPASS CENTER, GEORGE TOWN, CJ

YOUR PRO RATA SHARE OF THE ABOVE AMOUNT(S) FROM THE PFIC(S) ARE INCLUDED ON YOUR 2006 SCHEDULE K-1. MULTIPLY THE ABOVE AMOUNT(S) BY YOUR OWNERSHIP PERCENTAGE TO DETERMINE YOUR SHARE.

STATEMENT #7

6P9000 1.000

70011G 1707

V06-8

003376

## **EXHIBIT 52**



## 2007

For calendar year 2007, or tax  
year beginning \_\_\_\_\_, 2007  
ending \_\_\_\_\_, 20

► See back of form and separate instructions.

Part III		Partner's Share of Current Year Income, Deductions, Credits, and Other Items	
1	Ordinary business income (loss) 923,506	15	Credits L 242
2	Net rental real estate income (loss) (4,346)	N	5
3	Other net rental income (loss) 6	16	Foreign transactions A VARIOUS
4	Guaranteed payments	B	3,278,002
5	Interest income 84,487	C	598,196
6a	Ordinary dividends 23,983	D	291
6b	Qualified dividends 7,155	E	65,861
7	Royalties	G	107,625
8	Net short-term capital gain (loss) (405,456)	*	STMT
9a	Net long-term capital gain (loss) 444,762	17	Alternative minimum tax (AMT) items A 32
9b	Collectibles (28%) gain (loss)		
9c	Unrecaptured section 1250 gain 9c 4,906		
10	Net section 1231 gain (loss) 57,798	18	Tax-exempt income and nondeductible expenses
11	Other income (loss) A 499,721	A	2,348
	C 7,039	C	6,842
	F 118,002		
12	Section 179 deduction	19	Distributions A 515,084
13	Other deductions A 1,959	B	-
	G 40,888	20	Other information A STMT
*	STMT	B	STMT
14	Self-employment earnings (loss)		
*See attached statement for additional information.			

For IRS Use Only

Schedule K-1 (Form 1065) 2007

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Schedule K-1 (Form 1065) 2007

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This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

	Code	Report on
1. Ordinary business income (loss). You must first determine whether the income (loss) is passive or nonpassive. Then enter on your return as follows:		
Passive loss	See the Partner's Instructions	
Passive income	Schedule E, line 28, column (g)	
Nonpassive loss	Schedule E, line 28, column (h)	
Nonpassive income	Schedule E, line 28, column (i)	
2. Net rental real estate income (loss)	See the Partner's Instructions	
3. Other net rental income (loss)		
Net income	Schedule E, line 28, column (g)	
Net loss	See the Partner's Instructions	
4. Guaranteed payments	Schedule E, line 28, column (j)	
5. Interest income	Form 1040, line 8a	
6a. Ordinary dividends	Form 1040, line 9a	
6b. Qualified dividends	Form 1040, line 9b	
7. Royalties	Schedule E, line 4	
8. Net short-term capital gain (loss)	Schedule D, line 5, column (f)	
9a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)	
9b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)	
9c. Unrecaptured section 1250 gain	See the Partner's Instructions	
10. Net section 1231 gain (loss)	See the Partner's Instructions	
11. Other income (loss)		
Code		
A Other portfolio income (loss)	See the Partner's Instructions	
B Involuntary conversions	See the Partner's Instructions	
C Sec. 1256 contracts & straddles	Form 6781, line 1	
D Mining exploration costs recapture	See Pub. 535	
E Cancellation of debt	Form 1040, line 21 or Form 982	
F Other income (loss)	See the Partner's Instructions	
12. Section 179 deduction	See the Partner's Instructions	
13. Other deductions		
A Cash contributions (50%)	See the Partner's Instructions	
B Cash contributions (30%)		
C Noncash contributions (50%)		
D Noncash contributions (30%)		
E Capital gain property to a 50% organization (30%)		
F Capital gain property (20%)	Form 4952, line 1	
G Investment interest expense	Schedule E, line 18	
H Deductions—royalty income	See the Partner's Instructions	
I Section 59(e)(2) expenditures	Schedule A, line 23	
J Deductions—portfolio (2% floor)	Schedule A, line 28	
K Deductions—portfolio (other)	Schedule A, line 1 or Form 1040, line 29	
L Amounts paid for medical insurance	See the Partner's Instructions	
M Educational assistance benefits	Form 2441, line 14	
N Dependent care benefits	See the Partner's Instructions	
O Preproductive period expenses	See the Partner's Instructions	
P Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions	
Q Pensions and IRAs	See the Partner's Instructions	
R Reforestation expense deduction	See the Partner's Instructions	
S Domestic production activities information	See Form 8903 instructions	
T Qualified production activities income	Form 8903, line 7	
U Employer's Form W-2 wages	Form 8903, line 15	
V Other deductions	See the Partner's Instructions	
14. Self-employment earnings (loss)		
Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.		
A Net earnings (loss) from self-employment	Schedule SE, Section A or B	
B Gross farming or fishing income	See the Partner's Instructions	
C Gross non-farm income	See the Partner's Instructions	
15. Credits		
A Low-income housing credit (section 42(j)(5))	See the Partner's Instructions	
B Low-income housing credit (other)		
C Qualified rehabilitation expenditures (rental real estate)		
D Other rental real estate credits		
E Other rental credits		
F Undistributed capital gains credit	Form 1040, line 70: check box a	
G Credit for alcohol used as fuel	See the Partner's Instructions	
H Work opportunity credit		
I Welfare-to-work credit		
J Disabled access credit		
K Empowerment zone and renewal community employment credit		Form 8844, line 3
L Credit for increasing research activities	See the Partner's Instructions	
M New markets credit		
N Credit for employer social security and Medicare taxes		
O Backup withholding		Form 1040, line 64
P Other credits		See the Partner's Instructions
16. Foreign transactions		
A Name of country or U.S. possession	Form 1116, Part I	
B Gross income from all sources		
C Gross income sourced at partner level		
Foreign gross income sourced at partnership level		
D Passive category	Form 1116, Part I	
E General category		
F Other		
Deductions allocated and apportioned at partner level		
G Interest expense	Form 1116, Part I	
H Other	Form 1116, Part I	
Deductions allocated and apportioned at partnership level to foreign source income		
I Passive category	Form 1116, Part I	
J General category		
K Other		
Other information		
L Total foreign taxes paid	Form 1116, Part II	
M Total foreign taxes accrued	Form 1116, Part II	
N Reduction in taxes available for credit	Form 1116, line 12	
O Foreign trading gross receipts	Form 8873	
P Extraterritorial income exclusion	Form 8873	
Q Other foreign transactions	See the Partner's Instructions	
17. Alternative minimum tax (AMT) items		
A Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251	
B Adjusted gain or loss		
C Depletion (other than oil & gas)		
D Oil, gas, & geothermal—gross income		
E Oil, gas, & geothermal—deductions		
F Other AMT items		
18. Tax-exempt income and nondeductible expenses		
A Tax-exempt interest income	Form 1040, line 8b	
B Other tax-exempt income	See the Partner's Instructions	
C Nondeductible expenses	See the Partner's Instructions	
19. Distributions		
A Cash and marketable securities	See the Partner's Instructions	
B Other property	See the Partner's Instructions	
20. Other information		
A Investment income	Form 4952, line 4a	
B Investment expenses	Form 4952, line 5	
C Fuel tax credit information	Form 4136	
D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions	
E Basis of energy property	See the Partner's Instructions	
F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8	
G Recapture of low-income housing credit (other)	Form 8611, line 8	
H Recapture of investment credit	See Form 4255	
I Recapture of other credits	See the Partner's Instructions	
J Look-back interest—completed long-term contracts	See Form 8697	
K Look-back interest—income forecast method	See Form 8866	
L Dispositions of property with section 179 deductions	See the Partner's Instructions	
M Recapture of section 179 deduction		
N Interest expense for corporate partners		
O Section 453(j)(3) information		
P Section 453A(c) information		
Q Section 1260(b) information		
R Interest allocable to production expenditures		
S CCF nonqualified withdrawals		
T Information needed to figure depletion—oil and gas		
U Amortization of reforestation costs		
V Unrelated business taxable income		
W Other information		

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Highland Capital Management, L.P.  
75-2716725

PATRICK DAUGHERTY

This list identifies the codes used on the Schedule K-1 for all partners and summarizes reporting information for partners who file Form 1040.

For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

Line 13	OTHER DEDUCTIONS	
	J Deductions - portfolio (2% floor)	114,134
	K Deductions - portfolio (other)	169
	V Other Deductions	17,544
Line 16	FOREIGN TRANSACTIONS	
	H Other	442,285
	I Passive category	37
	J General category	47,399
	L Total foreign taxes paid	6,298

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

1. THE PARTNERSHIP EARNS A PORTION OF ITS INCOME THROUGH INVESTMENTS IN PARTNERSHIPS WHICH CONSIDER THEMSELVES TO BE IN THE TRADE OR BUSINESS OF ACTIVELY TRADING PERSONAL PROPERTY FOR THEIR OWN ACCOUNT. IN ACCORDANCE WITH INTERNAL REVENUE CODE SECTION 469-IT(e)(6), THE INCOME EARNED ON SUCH ACTIVITIES IS "NON-PASSIVE" TO ANY PARTNER. WHERE APPROPRIATE, WE HAVE INDICATED IN THE ACCOMPANYING FOOTNOTES ANY PORTION WHICH IS "NON-PASSIVE". PLEASE CONSULT YOUR TAX ADVISOR.

## 2. LINE 1 - ORDINARY INCOME/(LOSS) FROM TRADE OR BUSINESS ACTIVITIES

THE AMOUNT ON LINE 1 IS COMPRISED OF THE FOLLOWING 'NON-PASSIVE' TRADE OR BUSINESS SOURCES, UNLESS OTHERWISE INDICATED AS PASSIVE:

INTEREST INCOME	\$	9,464
DIVIDEND INCOME		1,413
SWAP INCOME/(LOSS)		549
OTHER INCOME/(LOSS)		2,049,894
TRADE OR BUSINESS INVESTMENT INTEREST EXPENSE		(2,657)
OTHER TRADE OR BUSINESS EXPENSE		(1,135,156)
TOTAL LINE 1	\$	923,506

YOUR SHARE OF QUALIFIED DIVIDEND INCOME INCLUDED IN LINE 1 DIVIDEND INCOME IS:

\$ 197

## 3. LINE 11F - OTHER INCOME/(LOSS)

SWAP INCOME/(LOSS)	\$	57,874
SECTION 988 GAIN/(LOSS)		1,488
SHORT-TERM CAPITAL GAIN/(LOSS)		45,751
LONG-TERM CAPITAL GAIN/(LOSS)		4,528
OTHER INCOME/(LOSS)		8,361
TOTAL LINE 11F	\$	118,002

PLEASE NOTE THAT THE ABOVE DETAILS FOR LINES 1 AND 11F MAY NOT SUM TO THE TOTAL DUE TO ROUNDING.

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

4. LINE 20 — BASED UPON INTERNAL REVENUE CODE (IRC) SECTION 163(d) ALL 'NON-PASSIVE' ITEMS OF INCOME AND EXPENSE REPORTED TO YOU ON THIS SCHEDULE K-1 MAY QUALIFY AS INVESTMENT INCOME OR EXPENSE. PLEASE REFER TO 2007 PARTNER'S INSTRUCTIONS FOR SCHEDULE K-1 (FORM 1065) AND THE INSTRUCTIONS FOR FORM 4952. PLEASE CONSULT YOUR TAX ADVISOR.

5. THE PARTNERSHIP HAS MADE A TIMELY QUALIFIED ELECTING FUND ("QEF") ELECTION WITH RESPECT TO ITS INVESTMENT IN UNDERLYING PASSIVE FOREIGN INVESTMENT COMPANIES ("PFICS"), EFFECTIVE FOR EACH YEAR OF OWNERSHIP, AND HAS FILED THE REQUIRED FORM 8621 FOR ALL YEARS OF OWNERSHIP. EACH PFIC WAS ACQUIRED FOR CASH.

THE FIRST U.S. SHAREHOLDER THAT HAS MADE A QEF ELECTION FOR A PFIC IS REQUIRED TO INCLUDE INCOME CURRENTLY UNDER IRC SECTION 1293 AND TO FILE FORM 8621. AS A PARTNER IN A U.S. PARTNERSHIP THAT HAS MADE THE QEF ELECTION AND FILED FORM 8621, YOUR ALLOCABLE SHARE OF THIS INCOME IS NOT REQUIRED TO BE FURTHER REPORTED ON AN ADDITIONAL FORM 8621. THE SERVICE HAS CLARIFIED INFORMALLY AND WILL CLARIFY FORMALLY BY CHANGING THE INSTRUCTIONS TO FORM 8621 THAT NO ADDITIONAL FORM 8621 REPORTING IS NECESSARY UNDER THESE FACTS. PLEASE CONSULT YOUR TAX ADVISOR.

6. FORM 926 REPORTING REQUIREMENTS

PURSUANT TO IRC SECTION 6038B (FOR TAXABLE YEARS BEGINNING AFTER FEBRUARY 5, 1999), A PARTNERSHIP'S CONTRIBUTION OF PROPERTY, WHICH INCLUDES CASH, TO A FOREIGN CORPORATION IS DEEMED TO BE MADE BY THE PARTNERS OF SUCH PARTNERSHIP. THE PARTNERSHIP INVESTS IN HIGHLAND CDO OPPORTUNITY FUND, L.P. AND HIGHLAND FINANCIAL PARTNERS, L.P. A PORTION OF YOUR INVESTMENT IN HIGHLAND CDO OPPORTUNITY FUND, L.P. AND HIGHLAND FINANCIAL PARTNERS, L.P. WAS TRANSFERRED TO THE FOREIGN CORPORATIONS INDICATED ON THE SCHEDULE BELOW. AS A RESULT, YOU MAY HAVE A FILING REQUIREMENT UNDER TREASURY REGULATION SEC.1.6038B-1(B)(3) WITH REGARD TO SUCH TRANSFERS ON FORM 926. PLEASE CONSULT YOUR TAX ADVISOR REGARDING THIS FILING REQUIREMENT.

PLEASE NOTE THAT IF YOU ARE REQUIRED TO COMPLETE A FORM 926 BASED ON THE INFORMATION BELOW, A SEPARATE FORM MUST BE COMPLETED FOR EACH RESPECTIVE FOREIGN TRANSFEREE CORPORATION.

THE FOLLOWING INFORMATION IS PROVIDED IN ORDER FOR YOU TO COMPLY WITH THE FORM 926 FILING REQUIREMENTS. THE LINE NUMBERS BELOW CORRESPOND TO THOSE ON FORM 926.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	EASTLAND INVESTORS CORP.	
LINE 4.	N/A	
LINE 5.	C/O OGIER FIDUCIARY SERVICES (CAYMAN) LIMITED, PO BOX 1234, QUEENSGATE HOUSE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS	
LINE 6.	CAYMAN ISLANDS	
LINE 7.	EXEMPTED LLC	
LINE 8.	YES	
LINE 9.	3/13/2007	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 1,179
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-17. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	GREENBRIAR CLO, LTD.	
LINE 4.	N/A	
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HILL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS	
LINE 6.	CAYMAN ISLANDS	
LINE 7.	EXEMPTED LLC	
LINE 8.	YES	
LINE 9.	12/20/2007	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 1,784
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

8. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HIGHLAND EURO CDO III B.V.	
LINE 4.	N/A	
LINE 5.	C/O THE TMF GROUP, THE PARNASSUSTOREN, LOCATELLIKADE 1, 1076 AZ AMSTERDAM, THE NETHERLANDS	
LINE 6.	THE NETHERLANDS	
LINE 7.	LIMITED LIABILITY PRIVATE COMPANY	
LINE 8.	YES	
LINE 9.	4/26/2007	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 1,141
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

9. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	ROCKWALL CDO II, LTD.	
LINE 4.	N/A	
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HILL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS	
LINE 6.	CAYMAN ISLANDS	
LINE 7.	EXEMPTED LLC	
LINE 8.	YES	
LINE 9.	5/9/2007	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 1,369
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

## 10. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	STRATFORD CLO LTD.	
LINE 4.	N/A	
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HILL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS	
LINE 6.	CAYMAN ISLANDS	
LINE 7.	EXEMPTED LLC	
LINE 8.	YES	
LINE 9.	10/25/2007	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 1,688
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

## 11. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	WESTCHESTER CLO, LTD.	
LINE 4.	N/A	
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HILL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS	
LINE 6.	CAYMAN ISLANDS	
LINE 7.	EXEMPTED LLC	
LINE 8.	YES	
LINE 9.	5/31/2007	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 1,731
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

## 12. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HIGHLAND SPECIAL OPPORTUNITIES HOLDING COMPANY	
LINE 4.	N/A	
LINE 5.	PO BOX 908 GT, MARY STREET GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS	
LINE 6.	CAYMAN ISLANDS	
LINE 7.	CORPORATION	
LINE 8.	YES	
LINE 9.	VARIOUS	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 3,427
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

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PATRICK DAUGHERTY  
[REDACTED]

HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

13. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HIGHLAND CDO HOLDING COMPANY	
LINE 4.	N/A	
LINE 5.	N/A	
	N/A	
LINE 6.	N/A	
LINE 7.	CORPORATION	
LINE 8.	YES	
LINE 9.	VARIOUS	
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11.	CASH (YOUR SHARE OF)	\$ 232,480
LINE 12.	NO	
LINE 13.	NO	
LINE 14.	NO	

14. FORM 8886 AND FORM 8275 DISCLOSURES

AS A RESULT OF ITS DIRECT INVESTMENT IN HIGHLAND FINANCIAL PARTNERS, L.P. AND HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., HIGHLAND CAPITAL MANAGEMENT, L.P. ATTACHED FOUR DISCLOSURE FORMS TO ITS 2007 TAX RETURN (FORM 8886 AND FORM 8275). COPIES OF THESE FORMS HAVE BEEN ATTACHED AS A REFERENCE. YOUR SHARE OF THE LOSSES ARE REFLECTED ON THE ATTACHED FORMS 8886.

PLEASE CONSULT YOUR TAX ADVISOR CONCERNING ANY POTENTIAL FILING REQUIREMENT YOU MAY HAVE RELATED TO THESE DISCLOSURES.

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Form <b>8886</b> (Rev. December 2007) Department of the Treasury Internal Revenue Service	<b>Reportable Transaction Disclosure Statement</b>	OMB No. 1545-1800  Attachment Sequence No. <b>137</b>						
Name(s) shown on return (individuals enter last name, first name, middle initial) <b>PATRICK DAUGHERTY</b>		Identifying number <div style="background-color: black; width: 100px; height: 1.2em;"></div>						
Number, street, and room or suite no. <b>3621 CORNELL AVE.</b>								
City or town, state and ZIP code <b>DALLAS, TX 75205</b>								
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number <u>1</u> of <u>1</u>								
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . ▶ <u>1065</u> Enter the year of the tax return identified above . . . . . ▶ <u>2007</u>								
Is this Form 8886 being filed with an amended tax return? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No								
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filer <input checked="" type="checkbox"/> Protective disclosure								
<b>1a</b> Name of reportable transaction <b>SECTION 165 LOSS</b>								
<b>1b</b> Initial year participated in transaction  <div style="text-align: center;">2007</div>	<b>1c</b> Reportable transaction or tax shelter registration number (9 digits or 11 digits)							
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply								
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><b>a</b> <input type="checkbox"/> Listed</td> <td style="width: 33%;"><b>c</b> <input type="checkbox"/> Contractual protection</td> <td style="width: 33%;"><b>e</b> <input type="checkbox"/> Brief asset holding period</td> </tr> <tr> <td><b>b</b> <input type="checkbox"/> Confidential</td> <td><b>d</b> <input checked="" type="checkbox"/> Loss</td> <td><b>f</b> <input type="checkbox"/> Transaction of interest</td> </tr> </table>			<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period	<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest
<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period						
<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest						
<b>3</b> If you checked box 2a or 2f, enter the published guidance number for the listed transaction of interest . . . . . ▶								
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ <u>5</u>								
<b>5</b> If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)								
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>a</b> Type of entity:  <input checked="" type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign         </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign         </td> </tr> </table>			<b>a</b> Type of entity: <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> S corporation <input type="checkbox"/> Trust <input type="checkbox"/> Foreign	<input type="checkbox"/> Partnership <input type="checkbox"/> S corporation <input type="checkbox"/> Trust <input type="checkbox"/> Foreign				
<b>a</b> Type of entity: <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> S corporation <input type="checkbox"/> Trust <input type="checkbox"/> Foreign	<input type="checkbox"/> Partnership <input type="checkbox"/> S corporation <input type="checkbox"/> Trust <input type="checkbox"/> Foreign							
<b>b</b> Name . . . . . ▶ <u>HIGHLAND FINANCIAL PARTNERS, LP</u>								
<b>c</b> Employer identification number (EIN), if known . . . . . ▶ <u>83-0446391</u>								
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <u>12/23/2008</u>								
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)								
<b>a</b> Name  Number, street, and room or suite no.  City or town, state, and ZIP code	Identifying number (if known)	Fees paid \$						
<b>b</b> Name  Number, street, and room or suite no.  City or town, state, and ZIP code	Identifying number (if known)	Fees paid \$						

**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

<input type="checkbox"/> Deductions	<input type="checkbox"/> Exclusions from gross income	<input type="checkbox"/> Tax credits	<input type="checkbox"/> Other _____
<input checked="" type="checkbox"/> Capital loss	<input type="checkbox"/> Nonrecognition of gain	<input type="checkbox"/> Deferral	
<input type="checkbox"/> Ordinary loss	<input type="checkbox"/> Adjustments to basis	<input type="checkbox"/> Absence of adjustments to basis	

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

SEE STATEMENT

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**8** Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

**a** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

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**b** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

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PATRICK DAUGHERTY  
[REDACTED]

## ATTACHMENT TO FORM 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENT

## 7b. FACTS

HIGHLAND CAPITAL MANAGEMENT, L.P. OWNS A DIRECT INTEREST IN HIGHLAND FINANCIAL PARTNERS, L.P. ("HFP"). HFP OWNS A MAJORITY INTEREST IN HIGHLAND EURO CDO III B.V., STRATFORD CLO, LTD., ROCKWALL CDO II, LTD. AND WESTCHESTER CLO, LTD., ALL CONTROLLED FOREIGN CORPORATIONS (CFC'S). THE FIRST YEAR OF OPERATION FOR THESE ENTITIES ENDED IN 2007. PURSUANT TO SECTION 1.964-1-T OF THE TREASURY REGULATIONS, HFP, ON BEHALF OF THE CFC'S, AS MAJORITY SHAREHOLDER, ADOPTED THE MARK TO MARKET METHOD OF ACCOUNTING IN COMPUTING THE INCOME OF THESE CFC'S. HFP WILL FILE FORM 5471, INFORMATION RETURN OF U.S. PERSONS WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS, REPORTING INFORMATION THAT IN PART REFLECTS THE MARK TO MARKET METHOD OF ACCOUNTING ADOPTED BY THE CFC'S. DUE TO THE MARK TO MARKET METHOD OF ACCOUNTING THE CFC'S WILL HAVE A SECTION 165 LOSS TRANSACTION.

YOUR SHARE OF THOSE LOSSES IS AS FOLLOWS:

HIGHLAND EURO CDO III B.V.	\$	80,688
STRATFORD CLO, LTD.		87,842
ROCKWALL CDO II, LTD.		268,628
WESTCHESTER CLO, LTD.		176,597

HFP HAS TREATED THE LOSS FROM THE ADOPTION OF THE MARK TO MARKET METHOD OF ACCOUNTING AS A SINGLE LOSS TRANSACTION PURSUANT TO TREASURY REGULATION 1.6011-4(D) EVEN THOUGH THERE ARE MANY SEPARATE ASSETS TO WHICH THE METHOD IS APPLIED. IF EACH ASSET THAT WAS MARKED TO MARKET WAS TREATED AS A SEPARATE TRANSACTION, THE SECTION 165 LOSS MIGHT BE LARGER.

IN ADDITION, HIGHLAND FINANCIAL PARTNERS, L.P. ("HFP") OWNS A MAJORITY INTEREST IN EASTLAND CLO, LTD. ("EASTLAND"), A FOREIGN PARTNERSHIP. THE FIRST YEAR OF OPERATION FOR EASTLAND ENDED IN 2007. PURSUANT TO SECTIONS 703(b) AND 446 OF THE INTERNAL REVENUE CODE, EASTLAND ADOPTED THE MARK TO MARKET METHOD OF ACCOUNTING IN COMPUTING ITS INCOME. HFP WILL FILE FORM 8865, INFORMATION RETURN OF U.S. PERSONS WITH RESPECT TO CERTAIN FOREIGN PARTNERSHIPS, REPORTING INFORMATION THAT IN PART REFLECTS THE MARK TO MARKET METHOD OF ACCOUNTING ADOPTED BY EASTLAND. DUE TO THE MARK TO MARKET METHOD OF ACCOUNTING EASTLAND WILL HAVE A SECTION 165 LOSS TRANSACTION THAT WILL RESULT IN A REDUCTION OF SUBPART F TO HFP.

YOUR SHARE OF THE EASTLAND LOSS IS AS FOLLOWS:

\$	342,617
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HFP HAS TREATED THE LOSS FROM THE ADOPTION OF THE MARK TO MARKET METHOD OF ACCOUNTING AS A SINGLE LOSS TRANSACTION PURSUANT TO TREASURY REGULATION 1.6011-4(D) EVEN THOUGH THERE ARE MANY SEPARATE ASSETS TO WHICH THE METHOD IS APPLIED. IF EACH ASSET THAT WAS MARKED TO MARKET WAS TREATED AS A SEPARATE TRANSACTION, THE SECTION 165 LOSS MIGHT BE LARGER.

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Form **8275**  
(Rev. August 2008)**Disclosure Statement**

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.

OMB No. 1545-0889

Attachment  
Sequence No. **92**Department of the Treasury  
Internal Revenue Service

▶ Attach to your tax return.

Name(s) shown on return

HIGHLAND CAPITAL MANAGEMENT, L.P.

Identifying number shown on return

75-2716725

**Part I** General Information (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1		SEE STATEMENT			
2					
3					
4					
5					
6					

**Part II** Detailed Explanation (see instructions)

1	PLEASE SEE ATTACHED STATEMENT
2	
3	
4	
5	
6	

**Part III** Information About Pass-Through Entity. To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity HIGHLAND FINANCIAL PARTNERS, L.P.  TWO GALLERIA TOWER  13455 NOEL ROAD, SUITE 800  DALLAS, TX 75240	2 Identifying number of pass-through entity 83-0446391
	3 Tax year of pass-through entity 1/16/2007 to 12/31/2007
	4 Internal Revenue Service Center where the pass-through entity filed its return OGDEN

For Paperwork Reduction Act Notice, see separate instructions.

Form **8275** (Rev. 8-2008)

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Form 8275 (Rev. 8-2008)

Page 2

Part IV	Explanations (continued from Parts I and/or II)
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Form **8275** (Rev. 8-2008)

ATTACHMENT TO FORM 8275 - DISCLOSURE STATEMENT

HIGHLAND CAPITAL MANAGEMENT, L.P. OWNS A DIRECT INTEREST IN HIGHLAND FINANCIAL PARTNERS, L.P. ("HFP"). HFP OWNS A MAJORITY INTEREST IN THE FOLLOWING CONTROLLED FOREIGN CORPORATIONS ("CFCs") AND FOREIGN PARTNERSHIP: HIGHLANDER EURO CDO III B.V. (CFC), ROCKWALL CDO II, LTD. (CFC), STRATFORD CLO, LTD. (CFC), WESTCHESTER CLO, LTD. (CFC), AND EASTLAND CLO, LTD. (FOREIGN PARTNERSHIP). THE FIRST YEAR OF OPERATION FOR EACH OF THESE ENTITIES ENDED IN 2007. PURSUANT TO SECTION 1.964-1T OF THE TREASURY REGULATIONS, HFP ADOPTED THE MARK TO MARKET METHOD OF ACCOUNTING IN COMPUTING THE INCOME OF THESE CFCs. THE FOREIGN PARTNERSHIP, WHICH IS CONTROLLED BY HFP, ALSO ADOPTED THE MARK TO MARKET METHOD OF ACCOUNTING ON ITS 2007 TAX RETURN. THE MARK TO MARKET METHOD OF ACCOUNTING IS A PERMISSIBLE METHOD UNDER SECTION 446 OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED THEREUNDER FOR EACH OF THESE ENTITIES.

THE CFCs AND THE FOREIGN PARTNERSHIP ARE SPECIAL PURPOSE VEHICLES THAT ISSUE COLLATERALIZED LOAN OBLIGATIONS ("CLOs") OR COLLATERALIZED DEBT OBLIGATIONS ("CDOs"). THE CFCs AND THE FOREIGN PARTNERSHIP TYPICALLY HOLD SECURITIES IN THE FORM OF NOTES, LOANS HELD FOR SALE, AND LOANS NOT HELD FOR SALE ALL OF WHICH ARE SECURITIES WITHIN THE MEANING OF SECTION 475(c). FOR FINANCIAL REPORTING PURPOSES, THE CFCs AND THE FOREIGN PARTNERSHIP ACCOUNT FOR THE NOTES UNDER GENERALLY ACCEPTED ACCOUNTING PURPOSES ("GAAP") USING THE MARK TO MARKET METHOD OF ACCOUNTING. THE CFCs AND THE FOREIGN PARTNERSHIP ACCOUNT FOR THE LOANS HELD FOR SALE ON THE MARK TO MARKET METHOD OF ACCOUNTING UNDER GAAP. THE LOANS NOT HELD FOR SALE ARE ACCOUNTED FOR UNDER THE AMORTIZED COST METHOD OF ACCOUNTING FOR GAAP WITH ALLOWANCES FOR LOAN LOSSES THAT CONSIDER MARK TO MARKET FLUCTUATIONS AS AN INDICATION OF POTENTIAL IMPAIRMENT.

HFP IS NOT A TRADER OR A DEALER IN SECURITIES AND IS NOT RELYING ON SECTION 475(f) IN ADOPTING THE MARK TO MARKET METHOD OF ACCOUNTING. THE UTILIZATION OF THE MARK TO MARKET METHOD OF ACCOUNTING IS A PERMISSIBLE METHOD OF ACCOUNTING UNDER SECTION 446 AND IS NOT LIMITED TO DEALERS OR TRADERS IN SECURITIES. WHEN ADOPTING SECTION 475(f), THE SENATE FINANCE COMMITTEE STATED THAT "[M]ARK-TO-MARKET ACCOUNTING GENERALLY PROVIDES A CLEAR REFLECTION OF INCOME WITH RESPECT TO ASSETS THAT ARE TRADED ON ESTABLISHED MARKETS. FOR MARKET-VALUED ASSETS, MARK-TO-MARKET ACCOUNTING IMPOSES FEW BURDENS AND OFFERS FEW OPPORTUNITIES FOR MANIPULATION." S. REP. NO. 105-33 AT 128 (1997).

HFP WILL FILE FORM 5471, INFORMATION RETURN OF U.S. PERSONS WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS, FORM 8865, INFORMATION RETURN OF U.S. PERSONS WITH RESPECT TO CERTAIN FOREIGN PARTNERSHIPS, AND FORM 1065, U.S. RETURN OF PARTNERSHIP INCOME, REPORTING INFORMATION THAT IN PART REFLECTS THE MARK TO MARKET METHOD OF ACCOUNTING ADOPTED BY THE RESPECTIVE ENTITIES. UNDER THE MARK TO MARKET METHOD OF ACCOUNTING, THE CFCs AND THE FOREIGN PARTNERSHIP WILL REALIZE TOTAL CAPITAL LOSSES OF \$210,309,006, \$99,171,674 OF WHICH WILL FLOW THROUGH AS A REDUCTION OF SUBPART F INCOME FOR HFP. BEFORE HFP FILED ITS TAX RETURNS AND PROVIDED TAX DOCUMENTS INCLUDING DISCLOSURES, FORMS 5471, FORMS 8865, AND SCHEDULE K-1s TO VARIOUS PARTNERS AND INVESTORS, PRO FORMA FORMS 5471 AND FORMS 8865 WERE SENT TO SOME MINORITY INTEREST HOLDERS REPORTING INFORMATION THAT IN PART REFLECTS THE REALIZATION METHOD OF ACCOUNTING. HFP PROVIDED THIS NOTICE TO ALL OTHER U.S. DOMESTIC SHAREHOLDERS THAT ARE REQUIRED TO RECEIVE NOTICE OF AN ADOPTION OF AN ACCOUNTING METHOD PURSUANT TO SECTION 1.964-1T(c)(3)(iii) OF THE TREASURY REGULATIONS. HFP PROVIDED THIS NOTICE TO ALL OTHER U.S. DOMESTIC PARTNERSHIP IN THE FOREIGN PARTNERSHIP.

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Form <b>8886</b> (Rev. December 2007) Department of the Treasury Internal Revenue Service	<b>Reportable Transaction Disclosure Statement</b>	OMB No. 1545-1800  Attachment Sequence No. <b>137</b>								
Name(s) shown on return (individuals enter last name, first name, middle initial) <b>PATRICK DAUGHERTY</b>		Identifying number <div style="background-color: black; width: 100px; height: 1.2em;"></div>								
Number, street, and room or suite no. <b>3621 CORNELL AVE.</b>										
City or town, state and ZIP code <b>DALLAS, TX 75205</b>										
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number <u>2</u> of <u>2</u>										
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . ▶ <u>1065</u> Enter the year of the tax return identified above . . . . . ▶ <u>2007</u>										
Is this Form 8886 being filed with an amended tax return? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No										
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filer <input checked="" type="checkbox"/> Protective disclosure										
<b>1a</b> Name of reportable transaction <b>SECTION 165 LOSS</b>										
<b>1b</b> Initial year participated in transaction <div style="text-align: center;">2006</div>	<b>1c</b> Reportable transaction or tax shelter registration number (9 digits or 11 digits)									
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply										
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><b>a</b> <input type="checkbox"/> Listed</td> <td style="width: 33%;"><b>c</b> <input type="checkbox"/> Contractual protection</td> <td style="width: 33%;"><b>e</b> <input type="checkbox"/> Brief asset holding period</td> </tr> <tr> <td><b>b</b> <input type="checkbox"/> Confidential</td> <td><b>d</b> <input checked="" type="checkbox"/> Loss</td> <td><b>f</b> <input type="checkbox"/> Transaction of interest</td> </tr> </table>			<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period	<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest		
<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period								
<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest								
<b>3</b> If you checked box 2a or 2f, enter the published guidance number for the listed transaction of interest . . . . . ▶										
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ <u>1</u>										
<b>5</b> If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)										
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>a</b> Type of entity:           <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign             </div> <div> <input type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign             </div> </div> </td> <td style="width: 50%;"></td> </tr> <tr> <td><b>b</b> Name . . . . . ▶ <b>HIGHLAND CREDIT OPPORTUNITIES CD</b></td> <td></td> </tr> <tr> <td><b>c</b> Employer identification number (EIN), if known . . . . . ▶ <b>20-3874256</b></td> <td></td> </tr> <tr> <td><b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <b>1/5/2009</b></td> <td></td> </tr> </table>			<b>a</b> Type of entity: <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign             </div> <div> <input type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign             </div> </div>		<b>b</b> Name . . . . . ▶ <b>HIGHLAND CREDIT OPPORTUNITIES CD</b>		<b>c</b> Employer identification number (EIN), if known . . . . . ▶ <b>20-3874256</b>		<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <b>1/5/2009</b>	
<b>a</b> Type of entity: <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign             </div> <div> <input type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign             </div> </div>										
<b>b</b> Name . . . . . ▶ <b>HIGHLAND CREDIT OPPORTUNITIES CD</b>										
<b>c</b> Employer identification number (EIN), if known . . . . . ▶ <b>20-3874256</b>										
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <b>1/5/2009</b>										
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)										
<b>a</b> Name	Identifying number (if known)	Fees paid \$								
Number, street, and room or suite no.										
City or town, state, and ZIP code										
<b>b</b> Name	Identifying number (if known)	Fees paid \$								
Number, street, and room or suite no.										
City or town, state, and ZIP code										



**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |  |   |  |                                      |
|--|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions              | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input checked="" type="checkbox"/> Capital loss | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input type="checkbox"/> Ordinary loss           | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

SEE STATEMENT

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**8** Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

**a** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

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**b** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

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PATRICK DAUGHERTY  
[REDACTED]

ATTACHMENT TO FORM 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENT

7b. FACTS

HIGHLAND CAPITAL MANAGEMENT, L.P. OWNS A DIRECT INTEREST IN HIGHLAND CREDIT OPPORTUNITIES CDO, L.P. ("CDO"). CDO OWNS A MAJORITY INTEREST IN HIGHLAND CREDIT OPPORTUNITIES CDO, LTD., A CONTROLLED FOREIGN CORPORATION (CFC). THE FIRST YEAR OF OPERATION FOR THIS ENTITY ENDED IN 2006. PURSUANT TO SECTION 1.964-1T OF THE TREASURY REGULATIONS, CDO, ON BEHALF OF THE CFC AS MAJORITY SHAREHOLDER, ADOPTED THE MARK TO MARKET METHOD OF ACCOUNTING IN COMPUTING THE INCOME OF THIS CFC. CDO WILL FILE FORM 5471, INFORMATION RETURN OF U.S. PERSONS WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS, REPORTING INFORMATION THAT IN PART REFLECTS THE MARK TO MARKET METHOD OF ACCOUNTING ADOPTED BY THE CFC. UNDER THE MARK TO MARKET METHOD OF ACCOUNTING, HIGHLAND CREDIT OPPORTUNITIES CDO, LTD. WILL REALIZE A TOTAL DEFICIT IN EARNINGS OF \$13,206,622. YOUR SHARE OF THE SECTION 165 LOSS IS: \$ 118,556

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Form **8275**  
(Rev. August 2008)**Disclosure Statement****Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.**

OMB No. 1545-0889

Attachment  
Sequence No. **92**Department of the Treasury  
Internal Revenue Service▶ **Attach to your tax return.**

Name(s) shown on return

HIGHLAND CAPITAL MANAGEMENT, L.P.

Identifying number shown on return

75-2716725

**Part I General Information** (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1		SEE STATEMENT			
2					
3					
4					
5					
6					

**Part II Detailed Explanation** (see instructions)

1 PLEASE SEE ATTACHED STATEMENT

2

3

4

5

6

**Part III Information About Pass-Through Entity.** To be completed by partners, shareholders, beneficiaries, or residual interest holders.**Complete this part only if you are making adequate disclosure for a pass-through item.****Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity HIGHLAND CREDIT OPPORTUNITIES CDO, LP  TWO GALLERIA TOWER  13455 NOEL ROAD, SUITE 800  DALLAS, TX 75240	2 Identifying number of pass-through entity 20-3874256
	3 Tax year of pass-through entity 01/01/2007 to 12/31/2007
	4 Internal Revenue Service Center where the pass-through entity filed its return OGDEN

**For Paperwork Reduction Act Notice, see separate instructions.**  
ISAForm **8275** (Rev. 8-2008)

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Form 8275 (Rev. 8-2008)

Page 2

Part IV	Explanations (continued from Parts I and/or II)
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This image shows a full page of a handwriting practice worksheet. It consists of multiple sets of three horizontal dashed lines, providing a guide for letter height and placement. The lines are evenly spaced across the entire page, which is otherwise blank white. There are no margins, text, or other markings present.Form **8275** (Rev. 8-2008)

ATTACHMENT TO FORM 8275 - DISCLOSURE STATEMENT

HIGHLAND CAPITAL MANAGEMENT, L.P. OWNS A DIRECT INTEREST IN HIGHLAND CREDIT OPPORTUNITIES CDO, L.P. ("CDO"). CDO OWNS A MAJORITY INTEREST IN HIGHLAND CREDIT OPPORTUNITIES CDO, LTD. (HCO), A CONTROLLED FOREIGN CORPORATION (CFC). THE FIRST YEAR OF OPERATION FOR THIS ENTITY ENDED IN 2006. PURSUANT TO SECTION 1.964-1T OF THE TREASURY REGULATIONS, CDO, ON BEHALF OF THE CFC AS MAJORITY SHAREHOLDER, ADOPTED THE MARK TO MARKET METHOD OF ACCOUNTING IN COMPUTING THE INCOME OF THIS CFC IN THAT YEAR. CDO AND HCO BELIEVE THAT THE MARK TO MARKET METHOD OF ACCOUNTING IS A PERMISSIBLE METHOD UNDER SECTION 446 OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED THEREUNDER FOR THIS ENTITY. HCO HAS CONTINUED TO USE THE MARK TO MARKET METHOD OF ACCOUNTING IN COMPUTING ITS INCOME IN 2007.

HCO IS A SPECIAL PURPOSE VEHICLE THAT ISSUES FLOATING RATE NOTES AND PREFERRED SHARES. TYPICALLY, IT HOLDS SECURITIES IN THE FORM OF NOTES AND LOANS, ALL OF WHICH ARE SECURITIES WITHIN THE MEANING OF SECTION 475(c). FOR FINANCIAL REPORTING PURPOSES, HCO ACCOUNTS FOR THE SECURITIES UNDER GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ("GAAP") USING THE MARK TO MARKET METHOD OF ACCOUNTING. IN COMPUTING TAXABLE INCOME, SECTION 1.446-1(a)(2) PROVIDES THAT "A METHOD OF ACCOUNTING WHICH REFLECTS THE CONSISTENT APPLICATION OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES IN A PARTICULAR TRADE OR BUSINESS...WILL ORDINARILY BE REGARDED AS CLEARLY REFLECTING INCOME."

CDO IS NOT A TRADER OR A DEALER IN SECURITIES AND IS NOT RELYING ON SECTION 475(f) IN ADOPTING THE MARK TO MARKET METHOD OF ACCOUNTING. THE UTILIZATION OF THE MARK TO MARKET METHOD OF ACCOUNTING IS A PERMISSIBLE METHOD OF ACCOUNTING UNDER SECTION 446 AND IS NOT LIMITED TO DEALERS OR TRADERS IN SECURITIES. WHEN ADOPTING SECTION 475(f), THE SENATE FINANCE COMMITTEE STATED THAT "[M]ARK-TO-MARKET ACCOUNTING GENERALLY PROVIDES A CLEAR REFLECTION OF INCOME WITH RESPECT TO ASSETS THAT ARE TRADED ON ESTABLISHED MARKETS. FOR MARKET-VALUED ASSETS, MARK-TO-MARKET ACCOUNTING IMPOSES FEW BURDENS AND OFFERS FEW OPPORTUNITIES FOR MANIPULATION." S. REP. NO. 105-33 AT 128 (1997).

CDO WILL FILE FORM 5471, INFORMATION RETURN OF U.S. PERSONS WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS, REPORTING INFORMATION THAT IN PART REFLECTS THE MARK TO MARKET METHOD OF ACCOUNTING ADOPTED BY HCO. UNDER THE MARK TO MARKET METHOD OF ACCOUNTING, HCO WILL REALIZE A DEFICIT IN EARNINGS AND PROFITS OF (\$13,206,622) FOR 2007. BEFORE CDO FILED ITS RETURNS AND PROVIDED TAX DOCUMENTS INCLUDING DISCLOSURES AND FORMS 5471 TO VARIOUS INVESTORS, FORMS 5471 WERE SENT TO SOME MINORITY INTEREST HOLDERS REPORTING INFORMATION THAT IN PART REFLECTS THE REALIZATION METHOD OF ACCOUNTING. CDO IS PROVIDING THIS NOTICE TO ALL OTHER U.S. DOMESTIC SHAREHOLDERS THAT ARE REQUIRED TO RECEIVE NOTICE OF AN ADOPTION OF AN ACCOUNTING METHOD PURSUANT TO SECTION 1.964-1T(c)(3)(iii) OF THE TREASURY REGULATIONS.



## **EXHIBIT 53**

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**Schedule K-1  
(Form 1065)**Department of the Treasury  
Internal Revenue Service**2008**For calendar year 2008, or tax  
year beginning \_\_\_\_\_, 2008  
ending \_\_\_\_\_, 20 \_\_\_\_\_**Partner's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and separate instructions.

**Part I Information About the Partnership****A** Partnership's employer identification number  
75-2716725**B** Partnership's name, address, city, state, and ZIP code  
Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, TX 75240**C** IRS Center where partnership filed return  
Ogden**D** ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner****E** Partner's identifying number  
[REDACTED]**F** Partner's name, address, city, state, and ZIP code  
PATRICK DAUGHERTY  
3621 CORNELL AVE.  
DALLAS, TX 75205**G** ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member**H** ☒ Domestic partner ☐ Foreign partner**I** What type of entity is this partner? Individual**J** Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	VARIOUS	
Loss	VARIOUS	0.740262%
Capital	0.729918%	-23.074125%

**K** Partner's share of liabilities at year end:

Nonrecourse . . . . .	\$	
Qualified nonrecourse financing . . . . .	\$	62,759
Recourse . . . . .	\$	

**L** Partner's capital account analysis:

Beginning capital account . . . . .	\$	4,915,449
Capital contributed during the year . . . . .	\$	
Current year increase (decrease) . . . . .	\$	(4,706,342)
Withdrawals & distributions . . . . .	\$	(391,501)
Ending capital account . . . . .	\$	(182,394)

☐ Tax basis ☒ GAAP ☐ Section 704(b) book  
☐ Other (explain)
☐ Final K-1☐ Amended K-1

OMB No. 1545-0099

**Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Ordinary business income (loss)	15	Credits
	(4,043,150)	M	815
2	Net rental real estate income (loss)		
	(3,163)		
3	Other net rental income (loss)	16	Foreign transactions
	1	A	VARIOUS
4	Guaranteed payments	B	1,957,424
5	Interest income	C	96,455
	19,860		
6a	Ordinary dividends	D	864
	17,200		
6b	Qualified dividends	E	130,770
	92		
7	Royalties	G	97,790
8	Net short-term capital gain (loss)		
	26,429	*	STMT
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
	19,593	A	26
9b	Collectibles (28%) gain (loss)	D	(590)
9c	Unrecaptured section 1250 gain	E	(27)
	STMT		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
	596		
11	Other income (loss)	A	1,529
	(220)		
		C	4,479
	(122,529)		
	STMT		
12	Section 179 deduction	19	Distributions
		A	391,501
13	Other deductions		
	857		
		20	Other information
H	10,520	A	SEE STMT
	STMT	B	SEE STMT
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

For IRS Use Only

003399

## Schedule K-1 (Form 1065) 2008

Page 2

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

- |     |  |   |
|-----|--|---|
| 1.  | Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.       | Report on   |
|     | Passive loss   | See the Partner's Instructions                            |
|     | Passive income   | Schedule E, line 28, column (g)                           |
|     | Nonpassive loss  | Schedule E, line 28, column (h)                           |
|     | Nonpassive income  | Schedule E, line 28, column (i)                           |
| 2.  | Net rental real estate income (loss)   | See the Partner's Instructions                            |
| 3.  | Other net rental income (loss)   |   |
|     | Net income   | Schedule E, line 28, column (g)                           |
|     | Net loss   | See the Partner's Instructions                            |
| 4.  | Guaranteed payments  | Schedule E, line 28, column (i)                           |
| 5.  | Interest income  | Form 1040, line 8a  |
| 6a. | Ordinary dividends   | Form 1040, line 9a  |
| 6b. | Qualified dividends  | Form 1040, line 9b  |
| 7.  | Royalties  | Schedule E, line 4  |
| 8.  | Net short-term capital gain (loss)   | Schedule D, line 5, column (f)                            |
| 9a. | Net long-term capital gain (loss)  | Schedule D, line 12, column (f)                           |
| 9b. | Collectibles (28%) gain (loss)   | 28% Rate Gain Worksheet, line 4 (Schedule D instructions) |
| 9c. | Unrecaptured section 1250 gain   | See the Partner's Instructions                            |
| 10. | Net section 1231 gain (loss)   | See the Partner's Instructions                            |
| 11. | Other income (loss)  |   |
|     | Code   |   |
|     | A Other portfolio income (loss)  | See the Partner's Instructions                            |
|     | B Involuntary conversions  | See the Partner's Instructions                            |
|     | C Sec. 1256 contracts & straddles  | Form 8781, line 1   |
|     | D Mining exploration costs recapture   | See Pub. 535  |
|     | E Cancellation of debt   | Form 1040, line 21 or Form 982                            |
|     | F Other income (loss)  | See the Partner's Instructions                            |
| 12. | Section 179 deduction  | See the Partner's Instructions                            |
| 13. | Other deductions   |   |
|     | A Cash contributions (50%)   | See the Partner's Instructions                            |
|     | B Cash contributions (30%)   |   |
|     | C Noncash contributions (50%)  |   |
|     | D Noncash contributions (30%)  |   |
|     | E Capital gain property to a 50% organization (30%)  |   |
|     | F Capital gain property (20%)  | See the Partner's Instructions                            |
|     | G Contributions (100%)   |   |
|     | H Investment interest expense  |   |
|     | I Deductions—royalty income  |   |
|     | J Section 59(e)(2) expenditures  |   |
|     | K Deductions—portfolio (2% floor)  |   |
|     | L Deductions—portfolio (other)   |   |
|     | M Amounts paid for medical insurance   |   |
|     | N Educational assistance benefits  |   |
|     | O Dependent care benefits  |   |
|     | P Preproductive period expenses  | Form 2441, line 14  |
|     | Q Commercial revitalization deduction from rental real estate activities   | See the Partner's Instructions                            |
|     | R Pensions and IRAs  | See the Partner's Instructions                            |
|     | S Reforestation expense deduction  | See the Partner's Instructions                            |
|     | T Domestic production activities information   | See Form 8803 instructions                                |
|     | U Qualified production activities income   | Form 8903, line 7   |
|     | V Employer's Form W-2 wages  | Form 8903, line 15  |
|     | W Other deductions   | See the Partner's Instructions                            |
| 14. | Self-employment earnings (loss)  |   |
|     | Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE. |   |
|     | A Net earnings (loss) from self-employment   | Schedule SE, Section A or B                               |
|     | B Gross farming or fishing income  | See the Partner's Instructions                            |
|     | C Gross non-farm income  | See the Partner's Instructions                            |
| 15. | Credits  |   |
|     | A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings   | See the Partner's Instructions                            |
|     | B Low-income housing credit (other) from pre-2008 buildings  | See the Partner's Instructions                            |
|     | C Low-income housing credit (section 42(j)(5)) from post-2007 buildings  | Form 8586, line 11  |
|     | D Low-income housing credit (other) from post-2007 buildings   | Form 8586, line 11  |
|     | E Qualified rehabilitation expenditures (rental real estate)   | See the Partner's Instructions                            |
|     | F Other rental real estate credits   |   |
|     | G Other rental credits   |   |
|     | H Undistributed capital gains credit   | Form 1040, line 68; check box a                           |
|     | I Alcohol and cellulosic biofuel fuels credit  | Form 6478, line 9   |

- | Code  | Report on   |
|---|---|
| J Work opportunity credit   | Form 5884, line 3   |
| K Disabled access credit  | See the Partner's Instructions                                      |
| L Empowerment zone and renewal community employment credit                                | Form 8844, line 3   |
| M Credit for increasing research activities   | See the Partner's Instructions                                      |
| N Credit for employer social security and Medicare taxes                                  | Form 8846, line 5   |
| O Backup withholding  | Form 1040, line 62  |
| P Other credits   | See the Partner's Instructions                                      |
| <b>16. Foreign transactions</b>   |   |
| A Name of country or U.S. possession  | } Form 1116, Part I   |
| B Gross income from all sources   |   |
| C Gross income sourced at partner level   |   |
| <i>Foreign gross income sourced at partnership level</i>                                  |   |
| D Passive category  | } Form 1116, Part I   |
| E General category  |   |
| F Other   |   |
| <i>Deductions allocated and apportioned at partner level</i>                              |   |
| G Interest expense  | Form 1116, Part I   |
| H Other   | Form 1116, Part I   |
| <i>Deductions allocated and apportioned at partnership level to foreign source income</i> |   |
| I Passive category  | } Form 1116, Part I   |
| J General category  |   |
| K Other   |   |
| <i>Other information</i>  |   |
| L Total foreign taxes paid  | Form 1116, Part II  |
| M Total foreign taxes accrued   | Form 1116, Part II  |
| N Reduction in taxes available for credit   | Form 1116, line 12  |
| O Foreign trading gross receipts  | Form 8873   |
| P Extraterritorial income exclusion   | Form 8873   |
| Q Other foreign transactions  | See the Partner's Instructions                                      |
| <b>17. Alternative minimum tax (AMT) items</b>  |   |
| A Post-1986 depreciation adjustment   | } See the Partner's Instructions and the Instructions for Form 6251 |
| B Adjusted gain or loss   |   |
| C Depletion (other than oil & gas)  |   |
| D Oil, gas, & geothermal—gross income   |   |
| E Oil, gas, & geothermal—deductions   |   |
| F Other AMT items   |   |
| <b>18. Tax-exempt income and nondeductible expenses</b>                                   |   |
| A Tax-exempt interest income  | Form 1040, line 8b  |
| B Other tax-exempt income   | See the Partner's Instructions                                      |
| C Nondeductible expenses  | See the Partner's Instructions                                      |
| <b>19. Distributions</b>  |   |
| A Cash and marketable securities  | } See the Partner's Instructions                                    |
| B Other property  |   |
| C Distribution subject to section 737   |   |
| <b>20. Other information</b>  |   |
| A Investment income   | Form 4852, line 4a  |
| B Investment expenses   | Form 4852, line 5   |
| C Fuel tax credit information   | Form 4136   |
| D Qualified rehabilitation expenditures (other than rental real estate)                   | See the Partner's Instructions                                      |
| E Basis of energy property  | See the Partner's Instructions                                      |
| F Recapture of low-income housing credit (section 42(j)(5))                               | Form 8611, line 8   |
| G Recapture of low-income housing credit (other)  | Form 8611, line 8   |
| H Recapture of investment credit  | See Form 4255   |
| I Recapture of other credits  | See the Partner's Instructions                                      |
| J Look-back interest—completed long-term contracts  | See Form 8697   |
| K Look-back interest—income forecast method   | See Form 8896   |
| L Dispositions of property with section 179 deductions                                    | } See the Partner's Instructions                                    |
| M Recapture of section 179 deduction  |   |
| N Interest expense for corporate partners   |   |
| O Section 453(j)(3) information   |   |
| P Section 453A(c) information   |   |
| Q Section 1260(b) information   |   |
| R Interest allocable to production expenditures   |   |
| S CCF nonqualified withdrawals  |   |
| T Depletion information—oil and gas   |   |
| U Amortization of reforestation costs   |   |
| V Unrelated business taxable income   |   |
| W Precontribution gain (loss)   |   |
| X Other information   |   |

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Highland Capital Management, L.P.  
Two Galleria Tower  
75-2716725

PATRICK DAUGHERTY

  
PN-0007

This list identifies the codes used on the Schedule K-1 for all partners and summarizes reporting information for partners who file Form 1040.

For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

Line 9c	Unrecaptured Section 1250 Gain	
	Line 9c,	
	c From Sale/Exchange of Business Assets	1
Line 11	Other Income (Loss)	
	E Cancellation of Debt	0
	Line 11, F*	
	F Swap Income/(Loss)	432
	F Section 988 Gain/(Loss)	8,011
	F Short-Term Capital Gain/(Loss)	(11,276)
	F Long-Term Capital Gain/(Loss)	(4,475)
Line 13	Other Deductions	
	K Deductions - Portfolio (2% Floor)	61,221
	L Deductions - Portfolio (Other)	4
	Line 13, W*	
	W Other Deductions	183
Line 16	Foreign Transactions	
	H Other	180,106
	I Passive Category	2
	J General Categories	42,093
	L Total Foreign Taxes Paid	27,399

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

1. THE PARTNERSHIP EARNS A PORTION OF ITS INCOME THROUGH INVESTMENTS IN PARTNERSHIPS WHICH CONSIDER THEMSELVES TO BE IN THE TRADE OR BUSINESS OF ACTIVELY TRADING PERSONAL PROPERTY FOR THEIR OWN ACCOUNT. IN ACCORDANCE WITH INTERNAL REVENUE CODE SECTION 469-IT(e)(6), THE INCOME EARNED ON SUCH ACTIVITIES IS "NON-PASSIVE" TO ANY PARTNER. WHERE APPROPRIATE, WE HAVE INDICATED IN THE ACCOMPANYING FOOTNOTES ANY PORTION WHICH IS "NON-PASSIVE". PLEASE CONSULT YOUR TAX ADVISOR.

2. LINE 1 - ORDINARY INCOME/(LOSS) FROM TRADE OR BUSINESS ACTIVITIES

THE AMOUNT ON LINE 1 IS COMPRISED OF THE FOLLOWING 'NON-PASSIVE' TRADE OR BUSINESS SOURCES, UNLESS OTHERWISE INDICATED AS PASSIVE:

INTEREST INCOME	\$	12,710
DIVIDEND INCOME		2,125
IRC SECTION 475 INCOME/(LOSS)		(70,147)
SWAP INCOME/(LOSS)		308
OTHER INCOME/(LOSS)		(2,926,473)
TRADE OR BUSINESS INVESTMENT INTEREST EXPENSE		(7,041)
OTHER TRADE OR BUSINESS EXPENSE		(1,054,632)

TOTAL LINE 1	\$	(4,043,150)
--------------	----	-------------

YOUR SHARE OF QUALIFIED DIVIDEND INCOME INCLUDED IN LINE 1 DIVIDEND INCOME IS:	\$	839
--	----	-----

3. LINE 11F - OTHER INCOME/(LOSS)

SWAP INCOME/(LOSS)	\$	432
SECTION 988 GAIN/(LOSS)		8,011
SHORT-TERM CAPITAL GAIN/(LOSS)		(11,276)
LONG-TERM CAPITAL GAIN/(LOSS)		(4,475)

TOTAL LINE 11F	\$	(7,308)
----------------	----	---------

PLEASE NOTE THAT THE ABOVE DETAILS FOR LINES 1 AND 11F MAY NOT SUM TO THE TOTAL DUE TO ROUNDING.

4. LINE 20 — BASED UPON INTERNAL REVENUE CODE (IRC) SECTION 163(d) ALL 'NON-PASSIVE' ITEMS OF INCOME AND EXPENSE REPORTED TO YOU ON THIS SCHEDULE K-1 MAY QUALIFY AS INVESTMENT INCOME OR EXPENSE. PLEASE REFER TO 2008 PARTNER'S INSTRUCTIONS FOR SCHEDULE K-1 (FORM 1065) AND THE INSTRUCTIONS FOR FORM 4952. PLEASE CONSULT YOUR TAX ADVISOR.

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PATRICK DAUGHERTY  
[REDACTED]

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

5. THE PARTNERSHIP HAS MADE A TIMELY QUALIFIED ELECTING FUND ("QEF") ELECTION WITH RESPECT TO ITS INVESTMENT IN UNDERLYING PASSIVE FOREIGN INVESTMENT COMPANIES ("PFICS"), EFFECTIVE FOR EACH YEAR OF OWNERSHIP, AND HAS FILED THE REQUIRED FORM 8621 FOR ALL YEARS OF OWNERSHIP. EACH PFIC WAS ACQUIRED FOR CASH.

THE FIRST U.S. SHAREHOLDER THAT HAS MADE A QEF ELECTION FOR A PFIC IS REQUIRED TO INCLUDE INCOME CURRENTLY UNDER IRC SECTION 1293 AND TO FILE FORM 8621. AS A PARTNER IN A U.S. PARTNERSHIP THAT HAS MADE THE QEF ELECTION AND FILED FORM 8621, YOUR ALLOCABLE SHARE OF THIS INCOME IS NOT REQUIRED TO BE FURTHER REPORTED ON AN ADDITIONAL FORM 8621. THE SERVICE HAS CLARIFIED BY CHANGING THE INSTRUCTIONS TO FORM 8621 THAT NO ADDITIONAL FORM 8621 REPORTING IS NECESSARY UNDER THESE FACTS. PLEASE CONSULT YOUR TAX ADVISOR.

6. FORM 926 REPORTING REQUIREMENTS

PURSUANT TO IRC SECTION 6038B (FOR TAXABLE YEARS BEGINNING AFTER FEBRUARY 5, 1999), A PARTNERSHIP'S CONTRIBUTION OF PROPERTY, WHICH INCLUDES CASH, TO A FOREIGN CORPORATION IS DEEMED TO BE MADE BY THE PARTNERS OF SUCH PARTNERSHIP. THE PARTNERSHIP INVESTS IN UNDERLYING PARTNERSHIPS, AND A PORTION OF YOUR INVESTMENT WAS TRANSFERRED TO THE FOREIGN CORPORATIONS INDICATED ON THE SCHEDULE BELOW. AS A RESULT, YOU MAY HAVE A FILING REQUIREMENT UNDER TREASURY REGULATION SEC.1.6038B-1(B)(3) WITH REGARD TO SUCH TRANSFERS ON FORM 926. PLEASE CONSULT YOUR TAX ADVISOR REGARDING THIS FILING REQUIREMENT.

PLEASE NOTE THAT IF YOU ARE REQUIRED TO COMPLETE A FORM 926 BASED ON THE INFORMATION BELOW, A SEPARATE FORM MUST BE COMPLETED FOR EACH RESPECTIVE FOREIGN TRANSFEREE CORPORATION.

THE FOLLOWING INFORMATION IS PROVIDED IN ORDER FOR YOU TO COMPLY WITH THE FORM 926 FILING REQUIREMENTS. THE LINE NUMBERS BELOW CORRESPOND TO THOSE ON FORM 926.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. ABERDEEN LOAN FUNDING, LTD.  
 LINE 4. N/A  
 LINE 5. C/O WALKERS SPV LIMITED, WALKER HOUSE, 87 MARY STREET  
 GEORGE TOWN, GRAND CAYMAN KY1-9002, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	3/27/2008	(C)	\$	<u>4,566</u>
------	-----	-----------	-----	----	--------------

PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.009214%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

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PATRICK DAUGHERTY

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

7.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. ARMSTRONG LOAN FUNDING, LTD.  
 LINE 4. N/A  
 LINE 5. C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	3/19/2008	(C)	\$	<u>3,030</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.007350%
---------	-----	-----------	-----	-----------

LINE 10. IRC SECTION 351 CASH/CAPITAL CONTRIBUTION  
 LINE 11-15. NO  
 LINE 16. YES  
 LINE 17. NO

8.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. BABSON CLO LTD. 2004-II  
 LINE 4. N/A  
 LINE 5. C/O WALKERS SPV LTD., WALKER HOUSE, 87 MARY STREET  
 GEORGE TOWN, GRAND CAYMAN KY1-9002, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	1/7/2008	(C)	\$	<u>5</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
---------	-----	-----------	-----	-----------

LINE 10. IRC SECTION 351 CASH/CAPITAL CONTRIBUTION  
 LINE 11-15. NO  
 LINE 16. YES  
 LINE 17. NO

9.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. BRENTWOOD INVESTORS CORPORATION  
 LINE 4. N/A  
 LINE 5. C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8.

003404

PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	6/10/2008	(C)	\$	<u>94</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

10. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	GALAXY V CLO LTD.
LINE 4.	N/A
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS
LINE 6.	CAYMAN ISLANDS
LINE 7.	EXEMPTED LLC
LINE 8.	

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	1/7/2008	(C)	\$	<u>4</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

11. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	GALAXY IV CLO LTD.
LINE 4.	N/A
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS
LINE 6.	CAYMAN ISLANDS
LINE 7.	EXEMPTED LLC
LINE 8.	

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	1/7/2008	(C)	\$	<u>5</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

12. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION
- LINE 3. GLENEAGLES CLO, LTD.  
 LINE 4. N/A  
 LINE 5. C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8.
- PART III - INFORMATION REGARDING TRANSFER OF PROPERTY
- |      |     |          |     |    |           |
|------|-----|----------|-----|----|-----------|
| CASH | (A) | 1/7/2008 | (C) | \$ | <u>57</u> |
|------|-----|----------|-----|----|-----------|
- PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY
- |             |   |           |     |           |  |
|-------------|---|-----------|-----|-----------|--|
| LINE 9.     | (A)                                       | 0.000001% | (B) | 0.000001% |  |
| LINE 10.    | IRC SECTION 351 CASH/CAPITAL CONTRIBUTION |           |     |           |  |
| LINE 11-15. | NO  |           |     |           |  |
| LINE 16.    | YES                                       |           |     |           |  |
| LINE 17.    | NO  |           |     |           |  |
13. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION
- LINE 3. HIGHLANDER EURO CDO II (CAYMAN) LTD.  
 LINE 4. N/A  
 LINE 5. C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8.
- PART III - INFORMATION REGARDING TRANSFER OF PROPERTY
- |      |     |          |     |    |           |
|------|-----|----------|-----|----|-----------|
| CASH | (A) | 1/7/2008 | (C) | \$ | <u>13</u> |
|------|-----|----------|-----|----|-----------|
- PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY
- |             |   |           |     |           |  |
|-------------|---|-----------|-----|-----------|--|
| LINE 9.     | (A)                                       | 0.000001% | (B) | 0.000001% |  |
| LINE 10.    | IRC SECTION 351 CASH/CAPITAL CONTRIBUTION |           |     |           |  |
| LINE 11-15. | NO  |           |     |           |  |
| LINE 16.    | YES                                       |           |     |           |  |
| LINE 17.    | NO  |           |     |           |  |
14. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION
- LINE 3. HIGHLANDER EURO CDO IV B.V.  
 LINE 4. N/A  
 LINE 5. PARNASSUSTOREN, LOCATELLIKADE 1, 1076 AZ  
 AMSTERDAM, THE NETHERLANDS  
 LINE 6. THE NETHERLANDS  
 LINE 7. BV  
 LINE 8.

003406

PATRICK DAUGHERTY  
[REDACTED]

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	6/23/2008	(C)	\$	<u>124</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

15. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HIGHLAND PARK CDO I, LTD.
LINE 4.	N/A
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS
LINE 6.	CAYMAN ISLANDS
LINE 7.	EXEMPTED LLC
LINE 8.	

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	6/10/2008	(C)	\$	<u>81</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

16. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HIGHLANDER EURO CDO (CAYMAN) LTD.
LINE 4.	N/A
LINE 5.	C/O MAPLES FINANCE LIMITED, PO BOX 1093, BOUNDARY HALL, CRICKET SQUARE GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS
LINE 6.	CAYMAN ISLANDS
LINE 7.	EXEMPTED LLC
LINE 8.	

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	1/7/2008	(C)	\$	<u>8</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			



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PATRICK DAUGHERTY  
[REDACTED]

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

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PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. LANDMARK VI CDO LTD.  
 LINE 4. N/A  
 LINE 5. P.O. BOX 1093GT, QUEENSGATE HOUSE, SOUTH CHURCH STREET  
 SOUTH CHURCH STREET, GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8.

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	2/26/2008	(C)	\$	17
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
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LINE 10. IRC SECTION 351 CASH/CAPITAL CONTRIBUTION  
 LINE 11-15. NO  
 LINE 16. YES  
 LINE 17. NO

18.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. PACIFICA CDO V, LTD.  
 LINE 4. N/A  
 LINE 5. C/O MAPLES FINANCE LIMITED, PO BOX 1093GT, QUEENSGATE HOUSE  
 SOUTH CHURCH STREET, GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. EXEMPTED LLC  
 LINE 8.

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	1/7/2008	(C)	\$	9
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000001%	(B)	0.000001%
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LINE 10. IRC SECTION 351 CASH/CAPITAL CONTRIBUTION  
 LINE 11-15. NO  
 LINE 16. YES  
 LINE 17. NO

19.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CONVERSUS CAYMAN BLOCKER A, LIMITED  
 LINE 4. N/A

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	\$	23
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PATRICK DAUGHERTY  
[REDACTED]

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

20. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. HIGHLAND CREDIT OPPORTUNITIES CDO, LTD.  
 LINE 4. 98-0512429  
 LINE 5. WALKER HOUSE, 87 MARY STREET  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. CORPORATION  
 LINE 8. YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	1/1/2008	(C)	\$	<u>3</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.013636%	(B)	0.014371%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	NO			
LINE 17.	NO			

21. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. HIGHLAND SPECIAL OPPORTUNITIES HOLDING CO.  
 LINE 4. N/A  
 LINE 5. P.O. BOX 908GT MARY STREET  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. CORPORATION  
 LINE 8. YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	\$	<u>145,249</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.145409%	(B)	0.214429%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

22. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. HIGHLAND CDO HOLDING CO.  
 LINE 4. N/A  
 LINE 5. C/O WALKERS SPV LIMITED, P.O. BOX 908GT MARY STREET  
 GEORGE TOWN, GRAND CAYMAN, CAYMAN ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. CORPORATION  
 LINE 8. YES

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PATRICK DAUGHERTY  
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## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	\$	227,712
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.145403%	(B)	0.159949%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

23. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HFP ASSET FUNDING II, LTD.
LINE 4.	N/A
LINE 5.	P.O. BOX 309, UGLAND HOUSE GRAND CAYMAN, CJ KY1-1104
LINE 6.	CAYMAN ISLANDS
LINE 7.	CORPORATION
LINE 8.	YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

TYPE/DESCRIPTION OF PROPERTY	DATE OF TRANSFER	FMV	COST BASIS
CASH	9/26/2008	551	551
CLO EQUITY - EASTL 2007-1A	9/26/2008	11,626	11,626
CLO EQUITY - DFRMM 2007-1A	9/26/2008	12,470	12,470
CLO EQUITY - ACACL 2007-1A	9/26/2008	7,184	7,184
CLO EQUITY - PRIM 2007-2A	9/26/2008	10,878	10,878
CLO EQUITY - SYMP 2007-4A	9/26/2008	11,162	11,162
CLO EQUITY - DUANE 2007-4A	9/26/2008	11,132	11,132
CLO EQUITY - STRAF 2007-1A	9/26/2008	7,915	7,915
CLO EQUITY - GSC 2007-8A	9/26/2008	11,771	11,771
CLO EQUITY - SHINN 2006-1A	9/26/2008	531	531
CLO EQUITY - HICDO 2004-1X	9/26/2008	648	648
CLO EQUITY - RED RIVER CLO, LTD.	9/26/2008	8,625	8,625
CLO EQUITY - AMMC 2007-8A	9/26/2008	7,396	7,396
CLO EQUITY - GCLO 2006-1X	9/26/2008	4,833	4,833
CLO EQUITY - SHINN 2006-1A	9/26/2008	489	489
CLO EQUITY - CLYDS 2004-1A	9/26/2008	302	302
CLO EQUITY - STRAF 2007-1A	9/26/2008	1,707	1,707
CLO EQUITY - FOURC 2006-2A	9/26/2008	587	587
CLO EQUITY - NAVIG 2006-1A	9/26/2008	542	542
CLO EQUITY - STRAF 2007-1A	9/26/2008	4,716	4,716
CLO EQUITY - ROCKW 2007-1A B2L	9/26/2008	4,140	4,140
CLO EQUITY - STAMC 2007-1A B2L	9/26/2008	3,350	3,350
CLO EQUITY - SYMP 2007-4A E	9/26/2008	1,993	1,993
CLO EQUITY - VENTR 2007-9A	9/26/2008	2,417	2,417
CLO EQUITY - WITEH 2006-4A	9/26/2008	2,441	2,441
CLO EQUITY - ROCKW 2007-1A B2L	9/26/2008	4,140	4,140
CLO EQUITY - GCLO 2006-1A	9/26/2008	4,472	4,472
CLO EQUITY - CFC 2006 1A	9/26/2008	12,532	12,532
CLO EQUITY - MOCLO 2005-1A A3L	9/26/2008	2,321	2,321
CLO EQUITY - AVCLO 2006-3A A3L	9/26/2008	1,922	1,922
CLO EQUITY - ABERDEEN LOAN FUNDING I	9/26/2008	17,166	17,166
CLO EQUITY - ARMSTRONG LOAN FUNDING	9/26/2008	16,689	16,689

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PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY - CONTINUED

TYPE/DESCRIPTION OF PROPERTY	DATE OF TRANSFER	FMV	COST BASIS
CLO EQUITY - GRAYSON	9/26/2008	11,704	11,704
CLO EQUITY - GREENBRIAR	9/26/2008	11,205	11,205
CLO EQUITY - HIGHLANDER IV	9/26/2008	13,018	13,018
CLO EQUITY - ABERDEEN LOAN FUNDING L	9/26/2008	34,332	34,332
CLO EQUITY - ARMSTRONG LOAN FUNDING	9/26/2008	22,844	22,844
CLO EQUITY - HIGHLANDER IV	9/26/2008	18,408	18,408
CLO EQUITY - STRATFORD	9/26/2008	13,475	13,475
CLO EQUITY - GREENBRIAR	9/26/2008	8,353	8,353
CLO EQUITY - LANDM 2005-6A	9/26/2008	2,377	2,377
CLO EQUITY - BRENTWOOD CLO LTD	9/26/2008	1,357	1,357
CLO EQUITY - EASTLAND CLO LTD	9/26/2008	6,124	6,124
CLO EQUITY - STRATFORD	10/10/2008	27,855	27,855
CLO EQUITY - EASTLAND CLO LTD	10/10/2008	31,709	31,709
CLO EQUITY - GRAYSON	10/10/2008	32,403	32,403
CLO EQUITY - GREENBRIAR	10/10/2008	28,297	28,297

PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	NONE	(B)	0.214429%
LINE 10.	SECTION 351			
LINE 11-15.	NO			
LINE 16.	NO			
LINE 17.	NO			

23. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	HFP ASSET FUNDING III, LTD.
LINE 4.	N/A
LINE 5.	P.O. BOX 309, UGLAND HOUSE GRAND CAYMAN, CJ KY1-1104
LINE 6.	CAYMAN ISLANDS
LINE 7.	CORPORATION
LINE 8.	YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

TYPE/DESCRIPTION OF PROPERTY	DATE OF TRANSFER	FMV	COST BASIS
CASH	9/26/2008	13,395	13,395
LIFE SETTLEMENT CONTRACT 1	9/26/2008	17,573	17,573
LIFE SETTLEMENT CONTRACT 2	9/26/2008	6,729	6,729
LIFE SETTLEMENT CONTRACT 3	9/26/2008	3,957	3,957
LIFE SETTLEMENT CONTRACT 4	9/26/2008	4,171	4,171
LIFE SETTLEMENT CONTRACT 5	9/26/2008	3,590	3,590
LIFE SETTLEMENT CONTRACT 6	9/26/2008	6,620	6,620
LIFE SETTLEMENT CONTRACT 7	9/26/2008	12,105	12,105
LIFE SETTLEMENT CONTRACT 8	9/26/2008	3,050	3,050
LIFE SETTLEMENT CONTRACT 9	9/26/2008	2,954	2,954
LIFE SETTLEMENT CONTRACT 10	9/26/2008	7,869	7,869
LIFE SETTLEMENT CONTRACT 11	9/26/2008	11,965	11,965
LIFE SETTLEMENT CONTRACT 12	9/26/2008	8,194	8,194
LIFE SETTLEMENT CONTRACT 13	9/26/2008	25,065	25,065
LIFE SETTLEMENT CONTRACT 14	9/26/2008	9,135	9,135

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PATRICK DAUGHERTY  
[REDACTED]HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

## PART III - INFORMATION REGARDING TRANSFER OF PROPERTY - CONTINUED

TYPE/DESCRIPTION OF PROPERTY	DATE OF TRANSFER	FMV	COST BASIS
LIFE SETTLEMENT CONTRACT 15	9/26/2008	11,524	11,524
LIFE SETTLEMENT CONTRACT 16	9/26/2008	3,929	3,929
LIFE SETTLEMENT CONTRACT 17	9/26/2008	6,408	6,408
LIFE SETTLEMENT CONTRACT 18	9/26/2008	2,967	2,967
LIFE SETTLEMENT CONTRACT 19	9/26/2008	27,105	27,105
LIFE SETTLEMENT CONTRACT 20	9/26/2008	1,708	1,708
LIFE SETTLEMENT CONTRACT 21	9/26/2008	8,163	8,163
LIFE SETTLEMENT CONTRACT 22	9/26/2008	2,514	2,514
LIFE SETTLEMENT CONTRACT 23	9/26/2008	4,722	4,722
LIFE SETTLEMENT CONTRACT 24	9/26/2008	8,595	8,595
LIFE SETTLEMENT CONTRACT 25	9/26/2008	3,179	3,179
LIFE SETTLEMENT CONTRACT 26	9/26/2008	23,460	23,460
LIFE SETTLEMENT CONTRACT 27	9/26/2008	2,779	2,779
LIFE SETTLEMENT CONTRACT 28	9/26/2008	5,994	5,994
LIFE SETTLEMENT CONTRACT 29	9/26/2008	1,622	1,622
LIFE SETTLEMENT CONTRACT 30	9/26/2008	5,312	5,312
LIFE SETTLEMENT CONTRACT 31	9/26/2008	6,333	6,333
LIFE SETTLEMENT CONTRACT 32	9/26/2008	2,438	2,438
LIFE SETTLEMENT CONTRACT 33	9/26/2008	11,371	11,371
LIFE SETTLEMENT CONTRACT 34	9/26/2008	4,125	4,125
LIFE SETTLEMENT CONTRACT 35	9/26/2008	4,878	4,878
LIFE SETTLEMENT CONTRACT 36	9/26/2008	7,595	7,595
LIFE SETTLEMENT CONTRACT 37	9/26/2008	3,951	3,951
LIFE SETTLEMENT CONTRACT 38	9/26/2008	7,254	7,254
LIFE SETTLEMENT CONTRACT 39	9/26/2008	5,982	5,982
LIFE SETTLEMENT CONTRACT 40	9/26/2008	4,972	4,972
LIFE SETTLEMENT CONTRACT 41	9/26/2008	5,011	5,011
LIFE SETTLEMENT CONTRACT 42	9/26/2008	16,359	16,359
LIFE SETTLEMENT CONTRACT 43	9/26/2008	2,095	2,095
LIFE SETTLEMENT CONTRACT 44	9/26/2008	6,384	6,384
LIFE SETTLEMENT CONTRACT 45	9/26/2008	3,167	3,167
LIFE SETTLEMENT CONTRACT 46	9/26/2008	1,443	1,443
LIFE SETTLEMENT CONTRACT 47	9/26/2008	6,745	6,745
LIFE SETTLEMENT CONTRACT 48	9/26/2008	7,108	7,108
LIFE SETTLEMENT CONTRACT 49	9/26/2008	4,834	4,834
LIFE SETTLEMENT CONTRACT 50	9/26/2008	8,169	8,169
LIFE SETTLEMENT CONTRACT 51	9/26/2008	1,424	1,424

## PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	NONE	(B)	0.214429%
LINE 10.	SECTION 351			
LINE 11-15.	NO			
LINE 16.	NO			
LINE 17.	NO			

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PATRICK DAUGHERTY  


HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

25. FORM 8886 AND FORM 8275 DISCLOSURES  
ATTACHED TO YOUR SCHEDULE K-1 ARE THE FORMS 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENT AND THE FORMS 8275 DISCLOSURE STATEMENT FILED BY HIGHLAND CAPITAL MANAGEMENT, L.P. TO DETERMINE YOUR SHARE OF THE AMOUNTS SHOWN ON THESE ATTACHED DISCLOSURES, MULTIPLY THE AMOUNTS BY THE FOLLOWING PERCENTAGE.

0.7402624200%

PLEASE CONSULT YOUR TAX ADVISOR CONCERNING ANY POTENTIAL FILING REQUIREMENT YOU MAY HAVE RELATED TO THESE DISCLOSURES.

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PATRICK DAUGHERTY  
[REDACTED]

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

75-2716725

ATTACHMENT TO SCHEDULE K-1

IMPORTANT TAX DOCUMENT - PLEASE RETAIN FOR YOUR RECORDS

DISCLOSURE ACKNOWLEDGEMENT PURSUANT TO IRS NOTICE 2006-16  
FOR TAXABLE YEAR ENDED DECEMBER 31, 2008

HIGHLAND CAPITAL MANAGEMENT, L.P. HELD AN INDIRECT INTEREST IN HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., THROUGH HIGHLAND CREDIT STRATEGIES FUND, L.P.

HIGHLAND CREDIT STRATEGIES FUND, L.P. HAS ACKNOWLEDGED THAT THEY HAVE COMPLIED OR WILL COMPLY WITH THEIR SEPARATE DISCLOSURE OBLIGATIONS UNDER TREAS. REG. SEC. 1.6011-4 WITH RESPECT TO A TRANSACTION(S) DESCRIBED IN IRS NOTICE 2002-35 BY FILING A PROTECTIVE FORM 8886 (REPORTABLE TRANSACTION DISCLOSURE STATEMENT) TREAS. REG. SEC. 1.6011-4(f)(2).

IN ACCORDANCE WITH NOTICE 2006-16, SECTION 3.02, BY TIMELY RECEIPT OF THIS ACKNOWLEDGEMENT, YOU SHOULD NOT BE REQUIRED TO FILE A DISCLOSURE STATEMENT FOR THIS TRANSACTION(S), PROVIDED YOUR ONLY DISCLOSURE OBLIGATION WITH RESPECT TO THIS TRANSACTION(S) UNDER TREAS. REG. SEC. 1.6011-4(b) ARISES FROM YOUR DIRECT OR INDIRECT INTEREST IN HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

PASS-THROUGH ENTITIES RECEIVING THIS ACKNOWLEDGEMENT MUST TIMELY PROVIDE A COPY OF IT TO TAXPAYERS HOLDING AN INTEREST IN THE PASS-THROUGH ENTITY, UNDER NOTICE 2006-16, SECTION 3.02, IN ORDER FOR SUCH TAXPAYERS TO BE RELIEVED OF THE REQUIREMENT TO FILE A DISCLOSURE STATEMENT FOR THIS TRANSACTION(S), PROVIDED THEIR ONLY DISCLOSURE OBLIGATION WITH RESPECT TO THIS TRANSACTION(S) UNDER TREAS. REG. SEC. 1.6011-4(b) ARISES FROM THEIR INDIRECT INTEREST IN THESE PASS-THROUGH ENTITIES.

PLEASE CONSULT YOUR TAX ADVISOR WITH REGARD TO THE ACKNOWLEDGEMENT AND NOTICE 2006-16.

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Form **8275**

(Rev. August 2008)

Department of the Treasury  
Internal Revenue Service**Disclosure Statement**Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement.  
See separate instructions.

▶ Attach to your tax return.

OMB No. 1545-0889

Attachment  
Sequence No. **92**

Name(s) shown on return

Highland Capital Management, L.P.

Identifying number shown on return

752716725

**Part I General Information** (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1 Rev. Rul. 93-80	Loss	Loss from worthlessness of partnership interest in Highland Capital Multi-Strategy Fund, L.P.	1065	6	(\$349,568,517)
2					
3					
4					
5					
6					

**Part II Detailed Explanation** (see instructions)

1. See attached.

2. ....

3. ....

4. ....

5. ....

6. ....

**Part III Information About Pass-Through Entity.** To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity	2 Identifying number of pass-through entity
	3 Tax year of pass-through entity / / to / /
	4 Internal Revenue Service Center where the pass-through entity filed its return

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 61935M

Form **8275** (Rev. 8-2008)

003415

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Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.

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## **Part II, Line 1 – Detailed Explanation**

Highland Capital Management, L.P. (“HCM”) has reported on Form 1065, Line 6 a \$349,568,517 ordinary loss under I.R.C. § 165 with respect to the worthlessness of HCM’s partnership interest in Highland Capital Multi-Strategy Fund, L.P. (“HMSF LP”). The facts relating to this loss are as follows:

### **Highland Capital Management**

HCM is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment partnerships (“hedge funds”) that it has organized and marketed to investors. HCM has a significant equity interest in each of the hedge funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

In addition to serving as an investment advisor, HCM also engages in securities trading primarily for its own account.

### **Highland Multi-Strategy Fund**

In 2006, HCM entered into negotiations with Barclays Bank PLC (“Barclays”) regarding a prepaid forward transaction (discussed below) relating to a portfolio of equity interests that HCM held in certain HCM managed hedge funds. Because the prepaid forward contract would create economic exposure to a portfolio of HCM managed hedge funds, HCM determined that it should enter into the prepaid forward transaction through a subsidiary partnership structure that could function as a fund-of-funds arrangement for third party investors and thereby create an additional source of advisory fee income for HCM. Accordingly, HCM formed Highland Multi-Strategy Master Fund, L.P., a Bermuda limited partnership (“HMSF”), to engage in the prepaid forward transaction with Barclays.

HMSF’s sole limited partner is HMSF LP. HCM and its affiliates own all of HMSF LP. HMSF LP has never had any assets or activities other than its equity interest in HMSF.

HMSF’s sole general partner is Highland Multi-Strategy Fund GP, L.P. Highland Multi-Strategy Fund GP, L.P. is owned 99% by HCM as limited partner, and 1% by Highland Multi-Strategy Fund GP, L.L.C. as general partner. Highland Multi-Strategy Fund GP, L.L.C. is owned 100% by HCM.

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Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.

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For a number of non-tax reasons, HCM subsequently abandoned the idea of marketing additional equity interests in HMSF to third party investors, and HMSF and HMSF LP never received any equity contributions from persons not affiliated with HCM.

## **HMSF's Activities**

### *The Derivative Ownership Transactions*

On August 1, 2006, HMSF formed Highland Multi-Strategy Onshore Master SubFund, L.L.C. ("SubFund I") for the purpose of entering into a prepaid forward contract with Barclays. SubFund I is owned 99% by HMSF and 1% by HCM. SubFund I paid \$156,349,569 at inception of the contract and was entitled to a cash payment from Barclays at maturity of the contract equal to the excess of

- (1) the value of a notional portfolio of investment funds (the "Reference Portfolio") having an initial value of \$312,699,138, over
- (2) a specified "Notional Amount" initially equal to \$156,349,569 and increased by an accretion amount based on one-month USD LIBOR plus 0.90%.

In connection with entering into the prepaid forward contract, SubFund I also transferred \$53,158,854 in cash to a brokerage account (the "Collateral Account") in SubFund I's name. The Collateral Account was pledged to Barclays as security for any negative value for the Prepaid Forward at maturity or early termination.

In February 2007, HMSF formed Highland Multi-Strategy Onshore Master SubFund II, L.L.C. ("SubFund II") for the purpose of entering into an accreting strike option contract with Barclays. SubFund II is owned 99% by HMSF and 1% by HCM. The accreting strike option contract grants SubFund II the option to purchase, at the "Final Valuation Date" specified in the contract, the cash equivalent value of a notional portfolio of HCM managed investment funds (the "Reference Portfolio") for a strike price of \$178,584,722.22 (subject to accretion based on LIBOR plus 1.4%). At the inception of the contract, the Reference Portfolio had a value of \$250,000,000, and SubFund II paid Barclays an option premium of \$71,428,571.43.

### *The Strand Funding Transactions*

During 2007, HCM and The Bank of Nova Scotia ("BNS") entered into a total return swap ("Swap") whose notional value was tied to a portfolio of loans held by Strand Funding, an affiliate of BNS. Under the Swap, HCM owed BNS a floating payment based on an interest rate applied to the book value of the underlying loan portfolio, and BNS owed HCM an asset payment equal to the realized interest and proceeds from the underlying loan portfolio. When the Swap matured in June 2008,



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Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.

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there were certain loans that Strand Funding had not been able to sell in the open market and therefore HCM and BNS could not settle the Swap.

HCM arranged for HMSF to enter into a series of "LSTA Par/Near Par Trade Conformations" with Strand Funding pursuant to which Strand Funding as Seller purported to assign the underlying loans to HMSF as Buyer. HCM then arranged for most of the loans be assigned by HMSF as Seller to unrelated third parties as Buyers under separate LSTA confirmations. Pursuant to a Multilateral Netting Agreement entered into by Strand Funding, HMSF, and the third party buyer, Strand Funding assigned the loans directly to the third party buyer. The amount due under the original confirmations between HMSF and Strand Funding was funded from the proceeds of the assignments to the third party buyers. These transactions produced a net profit to HMSF.

For certain of the loans that Strand Funding purported to assign to HMSF, HCM was not able to find a third party buyer during 2008 (principally because the borrowers under the loans were in severe financial distress). The trade confirmations between Strand Funding and HMSF with respect to those loans remained open and unsettled as of December 31, 2008. As of December 31, 2008, the amount payable to Strand Funding under the confirmations relating to the unsettled trades was \$10,457,201, and the underlying loans had a mark-to-market value of \$6,181,618. During 2009, BNS and HCM agreed to cancel the unsettled trades, and HCM accounted to BNS under the Swap for the loss in value of the loans.

#### *Assets and Liabilities*

As of December 31, 2008, HMSF's financial statements reflect assets of \$6,347,039 (consisting of \$165,421 cash and \$6,181,618 of business securities representing the value of the loans under the unsettled trades with Strand Funding), and liabilities of \$11,513,448 (consisting of \$1,056,247 payable to HCM for overhead expense allocations and \$10,457,201 payable to Strand Funding in connection with the unsettled trades).

#### **Worthlessness and Abandonment Events**

During 2008, the HCM managed hedge funds underlying the Barclays derivative ownership contracts lost significant value and liquidity. In October 2008 Barclays gave notices that it was terminating the contracts. Due to the illiquidity of the underlying hedge fund interests and other factors, the contracts were not actually terminated during 2008. HCM determined that Barclays decision to terminate the contracts in October 2008 eliminated any reasonable hope or expectation of the SubFund entities recovering any value under the contracts or in any assets held in connection with the contracts.

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Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.

By letters dated December 9, 2008, HMSF advised the SubFund entities that HMSF had abandoned its equity interests in entities. The abandonment was recognized by HCM as managing member of the SubFund entities and, by amendment to the SubFund entity operating agreements, HMSF was stricken as a member of the SubFund entities effective as of December 9, 2008. To preserve the SubFund entities' tax classification as partnerships, Strand Advisors II, Inc., a wholly owned subsidiary of HCM, was admitted as a limited partner in the SubFund entities effective as of December 9, 2008, acquiring a 1% equity interest for no consideration.

As of not later than December 31, 2008, the loans underlying HMSF's open trade confirmations with Strand Funding had a value substantially less than the amount payable to Strand Funding under the trade confirmation, and there was no reasonable hope or expectation that the value of the loans would increase to an amount in excess of the amount payable to Strand Funding.

As of December 30, 2008, HMSF had no net assets and no reasonable hope or expectation of any realizing any net assets. Accordingly, HCM determined that its equity interest in HMSF LP was worthless as of not later than December 30, 2008.

### Tax Reporting

HCM has reported on its tax return for its taxable year ended December 31, 2008 a loss with respect to the worthlessness of its partnership interest in HMSF LP.<sup>1</sup> The loss is equal to HCM's adjusted tax basis in the HMSF LP partnership interest as of the date of worthlessness.<sup>2</sup> HCM wrote down its tax basis for its equity interest in HMSF LP to zero as of the date the interest in HMSF LP became worthless.<sup>3</sup> In computing HCM's tax basis in its interest in HMSF LP as of the date of worthlessness, HCM has not taken into account its distributive share of HMSF LP's tax items for the 2008 tax year through the worthlessness date because HCM did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in HMSF LP as a result of the worthlessness of the interest.<sup>4</sup> HCM has not claimed any deduction for its distributive share of HMSF LP loss reported for HMSF LP's taxable year ending December 31, 2008 because HCM's adjusted tax basis for its HMSF LP partnership interest was zero as of December 31, 2008.<sup>5</sup>

<sup>1</sup> I.R.C. § 165(a), (c)(1).

<sup>2</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>3</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>4</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). *Cf. Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment).

<sup>5</sup> I.R.C. § 704(d).

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Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.

Because the worthlessness of HCM's interest in HMSF LP did not give rise to any actual or constructive discharge of HMSF LP liabilities under I.R.C. § 752,<sup>6</sup> HCM's loss from such worthlessness is an ordinary loss rather than a capital loss.<sup>7</sup> Moreover, the loss is a business loss because HCM's interest in HMSF LP was attributable to and derived from HCM's business as an investment advisor and as a securities trader and was acquired with the dominant motive of generating a source of business income, and not with the dominant motive of making or preserving a non-business investment.<sup>8</sup>

The ordinary loss reported on HCM's tax return for its tax year ended December 31, 2008 flows through to HCM's partners as of December 31, 2008.<sup>9</sup>

The Service could challenge HCM's tax reporting of the worthlessness loss under a variety of theories, which could include challenging the following assertions set forth above: (a) that HCM's HMSF LP partnership interest became worthless during HCM's tax year ending December 31, 2008, (b) that HCM's loss is calculated without taking into account its distributive share of HMSF LP tax items (if any) for HMSF LP's taxable year ended December 31, 2008, (c) that HCM's loss with respect to the worthlessness of its HMSF LP partnership interest is an ordinary loss attributable to HCM's business.

<sup>6</sup> HMSF LP had no direct or indirect partnership liabilities. The SubFund entities and HMSF LP had no direct liabilities. HMSF's only liability was an intercompany payable to HCM. This recourse liability is allocated entirely to HMSF GP in its status as general partner. See Treas. Reg. § 1.752-2(a) (partner's share of partnership recourse liability equals portion for which the partner or a related person bears the economic risk of loss); (c)(1) (partner bears the risk of loss for a partnership liability to the extent that the partner or a related person is the lender and risk of loss is not borne by another person); (k)(1) (special rule for disregarded entities does not apply to the extent the owner is at risk with respect to the obligation). In any event, the worthlessness of HCM's HMSF LP partnership interest did not constitute a disposition of the partnership interest, or otherwise affect HMSF LP's direct or indirect liabilities, HCM's status as a partner in HMSF LP, or the allocation of HMSF LP liabilities under I.R.C. § 752. Cf. *Abdalla v. Commissioner*, 647 F.2d 487 (5th Cir. 1981) (worthlessness of S corporation stock is not a "disposition" of the stock for purposes S corporation loss allocations). Accordingly, the worthlessness event did not result in any reduction in HCM's share (if any) of HMSF LP liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>7</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

<sup>8</sup> See *United States v. Geneser*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).

<sup>9</sup> I.R.C. § 706(a); Treas. Reg. § 1.706-1(a).

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Form **8275**

(Rev. August 2008)

Department of the Treasury  
Internal Revenue Service

Name(s) shown on return

Highland Capital Management, L.P.

**Disclosure Statement**Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement.  
See separate instructions.

▶ Attach to your tax return.

OMB No. 1545-0889

Attachment  
Sequence No. **92**

Identifying number shown on return

752716725

**Part I General Information** (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1 Rev. Rul. 93-80	Loss	Loss from worthlessness of partnership interest in Highland Financial Partners, L.P.	1065	6	(\$276,533,895)
2					
3					
4					
5					
6					

**Part II Detailed Explanation** (see instructions)

1. See attached.

2.

3.

4.

5.

6.

**Part III Information About Pass-Through Entity.** To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity	2 Identifying number of pass-through entity
	3 Tax year of pass-through entity / / to / /
	4 Internal Revenue Service Center where the pass-through entity filed its return

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 61935M

Form **8275** (Rev. 8-2008)

003421

Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss From Worthlessness of Highland Financial Partners

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**Part II, Line 1 – Detailed Explanation**

The taxpayer, Highland Capital Management, L.P. (“HCM”), has reported on Form 1065, Line 6, a \$276,533,895 ordinary loss under I.R.C. § 165 with respect to taxpayer’s partnership interest in Highland Financial Partners, L.P. (“HFP”). The facts relating to this loss are as follows:

**Highland Capital Management**

HCM is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment funds (“funds”) that it has organized and marketed to investors. HCM has a significant equity interest in each of the funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

**Highland Financial Partners**

HCM formed HFP in January 2006 to hold equity interests in certain leveraged credit subsidiaries and other assets. HFP was initially capitalized by issuing limited partner interests to HCM and to certain institutional investors (who initially held their interests through a trust). As of December 31, 2006, HFP had approximately \$11.7 billion in total assets and \$490.4 million in net equity. HCM held approximately 12.2% of HFP’s equity on a fully diluted basis.

In addition to the roughly \$405 million of capital raised from investors pursuant to private placements in February and October 2006, HCM anticipated that HFP would raise significant capital from one or more public offerings of HFP common units, thereby increasing HFP’s equity subject to base management fees and income potentially subject to incentive allocations. On April 27, 2007, HFP filed an amended preliminary registration statement on Form S-1 seeking to effect an initial public offering of \$50,000,000 of limited partner units. Due to unfavorable market conditions that developed thereafter in connection with the deterioration of the credit markets, and for other reasons, HFP withdrew the registration statement on September 7, 2007.

Additional background information regarding HFP and HCM can be obtained at <http://www.sec.gov/Archives/edgar/data/1354166/000095013407009372/d40436a1sv1za.htm>, and is incorporated herein by reference.

**Worthlessness Events**

During the fourth quarter of 2008, due to the continuing deterioration in the credit markets, HFP became insolvent beyond any reasonable hope or expectation of recovery. HCM determined that its partnership interest in HFP was worthless as of no



Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss From Worthlessness of Highland Financial Partners

later than November 30, 2008. Likewise, the taxpayer determined that its direct equity interest in HFP was worthless as of November 30, 2008. The interests in HFP became worthless (such that no investor would be willing to pay any consideration for an HFP unit) no later than November 30, 2008, through a confluence of factors: (1) deterioration in the credit markets rendered HFP's expected cash flows to have no prospect to ever be sufficient to pay HFP's outstanding debts; (2) loan value erosion within the CLO (collateralized loan obligation) entities held by HFP resulted in violation of multiple HFP coverage tests causing permanent impairment of HFP's expected cash flows; (3) major lawsuits filed in the fourth quarter of 2008; (4) HFP's balance sheet reflected approximately \$1 billion in negative equity.

### Tax Reporting

HCM has reported on its tax return for its taxable year ended December 31, 2008 an ordinary loss with respect to the worthlessness of its partnership interest in HFP.<sup>1</sup> The loss is equal to HCM's adjusted tax basis in the HFP equity interest as of the date of worthlessness,<sup>2</sup> including basis attributable to HCM's allocable share of HFP liabilities.<sup>3</sup> HCM wrote down its tax basis for its partnership interest in HFP to zero as of November 30, 2008.<sup>4</sup> In computing HCM's adjusted tax basis in its interest in HFP as of November 30, 2008, HCM has not taken into account its distributive share of HFP's tax items for the 2008 tax year through the worthlessness date because HCM did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in HFP as a result of the worthlessness of the interest.<sup>5</sup> HCM has, however, taken into account any changes in its allocable share of HFP liabilities during the 2008 year through the date of worthlessness.<sup>6</sup>

The worthlessness of HCM's HFP partnership interest is not a disposition of the partnership interest for federal income tax purposes,<sup>7</sup> and HCM retains its allocable share of HFP liabilities until it ceases to be an HFP partner. HCM has taken into

<sup>1</sup> I.R.C. § 165(a), (c)(1).

<sup>2</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>3</sup> Treas. Reg. §§ 1.705-1(a); 1.752-1, 1.752-2, 1.752-3.

<sup>4</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>5</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). *Cf. Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment, but taking into account distributions during the year).

<sup>6</sup> See Treas. Reg. § 1.752-4(d) (partner's share of partnership liabilities determined "whenever the determination is necessary in order to determine the tax liability of the partner"). *Cf. Rev. Rul. 94-4*, 1994-1 C.B. 196 (deemed distributions under I.R.C. § 752(b) from reductions in liabilities are taken into account as of the last day of the partnership taxable year to the extent of the partner's distributive share of income for the partnership taxable year).

<sup>7</sup> *Cf. Abdalla v. Commissioner*, 647 F.2d 487 (5th Cir. 1981) (worthlessness of S corporation stock is not a "disposition" of the stock for purposes S corporation loss allocations).

Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss From Worthlessness of Highland Financial Partners

account as of December 31, 2008 any increase or decrease in its allocable share of HFP liabilities from November 30, 2008 through December 31, 2008.<sup>8</sup> HCM has not claimed any deduction for its distributive share of the HFP loss reported for HFP's taxable year ending December 31, 2008 to the extent the loss exceeds HCM's adjusted tax basis for its HFP equity interest as of December 31, 2008 (taking into account the write down of its tax basis to zero as of November 30, 2008 and any changes in HCM's allocable share of HFP liabilities from November 30, 2008 through December 31, 2008).<sup>9</sup>

Because the worthlessness of HCM's partnership interest in HFP did not give rise to any actual or constructive discharge of HFP liabilities under I.R.C. § 752,<sup>10</sup> HCM's loss from such worthlessness is an ordinary loss rather than a capital loss.<sup>11</sup> In addition, the loss is a business loss for purposes of I.R.C. §§ 62(a)(1) and 172 because HCM's interest in HFP was attributable to and derived from HCM's business as an investment advisor and was acquired with the dominant motive of generating a source of business income, and not with the dominant motive of making or preserving a non-business investment.<sup>12</sup>

The ordinary business loss reported on HCM's tax return for its tax year ended December 31, 2008 will flow through to HCM partners as of December 31, 2008.<sup>8</sup>

The Service could challenge the taxpayer's tax reporting of the worthlessness loss under a variety of theories, which could include challenging the following assertions set forth above: (a) that the taxpayer's HFP partnership interest became worthless during the taxpayer's year ending December 31, 2008, (b) that the taxpayer's loss is calculated without taking into account its distributive share of HFP's tax items (if any) for HFP's taxable year ended December 31, 2008, (c) that the taxpayer's loss with respect to the worthlessness of its HFP partnership interest is an ordinary loss attributable to HCM's business.

<sup>8</sup> I.R.C. § 752.

<sup>9</sup> I.R.C. § 704(d).

<sup>10</sup> The worthlessness of HCM's interest in HFP had no effect on HFP's direct or indirect liabilities, on HCM's status as a partner in HFP, or on the allocation of HFP liabilities under I.R.C. § 752. Accordingly, the worthlessness event did not result in any reduction in HCM's share of HFP liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>11</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

<sup>12</sup> See *United States v. Genes*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).

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Form **8275**  
(Rev. August 2008)**Disclosure Statement**

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.

OMB No. 1545-0889

Attachment  
Sequence No. **92**Department of the Treasury  
Internal Revenue Service

▶ Attach to your tax return.

Name(s) shown on return

HIGHLAND CAPITAL MANAGEMENT, L.P.

Identifying number shown on return

75-2716725

**Part I** General Information (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1		SEE ATTACHED STATEMENT			
2					
3					
4					
5					
6					

**Part II** Detailed Explanation (see instructions)

1	SEE ATTACHED STATEMENT
2	
3	
4	
5	
6	

**Part III** Information About Pass-Through Entity. To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity HIGHLAND FINANCIAL PARTNERS, LP  TWO GALLERIA TOWER  13455 NOEL ROAD SUITE 800  DALLAS, TX 75240	2 Identifying number of pass-through entity 83-0446391
	3 Tax year of pass-through entity 01/01/2008 to 12/31/2008
	4 Internal Revenue Service Center where the pass-through entity filed its return OGDEN, UT

For Paperwork Reduction Act Notice, see separate instructions.  
ISAForm **8275** (Rev. 8-2008)

Part IV	Explanations (continued from Parts I and/or II)
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SEE ATTACHED

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Highland Capital Management, L.P.  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss From Highland Financial Partners, L.P.

The taxpayer was allocated a loss from Highland Financial Partners, L.P. ("HFP") based on the amounts below with respect to taxpayer's interest in HFP. The loss is not claimed on the taxpayer's return because the taxpayer's tax basis for its HFP partnership interest as of the end of HFP's 2008 tax year was zero. Nevertheless, because the losses exceeded \$2 million and the underlying asset is an interest in a passthrough entity, the loss is a reportable loss. The following information was provided by HFP with respect to the loss. The discussion below uses the term "taxpayer" to refer to HFP.

Highland Financial Partners, L.P. ("HFP") which owns a majority interest in the following controlled foreign corporations ("CFCs") and foreign partnership: Highland Euro CDO III B.V. (CFC), Rockwall CDO II, Ltd. (CFC), Stratford CLO, Ltd. (CFC), Westchester CLO, Ltd. (CFC), and Eastland CLO, Ltd. (foreign partnership). The first year of operation for each of these entities ended in 2007. Pursuant to § 1.964-1T of the Treasury Regulations, HFP adopted the mark to market method of accounting in computing the income of these CFCs. The foreign partnership, which is controlled by HFP, also adopted the mark to market method of accounting on its 2007 tax return. The mark to market method of accounting is a permissible method under § 446 of the Internal Revenue Code and the regulations promulgated thereunder for each of these entities.

The CFCs and the foreign partnership are special purpose vehicles that issue Collateralized Loan Obligations ("CLOs") or Collateralized Debt Obligations (CDOs). The CFCs and the foreign partnership typically hold securities in the form of notes, loans held for sale, and loans not held for sale all of which are securities within the meaning of § 475(c). For financial reporting purposes, the CFC's and the foreign partnership account for the notes under Generally Accepted Accounting Principles ("GAAP") using the mark to market method of accounting. The CFCs and the foreign partnership account for the loans held for sale on the mark to market method of accounting under GAAP. The loans not held for sale are accounted for under the amortized cost method of accounting for GAAP with allowances for loan losses that consider mark to market fluctuations as an indication of potential impairment.

HFP is not a trader or a dealer in securities and is not relying on § 475(f) in adopting the mark to market method of accounting. The utilization of the mark to market method of accounting is a permissible method of accounting under § 446 and is not limited to dealers or traders in securities. When adopting § 475(f), the Senate Finance Committee stated that "[m]ark-to-market accounting generally provides a clear reflection of income with respect to assets that are traded on established markets. For market-valued assets, mark-to-market accounting imposes few burdens and offers few opportunities for manipulation." S. Rep. No. 105-33 at 128 (1997).



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Highland Capital Management, L.P.  
Form 1065; December 31, 2008

Attachment to Form 8275: Loss From Highland Financial Partners, L.P.

HFP will file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, Form 8865, Information Return of U.S. Persons with Respect to Certain Foreign Partnerships, and Form 1065, U.S. Return of Partnership Income, reporting information that in part reflects the mark to market method of accounting adopted by the respective entities. Under the mark to market method of accounting, the CFCs and the foreign partnership will realize total capital losses of \$908,275,190, \$51,281,106 of which will flow through as a reduction of subpart F income for HFP. HFP is providing this notice to all other U.S. domestic shareholders that are required to receive notice of an adoption of an accounting method pursuant to § 1.964-1T(c)(3)(iii) of the Treasury Regulations. HFP is providing this notice to all other U.S. domestic partners in the foreign partnership.

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Form **8275**

(Rev. August 2008)

Department of the Treasury  
Internal Revenue Service**Disclosure Statement**

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.

▶ Attach to your tax return.

OMB No. 1545-0889

Attachment  
Sequence No. **92**

Name(s) shown on return

HIGHLAND CAPITAL MANAGEMENT, L.P.

Identifying number shown on return

75-2716725

**Part I** General Information (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1	GAIN/LOSS	UNREALIZED GAIN/LOSS ON SECURITIES MARKED TO MARKET	5471, C	7	(2,221,150)
2					
3					
4					
5					
6					

**Part II** Detailed Explanation (see instructions)

- 1 PLEASE SEE ATTACHED STATEMENT
- 2
- 3
- 4
- 5
- 6

**Part III** Information About Pass-Through Entity. To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

- |   |   |
|---|---|
| 1 Name, address, and ZIP code of pass-through entity<br>HIGHLAND CREDIT OPPORTUNITIES CDO, LP<br><br>TWO GALLERIA TOWER<br><br>13455 NOEL ROAD, SUITE 800<br><br>DALLAS, TX 75240 | 2 Identifying number of pass-through entity<br>20-3874256                                 |
|   | 3 Tax year of pass-through entity<br>01/01/2008 to 12/31/2008                             |
|   | 4 Internal Revenue Service Center where the pass-through entity filed its return<br>OGDEN |

For Paperwork Reduction Act Notice, see separate instructions.  
ISAForm **8275** (Rev. 8-2008)

## Part IV Explanations (continued from Parts I and/or II)

Blank handwriting practice paper with horizontal dashed lines.

Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

Attachment to Form 8275 – Disclosure Statement

Highland Capital Management, L.P. (“HCM”) owns a direct interest in Highland Credit Opportunities CDO, L.P. (“CDO”). CDO owns a majority interest in Highland Credit Opportunities CDO, Ltd. (“HCO”), a Controlled Foreign Corporation (CFC). The amounts and related disclosures shown on this Form 8275 have been passed through to HCM by CDO. The first year of operation for HCO ended in 2006. Pursuant to Section 1.964-1T of the Treasury Regulations, CDO, on behalf of CFC as majority shareholder, adopted the mark to market method of accounting in computing the income of this CFC in that year. CDO and HCO believe that the mark to market method of accounting is a permissible method under Section 446 of the Internal Revenue Code and the regulations promulgated thereunder for this entity. HCO has continued to use the mark to market method of accounting in computing its income in 2008.

HCO is a special purpose vehicle that issues Floating Rate Notes and Preferred Shares. Typically, it holds securities in the form of notes and loans, all of which are securities within the meaning of Section 475(c). For financial reporting purposes, HCO accounts for the securities under Generally Accepted Accounting Principles (“GAAP”) using the mark to market method of accounting. In computing taxable income, Section 1.446-1(a)(2) provides that “A method of accounting which reflects the consistent application of generally accepted accounting principles in a particular trade or business...will ordinarily be regarded as clearly reflecting income.”

CDO is not a trader or a dealer in securities and is not relying on Section 475(f) in adopting the mark to market method of accounting. The utilization of the mark to market method of accounting is a permissible method of accounting under Section 446 and is not limited to dealers or traders in securities. When adopting Section 475(f), the Senate Finance Committee stated that “[m]ark-to-market accounting generally provides a clear reflection of income with respect to assets that are traded on established markets. For market-valued assets, mark-to-market accounting imposes few burdens and offers few opportunities for manipulation.” S. Rep. No. 105-33 at 128 (1997).

CDO will file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, reporting information that in part reflects the mark to market method of accounting adopted by the HCO. Under the mark to market method of accounting, HCO will realize a deficit in earnings and profits of (\$547,397,844) for 2008. Before CDO filed its returns and provided tax documents including disclosures and Forms 5471 to various investors, Form 5471 were sent to some minority interest holders reporting information that in part reflects the realization method of accounting. CDO is providing this notice to all other U.S. domestic shareholders that are required to receive notice of adoption of an accounting method pursuant to Section 1.964-1T(c)(3)(iii) of the Treasury Regulations.

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Form **8275**  
(Rev. August 2008)**Disclosure Statement**

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.

OMB No. 1545-0889

Attachment  
Sequence No. **92**Department of the Treasury  
Internal Revenue Service

▶ Attach to your tax return.

Name(s) shown on return

HIGHLAND CAPITAL MANAGEMENT, L.P.

Identifying number shown on return

75-2716725

**Part I General Information** (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1	LOSS	ORDINARY LOSS - WORTHLESS PARTNERSHIP EQUITY INTEREST	1065	11F	(428,218)
2					
3					
4					
5					
6					

**Part II Detailed Explanation** (see instructions)

1 PLEASE SEE ATTACHED STATEMENT

2

3

4

5

6

**Part III Information About Pass-Through Entity.** To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity HIGHLAND CRUSADER FUND, LP  TWO GALLERIA TOWER  13455 NOEL ROAD, SUITE 800  DALLAS, TX 75240	2 Identifying number of pass-through entity 75-2889981
	3 Tax year of pass-through entity 01/01/2008 to 12/31/2008
	4 Internal Revenue Service Center where the pass-through entity filed its return OGDEN

For Paperwork Reduction Act Notice, see separate instructions.  
ISAForm **8275** (Rev. 8-2008)



Part IV	Explanations (continued from Parts I and/or II)
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1. *Introduction*  
 2. *Methodology*  
 3. *Results*  
 4. *Discussion*  
 5. *Conclusion*  
 6. *References*  
 7. *Appendix*  
 8. *Index*  
 9. *Glossary*  
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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

## Attachment to Form 8275 – Disclosure Statement

Highland Capital Management, L.P. (“Taxpayer”) is directly invested in Highland Crusader, L.P. (“HC”). HC has passed through to the taxpayer on Schedule K, Line 11F, a loss with respect to HC’s interest in Highland Crusader Offshore Partners, L.P. (“Master Fund”). Included in the HC’s distributive share of the Master Fund loss is a \$16,358,789 ordinary loss claimed by the Master Fund under I.R.C. § 165 with respect to the worthlessness of the Master Fund’s partnership interest in Highland Financial Partners, L.P. (“HFP”). This loss is a reportable transaction, as defined in Treas. Reg. § 1.6011-4(b)(5), because the loss exceeds \$2 million and the asset is an interest in a pass-through entity.<sup>1</sup>

During the fourth quarter of 2008, due to the continuing deterioration in the credit markets, HFP became insolvent beyond any reasonable hope or expectation of recovery. The Master Fund determined that its equity interest in HFP was worthless as of November 30, 2008. The interest in HFP became worthless (such that no investor would be willing to pay any consideration for an HFP unit) no later than November 30, 2008, through a confluence of factors: (1) deterioration in the credit markets rendered HFP’s expected cash flows to have no prospect to ever be sufficient to pay HFP’s outstanding debts; (2) loan value erosion within CLO (collateralized loan obligation) entities held by HFP resulted in violation of multiple HFP coverage tests causing permanent impairment of HFP’s expected cash flows; (3) major lawsuits filed in the fourth quarter of 2008; (4) HFP’s balance sheet reflected approximately \$1 billion in negative equity.

The Master Fund has reported in its tax return for its taxable year ended December 31, 2008, an ordinary loss with respect to the worthlessness of its partnership interest in HFP.<sup>2</sup> The loss is equal to the Master Fund’s adjusted tax basis in the HFP partnership interest as of the date of worthlessness,<sup>3</sup> including the basis attributable to the Master Fund’s allocable share of HFP liabilities.<sup>4</sup> The Master Fund will write down its tax basis for its equity interest in HFP to zero as of November 30, 2008.<sup>5</sup> The Master Fund will not claim any deduction for its distributive share of loss reported for HFP’s taxable year ending December 31, 2008 because its tax basis will be zero at that time.<sup>6</sup> In computing the Master Fund’s tax basis in its interest in HFP as of November 30, 2008, the Master Fund will not take into account its distributive share of HFP’s tax items for the 2008 tax year through worthlessness date because the Master

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<sup>1</sup> Rev. Proc. 2004-66, 2004-50 I.R.B. 966.

<sup>2</sup> I.R.C. § 165(a), (c)(1).

<sup>3</sup> Treas. Reg. § 1.165-1(c)(1)

<sup>4</sup> Treas. Reg. § 1.705-1(a), 1.752-1, 1.752-2, and 1.752-3.

<sup>5</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>6</sup> I.R.C. § 704(d)

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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

## Attachment to Form 8275 – Disclosure Statement

Fund did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in HFP as a result of the worthlessness of the interest.<sup>7</sup> The worthlessness of an asset is not a disposition of that asset for Federal income tax purposes, and a partner retains a share of the liabilities of a partnership for which the partner is liable under the rules of Section 752 and the regulations thereunder until that partner is released from the liability for those partnership's debts under the law.<sup>8</sup> The Master Fund will, however, take into account any changes in its allocable share of HFP liabilities during the 2008 year through the date of worthlessness.<sup>9</sup>

The worthlessness of the Master Fund's interest in HFP does not terminate the Master Fund's status as an HFP partner. The Master Fund will take into account, as of December 31, 2008, any increase or decrease in its allocable share of HFP liabilities from November 30, 2008 through December 31, 2008.<sup>10</sup> The Master Fund will not claim any deduction for its distributive share of the HFP loss reported for HFP's taxable year ending December 31, 2008, to the extent the loss exceeds the Master Fund's adjusted basis for its HFP partnership interest as of December 31, 2008 (taking into account the write down of its tax basis to zero as of November 30, 2008, and any changes in the Master Fund's allocable share of HFP liabilities from November 30, 2008 through December 31, 2008).<sup>11</sup>

Because the worthlessness of the Master Fund's partnership interest in HFP did not give rise to any actual or constructive discharge of HFP liabilities under I.R.C. Section 752,<sup>12</sup> the Master Fund's loss from such worthlessness is an ordinary rather than capital loss.<sup>13</sup>

<sup>7</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). *Cf. Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment, but taking into account distributions during the year).

<sup>8</sup> *Cf. Abdalla v. Commissioner*, 647 F. 2d 487 (5<sup>th</sup> Cir. 1981) (worthlessness of S corporation stock is not a "disposition" of the stock for purposes of S corporation loss allocations).

<sup>9</sup> See Treas. Reg. § 1.752-4(d) (partner's share of partnership liabilities determined "whenever the determination is necessary in order to determine the tax liability of the partner"). *Cf. Rev. Rul. 94-4*, 1994-1 C. B. 196 (deemed distributions under I.R.C. § 752(b) from reductions in liabilities are taken into account as of the last day of the partnership taxable year *to the extent of the partner's distributive share of income for the partnership taxable year*).

<sup>10</sup> I.R.C. § 752.

<sup>11</sup> I.R.C. § 704(d).

<sup>12</sup> The worthlessness of the Master Fund's interest in HFP had no effect on HFP's direct or indirect liabilities, on the Master Fund's status as a partner in HFP, or on the allocation of HFP liabilities under I.R.C. § 752. Accordingly, the worthlessness event did not result in any reduction in the Master Fund's share of HFP liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>13</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

Attachment to Form 8275 – Disclosure Statement

The ordinary loss reported on the Master Fund's tax return for its tax year ended December 31, 2008, flowed through HC to the taxpayer as of December 31, 2008.<sup>14</sup> The taxpayer has reported its distributive share of the Master Fund's loss passed through by HC for the Master Fund's taxable year ended December 31, 2008 on their tax return for its taxable year ended December 31, 2008, as an ordinary loss on Form, 1065, Schedule K, Line 11F.<sup>15</sup>

The losses passed through by HC and reported by the taxpayer with respect to its distributive share of the Master Fund's loss for 2008 and with respect to the worthlessness of its direct partnership interest in HFP have been taken into account in calculating the taxpayer's taxable income/(loss) for the taxpayer's taxable year ending December 31, 2008.

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<sup>14</sup> I.R.C. § 706(a); Treas. Reg. § 1.706-1(a).

<sup>15</sup> As of the date of this disclosure, the HC had not received a Schedule K-1 from the Master Fund for the Master Fund's taxable year ended December 31, 2008. The amount reported on Form 1065, Schedule K, Line 11F, is the estimated amount of the loss to be reported to the taxpayer on such Schedule K-1.

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Form <b>8886</b> (Rev. December 2007) Department of the Treasury Internal Revenue Service	<b>Reportable Transaction Disclosure Statement</b>  ▶ Attach to your tax return. ▶ See separate instructions.	OMB No. 1545-1800  Attachment Sequence No. <b>137</b>								
Name(s) shown on return (individuals enter last name, first name, middle initial) <b>Highland Capital Management, L.P.</b>		Identifying number <b>75-2716725</b>								
Number, street, and room or suite no. <b>13455 Noel Road</b>										
City or town, state, and ZIP code <b>Dallas, TX 75240</b>										
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number <u>1</u> of <u>5</u>										
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . ▶ <u>1065</u>										
Enter the year of the tax return identified above . . . . . ▶ <u>2008</u>										
Is this Form 8886 being filed with an amended tax return? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No										
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filer <input type="checkbox"/> Protective disclosure										
<b>1a</b> Name of reportable transaction <b>Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.</b>										
<b>1b</b> Initial year participated in transaction  <b>2008</b>	<b>1c</b> Reportable transaction or tax shelter registration number (9 digits or 11 digits)  <b>MA0900079</b>									
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply (see instructions). <table style="width: 100%;"> <tr> <td><b>a</b> <input type="checkbox"/> Listed</td> <td><b>c</b> <input type="checkbox"/> Contractual protection</td> <td><b>e</b> <input type="checkbox"/> Brief asset holding period</td> </tr> <tr> <td><b>b</b> <input type="checkbox"/> Confidential</td> <td><b>d</b> <input checked="" type="checkbox"/> Loss</td> <td><b>f</b> <input type="checkbox"/> Transaction of interest</td> </tr> </table>			<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period	<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest		
<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period								
<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest								
<b>3</b> If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶										
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ <u>0</u>										
<b>5</b> If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)										
<b>a</b> Type of entity:										
<table style="width: 100%;"> <tr> <td><input checked="" type="checkbox"/> Partnership</td> <td><input type="checkbox"/> Partnership</td> </tr> <tr> <td><input type="checkbox"/> S corporation</td> <td><input type="checkbox"/> S corporation</td> </tr> <tr> <td><input type="checkbox"/> Trust</td> <td><input type="checkbox"/> Trust</td> </tr> <tr> <td><input type="checkbox"/> Foreign</td> <td><input type="checkbox"/> Foreign</td> </tr> </table>			<input checked="" type="checkbox"/> Partnership	<input type="checkbox"/> Partnership	<input type="checkbox"/> S corporation	<input type="checkbox"/> S corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Trust	<input type="checkbox"/> Foreign	<input type="checkbox"/> Foreign
<input checked="" type="checkbox"/> Partnership	<input type="checkbox"/> Partnership									
<input type="checkbox"/> S corporation	<input type="checkbox"/> S corporation									
<input type="checkbox"/> Trust	<input type="checkbox"/> Trust									
<input type="checkbox"/> Foreign	<input type="checkbox"/> Foreign									
<b>b</b> Name . . . . . ▶ <b>Highland Capital Multi-Strategy Fund</b>										
<b>c</b> Employer identification number (EIN), if known . . . . . ▶ <b>20-5237025</b>										
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <b>September 15, 2009</b>										
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)										
<b>a</b> Name <b>Strasburger &amp; Price LLP</b>  Number, street, and room or suite no. <b>901 Main Street, Suite 4400</b>  City or town, state, and ZIP code <b>Dallas, Texas 75202</b>	Identifying number (if known) <b>75-0838805</b>	Fees paid \$ <b>\$75,000 (est.)</b>								
<b>b</b> Name <b>Deloitte Tax LLP</b>  Number, street, and room or suite no. <b>1111 Bagby Street, Suite 4500</b>  City or town, state, and ZIP code <b>Houston, Texas 77702-4196</b>	Identifying number (if known) <b>86-1065772</b>	Fees paid \$ <b>\$20,000 (est.)</b>								



**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions               | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Capital loss             | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input checked="" type="checkbox"/> Ordinary loss | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

See attached.

**8** Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

**a** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

**b** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

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Form 1065; December 31, 2008

Attachment to Form 8886: Loss from worthlessness of Highland Capital Multi-Strategy Fund, L.P.

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**Line 5: Participating Entities**

Type of Entity: Partnership  
Name: Highland Multi-Strategy Fund GP, L.L.C.  
EIN: 20-5236824  
Date K-1 received: September 15, 2009

Type of Entity: Partnership  
Name: Highland Multi-Strategy Fund GP, L.P.  
EIN: 20-5236931  
Date K-1 received: September 15, 2009

Type of Entity: Partnership, Foreign  
Name: Highland Multi-Strategy Master Fund, L.P.  
EIN: 20-5237085  
Date K-1 received: September 15, 2009

Type of Entity: Partnership  
Name: Highland Multi-Strategy Onshore Master SubFund, L.L.C.  
EIN: 20-5237152  
Date K-1 received: September 15, 2009

Type of Entity: Partnership  
Name: Highland Multi-Strategy Onshore Master SubFund II, L.L.C.  
EIN: 20-8458989  
Date K-1 received: September 15, 2009

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### **Line 7b: Description of Expected Tax Benefits**

Highland Capital Management, L.P. ("HCM") has reported on Form 1065, Line 6 a \$349,568,517 ordinary loss under I.R.C. § 165 with respect to the worthlessness of HCM's partnership interest in Highland Capital Multi-Strategy Fund, L.P. ("HMSF LP"). This loss is a reportable transaction as defined in Treas. Reg. § 1.6011-4(b)(5) because the loss exceeds \$2 million and the asset is an interest in a passthrough entity.<sup>1</sup>

### **Highland Capital Management**

HCM is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment partnerships ("hedge funds") that it has organized and marketed to investors. HCM has a significant equity interest in each of the hedge funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

In addition to serving as an investment advisor, HCM also engages in securities trading primarily for its own account.

### **Highland Multi-Strategy Fund**

In 2006, HCM entered into negotiations with Barclays Bank PLC ("Barclays") regarding a prepaid forward transaction (discussed below) relating to a portfolio of equity interests that HCM held in certain HCM managed hedge funds. Because the prepaid forward contract would create economic exposure to a portfolio of HCM managed hedge funds, HCM determined that it should enter into the prepaid forward transaction through a subsidiary partnership structure that could function as a fund-of-funds arrangement for third party investors and thereby create an additional source of advisory fee income for HCM. Accordingly, HCM formed Highland Multi-Strategy Master Fund, L.P., a Bermuda limited partnership ("HMSF"), to engage in the prepaid forward transaction with Barclays.

HMSF's sole limited partner is HMSF LP. HCM and its affiliates own all of HMSF LP. HMSF LP has never had any assets or activities other than its equity interest in HMSF.

HMSF's sole general partner is Highland Multi-Strategy Fund GP, L.P. Highland Multi-Strategy Fund GP, L.P. is owned 99% by HCM as limited partner, and 1% by Highland Multi-Strategy Fund GP, L.L.C. as general partner. Highland Multi-Strategy Fund GP, L.L.C. is owned 100% by HCM.

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<sup>1</sup> Rev. Proc. 2004-66, 2004-50 I.R.B. 966.

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For a number of non-tax reasons, HCM subsequently abandoned the idea of marketing additional equity interests in HMSF to third party investors, and HMSF and HMSF LP never received any equity contributions from persons not affiliated with HCM.

## **HMSF's Activities**

### *The Derivative Ownership Transactions*

On August 1, 2006, HMSF formed Highland Multi-Strategy Onshore Master SubFund, L.L.C. ("SubFund I") for the purpose of entering into a prepaid forward contract with Barclays. SubFund I is owned 99% by HMSF and 1% by HCM. SubFund I paid \$156,349,569 at inception of the contract and was entitled to a cash payment from Barclays at maturity of the contract equal to the excess of

- (1) the value of a notional portfolio of investment funds (the "Reference Portfolio") having an initial value of \$312,699,138, over
- (2) a specified "Notional Amount" initially equal to \$156,349,569 and increased by an accretion amount based on one-month USD LIBOR plus 0.90%.

In connection with entering into the prepaid forward contract, SubFund I also transferred \$53,158,854 in cash to a brokerage account (the "Collateral Account") in SubFund I's name. The Collateral Account was pledged to Barclays as security for any negative value for the Prepaid Forward at maturity or early termination.

In February 2007, HMSF formed Highland Multi-Strategy Onshore Master SubFund II, L.L.C. ("SubFund II") for the purpose of entering into an accreting strike option contract with Barclays. SubFund II is owned 99% by HMSF and 1% by HCM. The accreting strike option contract grants SubFund II the option to purchase, at the "Final Valuation Date" specified in the contract, the cash equivalent value of a notional portfolio of HCM managed investment funds (the "Reference Portfolio") for a strike price of \$178,584,722.22 (subject to accretion based on LIBOR plus 1.4%). At the inception of the contract, the Reference Portfolio had a value of \$250,000,000, and SubFund II paid Barclays an option premium of \$71,428,571.43.

### *The Strand Funding Transactions*

During 2007, HCM and The Bank of Nova Scotia ("BNS") entered into a total return swap ("Swap") whose notional value was tied to a portfolio of loans held by Strand Funding, an affiliate of BNS. Under the Swap, HCM owed BNS a floating payment based on an interest rate applied to the book value of the underlying loan portfolio, and BNS owed HCM an asset payment equal to the realized interest and proceeds from the underlying loan portfolio. When the Swap matured in June 2008,

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there were certain loans that Strand Funding had not been able to sell in the open market and therefore HCM and BNS could not settle the Swap.

HCM arranged for HMSF to enter into a series of "LSTA Par/Near Par Trade Conformations" with Strand Funding pursuant to which Strand Funding as Seller purported to assign the underlying loans to HMSF as Buyer. HCM then arranged for most of the loans be assigned by HMSF as Seller to unrelated third parties as Buyers under separate LSTA confirmations. Pursuant to a Multilateral Netting Agreement entered into by Strand Funding, HMSF, and the third party buyer, Strand Funding assigned the loans directly to the third party buyer. The amount due under the original confirmations between HMSF and Strand Funding was funded from the proceeds of the assignments to the third party buyers. These transactions produced a net profit to HMSF.

For certain of the loans that Strand Funding purported to assign to HMSF, HCM was not able to find a third party buyer during 2008 (principally because the borrowers under the loans were in severe financial distress). The trade confirmations between Strand Funding and HMSF with respect to those loans remained open and unsettled as of December 31, 2008. As of December 31, 2008, the amount payable to Strand Funding under the confirmations relating to the unsettled trades was \$10,457,201, and the underlying loans had a mark-to-market value of \$6,181,618. During 2009, BNS and HCM agreed to cancel the unsettled trades, and HCM accounted to BNS under the Swap for the loss in value of the loans.

#### *Assets and Liabilities*

As of December 31, 2008, HMSF's financial statements reflect assets of \$6,347,039 (consisting of \$165,421 cash and \$6,181,618 of business securities representing the value of the loans under the unsettled trades with Strand Funding), and liabilities of \$11,513,448 (consisting of \$1,056,247 payable to HCM for overhead expense allocations and \$10,457,201 payable to Strand Funding in connection with the unsettled trades).

#### **Worthlessness and Abandonment Events**

During 2008, the HCM managed hedge funds underlying the Barclays derivative ownership contracts lost significant value and liquidity. In October 2008 Barclays gave notices that it was terminating the contracts. Due to the illiquidity of the underlying hedge fund interests and other factors, the contracts were not actually terminated during 2008. HCM determined that Barclays decision to terminate the contracts in October 2008 eliminated any reasonable hope or expectation of the SubFund entities recovering any value under the contracts or in any assets held in connection with the contracts.



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By letters dated December 9, 2008, HMSF advised the SubFund entities that HMSF had abandoned its equity interests in entities. The abandonment was recognized by HCM as managing member of the SubFund entities and, by amendment to the SubFund entity operating agreements, HMSF was stricken as a member of the SubFund entities effective as of December 9, 2008. To preserve the SubFund entities' tax classification as partnerships, Strand Advisors II, Inc., a wholly owned subsidiary of HCM, was admitted as a limited partner in the SubFund entities effective as of December 9, 2008, acquiring a 1% equity interest for no consideration.

As of not later than December 31, 2008, the loans underlying HMSF's open trade confirmations with Strand Funding had a value substantially less than the amount payable to Strand Funding under the trade confirmation, and there was no reasonable hope or expectation that the value of the loans would increase to an amount in excess of the amount payable to Strand Funding.

As of December 30, 2008, HMSF had no net assets and no reasonable hope or expectation of any realizing any net assets. Accordingly, HCM determined that its equity interest in HMSF LP was worthless as of not later than December 30, 2008.

### Tax Reporting

HCM has reported on its tax return for its taxable year ended December 31, 2008 a loss with respect to the worthlessness of its partnership interest in HMSF LP.<sup>2</sup> The loss is equal to HCM's adjusted tax basis in the HMSF LP partnership interest as of the date of worthlessness.<sup>3</sup> HCM wrote down its tax basis for its equity interest in HMSF LP to zero as of the date the interest in HMSF LP became worthless.<sup>4</sup> In computing HCM's tax basis in its interest in HMSF LP as of the date of worthlessness, HCM has not taken into account its distributive share of HMSF LP's tax items for the 2008 tax year through the worthlessness date because HCM did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in HMSF LP as a result of the worthlessness of the interest.<sup>5</sup> HCM has not claimed any deduction for its distributive share of HMSF LP loss reported for HMSF LP's taxable year ending December 31, 2008 because HCM's adjusted tax basis for its HMSF LP partnership interest was zero as of December 31, 2008.<sup>6</sup>

<sup>2</sup> I.R.C. § 165(a), (c)(1).

<sup>3</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>4</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>5</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). Cf. *Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment).

<sup>6</sup> I.R.C. § 704(d).

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Because the worthlessness of HCM's interest in HMSF LP did not give rise to any actual or constructive discharge of HMSF LP liabilities under I.R.C. § 752,<sup>7</sup> HCM's loss from such worthlessness is an ordinary loss rather than a capital loss.<sup>8</sup> Moreover, the loss is a business loss because HCM's interest in HMSF LP was attributable to and derived from HCM's business as an investment advisor and as a securities trader and was acquired with the dominant motive of generating a source of business income, and not with the dominant motive of making or preserving a non-business investment.<sup>9</sup>

The ordinary loss reported on HCM's tax return for its tax year ended December 31, 2008 flows through to HCM's partners as of December 31, 2008.<sup>10</sup>

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<sup>7</sup> HMSF LP had no direct or indirect partnership liabilities. The SubFund entities and HMSF LP had no direct liabilities. HMSF's only liability was an intercompany payable to HCM. This recourse liability is allocated entirely to HMSF GP in its status as general partner. See Treas. Reg. § 1.752-2(a) (partner's share of partnership recourse liability equals portion for which the partner or a related person bears the economic risk of loss); (c)(1) (partner bears the risk of loss for a partnership liability to the extent that the partner or a related person is the lender and risk of loss is not borne by another person); (k)(1) (special rule for disregarded entities does not apply to the extent the owner is at risk with respect to the obligation). In any event, the worthlessness of HCM's HMSF LP partnership interest did not constitute a disposition of the partnership interest, or otherwise affect HMSF LP's direct or indirect liabilities, HCM's status as a partner in HMSF LP, or the allocation of HMSF LP liabilities under I.R.C. § 752. Cf. *Abdalla v. Commissioner*, 647 F.2d 487 (5th Cir. 1981) (worthlessness of S corporation stock is not a "disposition" of the stock for purposes S corporation loss allocations). Accordingly, the worthlessness event did not result in any reduction in HCM's share (if any) of HMSF LP liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>8</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

<sup>9</sup> See *United States v. Generes*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).

<sup>10</sup> I.R.C. § 706(a); Treas. Reg. § 1.706-1(a).

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<b>Form 8886</b> (Rev. December 2007) Department of the Treasury Internal Revenue Service	<b>Reportable Transaction Disclosure Statement</b>  <div style="display: flex; justify-content: space-around;"> <span>▶ Attach to your tax return.</span> <span>▶ See separate instructions.</span> </div>	OMB No. 1545-1800  Attachment Sequence No. <b>137</b>
Name(s) shown on return (individuals enter last name, first name, middle initial) <b>Highland Capital Management, L.P.</b>		Identifying number <b>75-2716725</b>
Number, street, and room or suite no. <b>13455 Noel Road</b>		
City or town, state, and ZIP code <b>Dallas, TX 75240</b>		
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number <u>2</u> of <u>5</u>		
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . ▶ <u>1065</u>		
Enter the year of the tax return identified above . . . . . ▶ <u>2008</u>		
Is this Form 8886 being filed with an amended tax return? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>		
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filing <input type="checkbox"/> Protective disclosure		
<b>1a</b> Name of reportable transaction <b>Loss from worthlessness of Highland Multi-Strategy Fund, L.P.</b>		
<b>1b</b> Initial year participated in transaction  <b>2008</b>	<b>1c</b> Reportable transaction or tax shelter registration number (9 digits or 11 digits)  <b>MA0900079</b>	
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply (see instructions).		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <b>a</b> <input type="checkbox"/> Listed  <b>b</b> <input type="checkbox"/> Confidential         </div> <div style="width: 33%;"> <b>c</b> <input type="checkbox"/> Contractual protection  <b>d</b> <input checked="" type="checkbox"/> Loss         </div> <div style="width: 33%;"> <b>e</b> <input type="checkbox"/> Brief asset holding period  <b>f</b> <input type="checkbox"/> Transaction of interest         </div> </div>		
<b>3</b> If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶		
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ <u>0</u>		
<b>5</b> If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)		
<b>a</b> Type of entity: <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign         </div> <div> <input type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign         </div> </div>		
<b>b</b> Name . . . . . ▶ <b>Highland Capital Multi-Strategy Fund</b>		
<b>c</b> Employer identification number (EIN), if known . . . . . ▶ <b>20-5237025</b>		
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <b>September 15, 2009</b>		
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)		
<b>a</b> Name <b>Strasburger &amp; Price LLP</b>  Number, street, and room or suite no. <b>901 Main Street, Suite 4400</b>  City or town, state, and ZIP code <b>Dallas, Texas 75202</b>	Identifying number (if known) <b>75-0838805</b>	Fees paid \$ <b>\$75,000 (est.)</b>
<b>b</b> Name <b>Deloitte Tax LLP</b>  Number, street, and room or suite no. <b>1111 Bagby Street, Suite 4500</b>  City or town, state, and ZIP code <b>Houston, Texas 77702-4196</b>	Identifying number (if known) <b>86-1065772</b>	Fees paid \$ <b>\$20,000 (est.)</b>

**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions               | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Capital loss             | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input checked="" type="checkbox"/> Ordinary loss | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

See attached.

**8** Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

**a** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

**b** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Identifying number

Name

Address

Description

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Highland Capital Multi-Strategy Fund, L.P. (20-5237025)  
Form 1065; December 31, 2008

Attachment to Form 8886: Loss from worthlessness of Highland Multi-Strategy Master Fund, L.P.

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### **Line 7b: Description of Expected Tax Benefits**

The taxpayer was allocated a \$346,013,886 loss from Highland Capital Multi-Strategy Fund, L.P. ("HMSF LP") with respect to taxpayer's partnership interest in HMSF LP. The loss is not claimed on the taxpayer's return because the taxpayer's tax basis for its HMSF LP partnership interest as of the end of HMSF LP's 2008 tax year was zero. Nevertheless, because the loss exceeded \$2 million and the underlying asset is an interest in a passthrough entity, the loss is a reportable loss. The following information was provided by HMSF LP with respect to the loss. The discussion below uses the term "taxpayer" to refer to HMSF LP.

The taxpayer has reported on Form 1065, Line 6 a \$349,568,517 ordinary loss under I.R.C. § 165 with respect to the worthlessness of the taxpayer's partnership interest in Highland Multi-Strategy Master Fund, L.P. ("HMSF"). This loss is a reportable transaction as defined in Treas. Reg. § 1.6011-4(b)(5) because the loss exceeds \$2 million and the asset is an interest in a passthrough entity.<sup>1</sup>

### **Highland Capital Management**

Highland Capital Management, L.P. ("HCM") is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment partnerships ("hedge funds") that it has organized and marketed to investors. HCM has a significant equity interest in each of the hedge funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

In addition to serving as an investment advisor, HCM also engages in securities trading primarily for its own account.

### **Highland Multi-Strategy Fund**

In 2006, HCM entered into negotiations with Barclays Bank PLC ("Barclays") regarding a prepaid forward transaction (discussed below) relating to a portfolio of equity interests that HCM held in certain HCM managed hedge funds. Because the prepaid forward contract would create economic exposure to a portfolio of HCM managed hedge funds, HCM determined that it should enter into the prepaid forward transaction through a subsidiary partnership structure that could function as a fund-of-funds arrangement for third party investors and thereby create an additional source of advisory fee income for HCM. Accordingly, HCM formed Highland Multi-Strategy Master Fund, L.P., a Bermuda limited partnership ("HMSF"), to engage in the prepaid forward transaction with Barclays.

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<sup>1</sup> Rev. Proc. 2004-66, 2004-50 I.R.B. 966.



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Highland Capital Multi-Strategy Fund, L.P. (20-5237025)  
Form 1065; December 31, 2008

Attachment to Form 8886: Loss from worthlessness of Highland Multi-Strategy Master Fund, L.P.

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HMSF's sole limited partner is Highland Capital Multi-Strategy Fund, L.P. ("HMSF LP"). HCM and its affiliates own all of HMSF LP. HMSF LP has never had any assets or activities other than its equity interest in HMSF.

HMSF's sole general partner is Highland Multi-Strategy Fund GP, L.P. Highland Multi-Strategy Fund GP, L.P. is owned 99% by HCM as limited partner, and 1% by Highland Multi-Strategy Fund GP, L.L.C. as general partner. Highland Multi-Strategy Fund GP, L.L.C. is owned 100% by HCM.

For a number of non-tax reasons, HCM subsequently abandoned the idea of marketing additional equity interests in HMSF to third party investors, and HMSF and HMSF LP never received any equity contributions from persons not affiliated with HCM.

### **HMSF's Activities**

#### *The Derivative Ownership Transactions*

On August 1, 2006, HMSF formed Highland Multi-Strategy Onshore Master SubFund, L.L.C. ("SubFund I") for the purpose of entering into a prepaid forward contract with Barclays. SubFund I is owned 99% by HMSF and 1% by HCM. SubFund I paid \$156,349,569 at inception of the contract and was entitled to a cash payment from Barclays at maturity of the contract equal to the excess of

- (1) the value of a notional portfolio of investment funds (the "Reference Portfolio") having an initial value of \$312,699,138, over
- (2) a specified "Notional Amount" initially equal to \$156,349,569 and increased by an accretion amount based on one-month USD LIBOR plus 0.90%.

In connection with entering into the prepaid forward contract, SubFund I also transferred \$53,158,854 in cash to a brokerage account (the "Collateral Account") in SubFund I's name. The Collateral Account was pledged to Barclays as security for any negative value for the Prepaid Forward at maturity or early termination.

In February 2007, HMSF formed Highland Multi-Strategy Onshore Master SubFund II, L.L.C. ("SubFund II") for the purpose of entering into an accreting strike option contract with Barclays. SubFund II is owned 99% by HMSF and 1% by HCM. The accreting strike option contract grants SubFund II the option to purchase, at the "Final Valuation Date" specified in the contract, the cash equivalent value of a notional portfolio of HCM managed investment funds (the "Reference Portfolio") for a strike price of \$178,584,722.22 (subject to accretion based on LIBOR plus 1.4%). At the inception of the contract, the Reference Portfolio had a value of \$250,000,000, and SubFund II paid Barclays an option premium of \$71,428,571.43.

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### *The Strand Funding Transactions*

During 2007, HCM and The Bank of Nova Scotia ("BNS") entered into a total return swap ("Swap") whose notional value was tied to a portfolio of loans held by Strand Funding, an affiliate of BNS. Under the Swap, HCM owed BNS a floating payment based on an interest rate applied to the book value of the underlying loan portfolio, and BNS owed HCM an asset payment equal to the realized interest and proceeds from the underlying loan portfolio. When the Swap matured in June 2008, there were certain loans that Strand Funding had not been able to sell in the open market and therefore HCM and BNS could not settle the Swap.

HCM arranged for HMSF to enter into a series of "LSTA Par/Near Par Trade Conformations" with Strand Funding pursuant to which Strand Funding as Seller purported to assign the underlying loans to HMSF as Buyer. HCM then arranged for most of the loans be assigned by HMSF as Seller to unrelated third parties as Buyers under separate LSTA confirmations. Pursuant to a Multilateral Netting Agreement entered into by Strand Funding, HMSF, and the third party buyer, Strand Funding assigned the loans directly to the third party buyer. The amount due under the original confirmations between HMSF and Strand Funding was funded from the proceeds of the assignments to the third party buyers. These transactions produced a net profit to HMSF.

For certain of the loans that Strand Funding purported to assign to HMSF, HCM was not able to find a third party buyer during 2008 (principally because the borrowers under the loans were in severe financial distress). The trade confirmations between Strand Funding and HMSF with respect to those loans remained open and unsettled as of December 31, 2008. As of December 31, 2008, the amount payable to Strand Funding under the confirmations relating to the unsettled trades was \$10,457,201, and the underlying loans had a mark-to-market value of \$6,181,618. During 2009, BNS and HCM agreed to cancel the unsettled trades, and HCM accounted to BNS under the Swap for the loss in value of the loans.

### *Assets and Liabilities*

As of December 31, 2008, HMSF's financial statements reflect assets of \$6,347,039 (consisting of \$165,421 cash and \$6,181,618 of business securities representing the value of the loans under the unsettled trades with Strand Funding), and liabilities of \$11,513,448 (consisting of \$1,056,247 payable to HCM for overhead expense allocations and \$10,457,201 payable to Strand Funding in connection with the unsettled trades).

Highland Capital Multi-Strategy Fund, L.P. (20-5237025)  
Form 1065; December 31, 2008

Attachment to Form 8886: Loss from worthlessness of Highland Multi-Strategy Master Fund, L.P.

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### **Worthlessness and Abandonment Events**

During 2008, the HCM managed hedge funds underlying the Barclays derivative ownership contracts lost significant value and liquidity. In October 2008 Barclays gave notices that it was terminating the contracts. Due to the illiquidity of the underlying hedge fund interests and other factors, the contracts were not actually terminated during 2008. HCM determined that Barclays decision to terminate the contracts in October 2008 eliminated any reasonable hope or expectation of the SubFund entities recovering any value under the contracts or in any assets held in connection with the contracts.

By letters dated December 9, 2008, HMSF advised the SubFund entities that HMSF had abandoned its equity interests in entities. The abandonment was recognized by HCM as managing member of the SubFund entities and, by amendment to the SubFund entity operating agreements, HMSF was stricken as a member of the SubFund entities effective as of December 9, 2008. To preserve the SubFund entities' tax classification as partnerships, Strand Advisors II, Inc., a wholly owned subsidiary of HCM, was admitted as a limited partner in the SubFund entities effective as of December 9, 2008, acquiring a 1% equity interest for no consideration.

As of not later than December 31, 2008, the loans underlying HMSF's open trade confirmations with Strand Funding had a value substantially less than the amount payable to Strand Funding under the trade confirmation, and there was no reasonable hope or expectation that the value of the loans would increase to an amount in excess of the amount payable to Strand Funding.

As of December 30, 2008, HMSF had no net assets and no reasonable hope or expectation of any realizing any net assets. Accordingly, HCM determined that its equity interest in HMSF LP was worthless as of not later than December 30, 2008.

### **Tax Reporting**

The taxpayer has reported on its tax return for its taxable year ended December 31, 2008 a loss with respect to the worthlessness of its partnership interest in HMSF.<sup>2</sup> The loss is equal to the taxpayer's adjusted tax basis in the HMSF partnership interest as of the date of worthlessness.<sup>3</sup> the taxpayer wrote down its tax basis for its equity interest in HMSF to zero as of the date the interest in HMSF became worthless.<sup>4</sup> In computing the taxpayer's tax basis in its interest in HMSF as of the date of worthlessness, the taxpayer has not taken into account its distributive share of HMSF's tax items for the 2008 tax year through the worthlessness date because the taxpayer

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<sup>2</sup> I.R.C. § 165(a), (c)(1).

<sup>3</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>4</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

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Highland Capital Multi-Strategy Fund, L.P. (20-5237025)  
Form 1065; December 31, 2008

Attachment to Form 8886: Loss from worthlessness of Highland Multi-Strategy Master Fund, L.P.

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did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in HMSF as a result of the worthlessness of the interest.<sup>5</sup> The taxpayer has not claimed any deduction for its distributive share of HMSF loss reported for HMSF's taxable year ending December 31, 2008 because the taxpayer's adjusted tax basis for its HMSF partnership interest was zero as of December 31, 2008.<sup>6</sup>

Because the worthlessness of the taxpayer's interest in HMSF did not give rise to any actual or constructive discharge of HMSF liabilities under I.R.C. § 752,<sup>7</sup> the taxpayer's loss from such worthlessness is an ordinary loss rather than a capital loss.<sup>8</sup> Moreover, the loss is a business loss because the taxpayer's interest in HMSF was attributable to and derived from HCM's business as an investment advisor and as a securities trader and was acquired with the dominant motive of generating a source of business income for HCM, and not with the dominant motive of making or preserving a non-business investment.<sup>9</sup>

The ordinary loss reported on the taxpayer's tax return for its tax year ended December 31, 2008 flows through to the taxpayer's partners as of December 31, 2008.<sup>10</sup>

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<sup>5</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). *Cf. Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment).

<sup>6</sup> I.R.C. § 704(d).

<sup>7</sup> HMSF's only direct or indirect liability was a direct intercompany payable to HCM. This recourse liability is allocated entirely to HMSF GP in its status as general partner. See Treas. Reg. § 1.752-2(a) (partner's share of partnership recourse liability equals portion for which the partner or a related person bears the economic risk of loss); (c)(1) (partner bears the risk of loss for a partnership liability to the extent that the partner or a related person is the lender and risk of loss is not borne by another person); (k)(1) (special rule for disregarded entities does not apply to the extent the owner is at risk with respect to the obligation). In any event, the worthlessness of HMSF LP's HMSF partnership interest did not constitute a disposition of the partnership interest, or otherwise affect HMSF's direct or indirect liabilities, HMSF LP's status as a partner in HMSF, or the allocation of HMSF liabilities under I.R.C. § 752. *Cf. Abdalla v. Commissioner*, 647 F.2d 487 (5th Cir. 1981) (worthlessness of S corporation stock is not a "disposition" of the stock for purposes S corporation loss allocations). Accordingly, the worthlessness event did not result in any reduction in HMSF LP's share (if any) of HMSF liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>8</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

<sup>9</sup> See *United States v. Generes*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).

<sup>10</sup> I.R.C. § 706(a); Treas. Reg. § 1.706-1(a).

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<b>Form 8886</b> (Rev. December 2007) Department of the Treasury Internal Revenue Service	<b>Reportable Transaction Disclosure Statement</b>  <div style="display: flex; justify-content: space-around;"> <span>▶ Attach to your tax return.</span> <span>▶ See separate instructions.</span> </div>	OMB No. 1545-1800  Attachment Sequence No. <b>137</b>
Name(s) shown on return (individuals enter last name, first name, middle initial) <b>Highland Capital Management, L.P.</b>		Identifying number <b>75-2716725</b>
Number, street, and room or suite no. <b>13455 Noel Road</b>		
City or town, state, and ZIP code <b>Dallas, TX 75240</b>		
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number <u>3</u> of <u>5</u>		
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . ▶ <u>1065</u>		
Enter the year of the tax return identified above . . . . . ▶ <u>2008</u>		
Is this Form 8886 being filed with an amended tax return? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>		
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filing <input type="checkbox"/> Protective disclosure		
<b>1a</b> Name of reportable transaction <b>Loss from worthlessness of Highland Financial Partners, L.P.</b>		
<b>1b</b> Initial year participated in transaction  <b>2008</b>	<b>1c</b> Reportable transaction or tax shelter registration number (9 digits or 11 digits)  <b>MA0900079</b>	
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply (see instructions). <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <b>a</b> <input type="checkbox"/> Listed  <b>b</b> <input type="checkbox"/> Confidential         </div> <div style="width: 30%;"> <b>c</b> <input type="checkbox"/> Contractual protection  <b>d</b> <input checked="" type="checkbox"/> Loss         </div> <div style="width: 30%;"> <b>e</b> <input type="checkbox"/> Brief asset holding period  <b>f</b> <input type="checkbox"/> Transaction of interest         </div> </div>		
<b>3</b> If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶		
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ <u>0</u>		
<b>5</b> If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)		
<b>a</b> Type of entity: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign         </div> <div style="width: 45%;"> <input type="checkbox"/> Partnership  <input type="checkbox"/> S corporation  <input type="checkbox"/> Trust  <input type="checkbox"/> Foreign         </div> </div>		
<b>b</b> Name . . . . . ▶ <b>Highland Financial Partners, LP</b>		
<b>c</b> Employer identification number (EIN), if known . . . . . ▶ <b>83-0446391</b>		
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ <b>September 15, 2009</b>		
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)		
<b>a</b> Name <b>Strasburger &amp; Price LLP</b>	Identifying number (if known) <b>75-0838805</b>	Fees paid \$ <b>\$10,000 (est.)</b>
Number, street, and room or suite no. <b>901 Main Street, Suite 4400</b>		
City or town, state, and ZIP code <b>Dallas, Texas 75202</b>		
<b>b</b> Name <b>Deloitte Tax LLP</b>	Identifying number (if known) <b>86-1065772</b>	Fees paid \$ <b>\$10,000 (est.)</b>
Number, street, and room or suite no. <b>1111 Bagby Street, Suite 4500</b>		
City or town, state, and ZIP code <b>Houston, Texas 77702-4196</b>		



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**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions               | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Capital loss             | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input checked="" type="checkbox"/> Ordinary loss | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

See attached.

**8** Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

**a** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name

Address

Description

**b** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name

Address

Description

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Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008Attachment to Form 8886: Loss From Worthlessness of Highland Financial Partners

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**Line 7b: Description of Expected Tax Benefits**

The taxpayer, Highland Capital Management, L.P. ("HCM"), has reported on Form 1065, Line 6, a \$276,533,895 ordinary loss under I.R.C. § 165 with respect to taxpayer's partnership interest in Highland Financial Partners, L.P. ("HFP"). This loss is a reportable transaction as defined in Treas. Reg. § 1.6011-4(b)(5) because the loss exceeds \$2 million and the asset is an interest in a passthrough entity.<sup>1</sup>

**Highland Capital Management**

HCM is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment funds ("funds") that it has organized and marketed to investors. HCM has a significant equity interest in each of the funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

**Highland Financial Partners**

HCM formed HFP in January 2006 to hold equity interests in certain leveraged credit subsidiaries and other assets. HFP was initially capitalized by issuing limited partner interests to HCM and to certain institutional investors (who initially held their interests through a trust). As of December 31, 2006, HFP had approximately \$11.7 billion in total assets and \$490.4 million in net equity. HCM held approximately 12.2% of HFP's equity on a fully diluted basis.

In addition to the roughly \$405 million of capital raised from investors pursuant to private placements in February and October 2006, HCM anticipated that HFP would raise significant capital from one or more public offerings of HFP common units, thereby increasing HFP's equity subject to base management fees and income potentially subject to incentive allocations. On April 27, 2007, HFP filed an amended preliminary registration statement on Form S-1 seeking to effect an initial public offering of \$50,000,000 of limited partner units. Due to unfavorable market conditions that developed thereafter in connection with the deterioration of the credit markets, and for other reasons, HFP withdrew the registration statement on September 7, 2007.

Additional background information regarding HFP and HCM can be obtained at <http://www.sec.gov/Archives/edgar/data/1354166/000095013407009372/d40436a1sv1za.htm>, and is incorporated herein by reference.

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<sup>1</sup> Rev. Proc. 2004-66, 2004-50 I.R.B. 966.

Highland Capital Management, L.P. (75-2716725)  
Form 1065; December 31, 2008

Attachment to Form 8886: Loss From Worthlessness of Highland Financial Partners

### **Worthlessness Events**

During the fourth quarter of 2008, due to the continuing deterioration in the credit markets, HFP became insolvent beyond any reasonable hope or expectation of recovery. HCM determined that its partnership interest in HFP was worthless as of no later than November 30, 2008. Likewise, the taxpayer determined that its direct equity interest in HFP was worthless as of November 30, 2008. The interests in HFP became worthless (such that no investor would be willing to pay any consideration for an HFP unit) no later than November 30, 2008, through a confluence of factors: (1) deterioration in the credit markets rendered HFP's expected cash flows to have no prospect to ever be sufficient to pay HFP's outstanding debts; (2) loan value erosion within the CLO (collateralized loan obligation) entities held by HFP resulted in violation of multiple HFP coverage tests causing permanent impairment of HFP's expected cash flows; (3) major lawsuits filed in the fourth quarter of 2008; (4) HFP's balance sheet reflected approximately \$1 billion in negative equity.

### **Tax Reporting**

HCM has reported on its tax return for its taxable year ended December 31, 2008 an ordinary loss with respect to the worthlessness of its partnership interest in HFP.<sup>2</sup> The loss is equal to HCM's adjusted tax basis in the HFP equity interest as of the date of worthlessness,<sup>3</sup> including basis attributable to HCM's allocable share of HFP liabilities.<sup>4</sup> HCM wrote down its tax basis for its partnership interest in HFP to zero as of November 30, 2008.<sup>5</sup> In computing HCM's adjusted tax basis in its interest in HFP as of November 30, 2008, HCM has not taken into account its distributive share of HFP's tax items for the 2008 tax year through the worthlessness date because HCM did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in HFP as a result of the worthlessness of the interest.<sup>6</sup> HCM has, however, taken into account any changes in its allocable share of HFP liabilities during the 2008 year through the date of worthlessness.<sup>7</sup>

<sup>2</sup> I.R.C. § 165(a), (c)(1).

<sup>3</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>4</sup> Treas. Reg. §§ 1.705-1(a); 1.752-1, 1.752-2, 1.752-3.

<sup>5</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>6</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). Cf. *Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment, but taking into account distributions during the year).

<sup>7</sup> See Treas. Reg. § 1.752-4(d) (partner's share of partnership liabilities determined "whenever the determination is necessary in order to determine the tax liability of the partner"). Cf. Rev. Rul. 94-4, 1994-1 C.B. 196 (deemed distributions under I.R.C. § 752(b) from reductions in liabilities are taken into account as of the last day of the partnership taxable year to the extent of the partner's distributive share of income for the partnership taxable year).

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The worthlessness of HCM's HFP partnership interest is not a disposition of the partnership interest for federal income tax purposes,<sup>8</sup> and HCM retains its allocable share of HFP liabilities until it ceases to be an HFP partner. HCM has taken into account as of December 31, 2008 any increase or decrease in its allocable share of HFP liabilities from November 30, 2008 through December 31, 2008.<sup>9</sup> HCM has not claimed any deduction for its distributive share of the HFP loss reported for HFP's taxable year ending December 31, 2008 to the extent the loss exceeds HCM's adjusted tax basis for its HFP equity interest as of December 31, 2008 (taking into account the write down of its tax basis to zero as of November 30, 2008 and any changes in HCM's allocable share of HFP liabilities from November 30, 2008 through December 31, 2008).<sup>10</sup>

Because the worthlessness of HCM's partnership interest in HFP did not give rise to any actual or constructive discharge of HFP liabilities under I.R.C. § 752,<sup>11</sup> HCM's loss from such worthlessness is an ordinary loss rather than a capital loss.<sup>12</sup> In addition, the loss is a business loss for purposes of I.R.C. §§ 62(a)(1) and 172 because HCM's interest in HFP was attributable to and derived from HCM's business as an investment advisor and was acquired with the dominant motive of generating a source of business income, and not with the dominant motive of making or preserving a non-business investment.<sup>13</sup>

The ordinary business loss reported on HCM's tax return for its tax year ended December 31, 2008 will flow through to HCM partners as of December 31, 2008.<sup>8</sup>

<sup>8</sup> Cf. *Abdalla v. Commissioner*, 647 F.2d 487 (5th Cir. 1981) (worthlessness of S corporation stock is not a "disposition" of the stock for purposes S corporation loss allocations).

<sup>9</sup> I.R.C. § 752.

<sup>10</sup> I.R.C. § 704(d).

<sup>11</sup> The worthlessness of HCM's interest in HFP had no effect on HFP's direct or indirect liabilities, on HCM's status as a partner in HFP, or on the allocation of HFP liabilities under I.R.C. § 752. Accordingly, the worthlessness event did not result in any reduction in HCM's share of HFP liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>12</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

<sup>13</sup> See *United States v. Generes*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).

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Form **8886**  
(Rev. December 2007)  
Department of the Treasury  
Internal Revenue Service

**Reportable Transaction Disclosure Statement**

OMB No. 1545-1800

- ▶ **Attach to your tax return.**  
▶ **See separate instructions.**

Attachment  
Sequence No. **137**

Name(s) shown on return (individuals enter last name, first name, middle initial)

HIGHLAND CAPITAL MANAGEMENT, L.P.

Identifying number

75-2716725

Number, street, and room or suite no.

13455 NOEL ROAD, SUITE 800

City or town, state, and ZIP code

DALLAS, TX 75240

**A** If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . Statement number 4 of 5

**B** Enter the form number of the tax return to which this form is attached or related . . . . . ▶ 1065

Enter the year of the tax return identified above . . . . . ▶ 2008

Is this Form 8886 being filed with an amended tax return? ☐ Yes ☒ No

**C** Check the box(es) that apply (see instructions). ☐ Initial year filer ☐ Protective disclosure

**1a** Name of reportable transaction

SECTION 165 LOSS FROM HIGHLAND FINANCIAL PARTNERS, L.P.

**1b** Initial year participated in transaction

2007

**1c** Reportable transaction or tax shelter registration number (9 digits or 11 digits)**2** Identify the type of reportable transaction. Check all boxes that apply (see instructions).

- a** ☐ Listed **c** ☐ Contractual protection **e** ☐ Brief asset holding period  
**b** ☐ Confidential **d** ☒ Loss **f** ☐ Transaction of interest

**3** If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶

**4** Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ 5

**5** If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)

- a** Type of entity: ☒ Partnership ☐ Partnership  
☐ S corporation ☐ S corporation  
☐ Trust ☐ Trust  
☐ Foreign ☐ Foreign
- b** Name . . . . . ▶ HIGHLAND FINANCIAL PARTNERS, L.P. SEE ATTACHED STATEMENT
- c** Employer identification number (EIN), if known . . . . . ▶ 83-0446391
- d** Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶ 8/27/2009

**6** Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

a Name	Identifying number (if known)	Fees paid
Number, street, and room or suite no.		\$
City or town, state, and ZIP code		
<b>b</b> Name	Identifying number (if known)	Fees paid
Number, street, and room or suite no.		\$
City or town, state, and ZIP code		

For Paperwork Reduction Act Notice, see separate instructions.

Form **8886** (Rev. 12-2007)



7 Facts

a Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |  |   |  |                                      |
|--|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions              | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input checked="" type="checkbox"/> Capital loss | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input type="checkbox"/> Ordinary loss           | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

b Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

SEE ATTACHED STATEMENT

8 Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

a Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related Identifying number

Name

Address

Description

b Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related Identifying number

Name

Address

Description

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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

Attachment to Form 8886: Section 165 Loss From Highland Financial Partners, L.P.

**Line 5: Participating Entities**

Name: Highlander Euro CDO III B.V.  
EIN: FOREIGN US  
Date Schedule K-1 Received: N/A

Name: Stratford CLO, Ltd.  
EIN: FOREIGN US  
Date Schedule K-1 Received: N/A

Name: Rockwall CDO II, Ltd.  
EIN: FOREIGN US  
Date Schedule K-1 Received: N/A

Name: Westchester CLO, Ltd.  
EIN: FOREIGN US  
Date Schedule K-1 Received: N/A

Name: Eastland CLO, Ltd.  
EIN: 98-0550088  
Date Schedule K-1 Received: 04/01/2009

**Line 7b: Description of Expected Tax Benefits**

Highland Capital Management, L.P., (the "Taxpayer") was allocated a loss from Highland Financial Partners, L.P. ("HFP") based on the amounts below with respect to taxpayer's interest in HFP. The loss is not claimed on the taxpayer's return because the taxpayer's tax basis for its HFP partnership interest as of the end of HFP's 2008 tax year was zero. Nevertheless, because the losses exceeded \$2 million and the underlying asset is an interest in a passthrough entity, the loss is a reportable loss. The following information was provided by HFP with respect to the loss. The discussion below uses the term "taxpayer" to refer to HFP.

Highland Capital Management, L.P. owns a direct interest in Highland Financial Partners, L.P. ("HFP"). HFP owns a majority interest in Highland Euro CDO III B.V., Stratford CLO, Ltd., Rockwall CDO II, Ltd. and Westchester CLO, Ltd., all Controlled Foreign Corporations (CFC's). The first year of operation for these entities ended in 2007. Pursuant to Section 1.964-1-T of the Treasury Regulations, HFP, on behalf of the CFC's, as majority shareholder, adopted the mark to market method of accounting in computing the income of these CFC's. HFP will file Form 5471, Information Return of U.S. Persons with respect to certain foreign corporations, reporting information that in part reflects the mark to market method of accounting adopted by the CFC's. Due to

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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

Attachment to Form 8886: Section 165 Loss From Highland Financial Partners, L.P.

the mark to market method of accounting the CFC's will have a Section 165 loss transaction. HFP's share of those losses is as follows:

Highland Euro CDO III B.V.	\$171,902,921
Stratford CLO, Ltd.	\$157,744,501
Rockwall CDO II, Ltd.	\$209,539,575
Westchester CLO, Ltd.	\$154,370,763

HFP has treated the loss from the adoption of the mark to market method of accounting as a single loss transaction pursuant to Treasury Regulation 1.6011-4(D) even though there are many separate assets to which the method is applied. If each asset that was marked to market was treated as a separate transaction, the Section 165 loss might be larger.

In addition, HFP owns a majority interest in Eastland CLO, Ltd. ("Eastland"), a foreign partnership. The first year of operation for Eastland ended in 2007. Pursuant to Sections 703(b) and 446 of the Internal Revenue Code, Eastland adopted the mark to market method of accounting in computing its income. HFP will file form 8865, Information Return of U.S. Persons with Respect to Certain Foreign Partnerships, reporting information that in part reflects the mark to market method of accounting adopted by Eastland. Due to the mark to market method of accounting Eastland will have a Section 165 loss transaction in the amount of \$214,717,431 that will result in a reduction of Subpart F to HFP. HFP has treated the loss from the adoption of the mark to market method of accounting as a single loss transaction pursuant to Treasury Regulation 1.6011-4(D) even though there are many separate assets to which the method is applied. If each asset that was marked to market was treated as a separate transaction, the Section 165 loss might be larger.

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Form **8886**  
(Rev. December 2007)  
Department of the Treasury  
Internal Revenue Service**Reportable Transaction Disclosure Statement**

OMB No. 1545-1800

- **Attach to your tax return.**  
► **See separate instructions.**

Attachment  
Sequence No. **137**

Name(s) shown on return (individuals enter last name, first name, middle initial)

Identifying number

HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

Number, street, and room or suite no.

13455 NOEL ROAD, SUITE 800

City or town, state, and ZIP code

DALLAS, TX 75240

**A** If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . Statement number 5 of 5

**B** Enter the form number of the tax return to which this form is attached or related . . . . . 1065

Enter the year of the tax return identified above . . . . . 2008

Is this Form 8886 being filed with an amended tax return? ☐ Yes ☒ No

**C** Check the box(es) that apply (see instructions). ☐ Initial year filer ☐ Protective disclosure

**1a** Name of reportable transaction

SECTION 165 LOSS FROM HIGHLAND CREDIT OPPORTUNITIES CDO, L.P.

**1b** Initial year participated in transaction

2006

**1c** Reportable transaction or tax shelter registration number (9 digits or 11 digits)**2** Identify the type of reportable transaction. Check all boxes that apply (see instructions).

- a** ☐ Listed **c** ☐ Contractual protection **e** ☐ Brief asset holding period  
**b** ☐ Confidential **d** ☒ Loss **f** ☐ Transaction of interest

**3** If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . .

**4** Enter the number of "same as or substantially similar" transactions reported on this form . . . . .

**5** If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)

- a** Type of entity: ☒ Partnership ☐ Partnership  
☐ S corporation ☐ S corporation  
☐ Trust ☐ Trust  
☐ Foreign ☐ Foreign

**b** Name . . . . . HIGHLAND CREDIT OPPORTUNITIES CDO, LP

**c** Employer identification number (EIN), if known . . . . . 20-3874256

**d** Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . 8/25/2009

**6** Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

a Name	Identifying number (if known)	Fees paid
		\$

Number, street, and room or suite no.

City or town, state, and ZIP code

b Name	Identifying number (if known)	Fees paid
		\$

Number, street, and room or suite no.

City or town, state, and ZIP code

For Paperwork Reduction Act Notice, see separate instructions.

Form **8886** (Rev. 12-2007)

ISA

STF LZHQ1001.1

003461

**7 Facts**

**a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |  |   |  |                                      |
|--|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions              | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input checked="" type="checkbox"/> Capital loss | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input type="checkbox"/> Ordinary loss           | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

SEE ATTACHED STATEMENT

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**8** Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

**a** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name	Identifying number
------	--------------------

Address

Description

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**b** Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name	Identifying number
------	--------------------

Address

Description

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2008

Attachment to Form 8886: Section 165 Loss From Highland Credit Opportunities CDO, L.P.

**Line 7b: Description of Expected Tax Benefits**

Highland Capital Management, L.P. owns a direct interest in Highland Credit Opportunities CDO, L.P. ("CDO"). CDO owns a majority interest in Highland Credit Opportunities CDO, Ltd., a Controlled Foreign Corporation (CFC). The first year of operation for this entity ended in 2006. Pursuant to Section 1.964-1T of the Treasury Regulations, CDO, on behalf of CFC as majority shareholder, adopted the mark to market method of accounting in computing the income of this CFC. CDO will file Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, reporting information that in part reflects the mark to market method of accounting adopted by the CFC. Under the mark to market method accounting, Highland Credit Opportunities CDO, Ltd. will realize a total deficit in earnings of \$547,393,844. The total amount of Section 165 loss transaction is \$614,425,907. Highland Capital Management, L.P.'s share of the Section 165 loss transaction is \$2,221,150.

## **EXHIBIT 54**

**Schedule K-1**  
**(Form 1065)**

Department of the Treasury  
Internal Revenue Service

For calendar year 2009, or tax  
year beginning \_\_\_\_\_, 2009  
ending \_\_\_\_\_, 20

**Partner's Share of Income, Deductions, Credits, etc.** ▶ See back of form and separate instructions.

► See back of form and separate instructions.

## Part I Information About the Partnership

A Partnership's employer identification number

75-2716725

**B** Partnership's name, address, city, state, and ZIP code

Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, TX 75240

**C** IRS Center where partnership filed return

Ogden

**D** ☐ Check if this is a publicly traded partnership (PTP)

## Part II Information About the Partner

E Partner's identifying number

F	Partner's name, address, city, state, and ZIP code
---	--

PATRICK DAUGHERTY  
3621 CORNELL AVE.  
DALLAS, TX 75205

G ☐ General partner or LLC member-manager

☒ Limited partner or other LLC member

H ☒ Domestic partner

☐ Foreign partner

What type of entity is this partner? Individual

**J** Partner's share of profit, loss, and capital (see instructions):

### Beginning

## Ending

Profit		
Loss	0.771660%	0.596896%
Capital	-23.074114%	

K Partner's share of liabilities at year end:

Nonrecourse . . . . .	\$	
Qualified nonrecourse financing . . . .	\$	909,586
Recourse . . . . .	\$	

L Partner's capital account analysis:

Beginning capital account . . . . .	\$	(182,394)
Capital contributed during the year . . . . .	\$	
Current year increase (decrease) . . . . .	\$	358,955
Withdrawals & distributions . . . . .	\$	(176,562)
Ending capital account . . . . .	\$	

☐ Tax basis    ☒ GAAP    ☐ Section 704(b) book  
☐ Other (explain)

**M** Did the partner contribute property with a built-in gain or loss?

☐ Yes ☒ No

If "Yes", attach statement (see instructions)

Final K-1

Amended K-1

### Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss) (319,582)	15	Credits
2	Net rental real estate income (loss) (3,306)		
3	Other net rental income (loss) 1	16 A	Foreign transactions VARIOUS
4	Guaranteed payments	B	1,501,626
5	Interest income 21,842	C	764,431
6a	Ordinary dividends 6,046	D	14,845
6b	Qualified dividends 65	E	83,530
7	Royalties	G	57,135
8	Net short-term capital gain (loss) 36,431	*	STMT
9a	Net long-term capital gain (loss) 562,633	17 A	Alternative minimum tax (AMT) items (144)
9b	Collectibles (28%) gain (loss)	B	(2)
9c	Unrecaptured section 1250 gain	*	STMT
10	Net section 1231 gain (loss) (21,793)	18	Tax-exempt income and nondeductible expenses
11 A	Other income (loss) 281	A	612
C	(3)	C	1,311
*	STMT		
12	Section 179 deduction	19 A	Distributions 176,562
13 A	Other deductions 347	C*	-
E	46	20 A	Other information SEE STMT
*	STMT	B	SEE STMT
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

For IRS Use Only

Schedule K-1 (Form 1065) 2009

Page 2

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

		Code	Report on
1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.			
Passive loss	Report on	K Disabled access credit	See the Partner's Instructions
Passive income	See the Partner's Instructions	L Empowerment zone and renewal community employment credit	Form 8844, line 3
Nonpassive loss	Schedule E, line 28, column (g)	M Credit for increasing research activities	See the Partner's Instructions
Nonpassive income	Schedule E, line 28, column (h)	N Credit for employer social security and Medicare taxes	Form 8846, line 5
2. Net rental real estate income (loss)	Schedule E, line 28, column (j)	O Backup withholding	Form 1040, line 61
3. Other net rental income (loss)	See the Partner's Instructions	P Other credits	See the Partner's Instructions
Net income	Schedule E, line 28, column (g)	16. Foreign transactions	
Net loss	See the Partner's Instructions	A Name of country or U.S. possession	Form 1116, Part I
4. Guaranteed payments	Schedule E, line 28, column (j)	B Gross income from all sources	
5. Interest income	Form 1040, line 8a	C Gross income sourced at partner level	
6a. Ordinary dividends	Form 1040, line 9a	Foreign gross income sourced at partnership level	
6b. Qualified dividends	Form 1040, line 9b	D Passive category	Form 1116, Part I
7. Royalties	Schedule E, line 4	E General category	
8. Net short-term capital gain (loss)	Schedule D, line 5, column (f)	F Other	
9a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)	Deductions allocated and apportioned at partner level	
9b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)	G Interest expense	Form 1116, Part I
9c. Unrecaptured section 1250 gain	See the Partner's Instructions	H Other	Form 1116, Part I
10. Net section 1231 gain (loss)	See the Partner's Instructions	Deductions allocated and apportioned at partnership level to foreign source income	
11. Other income (loss)		I Passive category	Form 1116, Part I
Code		J General category	
A Other portfolio income (loss)	See the Partner's Instructions	K Other	
B Involuntary conversions	See the Partner's Instructions	Other information	
C Sec. 1256 contracts & straddles	Form 6781, line 1	L Total foreign taxes paid	Form 1116, Part II
D Mining exploration costs recapture	See Pub. 535	M Total foreign taxes accrued	Form 1116, Part II
E Cancellation of debt	Form 1040, line 21 or Form 982	N Reduction in taxes available for credit	Form 1116, line 12
F Other income (loss)	See the Partner's Instructions	O Foreign trading gross receipts	Form 8873
12. Section 179 deduction	See the Partner's Instructions	P Extraterritorial income exclusion	Form 8873
13. Other deductions		Q Other foreign transactions	See the Partner's Instructions
A Cash contributions (50%)	See the Partner's Instructions	17. Alternative minimum tax (AMT) items	
B Cash contributions (30%)		A Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251
C Noncash contributions (50%)		B Adjusted gain or loss	
D Noncash contributions (30%)		C Depletion (other than oil & gas)	
E Capital gain property to a 50% organization (30%)		D Oil, gas, & geothermal—gross income	
F Capital gain property (20%)		E Oil, gas, & geothermal—deductions	
G Contributions (100%)		F Other AMT items	
H Investment interest expense	Form 4952, line 1	18. Tax-exempt income and nondeductible expenses	
I Deductions—royalty income	Schedule E, line 18	A Tax-exempt interest income	Form 1040, line 8b
J Section 59(e)(2) expenditures	See the Partner's Instructions	B Other tax-exempt income	See the Partner's Instructions
K Deductions—portfolio (2% floor)	Schedule A, line 23	C Nondeductible expenses	See the Partner's Instructions
L Deductions—portfolio (other)	Schedule A, line 28	19. Distributions	
M Amounts paid for medical insurance	Schedule A, line 1 or Form 1040, line 29	A Cash and marketable securities	See the Partner's Instructions
N Educational assistance benefits	See the Partner's Instructions	B Distribution subject to section 737	
O Dependent care benefits	Form 2441, line 14	C Other property	
P Preproductive period expenses	See the Partner's Instructions	20. Other information	
Q Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions	A Investment income	Form 4952, line 4a
R Pensions and IRAs	See the Partner's Instructions	B Investment expenses	Form 4952, line 5
S Reforestation expense deduction	See the Partner's Instructions	C Fuel tax credit information	Form 4136
T Domestic production activities information	See Form 8903 instructions	D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
U Qualified production activities income	Form 8903, line 7	E Basis of energy property	See the Partner's Instructions
V Employer's Form W-2 wages	Form 8903, line 15	F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
W Other deductions	See the Partner's Instructions	G Recapture of low-income housing credit (other)	Form 8611, line 8
14. Self-employment earnings (loss)		H Recapture of investment credit	See Form 4255
Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.		I Recapture of other credits	See the Partner's Instructions
A Net earnings (loss) from self-employment	Schedule SE, Section A or B	J Look-back interest—completed long-term contracts	See Form 8697
B Gross farming or fishing income	See the Partner's Instructions	K Look-back interest—income forecast method	See Form 8866
C Gross non-farm income	See the Partner's Instructions	L Dispositions of property with section 179 deductions	See the Partner's Instructions
15. Credits		M Recapture of section 179 deduction	
A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions	N Interest expense for corporate partners	
B Low-income housing credit (other) from pre-2008 buildings	See the Partner's Instructions	O Section 453(l)(3) information	
C Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11	P Section 453A(c) information	
D Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11	Q Section 1260(b) information	
E Qualified rehabilitation expenditures (rental real estate)	See the Partner's Instructions	R Interest allocable to production expenditures	
F Other rental real estate credits		S CCF nonqualified withdrawals	
G Other rental credits		T Depletion information—oil and gas	
H Undistributed capital gains credit	Form 1040, line 70; check box a	U Amortization of reforestation costs	
I Alcohol and cellulosic biofuel fuels credit	Form 6478, line 7	V Unrelated business taxable income	
J Work opportunity credit	Form 5884, line 3	W Precontribution gain (loss)	
		X Section 108(i) information	
		Y Other information	

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Highland Capital Management, L.P.  
75-2716725

PATRICK DAUGHERTY

7

This list identifies the codes used on the Schedule K-1 for all partners and summarizes reporting information for partners who file Form 1040.

For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

Line 11	Other Income (Loss)	
	E Cancellation of Debt	33,492
	Line 11, F*	
	F Section 988 Gain/(Loss)	(2,473)
	F PFIC Income	11,935
	F Other Income/(Loss)	515
	F Section 475 Gain/(Loss)	1,210
	F Subpart F Income	17,500
Line 13	Other Deductions	
	H Investment Interest Expense	2,022
	J Section 59(e)(2) Expenditures	488
	K Deductions - Portfolio (2% Floor)	11,425
	L Deductions - Portfolio (Other)	68
	Line 13, W*	
	W Other Deductions	3,078
Line 16	Foreign Transactions	
	H Other	189,647
	I Passive Category	86
	J General Categories	31,981
	L Total Foreign Taxes Paid	13,618
Line 17	Other AMT Items	
	D Oil, Gas, & Geothermal Properties - Gross Income	(10)
	E Oil, Gas, & Geothermal Properties - Deductions	(0)
	Line 17, F*	
	F Other AMT Adjustments	0

003467



PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725  
ATTACHMENT TO SCHEDULE K-1

1.	LINE 11F - OTHER INCOME/(LOSS)	
	OTHER INCOME/(LOSS)	\$ 515
	SECTION 988 GAIN/(LOSS)	(2,473)
	SUBPART F INCOME	17,500
	SECTION 475 GAIN/(LOSS)	1,210
	PFIC INCOME	11,935
	TOTAL LINE 11F	\$ 28,688

PLEASE NOTE THAT THE ABOVE DETAILS FOR LINE 11F MAY NOT SUM TO THE TOTAL DUE TO ROUNDING.

2.	YOUR SHARE OF FOREIGN QUALIFIED DIVIDEND INCOME IS:	\$ 41
3.	YOUR SHARE OF INTEREST INCOME FROM U.S. GOVERNMENT OBLIGATIONS INCLUDED ON LINE 5 IS:	\$ 3

4. LINE 20 — BASED UPON INTERNAL REVENUE CODE (IRC) SECTION 163(d) ALL 'NON-PASSIVE' ITEMS OF INCOME AND EXPENSE REPORTED TO YOU ON THIS SCHEDULE K-1 MAY QUALIFY AS INVESTMENT INCOME OR EXPENSE. PLEASE REFER TO 2009 PARTNER'S INSTRUCTIONS FOR SCHEDULE K-1 (FORM 1065) AND THE INSTRUCTIONS FOR FORM 4952. PLEASE CONSULT YOUR TAX ADVISOR.

5. THE PARTNERSHIP HAS MADE A TIMELY QUALIFIED ELECTING FUND ("QEF") ELECTION WITH RESPECT TO ITS INVESTMENT IN UNDERLYING PASSIVE FOREIGN INVESTMENT COMPANIES ("PFICS"), EFFECTIVE FOR EACH YEAR OF OWNERSHIP, AND HAS FILED THE REQUIRED FORM 8621 FOR ALL YEARS OF OWNERSHIP. EACH PFIC WAS ACQUIRED FOR CASH.

THE FIRST U.S. SHAREHOLDER THAT HAS MADE A QEF ELECTION FOR A PFIC IS REQUIRED TO INCLUDE INCOME CURRENTLY UNDER IRC SECTION 1293 AND TO FILE FORM 8621. AS A PARTNER IN A U.S. PARTNERSHIP THAT HAS MADE THE QEF ELECTION AND FILED FORM 8621, YOUR ALLOCABLE SHARE OF THIS INCOME IS NOT REQUIRED TO BE FURTHER REPORTED ON AN ADDITIONAL FORM 8621. THE SERVICE HAS CLARIFIED BY CHANGING THE INSTRUCTIONS TO FORM 8621 THAT NO ADDITIONAL FORM 8621 REPORTING IS NECESSARY UNDER THESE FACTS. PLEASE CONSULT YOUR TAX ADVISOR.

6. A FORM 8865 WAS EITHER FILED BY OR ON BEHALF OF HIGHLAND CAPITAL MANAGEMENT, LP FOR CONTRIBUTIONS MADE DIRECTLY OR INDIRECTLY TO THE FOLLOWING FOREIGN PARTNERSHIPS:

GRAYSON CLO LTD  
EASTLAND CLO LTD  
HIGHLANDER EURO CDO B.V.  
HIGHLANDER EURO CDO II B.V.  
ROCKWALL CDO LTD  
BRENTWOOD CLO LTD  
RED RIVER CLO LTD  
HIGHLAND CLO VALUE MASTER FUND LP  
PAM CAPITAL FUNDNG LP

YOU MAY HAVE A SEPARATE FILING REQUIREMENT, IF YOU MADE A CONTRIBUTION TO ANY OF THESE FOREIGN PARTNERSHIPS APART FROM THE CONTRIBUTIONS MADE BY HIGHLAND CAPITAL MANAGEMENT, LP. PLEASE CONSULT YOUR TAX ADVISOR.

PATRICK DAUGHERTY  
[REDACTED]

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

7. HIGHLAND CAPITAL MANAGEMENT, LP IS DIRECTLY INVESTED IN CONVERSUS CAPITAL, L.P. ("Fund"). THE FUND THROUGH ITS INVESTMENTS IN UNDERLYING PARTNERSHIPS, HAS ENGAGED IN SECTION 988 FOREIGN CURRENCY TRANSACTIONS THAT MAY BE REPORTABLE TRANSACTIONS. YOUR SHARE OF THE SEC. 988 LOSS IS UNCERTAIN. PROTECTIVE DISCLOSURE WAS MADE AT BOTH THE FUND AND HIGHLAND CAPITAL MANAGEMENT, LP LEVELS.

THE REALIZED LOSS ON IRC SECTION 988 TRANSACTIONS IS IN CONNECTION WITH THE FUND'S UNDERLYING INVESTMENTS' REGULAR INVESTING ACTIVITIES AND THEREFORE, NOT CARRIED OUT AS PART OF ANY PLAN TO ACHIEVE TAX BENEFITS. AS A RESULT, THERE ARE NOT ANY EXPECTED TAX BENEFITS. THE PARTNER'S SHARE OF THE SECTION 988 LOSS REFERRED ABOVE IS NETTED WITH THE OVERALL SECTION 988 GAIN OR LOSS REPORTED ON 2009 SCHEDULE K-1 WHICH IS AVAILABLE TO BE CLAIMED ON 2009 TAX RETURNS. IT IS NOT EXPECTED THAT THESE SECTION 988 TRANSACTIONS WILL GENERATE ANY PRIOR OR FUTURE TAX BENEFITS.

8. FORM 8886 AND FORM 8275 DISCLOSURES  
ATTACHED TO YOUR SCHEDULE K-1 ARE THE FORMS 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENT AND THE FORM 8275 DISCLOSURE STATEMENT FILED BY HIGHLAND CAPITAL MANAGEMENT, L.P. TO DETERMINE YOUR SHARE OF THE AMOUNTS SHOWN ON THESE ATTACHED DISCLOSURES, MULTIPLY THE AMOUNTS BY THE FOLLOWING PERCENTAGE.

0.5968959089%

PLEASE CONSULT YOUR TAX ADVISOR CONCERNING ANY POTENTIAL FILING REQUIREMENT YOU MAY HAVE RELATED TO THESE DISCLOSURES.

9. THE AMOUNT ON SCHEDULE L, CURRENT YEAR INCREASE(DECREASE) IS COMPRISED OF THE FOLLOWING:

CURRENT YEAR BOOK INCOME/(LOSS):	\$	(459)
PRIOR PERIOD ADJUSTMENT TO CAPITAL:		<u>359,414</u>
TOTAL CURRENT YEAR INCREASE/(DECREASE)	\$	<u>358,955</u>

PATRICK DAUGHERTY

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

10. FORM 926 REPORTING REQUIREMENTS

PURSUANT TO IRC SECTION 6038B (FOR TAXABLE YEARS BEGINNING AFTER FEBRUARY 5, 1999), A PARTNERSHIP'S CONTRIBUTION OF PROPERTY, WHICH INCLUDES CASH, TO A FOREIGN CORPORATION IS DEEMED TO BE MADE BY THE PARTNERS OF SUCH PARTNERSHIP. THE PARTNERSHIP INVESTS IN UNDERLYING PARTNERSHIPS, AND A PORTION OF YOUR INVESTMENT WAS TRANSFERRED TO THE FOREIGN CORPORATIONS INDICATED ON THE SCHEDULE BELOW. AS A RESULT, YOU MAY HAVE A FILING REQUIREMENT UNDER TREASURY REGULATION SEC.1.6038B-1(B)(3) WITH REGARD TO SUCH TRANSFERS ON FORM 926. PLEASE CONSULT YOUR TAX ADVISOR REGARDING THIS FILING REQUIREMENT.

PLEASE NOTE THAT IF YOU ARE REQUIRED TO COMPLETE A FORM 926 BASED ON THE INFORMATION BELOW, A SEPARATE FORM MUST BE COMPLETED FOR EACH RESPECTIVE FOREIGN TRANSFEREE CORPORATION.

THE FOLLOWING INFORMATION IS PROVIDED IN ORDER FOR YOU TO COMPLY WITH THE FORM 926 FILING REQUIREMENTS. THE LINE NUMBERS BELOW CORRESPOND TO THOSE ON FORM 926.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CONVERSUS CAYMAN BLOCKER A, LIMITED  
 LINE 4. 98-0541781  
 LINE 5. TRAFALGAR COURT, LES BANQUES, ST. PETER PORT, GUERNSEY  
 GY11 3 QL, CHANNEL ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. CORPORATION  
 LINE 8. YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>3</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.008454%	(B)	0.008454%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

11. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CONVERSUS CAYMAN BLOCKER C, LIMITED  
 LINE 4. 98-0411747  
 LINE 5. TRAFALGAR COURT, LES BANQUES, ST. PETER PORT, GUERNSEY  
 GY11 3 QL, CHANNEL ISLANDS  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. CORPORATION  
 LINE 8. YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>552</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.008454%	(B)	0.008454%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

PATRICK DAUGHERTY

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

12. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. COUNTRYWIDE, PLC  
 LINE 4. N/A  
 LINE 5. 17 DUKE STREET  
 CHELMSFIELD, ESSEX, CM1 1HP  
 LINE 6. UK  
 LINE 7. CORPORATION  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) 16

PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9. (A) (B)  
 LINE 10. IRC SECTION 351 CASH/CAPITAL CONTRIBUTION  
 LINE 11-15. NO  
 LINE 16. YES  
 LINE 17. NO

13. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CUNNINGHAM LINDSEY GROUP LIMITED  
 LINE 4. 98-0559028  
 LINE 5. 17 DUKE STREET  
 WALKERS SPV LIMITED, 87 MARY STREET, GEORGETOWN, CAYMAN ISLANDS, KY1-9001  
 LINE 6. CAYMAN ISLANDS  
 LINE 7. CORPORATION  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) 25

PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9. (A) 0.000000% (B) 0.000048%  
 LINE 10. IRC SECTION 351 CASH/CAPITAL CONTRIBUTION  
 LINE 11-15. NO  
 LINE 16. YES  
 LINE 17. NO

14. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. EL JAPAN CO., LTD.  
 LINE 4. N/A  
 LINE 5. N/A  
 LINE 6. JAPAN  
 LINE 7. CORPORATION  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) 16

PATRICK DAUGHERTY

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	(B)
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION	
LINE 11-15.	NO	
LINE 16.	YES	
LINE 17.	NO	

15. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	EURO V (BC) S.A.R.L
LINE 4.	98-0606903
LINE 5.	VAL STE CROIX, L-1371 LUXEMBOURG
	GRANDE-DUCHE DE LUXEMBOURG
LINE 6.	LUXEMBOURG
LINE 7.	CORPORATION
LINE 8.	YES

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>22</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000113%	(B)	0.000113%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

16. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3.	EURO VI (BC) S.A.R.L
LINE 4.	98-0591709
LINE 5.	VAL STE CROIX, L-1371 LUXEMBOURG
	GRANDE-DUCHE DE LUXEMBOURG
LINE 6.	LUXEMBOURG
LINE 7.	CORPORATION
LINE 8.	NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>73</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	0.000027%	(B)	0.000027%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION			
LINE 11-15.	NO			
LINE 16.	YES			
LINE 17.	NO			

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PATRICK DAUGHERTY

## HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

17. PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. RCIV HOLDINGS (LUXEMBOURG) S.A.R.L.  
 LINE 4. 98-0624493  
 LINE 5. VAL STE CROIX, L-1371 LUXEMBOURG  
 GRANDE-DUCHE DE LUXEMBOURG  
 LINE 6. LUXEMBOURG  
 LINE 7. CORPORATION  
 LINE 8. NO

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>39</u>
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PART IV - ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY

LINE 9.	(A)	(B)	0.000023%
LINE 10.	IRC SECTION 351 CASH/CAPITAL CONTRIBUTION		
LINE 11-15.	NO		
LINE 16.	YES		
LINE 17.	NO		

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Form **8275**  
(Rev. August 2008)**Disclosure Statement**

Do not use this form to disclose items or positions that are contrary to Treasury regulations. Instead, use Form 8275-R, Regulation Disclosure Statement. See separate instructions.

OMB No. 1545-0088

Attachment  
Sequence No. **92**Department of the Treasury  
Internal Revenue Service

▶ Attach to your tax return.

Name(s) shown on return

HIGHLAND CAPITAL MANAGEMENT, LP

Identifying number shown on return

75-2716725

**Part I General Information** (see instructions)

(a) Rev. Rul., Rev. Proc., etc.	(b) Item or Group of Items	(c) Detailed Description of Items	(d) Form or Schedule	(e) Line No.	(f) Amount
1 REV. RUL. 93-80	LOSS	LOSS ON WORTHLESSNESS - HIGHLAND CAPITAL REAL ESTATE FUND, LP	1065	6	42,259,607
2					
3					
4					
5					
6					

**Part II Detailed Explanation** (see instructions)

1	SEE ATTACHED STATEMENT.
2	
3	
4	
5	
6	

**Part III Information About Pass-Through Entity.** To be completed by partners, shareholders, beneficiaries, or residual interest holders.

Complete this part only if you are making adequate disclosure for a pass-through item.

**Note:** A pass-through entity is a partnership, S corporation, estate, trust, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

1 Name, address, and ZIP code of pass-through entity	2 Identifying number of pass-through entity
	3 Tax year of pass-through entity to
	4 Internal Revenue Service Center where the pass-through entity filed its return

For Paperwork Reduction Act Notice, see separate instructions.  
ISAForm **8275** (Rev. 8-2008)

**Part IV** Explanations (continued from Parts I and/or II)

[Ruled area for Explanations]

Highland Capital Management, LP (EIN: 75-2716725)  
Form 1065; December 31, 2009

Attachment to Form 8275: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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## **Part II, Line 1 – Detailed Explanation**

The taxpayer has reported on Form 1065, Page 1, Line 6 from Form 4797 a \$42,259,607 ordinary loss under I.R.C. § 165 with respect to the worthlessness of the taxpayer's ownership of limited partner units of Highland Capital Real Estate Fund, L.P. ("REF") which was also formerly known as Highland Real Estate Fund 2002-A up until July 9, 2007.

The facts relating to this loss are as follows:

### **Highland Capital Management**

James Dondero owns, directly and through grantor trusts and affiliates, approximately 72% of the capital and profits interest in HCM at the end of 2009. James Dondero is the President and sole owner of Strand Advisors, Inc., HCM's sole general partner. In his role as owner and President of Strand Advisors, Inc., James Dondero has effective control over the operations of HCM and is actively involved on a full-time basis in the management and operations of HCM and its affiliates.

James Dondero is the majority owner of the taxpayer and is also the majority owner in Highland Capital Management, L.P. ("HCM") whose business is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment funds ("funds") that it has organized and marketed to investors. HCM has a significant equity interest in most of the funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

HCM, under the governing documents, as investment advisor to REF was to receive an annual performance allocation at the end of each year which ranged historically from 20% to 25% based upon REF's annual net performance but only to the extent that such profits exceed any losses carried forward from prior years. In addition, for its services to REF, HCM is entitled to a management fee which ranged historically from an annual rate of 1.5% to 2.5% of the net asset value of the fund. All of REF's investment decisions are made by HCM. James Dondero is President of HCM and controls all of its operations and activities. The initial offering memorandum for REF describes James Dondero as part of the investment team.

The general partner of REF is Highland Capital Real Estate Fund GP, LLC, formerly known as Highland Capital Advisors RE2002A LLC, a Delaware limited liability company, ("GP"). The GP is 100% owned by HCM and, therefore for tax purposes, is treated as a disregarded entity. James Dondero serves as the President of the GP. Entities owned or controlled by principals of HCM also serve as the general partner of

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Highland Capital Management, LP (EIN: 75-2716725)  
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Attachment to Form 8275: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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the various investments held by REF. The GP has also served as the general partner for REF's investments.

#### **Highland Capital Real Estate Fund, L.P.**

REF began operations on April 2002 and was organized for the primary purpose of investing substantially all of its assets in a portfolio of public and private equity and debt securities of companies, entities, or ventures that are primarily engaged in or related to the real estate industry.

REF was initially capitalized by the end of 2002 with approximately \$3,200,000 through various entities affiliated or owned by James Dondero and other principals of HCM. By the end of 2002, HCM owned 15.91% in the capital accounts and James Dondero through his trusts owned over 66.37% of REF.

By the beginning of 2006, HCM owned 34.10% in REF. In August of 2006, HCM replaced its direct ownership with a derivative transaction that allowed HCM to continue to have exposure to REF (and hold itself to investors as continuing to have an aligned interest with investors) while generating excess cash from the transaction for HCM to utilize in other business endeavors.

In August 2006 the first non-affiliated investors purchased interests in REF with an initial investment of \$40,948,168. Additional capital was raised from non-affiliated investors in 2007, totaling about \$44,000,000.

Management fees were earned by HCM beginning in 2006 and continuing through 2007, 2008, and 2009, and totaled \$3,914,874 over that time period.

James Dondero's direct ownership through his grantor trusts, owned by December 31, 2009 of REF were approximately 31%.

The ending audited financials for December 31, 2008 for REF reflected a total net asset value of \$132,671,000. The ending unaudited financials for December 31, 2009, reflected an ending net asset value of approximately \$45,000,000. For Generally Accepted Accounting Principles, the assets held by REF consist primarily of interests in private placement limited partnerships and limited liability companies that own residential and commercial real estate. According to the 2008 audited financial statements, the fair value of these investments rely upon what is considered a Level 3 valuation which is based upon models in which the inputs are unobservable and deemed significant to the fair value measurement. In addition, according to the 2008 audited financial statements, about a quarter of the investments rely upon models that require assumptions that estimate operating plans for any undeveloped investments are in fact developed and then assumes certain rates of returns from a fully developed property. To support the taxpayer's internal assessment of REF's value as of



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Highland Capital Management, LP (EIN: 75-2716725)  
Form 1065; December 31, 2009

Attachment to Form 8275: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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December 31, 2009, the taxpayer performed a valuation analysis that applies a realistic assessment of what the taxpayer would receive if the assets were sold currently, in liquidation of REF applying internal appraisals and independent third party appraisals where appropriate depending upon the investment asset, and has found that the REF's liabilities would exceed the gross proceeds from such liquidation.

#### **Credit Agreement**

In February 2006, REF entered into a revolving credit agreement in the amount of \$25,000,000 (the "Credit Agreement") with Wachovia Bank (which was increased to \$31,000,000 in April 2009), interest was charged at LIBOR plus 2.25%. As of December 31, 2006, \$31,000,000 was outstanding under the Credit Agreement with substantially all of the investments of REF pledged as collateral. As of December 31, 2007, \$25,000,000 was outstanding under the Credit Agreement. On September 29, 2008 the Credit Agreement was amended to allow for REF to repay the outstanding balance of \$20,000,000 in three installments on or before December 31, 2008, March 31, 2009, and June 30, 2009. REF failed to make the first scheduled payment by December 31, 2008 which constituted an event of default under the terms of the Credit Agreement. On April 15, 2009, REF executed a forbearance agreement with Wachovia which extended the maturity date of the outstanding borrowings to October 15, 2009. On October 15, 2009, the forbearance agreement was amended and extended until December 22, 2009 in order to allow the lender to understand the value of the pledged collateral. REF investment professionals provided information to the lender that allowed the lender to independently hire third party appraisers for the pledged assets. From this, the lenders verbally expressed to REF investment professionals that from the lender's perspective, they were impaired in their ability to recover the full amount of the outstanding debt balance from the assets.

A first amendment to the forbearance agreement effective November 12, 2009, extended the forbearance period to February 1, 2010. The forbearance agreements permitted REF to use cash to support an agreed upon list of assets that required the lender's approval before any payments were made.

On February 1, 2010 the forbearance period expired, and on February 3, 2010, the lender informed REF of certain events of default under the Credit Agreement and its ability to exercise all its rights under the Credit Agreement including seizing the investment assets of REF (the reservation of rights letter). On February 18, 2010, the lender informed REF that it was exercising certain rights as a result of the event of default including restrictions on cash proceeds from investments and requiring immediate turn-over to the lender from any cash receipts and restrictions on ability to vote with respect to the investment properties. During January and February of 2010, REF made several requests to the lender to use the available cash to maintain the investments assets, and all such requests were all denied by the lender.

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Further, on March 5, 2010, Wachovia swept all the cash in the lender controlled escrow accounts totaling approximately \$2,300,000 of REF and has an ability to apply such against the outstanding balance of \$19,000,000. In April 2010, multiple assets have been foreclosed due to REF's inability to pay obligations of the investment assets. In May 2010, several more assets are anticipated to be foreclosed upon. Lastly, because the forbearance agreement has expired, Wachovia has the right at any time to seize all the assets in REF.

### **Worthlessness Events**

The commercial real estate and development market which compose REF's investment assets experienced in 2009 a notable decline in transactions over the prior two years as uncertainty regarding future financial and economic conditions increased. Buyers and sellers saw disparate expectations in sale transactions. Due to higher risk levels, any investors of these properties required higher returns for their investments across all asset classes. The difference in expectations of buyers and sellers led to a stalemate in the marketplace. Further, the limited availability of credit and financing resulted in depressed demand levels. Overall, extended marketing times were projected in all real estate sectors due to this imbalance of market forces (demand, supply, availability of financing and the deteriorating economy). Moreover, the decline in regional economies resulted in decreasing occupancy rates and rental revenues, which in turn further depressed commercial property values. Compounding the problems were the increasing amount of vacant lots and undeveloped property adding to the supply overhead. In certain regions where REF held its investments, statistical reporting agencies noted over 80% of properties offered for sale in nine months failed to sell in 2009 due to the factors of the market environment.

REF holds a significant amount of its investments in prospective land development. In 2009, no sector of the commercial property market has been harder hit than that for entitled land for development. Six quarters after the advent of the financial crisis and recession, the land market remained at a near standstill and values plummeted. It has been estimated in certain regions where REF holds its investments, that over half of all land sales involve a distressed situation. The reasons are: high vacancy rates across all property types make development a distant prospect and difficulty in financing land (and other non-cash flowing property) makes it unattractive to buyers. Also, with prices for core property falling below replacement cost in many markets, developers and investors continued to focus on acquisitions versus development.

With this macro context, by December of 2009, REF had only two options available to create any positive economically realizable value for the partner / owners, currently or in the future: (1) determine if REF had available resources to maintain its investments going into 2010; or (2) if not, execute a liquidation sale of all its investments in the hopes of being able to pay off the outstanding balance under the Credit

Highland Capital Management, LP (EIN: 75-2716725)  
Form 1065; December 31, 2009

Attachment to Form 8275: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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Agreement. Both options left no reasonable prospect to recover any positive economic realization for the partner / owners of REF.

The minimal amount of cash within REF as of December 31, 2009 was \$3,453,242 and was not enough to sustain the future cash needs of all the real estate investments within REF which at that time was conservatively estimated (assuming interest payments only on debt of property) to be approximately \$10,000,000. (As previously described the lender swept \$2,300,000 in March of 2010 which in December was anticipated as a strong possibility as well). The current owners would not provide any new capital because it would likely be seized by the lender under the Credit Agreement. All or substantially all of the real estate investment assets were not projected to be cash flow positive in 2010 nor be disposed and generate enough cash within REF to fund its other commitments or the obligations under the Credit Agreement. Therefore, without any ability to provide cash for the cost of carrying its investments, the taxpayer determined either the lender would seize the assets in 2010, the assets would themselves be foreclosed upon, or REF's ownership in a real estate investment would be significantly diluted if it didn't meet future capital calls. Left with little to no prospects to sustain REF's investments, a liquidation sale of all of the REF's assets was considered in the worthless assessment. However, given the depressed state of the commercial real estate market and the deep recession in late 2009, and minimal financing available from would-be buyers due to the tightened commercial real estate credit market, any "fire sales" would result in heavily discounted sales proceeds, such that, if all REF's investments were able to be sold in this manner, it would likely not be enough to pay-off the outstanding balance under the Credit Agreement.

Thus, during the fourth quarter of 2009, taxpayer determined that its interest in REF became worthless and had no reasonable hope or expectation of recovery. The taxpayer confirmed this belief applying a liquidation analysis of REF's investment assets and determined that no later than December 31, 2009 the liabilities exceeded the value of the assets, and so the taxpayer's interests in REF had no value.

Therefore, the taxpayer, HCM and James Dondero determined that its partnership interest in REF was worthless as of no later than December 31, 2009 and had no reasonable prospect to recover in value. The interests in REF became worthless (such that no investor would be willing to pay any consideration for an REF interest) no later than December 31, 2009, through a confluence of factors: (1) deterioration in the credit markets combined with the severe recession already in place resulted in a devastating impact upon the commercial real estate market, its development, and sustainability; (2) the lack of cash within REF to sustain and fund the current needs of the real estate investments that it held to avoid foreclosure, forced sale, or dilution within the respective investment; (3) the lack of any new capital by the current owners of REF to provide new funding to sustain the current real estate investments; (4) a state of default under the Credit Agreement allowing the lender to



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seize all the assets of REF and REF having no financial ability to pay off the outstanding balance even through a liquidation sale of REF's assets.

### Tax Reporting

The taxpayer has reported on its tax return for its taxable year ended December 31, 2009 an ordinary loss with respect to the worthlessness of its partnership interest in REF.<sup>1</sup> The loss is equal to the taxpayer's adjusted tax basis in the REF equity interest as of the date of worthlessness,<sup>2</sup> including basis attributable to the taxpayer's allocable share of REF liabilities.<sup>3</sup> The taxpayer wrote down its tax basis for its partnership interest in REF to zero no later than December 31, 2009.<sup>4</sup> In computing the taxpayer's adjusted tax basis in its interest in REF no later than December 31, 2009, the taxpayer has not taken into account its distributive share of its tax items for the 2009 tax year through the worthlessness date because the taxpayer did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in REF as a result of the worthlessness of the interest.<sup>5</sup> The taxpayer has not claimed any deduction for its distributive share of the REF loss reported for REF's taxable year ending December 31, 2009 to the extent the loss exceeds the taxpayer's adjusted tax basis for its REF equity interest as of December 31, 2009 (taking into account the write down of its tax basis to zero no later than December 31, 2009).<sup>6</sup>

Because the worthlessness of the taxpayer's partnership interest in REF did not give rise to any actual or constructive discharge of REF liabilities under I.R.C. § 752,<sup>7</sup> the taxpayer's loss from such worthlessness is an ordinary loss rather than a capital loss.<sup>8</sup> In addition, the loss is a business loss for purposes of I.R.C. §§ 62(a)(1) and 172 because the taxpayer's interest in REF was attributable to and derived from the

<sup>1</sup> I.R.C. § 165(a), (c)(1).

<sup>2</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>3</sup> Treas. Reg. §§ 1.705-1(a); 1.752-1, 1.752-2, 1.752-3.

<sup>4</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>5</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). *Cf. Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment, but taking into account distributions during the year).

<sup>6</sup> I.R.C. § 704(d).

<sup>7</sup> The worthlessness of the taxpayer's interest in REF had no effect on REF's direct or indirect liabilities, on the taxpayer's status as a partner in REF, or on the allocation of REF liabilities under I.R.C. § 752. Accordingly, the worthlessness event did not result in any reduction in the taxpayer's share of REF liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

<sup>8</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

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Highland Capital Management, LP (EIN: 75-2716725)  
Form 1065; December 31, 2009

Attachment to Form 8275: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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taxpayer's and James Dondero's business and was acquired with the dominant motive of generating a source of business income, and not with the dominant motive of making or preserving a non-business investment.<sup>9</sup>

The Service could challenge the taxpayer's tax reporting of the worthlessness loss under a variety of theories, which could include challenging the following assertions set forth above: (a) that the taxpayer's REF partnership interest became worthless during the taxpayer's year ending December 31, 2009, (b) that the taxpayer's loss is calculated without taking into account its distributive share of REF's tax items (if any) for REF's taxable year ended December 31, 2009, (c) that the taxpayer's loss with respect to the worthlessness of its REF partnership interest is an ordinary loss attributable to the taxpayer's business.

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<sup>9</sup> See *United States v. Generes*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).



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**Form 8886**  
(Rev. December 2007)  
Department of the Treasury  
Internal Revenue Service

**Reportable Transaction Disclosure Statement**

OMB No. 1545-1800

Attachment  
Sequence No. **137**

- ▶ Attach to your tax return.  
▶ See separate instructions.

Name(s) shown on return (Individuals enter last name, first name, middle initial)

HIGHLAND CAPITAL MANAGEMENT, LP

Identifying number  
75-2716725

Number, street, and room or suite no.

TWO GALLERIA TOWER, 13455 NOEL ROAD, SUITE 800

City or town, state, and ZIP code

DALLAS, TX 75240

**A** If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number 1 of 2

**B** Enter the form number of the tax return to which this form is attached or related . . . . . ▶ 1065

Enter the year of the tax return identified above . . . . . ▶ 2009

Is this Form 8886 being filed with an amended tax return? ☐ Yes ☒ No

**C** Check the box(es) that apply (see instructions). ☒ Initial year filer ☐ Protective disclosure

**1a** Name of reportable transaction

LOSS ON WORTHLESSNESS - HIGHLAND CAPITAL REAL ESTATE FUND, LP

**1b** Initial year participated in transaction

2009

**1c** Reportable transaction or tax shelter registration number (9 digits or 11 digits)

N/A

**2** Identify the type of reportable transaction. Check all boxes that apply (see instructions).

- a** ☐ Listed **c** ☐ Contractual protection **e** ☐ Brief asset holding period  
**b** ☐ Confidential **d** ☒ Loss **f** ☐ Transaction of interest

**3** If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶

**4** Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ 0

**5** If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)

**a** Type of entity:

- |  |  |
|--|--|
| <input type="checkbox"/> Partnership   | <input type="checkbox"/> Partnership   |
| <input type="checkbox"/> S corporation | <input type="checkbox"/> S corporation |
| <input type="checkbox"/> Trust         | <input type="checkbox"/> Trust         |
| <input type="checkbox"/> Foreign       | <input type="checkbox"/> Foreign       |

**b** Name . . . . . ▶ SEE STATEMENT**c** Employer identification number (EIN), if known . . . . . ▶**d** Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . ▶

**6** Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

a Name	Identifying number (if known)	Fees paid
DELOITTE TAX LLP	86-1065772	\$ 10,000

Number, street, and room or suite no.

1111 BAGBY STREET, SUITE 4500

City or town, state, and ZIP code

HOUSTON, TX 77002

**b** Name

Identifying number (if known)

Fees paid

\$

Number, street, and room or suite no.

City or town, state, and ZIP code

For Paperwork Reduction Act Notice, see separate instructions.

Form **8886** (Rev. 12-2007)

7 Facts

a Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions               | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Capital loss             | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input checked="" type="checkbox"/> Ordinary loss | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

b Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

SEE ATTACHED STATEMENT.

8 Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

a Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related Identifying number

Name

Address

Description

b Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related Identifying number

Name

Address

Description

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Highland Capital Management, LP (EIN: 75-2716725)  
Form 1065; December 31, 2009

Attachment to Form 8886: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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**Line 6: Tax Advisors**

Deloitte Tax LLP provided only tax return preparation services. The amounts listed as fees paid represent taxpayer's estimated fees to be paid.

**Line 7b: Description of Expected Tax Benefits**

The taxpayer has reported on Form 1065, Page 1, Line 6 from Form 4797 a \$42,259,607 ordinary loss under I.R.C. § 165 with respect to the worthlessness of the taxpayer's ownership of limited partner units of Highland Capital Real Estate Fund, L.P. ("REF") which was also formerly known as Highland Real Estate Fund 2002-A up until July 9, 2007.

The facts relating to this loss are as follows:

**Highland Capital Management**

James Dondero owns, directly and through grantor trusts and affiliates, approximately 72% of the capital and profits interest in HCM at the end of 2009. James Dondero is the President and sole owner of Strand Advisors, Inc., HCM's sole general partner. In his role as owner and President of Strand Advisors, Inc., James Dondero has effective control over the operations of HCM and is actively involved on a full-time basis in the management and operations of HCM and its affiliates.

James Dondero is the majority owner of the taxpayer and is also the majority owner in Highland Capital Management, L.P. ("HCM") whose business is an investment advisor registered with the SEC and specializes in alternative investment strategies. HCM serves as an investment advisor to several alternative investment funds ("funds") that it has organized and marketed to investors. HCM has a significant equity interest in most of the funds that it manages, which is required to attract additional capital investments from unrelated investors. The capital investments by unrelated investors provided the asset base on which HCM earned significant advisory fees.

HCM, under the governing documents, as investment advisor to REF was to receive an annual performance allocation at the end of each year which ranged historically from 20% to 25% based upon REF's annual net performance but only to the extent that such profits exceed any losses carried forward from prior years. In addition, for its services to REF, HCM is entitled to a management fee which ranged historically from an annual rate of 1.5% to 2.5% of the net asset value of the fund. All of REF's investment decisions are made by HCM. James Dondero is President of HCM and controls all of its operations and activities. The initial offering memorandum for REF describes James Dondero as part of the investment team.

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The general partner of REF is Highland Capital Real Estate Fund GP, LLC, formerly known as Highland Capital Advisors RE2002A LLC, a Delaware limited liability company, ("GP"). The GP is 100% owned by HCM and, therefore for tax purposes, is treated as a disregarded entity. James Dondero serves as the President of the GP. Entities owned or controlled by principals of HCM also serve as the general partner of the various investments held by REF. The GP has also served as the general partner for REF's investments.

#### **Highland Capital Real Estate Fund, L.P.**

REF began operations on April 2002 and was organized for the primary purpose of investing substantially all of its assets in a portfolio of public and private equity and debt securities of companies, entities, or ventures that are primarily engaged in or related to the real estate industry.

REF was initially capitalized by the end of 2002 with approximately \$3,200,000 through various entities affiliated or owned by James Dondero and other principals of HCM. By the end of 2002, HCM owned 15.91% in the capital accounts and James Dondero through his trusts owned over 66.37% of REF.

By the beginning of 2006, HCM owned 34.10% in REF. In August of 2006, HCM replaced its direct ownership with a derivative transaction that allowed HCM to continue to have exposure to REF (and hold itself to investors as continuing to have an aligned interest with investors) while generating excess cash from the transaction for HCM to utilize in other business endeavors.

In August 2006 the first non-affiliated investors purchased interests in REF with an initial investment of \$40,948,168. Additional capital was raised from non-affiliated investors in 2007, totaling about \$44,000,000.

Management fees were earned by HCM beginning in 2006 and continuing through 2007, 2008, and 2009, and totaled \$3,914,874 over that time period.

James Dondero's direct ownership through his grantor trusts, owned by December 31, 2009 of REF were approximately 31%.

The ending audited financials for December 31, 2008 for REF reflected a total net asset value of \$132,671,000. The ending unaudited financials for December 31, 2009, reflected an ending net asset value of approximately \$45,000,000. For Generally Accepted Accounting Principles, the assets held by REF consist primarily of interests in private placement limited partnerships and limited liability companies that own residential and commercial real estate. According to the 2008 audited financial statements, the fair value of these investments rely upon what is considered a Level 3 valuation which is based upon models in which the inputs are unobservable and



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Form 1065; December 31, 2009

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deemed significant to the fair value measurement. In addition, according to the 2008 audited financial statements, about a quarter of the investments rely upon models that require assumptions that estimate operating plans for any undeveloped investments are in fact developed and then assumes certain rates of returns from a fully developed property. To support the taxpayer's internal assessment of REF's value as of December 31, 2009, the taxpayer performed a valuation analysis that applies a realistic assessment of what the taxpayer would receive if the assets were sold currently, in liquidation of REF applying internal appraisals and independent third party appraisals where appropriate depending upon the investment asset, and has found that the REF's liabilities would exceed the gross proceeds from such liquidation.

### **Credit Agreement**

In February 2006, REF entered into a revolving credit agreement in the amount of \$25,000,000 (the "Credit Agreement") with Wachovia Bank (which was increased to \$31,000,000 in April 2009), interest was charged at LIBOR plus 2.25%. As of December 31, 2006, \$31,000,000 was outstanding under the Credit Agreement with substantially all of the investments of REF pledged as collateral. As of December 31, 2007, \$25,000,000 was outstanding under the Credit Agreement. On September 29, 2008 the Credit Agreement was amended to allow for REF to repay the outstanding balance of \$20,000,000 in three installments on or before December 31, 2008, March 31, 2009, and June 30, 2009. REF failed to make the first scheduled payment by December 31, 2008 which constituted an event of default under the terms of the Credit Agreement. On April 15, 2009, REF executed a forbearance agreement with Wachovia which extended the maturity date of the outstanding borrowings to October 15, 2009. On October 15, 2009, the forbearance agreement was amended and extended until December 22, 2009 in order to allow the lender to understand the value of the pledged collateral. REF investment professionals provided information to the lender that allowed the lender to independently hire third party appraisers for the pledged assets. From this, the lenders verbally expressed to REF investment professionals that from the lender's perspective, they were impaired in their ability to recover the full amount of the outstanding debt balance from the assets.

A first amendment to the forbearance agreement effective November 12, 2009, extended the forbearance period to February 1, 2010. The forbearance agreements permitted REF to use cash to support an agreed upon list of assets that required the lender's approval before any payments were made.

On February 1, 2010 the forbearance period expired, and on February 3, 2010, the lender informed REF of certain events of default under the Credit Agreement and its ability to exercise all its rights under the Credit Agreement including seizing the investment assets of REF (the reservation of rights letter). On February 18, 2010, the lender informed REF that it was exercising certain rights as a result of the event of



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default including restrictions on cash proceeds from investments and requiring immediate turn-over to the lender from any cash receipts and restrictions on ability to vote with respect to the investment properties. During January and February of 2010, REF made several requests to the lender to use the available cash to maintain the investments assets, and all such requests were all denied by the lender.

Further, on March 5, 2010, Wachovia swept all the cash in the lender controlled escrow accounts totaling approximately \$2,300,000 of REF and has an ability to apply such against the outstanding balance of \$19,000,000. In April 2010, multiple assets have been foreclosed due to REF's inability to pay obligations of the investment assets. In May 2010, several more assets are anticipated to be foreclosed upon. Lastly, because the forbearance agreement has expired, Wachovia has the right at any time to seize all the assets in REF.

#### **Worthlessness Events**

The commercial real estate and development market which compose REF's investment assets experienced in 2009 a notable decline in transactions over the prior two years as uncertainty regarding future financial and economic conditions increased. Buyers and sellers saw disparate expectations in sale transactions. Due to higher risk levels, any investors of these properties required higher returns for their investments across all asset classes. The difference in expectations of buyers and sellers led to a stalemate in the marketplace. Further, the limited availability of credit and financing resulted in depressed demand levels. Overall, extended marketing times were projected in all real estate sectors due to this imbalance of market forces (demand, supply, availability of financing and the deteriorating economy). Moreover, the decline in regional economies resulted in decreasing occupancy rates and rental revenues, which in turn further depressed commercial property values. Compounding the problems were the increasing amount of vacant lots and undeveloped property adding to the supply overhead. In certain regions where REF held its investments, statistical reporting agencies noted over 80% of properties offered for sale in nine months failed to sell in 2009 due to the factors of the market environment.

REF holds a significant amount of its investments in prospective land development. In 2009, no sector of the commercial property market has been harder hit than that for entitled land for development. Six quarters after the advent of the financial crisis and recession, the land market remained at a near standstill and values plummeted. It has been estimated in certain regions where REF holds its investments, that over half of all land sales involve a distressed situation. The reasons are: high vacancy rates across all property types make development a distant prospect and difficulty in financing land (and other non-cash flowing property) makes it unattractive to buyers. Also, with prices for core property falling below replacement cost in many markets, developers and investors continued to focus on acquisitions versus development.

Highland Capital Management, LP (EIN: 75-2716725)

Form 1065; December 31, 2009

Attachment to Form 8886: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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With this macro context, by December of 2009, REF had only two options available to create any positive economically realizable value for the partner / owners, currently or in the future: (1) determine if REF had available resources to maintain its investments going into 2010; or (2) if not, execute a liquidation sale of all its investments in the hopes of being able to pay off the outstanding balance under the Credit Agreement. Both options left no reasonable prospect to recover any positive economic realization for the partner / owners of REF.

The minimal amount of cash within REF as of December 31, 2009 was \$3,453,242 and was not enough to sustain the future cash needs of all the real estate investments within REF which at that time was conservatively estimated (assuming interest payments only on debt of property) to be approximately \$10,000,000. (As previously described the lender swept \$2,300,000 in March of 2010 which in December was anticipated as a strong possibility as well). The current owners would not provide any new capital because it would likely be seized by the lender under the Credit Agreement. All or substantially all of the real estate investment assets were not projected to be cash flow positive in 2010 nor be disposed and generate enough cash within REF to fund its other commitments or the obligations under the Credit Agreement. Therefore, without any ability to provide cash for the cost of carrying its investments, the taxpayer determined either the lender would seize the assets in 2010, the assets would themselves be foreclosed upon, or REF's ownership in a real estate investment would be significantly diluted if it didn't meet future capital calls. Left with little to no prospects to sustain REF's investments, a liquidation sale of all of the REF's assets was considered in the worthless assessment. However, given the depressed state of the commercial real estate market and the deep recession in late 2009, and minimal financing available from would-be buyers due to the tightened commercial real estate credit market, any "fire sales" would result in heavily discounted sales proceeds, such that, if all REF's investments were able to be sold in this manner, it would likely not be enough to pay-off the outstanding balance under the Credit Agreement.

Thus, during the fourth quarter of 2009, taxpayer determined that its interest in REF became worthless and had no reasonable hope or expectation of recovery. The taxpayer confirmed this belief applying a liquidation analysis of REF's investment assets and determined that no later than December 31, 2009 the liabilities exceeded the value of the assets, and so the taxpayer's interests in REF had no value.

Therefore, the taxpayer, HCM and James Dondero determined that its partnership interest in REF was worthless as of no later than December 31, 2009 and had no reasonable prospect to recover in value. The interests in REF became worthless (such that no investor would be willing to pay any consideration for an REF interest) no later than December 31, 2009, through a confluence of factors: (1) deterioration in the credit markets combined with the severe recession already in place resulted in a devastating impact upon the commercial real estate market, its

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development, and sustainability; (2) the lack of cash within REF to sustain and fund the current needs of the real estate investments that it held to avoid foreclosure, forced sale, or dilution within the respective investment; (3) the lack of any new capital by the current owners of REF to provide new funding to sustain the current real estate investments; (4) a state of default under the Credit Agreement allowing the lender to seize all the assets of REF and REF having no financial ability to pay off the outstanding balance even through a liquidation sale of REF's assets.

### Tax Reporting

The taxpayer has reported on its tax return for its taxable year ended December 31, 2009 an ordinary loss with respect to the worthlessness of its partnership interest in REF.<sup>1</sup> The loss is equal to the taxpayer's adjusted tax basis in the REF equity interest as of the date of worthlessness,<sup>2</sup> including basis attributable to the taxpayer's allocable share of REF liabilities.<sup>3</sup> The taxpayer wrote down its tax basis for its partnership interest in REF to zero no later than December 31, 2009.<sup>4</sup> In computing the taxpayer's adjusted tax basis in its interest in REF no later than December 31, 2009, the taxpayer has not taken into account its distributive share of its tax items for the 2009 tax year through the worthlessness date because the taxpayer did not sell, exchange, liquidate, or otherwise dispose of or terminate its interest in REF as a result of the worthlessness of the interest.<sup>5</sup> The taxpayer has not claimed any deduction for its distributive share of the REF loss reported for REF's taxable year ending December 31, 2009 to the extent the loss exceeds the taxpayer's adjusted tax basis for its REF equity interest as of December 31, 2009 (taking into account the write down of its tax basis to zero no later than December 31, 2009).<sup>6</sup>

Because the worthlessness of the taxpayer's partnership interest in REF did not give rise to any actual or constructive discharge of REF liabilities under I.R.C. § 752,<sup>7</sup> the taxpayer's loss from such worthlessness is an ordinary loss rather than a capital

<sup>1</sup> I.R.C. § 165(a), (c)(1).

<sup>2</sup> Treas. Reg. § 1.165-1(c)(1).

<sup>3</sup> Treas. Reg. §§ 1.705-1(a); 1.752-1, 1.752-2, 1.752-3.

<sup>4</sup> I.R.C. § 1016(a)(1); Treas. Reg. § 1.705-1(a)(1).

<sup>5</sup> I.R.C. § 706(a), (c); Treas. Reg. § 1.706-1(a), (c)(2)(i). *Cf. Citron v. Commissioner*, 97 T.C. 200 (1991) (abandonment loss computed without taking into account distributive share of partnership tax items for the year of abandonment, but taking into account distributions during the year).

<sup>6</sup> I.R.C. § 704(d).

<sup>7</sup> The worthlessness of the taxpayer's interest in REF had no effect on REF's direct or indirect liabilities, on the taxpayer's status as a partner in REF, or on the allocation of REF liabilities under I.R.C. § 752. Accordingly, the worthlessness event did not result in any reduction in the taxpayer's share of REF liabilities under Treas. Reg. § 1.752-2 or any deemed distribution under I.R.C. § 752(b).

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 15**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein



- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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650 Poydras Street, Suite 2500

New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073



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Highland Capital Management, LP (EIN: 75-2716725)  
Form 1065; December 31, 2009

Attachment to Form 8886: Loss From Worthlessness of Highland Capital Real Estate Fund, L.P.

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loss.<sup>8</sup> In addition, the loss is a business loss for purposes of I.R.C. §§ 62(a)(1) and 172 because the taxpayer's interest in REF was attributable to and derived from the taxpayer's and James Dondero's business and was acquired with the dominant motive of generating a source of business income, and not with the dominant motive of making or preserving a non-business investment.<sup>9</sup>

The Service could challenge the taxpayer's tax reporting of the worthlessness loss under a variety of theories, which could include challenging the following assertions set forth above: (a) that the taxpayer's REF partnership interest became worthless during the taxpayer's year ending December 31, 2009, (b) that the taxpayer's loss is calculated without taking into account its distributive share of REF's tax items (if any) for REF's taxable year ended December 31, 2009, (c) that the taxpayer's loss with respect to the worthlessness of its REF partnership interest is an ordinary loss attributable to the taxpayer's business.

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<sup>8</sup> Rev. Rul. 93-80, 1993-2 C.B. 239; *Tejon Ranch Co. v. Commissioner*, 49 T.C.M. 1357 (1985); *Zeeman v. Commissioner*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd and remanded on other matters*, 395 F.2d 861 (2d Cir. 1968); *Kreidle v. Internal Revenue Service*, 146 B.R. 464 (D. Colo. 1991).

<sup>9</sup> See *United States v. Generes*, 405 U.S. 93 (1972); *Adelson v. United States*, 12 Cl. Ct. 231 (1987).

<b>Case 19-34054-sgj11 Doc 2331-54 Filed 05/18/21 Entered 05/18/21 20:21:59 Page 29 of 21</b> <b>Form 8886 Reportable Transaction Disclosure Statement</b>		OMB No. 1545-1800  Attachment Sequence No. <b>137</b>								
(Rev. December 2007) Department of the Treasury Internal Revenue Service										
Name(s) shown on return (individuals enter last name, first name, middle initial) <b>HIGHLAND CAPITAL MANAGEMENT, L.P.</b>		Identifying number <b>75-2716725</b>								
Number, street, and room or suite no. <b>13455 NOEL ROAD, SUITE 800</b>										
City or town, state, and ZIP code <b>DALLAS, TX 75240</b>										
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . <b>2</b> of <b>2</b>										
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . <b>1065</b>										
Enter the year of the tax return identified above . . . . . <b>2009</b>										
Is this Form 8886 being filed with an amended tax return? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No										
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filer <input checked="" type="checkbox"/> Protective disclosure										
<b>1a</b> Name of reportable transaction <b>SECTION 988 LOSS FROM CONVERSUS CAPITAL, L.P.</b>										
<b>1b</b> Initial year participated in transaction  <b>2009</b>	<b>1c</b> Reportable transaction or tax shelter registration number (9 digits or 11 digits)									
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply (see instructions). <table style="width: 100%;"> <tr> <td><b>a</b> <input type="checkbox"/> Listed</td> <td><b>c</b> <input type="checkbox"/> Contractual protection</td> <td><b>e</b> <input type="checkbox"/> Brief asset holding period</td> </tr> <tr> <td><b>b</b> <input type="checkbox"/> Confidential</td> <td><b>d</b> <input checked="" type="checkbox"/> Loss</td> <td><b>f</b> <input type="checkbox"/> Transaction of interest</td> </tr> </table>			<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period	<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest		
<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Brief asset holding period								
<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	<b>f</b> <input type="checkbox"/> Transaction of interest								
<b>3</b> If you checked box 2a or 2f, enter the published guidance number for the listed transaction or transaction of interest . . . . .										
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . .										
<b>5</b> If you participated in the transaction through another entity, check all applicable boxes and provide the information below for the entity (see instructions). (Attach additional sheets, if necessary.)										
<b>a</b> Type of entity: <table style="width: 100%;"> <tr> <td><input checked="" type="checkbox"/> Partnership</td> <td><input type="checkbox"/> Partnership</td> </tr> <tr> <td><input type="checkbox"/> S corporation</td> <td><input type="checkbox"/> S corporation</td> </tr> <tr> <td><input type="checkbox"/> Trust</td> <td><input type="checkbox"/> Trust</td> </tr> <tr> <td><input type="checkbox"/> Foreign</td> <td><input type="checkbox"/> Foreign</td> </tr> </table>			<input checked="" type="checkbox"/> Partnership	<input type="checkbox"/> Partnership	<input type="checkbox"/> S corporation	<input type="checkbox"/> S corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Trust	<input type="checkbox"/> Foreign	<input type="checkbox"/> Foreign
<input checked="" type="checkbox"/> Partnership	<input type="checkbox"/> Partnership									
<input type="checkbox"/> S corporation	<input type="checkbox"/> S corporation									
<input type="checkbox"/> Trust	<input type="checkbox"/> Trust									
<input type="checkbox"/> Foreign	<input type="checkbox"/> Foreign									
<b>b</b> Name . . . . . <b>CONVERSUS CAPITAL, LP</b>										
<b>c</b> Employer identification number (EIN), if known . . . . . <b>98-0540917</b>										
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received) . . . . . <b>8/24/2010</b>										
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)										
<b>a</b> Name	Identifying number (if known)	Fees paid								
Number, street, and room or suite no.		\$								
City or town, state, and ZIP code										
<b>b</b> Name	Identifying number (if known)	Fees paid								
Number, street, and room or suite no.		\$								
City or town, state, and ZIP code										

For Paperwork Reduction Act Notice, see separate instructions.

Form **8886** (Rev. 12-2007)

**7 Facts**

a Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

- |   |   |  |                                      |
|---|---|--|--------------------------------------|
| <input type="checkbox"/> Deductions               | <input type="checkbox"/> Exclusions from gross income | <input type="checkbox"/> Tax credits                     | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Capital loss             | <input type="checkbox"/> Nonrecognition of gain       | <input type="checkbox"/> Deferral                        |                                      |
| <input checked="" type="checkbox"/> Ordinary loss | <input type="checkbox"/> Adjustments to basis         | <input type="checkbox"/> Absence of adjustments to basis |                                      |

b Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

SEE ATTACHED STATEMENT

8 Identify all tax-exempt, foreign, and related entities and individuals involved in the transaction. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each related entity, explain how it is related. (Attach additional sheets, if necessary.)

a Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related Identifying number

Name

Address

Description

b Type of entity: ☐ Tax-exempt ☐ Foreign ☐ Related Identifying number

Name

Address

Description

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Highland Capital Management, L.P. 75-2716725  
Form 1065; December 31, 2009

Attachment to Form 8886: Section 988 Loss From Conversus Capital, L.P.

**Line 7b: Description of Expected Tax Benefits**

Highland Capital Management, L.P. is directly invested in Conversus Capital, L.P. ("Fund"). Fund through its investments in underlying partnerships, has engaged in Section 988 foreign currency transactions that may be reportable transactions. Highland Capital Management, LP's share of the Section 988 loss is uncertain. Protective disclosure was made at the fund level. The realized loss on IRC Section 988 transactions is in connection with the Fund's underlying investments' regular investing activities and therefore, not carried out as part of any plan to achieve tax benefits. It is not expected that these Section 988 transactions will generate any prior or future tax benefits.

## **EXHIBIT 55**



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OMB No. 1545-0099

**Schedule K-1  
(Form 1065)**Department of the Treasury  
Internal Revenue ServiceFor calendar year 2010, or tax  
year beginning \_\_\_\_\_, 2010  
ending \_\_\_\_\_, 20**Partner's Share of Income, Deductions,  
Credits, etc.**

▶ See back of form and separate instructions.

**Part I Information About the Partnership****A** Partnership's employer identification number  
75-2716725**B** Partnership's name, address, city, state, and ZIP code  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
TWO GALLERIA TOWER  
13455 NOEL ROAD, SUITE 800  
DALLAS, TX 75240**C** IRS Center where partnership filed return  
Ogden**D** ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner****E** Partner's identifying number**F** Partner's name, address, city, state, and ZIP code  
PATRICK DAUGHERTY  
3621 CORNELL AVE.  
DALLAS, TX 75205**G** ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member**H** ☒ Domestic partner ☐ Foreign partner**I** What type of entity is this partner? **Individual****J** Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit		
Loss	0.596896%	
Capital		

**K** Partner's share of liabilities at year end:  
Nonrecourse . . . . . \$ 2,903,028  
Qualified nonrecourse financing . . . \$ 655,196  
Recourse . . . . . \$**L** Partner's capital account analysis:  
Beginning capital account . . . . . \$  
Capital contributed during the year . . . \$  
Current year increase (decrease) . . . \$ 61,797  
Withdrawals & distributions . . . . . \$ ( 61,797)  
Ending capital account . . . . . \$☐ Tax basis ☐ GAAP ☐ Section 704(b) book  
☒ Other (explain) **BOOK****M** Did the partner contribute property with a built-in gain or loss?  
☐ Yes ☐ No  
If "Yes", attach statement (see instructions)☐ Final K-1☐ Amended K-1**Part III Partner's Share of Current Year Income,  
Deductions, Credits, and Other Items**

1	Ordinary business income (loss)	15	Credits
	56,864		
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
		A	Other Country
4	Guaranteed payments	B	61,797
5	Interest income	C	2,334
6a	Ordinary dividends	D	71
6b	Qualified dividends	E	-
7	Royalties	G	-
8	Net short-term capital gain (loss)		
	154	*	STMT
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
	1,997	A	-
9b	Collectibles (28%) gain (loss)	B	-
9c	Unrecaptured section 1250 gain		
*	STMT		
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
	183		
11	Other income (loss)	B	-
A	641	C	-
E	751		
F*	STMT	19	Distributions
12	Section 179 deduction	A	61,797
13	Other deductions		
A	-	20	Other information
H	-		
*	STMT		
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

For IRS Use Only

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Schedule K-1 (Form 1065) 2010

Page 2

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the Instructions for your income tax return.

	Code	Report on
1. <b>Ordinary business income (loss).</b> Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.		See the Partner's Instructions
Passive loss	K Disabled access credit	
Passive income	L Empowerment zone and renewal community employment credit	Form 8844, line 3
Nonpassive loss	M Credit for increasing research activities	See the Partner's Instructions
Nonpassive income	N Credit for employer social security and Medicare taxes	Form 8846, line 5
2. <b>Net rental real estate income (loss)</b>	O Backup withholding	Form 1040, line 61
3. <b>Other net rental income (loss)</b>	P Other credits	See the Partner's Instructions
Net income		
Net loss		
4. <b>Guaranteed payments</b>	16. <b>Foreign transactions</b>	
5. <b>Interest income</b>	A Name of country or U.S. possession	Form 1116, Part I
6a. <b>Ordinary dividends</b>	B Gross income from all sources	
6b. <b>Qualified dividends</b>	C Gross income sourced at partner level	
7. <b>Royalties</b>	Foreign gross income sourced at partnership level	
8. <b>Net short-term capital gain (loss)</b>	D Passive category	Form 1116, Part I
9a. <b>Net long-term capital gain (loss)</b>	E General category	
9b. <b>Collectibles (28%) gain (loss)</b>	F Other	
9c. <b>Unrecaptured section 1250 gain</b>	Deductions allocated and apportioned at partner level	
10. <b>Net section 1231 gain (loss)</b>	G Interest expense	Form 1116, Part I
11. <b>Other income (loss)</b>	H Other	Form 1116, Part I
Code	Deductions allocated and apportioned at partnership level to foreign source income	
A Other portfolio income (loss)	I Passive category	Form 1116, Part I
B Involuntary conversions	J General category	
C Sec. 1256 contracts & straddles	K Other	
D Mining exploration costs recapture	Other information	
E Cancellation of debt	L Total foreign taxes paid	Form 1116, Part II
F Other income (loss)	M Total foreign taxes accrued	Form 1116, Part II
12. <b>Section 179 deduction</b>	N Reduction in taxes available for credit	Form 1116, line 12
13. <b>Other deductions</b>	O Foreign trading gross receipts	Form 8873
A Cash contributions (50%)	P Extraterritorial income exclusion	Form 8873
B Cash contributions (30%)	Q Other foreign transactions	See the Partner's Instructions
C Noncash contributions (50%)	17. <b>Alternative minimum tax (AMT) items</b>	
D Noncash contributions (30%)	A Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251
E Capital gain property to a 50% organization (30%)	B Adjusted gain or loss	
F Capital gain property (20%)	C Depletion (other than oil & gas)	
G Contributions (100%)	D Oil, gas, & geothermal—gross income	
H Investment interest expense	E Oil, gas, & geothermal—deductions	
I Deductions—royalty income	F Other AMT items	
J Section 59(e)(2) expenditures	18. <b>Tax-exempt income and nondeductible expenses</b>	
K Deductions—portfolio (2% floor)	A Tax-exempt interest income	Form 1040, line 8b
L Deductions—portfolio (other)	B Other tax-exempt income	See the Partner's Instructions
M Amounts paid for medical insurance	C Nondeductible expenses	See the Partner's Instructions
N Educational assistance benefits	19. <b>Distributions</b>	
O Dependent care benefits	A Cash and marketable securities	See the Partner's Instructions
P Preproductive period expenses	B Distribution subject to section 737	
Q Commercial revitalization deduction from rental real estate activities	C Other property	
R Pensions and IRAs	20. <b>Other information</b>	
S Reforestation expense deduction	A Investment income	Form 4952, line 4a
T Domestic production activities information	B Investment expenses	Form 4952, line 5
U Qualified production activities income	C Fuel tax credit information	Form 4136
V Employer's Form W-2 wages	D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
W Other deductions	E Basis of energy property	See the Partner's Instructions
14. <b>Self-employment earnings (loss)</b>	F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
	G Recapture of low-income housing credit (other)	Form 8611, line 8
	H Recapture of investment credit	See Form 4255
	I Recapture of other credits	See the Partner's Instructions
	J Look-back interest—completed long-term contracts	See Form 8697
	K Look-back interest—income forecast method	See Form 8866
	L Dispositions of property with section 179 deductions	
	M Recapture of section 179 deduction	
	N Interest expense for corporate partners	
	O Section 453(l)(3) information	See the Partner's Instructions
	P Section 453A(c) information	
	Q Section 1260(b) information	
	R Interest allocable to production expenditures	
	S CCF nonqualified withdrawals	
	T Depletion information—oil and gas	
	U Amortization of reforestation costs	
	V Unrelated business taxable income	
	W Precontribution gain (loss)	
	X Section 108(i) information	
	Y Other information	

Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.

A Net earnings (loss) from self-employment	Schedule SE, Section A or B
B Gross farming or fishing income	See the Partner's Instructions
C Gross non-farm income	See the Partner's Instructions
15. <b>Credits</b>	
A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions
B Low-income housing credit (other) from pre-2008 buildings	See the Partner's Instructions
C Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11
D Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11
E Qualified rehabilitation expenditures (rental real estate)	See the Partner's Instructions
F Other rental real estate credits	
G Other rental credits	
H Undistributed capital gains credit	Form 1040, line 71; check box a
I Alcohol and cellulosic biofuel fuels credit	Form 6478, line 8
J Work opportunity credit	Form 5884, line 3

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HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

PATRICK DAUGHERTY

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This list identifies the codes used on the Schedule K-1 for all partners and summarizes reporting information for partners who file Form 1040.

For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

Line 9c	Unrecaptured Section 1250 Gain	
	Line 9c,	
	c Unrecaptured Section 1250 Gain	-
Line 11	Other Income (Loss)	
	Line 11, F*	
	F Other Income/(Loss)	10
	F PFIC Income	71
	F Section 475 Gain/(Loss)	174
	F Section 988 Income/(Loss)	-
Line 13	Other Deductions	
	K Deductions - Portfolio (2% Floor)	-
	L Deductions - Portfolio (Other)	-
	Line 13, W*	
	W Other Deductions	-
Line 16	Foreign Transactions	
	H Other	-
	I Passive Category	-
	J General Categories	-
	L Total Foreign Taxes Paid	-

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PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

1. YOUR SHARE OF FOREIGN QUALIFIED DIVIDEND INCOME IS: -
2. YOUR SHARE OF INTEREST INCOME FROM U.S. GOVERNMENT OBLIGATIONS INCLUDED ON LINE 5 IS: -
3. LINE 20 — BASED UPON INTERNAL REVENUE CODE (IRC) SECTION 163(d) ALL 'NON-PASSIVE' ITEMS OF INCOME AND EXPENSE REPORTED TO YOU ON THIS SCHEDULE K-1 MAY QUALIFY AS INVESTMENT INCOME OR EXPENSE. PLEASE REFER TO 2010 PARTNER'S INSTRUCTIONS FOR SCHEDULE K-1 (FORM 1065) AND THE INSTRUCTIONS FOR FORM 4952. PLEASE CONSULT YOUR TAX ADVISOR.
4. THE PARTNERSHIP HAS MADE A TIMELY QUALIFIED ELECTING FUND ("QEF") ELECTION WITH RESPECT TO ITS INVESTMENT IN UNDERLYING PASSIVE FOREIGN INVESTMENT COMPANIES ("PFICS"), EFFECTIVE FOR EACH YEAR OF OWNERSHIP, AND HAS FILED THE REQUIRED FORM 8621 FOR ALL YEARS OF OWNERSHIP. EACH PFIC WAS ACQUIRED FOR CASH.  
  
THE FIRST U.S. SHAREHOLDER THAT HAS MADE A QEF ELECTION FOR A PFIC IS REQUIRED TO INCLUDE INCOME CURRENTLY UNDER IRC SECTION 1293 AND TO FILE FORM 8621. AS A PARTNER IN A U.S. PARTNERSHIP THAT HAS MADE THE QEF ELECTION AND FILED FORM 8621, YOUR ALLOCABLE SHARE OF THIS INCOME IS NOT REQUIRED TO BE FURTHER REPORTED ON AN ADDITIONAL FORM 8621. THE SERVICE HAS CLARIFIED BY CHANGING THE INSTRUCTIONS TO FORM 8621 THAT NO ADDITIONAL FORM 8621 REPORTING IS NECESSARY UNDER THESE FACTS. PLEASE CONSULT YOUR TAX ADVISOR.
5. A FORM 8865 WAS EITHER FILED BY OR ON BEHALF OF HIGHLAND CAPITAL MANAGEMENT, LP FOR CONTRIBUTIONS MADE DIRECTLY OR INDIRECTLY TO THE FOLLOWING FOREIGN PARTNERSHIPS:  
  
GRAYSON CLO LTD  
EASTLAND CLO LTD  
HIGHLANDER EURO CDO B.V.  
HIGHLANDER EURO CDO II B.V.  
ROCKWALL CDO LTD  
BRENTWOOD CLO LTD  
RED RIVER CLO LTD  
HIGHLAND CLO VALUE MASTER FUND LP  
PAM CAPITAL FUNDING LP  
  
YOU MAY HAVE A SEPARATE FILING REQUIREMENT, IF YOU MADE A CONTRIBUTION TO ANY OF THESE FOREIGN PARTNERSHIPS APART FROM THE CONTRIBUTIONS MADE BY HIGHLAND CAPITAL MANAGEMENT, LP. PLEASE CONSULT YOUR TAX ADVISOR.
6. HIGHLAND CAPITAL MANAGEMENT, LP IS DIRECTLY INVESTED IN CONVERSUS CAPITAL, L.P. ("FUND"). THE FUND HAS FILED VARIOUS FORMS 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENTS IN THE CURRENT YEAR DUE TO SECTION 165 LOSSES ALLOCABLE FROM ITS UNDERLYING PARTNERSHIP INVESTMENTS. YOUR SHARE OF EACH REPORTABLE TRANSACTION'S LOSS IS LESS THAN \$2 MILLION FOR THE CURRENT YEAR AND LESS THAN \$4 MILLION CUMULATIVELY. NONE OF THE REPORTABLE LOSSES AROSE FROM A SECTION 988 TRANSACTION. PLEASE CONSULT YOUR TAX ADVISOR.

PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

7. FORM 8886 DISCLOSURE

ATTACHED TO YOUR SCHEDULE K-1 IS THE FORM 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENT FILED BY HIGHLAND CAPITAL MANAGEMENT, L.P. TO DETERMINE YOUR SHARE OF THE AMOUNTS SHOWN ON THIS ATTACHED DISCLOSURE, MULTIPLY THE AMOUNTS BY THE FOLLOWING PERCENTAGE.

---

PLEASE CONSULT YOUR TAX ADVISOR CONCERNING ANY POTENTIAL FILING REQUIREMENT YOU MAY HAVE RELATED TO THIS DISCLOSURE.

8. THE AMOUNT ON SCHEDULE L, CURRENT YEAR INCREASE(DECREASE) IS COMPRISED OF THE FOLLOWING:

CURRENT YEAR BOOK INCOME/(LOSS):	-
CURRENT YEAR ADJUSTMENT TO CAPITAL:	61,797
TOTAL CURRENT YEAR INCREASE/(DECREASE)	61,797

9. YOUR SHARE OF INVESTMENT INTEREST EXPENSE THAT MAY BE DEDUCTED ON SCHEDULE E AS INVESTMENT INTEREST EXPENSE FROM UNDERLYING TRADER ACTIVITIES IS: -

10. FOR U.S. PARTNERS WHO ARE U.S. SHAREHOLDERS FOR CFC PURPOSES, YOUR SHARE OF SUBPART F INCOME NOT INCLUDED ON LINE 6a OF SCHEDULE K-1 FROM THE FOLLOWING CORPORATIONS IS:

CONVERSUS CAYMAN BLOCKER A, LIMITED:	-
CONVERSUS CAYMAN BLOCKER B, LIMITED:	-
CONVERSUS CAYMAN BLOCKER C, LIMITED:	-



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PATRICK DAUGHERTY  


HIGHLAND CAPITAL MANAGEMENT, L.P.

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ATTACHMENT TO SCHEDULE K-1

11. FORM 926 REPORTING REQUIREMENTS

PURSUANT TO IRC SECTION 6038B (FOR TAXABLE YEARS BEGINNING AFTER FEBRUARY 5, 1999), A PARTNERSHIP'S CONTRIBUTION OF PROPERTY, WHICH INCLUDES CASH, TO A FOREIGN CORPORATION IS DEEMED TO BE MADE BY THE PARTNERS OF SUCH PARTNERSHIP. THE PARTNERSHIP INVESTS IN UNDERLYING PARTNERSHIPS, AND A PORTION OF YOUR INVESTMENT WAS TRANSFERRED TO THE FOREIGN CORPORATIONS INDICATED ON THE SCHEDULE BELOW. AS A RESULT, YOU MAY HAVE A FILING REQUIREMENT UNDER TREASURY REGULATION SEC. 1.6038B-1(B)(3) WITH REGARD TO SUCH TRANSFERS ON FORM 926. PLEASE CONSULT YOUR TAX ADVISOR REGARDING THIS FILING REQUIREMENT.

PLEASE NOTE THAT IF YOU ARE REQUIRED TO COMPLETE A FORM 926 BASED ON THE INFORMATION BELOW, A SEPARATE FORM MUST BE COMPLETED FOR EACH RESPECTIVE FOREIGN TRANSFEREE CORPORATION.

THE FOLLOWING INFORMATION IS PROVIDED IN ORDER FOR YOU TO COMPLY WITH THE FORM 926 FILING REQUIREMENTS. THE LINE NUMBERS BELOW CORRESPOND TO THOSE ON FORM 926.

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CONVERSUS CAYMAN BLOCKER A, LIMITED  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>-</u>
------	-----	---------	-----	----------

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CONVERSUS CAYMAN BLOCKER B, LIMITED  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>-</u>
------	-----	---------	-----	----------

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. CONVERSUS CAYMAN BLOCKER C, LIMITED  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH	(A)	VARIOUS	(C)	<u>-</u>
------	-----	---------	-----	----------

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PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.

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ATTACHMENT TO SCHEDULE K-1

## PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. DUNE MEDICAL DEVICES LTD  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

## PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) -

## PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. AVANTOR PERFORMANCE MATERIALS HOLDINGS SA  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

## PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) -

## PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. WHITELABEL II, S.A.R.L.  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

## PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) -

## PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. APGH HOLDINGS 3 PTY LTD.  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

## PART III - INFORMATION REGARDING TRANSFER OF PROPERTY

CASH (A) VARIOUS (C) -

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HIGHLAND CAPITAL MANAGEMENT, L.P.

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ATTACHMENT TO SCHEDULE K-1

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. TBU-3 INTERNATIONAL SA  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY  
 CASH (A)

(C)

-

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. APHG HOLDINGS 3 PTY LTD  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY  
 CASH (A)

(C)

-

PART II - TRANSFEREE FOREIGN CORPORATION INFORMATION

LINE 3. QC HOLDING I PARTICIPACOES S.A.  
 LINE 4. INFORMATION NOT PROVIDED  
 LINE 5. INFORMATION NOT PROVIDED

LINE 6. INFORMATION NOT PROVIDED  
 LINE 7. INFORMATION NOT PROVIDED  
 LINE 8. INFORMATION NOT PROVIDED

PART III - INFORMATION REGARDING TRANSFER OF PROPERTY  
 CASH (A)

(C)

-

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PATRICK DAUGHERTY

[REDACTED]

HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

THE AMOUNT ON SCHEDULE L, CURRENT YEAR INCREASE (DECREASE) REPRESENTS YOUR NEGATIVE ENDING CAPITAL ACCOUNT BALANCE DUE TO YOUR DISTRIBUTION DURING THE 2010 TAX YEAR. PLEASE CONSULT YOUR TAX ADVISOR FOR PROPER TREATMENT.

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Form **8886**  
(Rev. March 2011)  
Department of the Treasury  
Internal Revenue Service

## Reportable Transaction Disclosure Statement

OMB No. 1545-1800

- ▶ Attach to your tax return.  
▶ See separate instructions.

Attachment  
Sequence No. **137**

Name(s) shown on return (individuals enter last name, first name, middle initial)

Identifying number

HIGHLAND CAPITAL MANAGEMENT, LP

75-2716725

Number, street, and room or suite no.

City or town

State

ZIP code

TWO GALLERIA TOWER, 13455 NOEL RD, DALLAS

TX 75240

**A** If you are filing more than one Form 8886 with your tax return, sequentially numbereach Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number 1 of 1**B** Enter the form number of the tax return to which this form is attached or related . . . . . ▶ 1065Enter the year of the tax return identified above . . . . . ▶ 2010-12Is this Form 8886 being filed with an amended tax return? . . . . . ▶ ☐ Yes ☒ No**C** Check the box(es) that apply (see instructions). ☒ Initial year filer ☐ Protective disclosure**1a** Name of reportable transaction

SECTION 165 LOSS TRANSACTION

**1b** Initial year participated in transaction

2010

**1c** Reportable transaction or tax shelter registration number (see instructions)**2** Identify the type of reportable transaction. Check all boxes that apply (see instructions).

- a** ☐ Listed **c** ☐ Contractual protection **e** ☐ Transaction of interest  
**b** ☐ Confidential **d** ☒ Loss

**3** If you checked box 2a or 2e, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶**4** Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ 1**5** If you participated in this reportable transaction through a partnership, S corporation, trust, and foreign entity, check the applicable boxes and provide the information below for the entity(s) (see instructions). (Attach additional sheets, if necessary.)

**a** Type of entity . . . . . ▶ ☐ Partnership ☐ Trust ☐ Partnership ☐ Trust  
☐ S corporation ☐ Foreign ☐ S corporation ☐ Foreign

**b** Name . . . . . ▶**c** Employer identification number (EIN), if known . . . . . ▶**d** Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received). . . . . ▶**6** Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

**a** Name Identifying number (if known) Fees paid  
\$

Number, street, and room or suite no. City or town State ZIP code

**b** Name Identifying number (if known) Fees paid  
\$

Number, street, and room or suite no. City or town State ZIP code



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Form 8886 (Rev. 3-2011) SECTION 165 LOSS TRANSACTION

Page 2

**7 Facts****a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

<input type="checkbox"/> Deductions	<input type="checkbox"/> Exclusions from gross income	<input type="checkbox"/> Absence of adjustments to basis	<input type="checkbox"/> Tax Credits
<input checked="" type="checkbox"/> Capital loss	<input type="checkbox"/> Nonrecognition of gain	<input type="checkbox"/> Deferral	
<input type="checkbox"/> Ordinary loss	<input type="checkbox"/> Adjustments to basis	<input type="checkbox"/> Other _____	

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

TAXPAYER SOLD ITS INVESTMENT IN CONVERSUS CAPITAL, L.P.

(EIN: 98-0540917) TO JP MORGAN CHASE BANK, N.A. AND RECOGNIZED A

LONG-TERM CAPITAL LOSS OF \$9,461,984 ON THE DISPOSITION OF ITS

INTEREST DURING THE 2010 TAX YEAR.

AS TAXPAYER'S LOSS EXCEEDS THE \$2 MILLION THRESHOLD, TAXPAYER HAS A

REQUIREMENT TO DISCLOSE THE LOSS UNDER TREAS. REG. SECTION

1.6011-4(E)(2)(II). THE TAXPAYER'S SHARE OF THE LOSS IS AVAILABLE TO

STMT 13

**8** Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.**a** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name

Identifying number

Address

Description

**b** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name

Identifying number

Address

Description

## **EXHIBIT 56**

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☒ Final K-1☐ Amended K-1

OMB No. 1545-0099

**Schedule K-1  
(Form 1065)**Department of the Treasury  
Internal Revenue ServiceFor calendar year 2011, or tax  
year beginning \_\_\_\_\_, 2011  
ending \_\_\_\_\_ 20 \_\_\_\_\_**2011****Partner's Share of Income, Deductions, Credits, etc.**

▶ See back of form and separate instructions.

**Part I Information About the Partnership****A** Partnership's employer identification number  
75-2716725**B** Partnership's name, address, city, state, and ZIP code  
HIGHLAND CAPITAL MANAGEMENT, L.P.  
300 CRESCENT COURT, SUITE 700  
DALLAS, TX 75201**C** IRS Center where partnership filed return  
Ogden**D** ☐ Check if this is a publicly traded partnership (PTP)**Part II Information About the Partner****E** Partner's identifying number**F** Partner's name, address, city, state, and ZIP code  
PATRICK DAUGHERTY  
3621 CORNELL AVE.  
DALLAS, TX 75205**G** ☐ General partner or LLC  
member-manager☒ Limited partner or other LLC  
member**H** ☒ Domestic partner☐ Foreign partner**I** What type of entity is this partner? **Individual****J** Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	NONE	0.130778%
Loss	NONE	NONE
Capital	NONE	NONE

**K** Partner's share of liabilities at year end:

Nonrecourse . . . . .	\$	256,647
Qualified nonrecourse financing . . . . .	\$	65,447
Recourse . . . . .	\$	

**L** Partner's capital account analysis:

Beginning capital account . . . . .	\$	NONE
Capital contributed during the year . . . . .	\$	
Current year increase (decrease) . . . . .	\$	22,451
Withdrawals & distributions . . . . .	\$ (	22,451)
Ending capital account . . . . .	\$	NONE

☐ Tax basis ☐ GAAP ☐ Section 704(b) book☒ Other (explain) **BOOK****M** Did the partner contribute property with a built-in gain or loss?☐ Yes ☒ No

If "Yes", attach statement (see instructions)

**Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items**

1	Ordinary business income (loss)	15	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)	16	Foreign transactions
		A	Other Country
4	Guaranteed payments	B	-
5	Interest income	C	-
6a	Ordinary dividends	D	-
6b	Qualified dividends	E	-
7	Royalties	G	-
8	Net short-term capital gain (loss)	*	STMT
9a	Net long-term capital gain (loss)	17	Alternative minimum tax (AMT) items
		A	-
9b	Collectibles (28%) gain (loss)	B	-
9c	Unrecaptured section 1250 gain	*	STMT
		*	STMT
10	Net section 1231 gain (loss)	18	Tax-exempt income and nondeductible expenses
11	Other income (loss)	C	-
	A	-	
	C	-	
	*	STMT	
12	Section 179 deduction	19	Distributions
		A	(22,451)
13	Other deductions		
	A	-	
	E	-	
	*	STMT	
14	Self-employment earnings (loss)		

\*See attached statement for additional information.

For IRS Use Only

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Schedule K-1 (Form 1065) 2011

Page 2

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and

	Code	Report on
1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.		
Passive loss	J Work opportunity credit	
Passive income	K Disabled access credit	
Nonpassive loss	L Empowerment zone and renewal community employment credit	
Nonpassive income	M Credit for increasing research activities	See the Partner's Instructions
2. Net rental real estate income (loss)	N Credit for employer social security and Medicare taxes	
3. Other net rental income (loss)	O Backup withholding	Form 1040, line 62
Net income	P Other credits	See the Partner's Instructions
Net loss	16. Foreign transactions	
4. Guaranteed payments	A Name of country or U.S. possession	
5. Interest income	B Gross income from all sources	Form 1116, Part I
6a. Ordinary dividends	C Gross income sourced at partner level	
6b. Qualified dividends	Foreign gross income sourced at partnership level	
7. Royalties	D Passive category	
8. Net short-term capital gain (loss)	E General category	Form 1116, Part I
9a. Net long-term capital gain (loss)	F Other	
9b. Collectibles (28%) gain (loss)	Deductions allocated and apportioned at partner level	
	G Interest expense	Form 1116, Part I
	H Other	Form 1116, Part I
	Deductions allocated and apportioned at partnership level	
	I Passive category	
	J General category	Form 1116, Part I
	K Other	
	Other information	
	L Total foreign taxes paid	Form 1116, Part II
	M Total foreign taxes accrued	Form 1116, Part II
	N Reduction in taxes available for credit	Form 1116, line 12
	O Foreign trading gross receipts	Form 8873
	P Extraterritorial income exclusion	Form 8873
	Q Other foreign transactions	See the Partner's Instructions
9c. Unrecaptured section 1250 gain	17. Alternative minimum tax (AMT) items	
10. Net section 1231 gain (loss)	A Post-1986 depreciation adjustment	
11. Other income (loss)	B Adjusted gain or loss	See the Partner's Instructions and the Instructions for Form 6251
Code	C Depletion (other than oil & gas)	
A Other portfolio income (loss)	D Oil, gas, & geothermal—gross income	
B Involuntary conversions	E Oil, gas, & geothermal—deductions	
C Sec. 1256 contracts & straddles	F Other AMT items	
D Mining exploration costs recapture	18. Tax-exempt income and nondeductible expenses	
E Cancellation of debt	A Tax-exempt interest income	Form 1040, line 8b
F Other income (loss)	B Other tax-exempt income	See the Partner's Instructions
	C Nondeductible expenses	See the Partner's Instructions
12. Section 179 deduction	19. Distributions	
13. Other deductions	A Cash and marketable securities	
A Cash contributions (50%)	B Distribution subject to section 737	See the Partner's Instructions
B Cash contributions (30%)	C Other property	
C Noncash contributions (50%)	20. Other information	
D Noncash contributions (30%)	A Investment income	Form 4952, line 4a
E Capital gain property to a 50% organization (30%)	B Investment expenses	Form 4952, line 5
F Capital gain property (20%)	C Fuel tax credit information	Form 4136
G Contributions (100%)	D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
H Investment interest expense	E Basis of energy property	See the Partner's Instructions
I Deductions—royalty income	F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
J Section 59(e)(2) expenditures	G Recapture of low-income housing credit (other)	Form 8611, line 8
K Deductions—portfolio (2% floor)	H Recapture of investment credit	See Form 4255
L Deductions—portfolio (other)	I Recapture of other credits	See the Partner's Instructions
M Amounts paid for medical insurance	J Look-back interest—completed long-term contracts	See Form 8697
N Educational assistance benefits	K Look-back interest—income forecast method	See Form 8866
O Dependent care benefits	L Dispositions of property with section 179 deductions	
P Preproductive period expenses	M Recapture of section 179 deduction	
Q Commercial revitalization deduction from rental real estate activities	N Interest expense for corporate partners	
R Pensions and IRAs	O Section 453(l)(3) information	
S Reforestation expense deduction	P Section 453A(c) information	
T Domestic production activities information	Q Section 1260(b) information	
U Qualified production activities income	R Interest allocable to production expenditures	See the Partner's Instructions
V Employer's Form W-2 wages	S CCF nonqualified withdrawals	
W Other deductions	T Depletion information—oil and gas	
	U Amortization of reforestation costs	
	V Unrelated business taxable income	
	W Precontribution gain (loss)	
	X Section 108(i) information	
	Y Other information	
14. Self-employment earnings (loss)		
Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.		
A Net earnings (loss) from self-employment	Schedule SE, Section A or B	
B Gross farming or fishing income	See the Partner's Instructions	
C Gross non-farm income	See the Partner's Instructions	
15. Credits		
A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions	
B Low-income housing credit (other) from pre-2008 buildings		
C Low-income housing credit (section 42(j)(5)) from post-2007 buildings		
D Low-income housing credit (other) from post-2007 buildings		
E Qualified rehabilitation expenditures (rental real estate)		
F Other rental real estate credits		
G Other rental credits		
H Undistributed capital gains credit	Form 1040, line 71; check box 4	
I Alcohol and cellulosic biofuel fuels credit	See the Partner's Instructions	

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HIGHLAND CAPITAL MANAGEMENT, L.P.  
75-2716725

PATRICK DAUGHERTY

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This list identifies the codes used on the Schedule K-1 for all partners and summarizes reporting information for partners who file Form 1040.

For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

Line 9c	Unrecaptured Section 1250 Gain	
	Line 9c,	
	c Unrecaptured Section 1250 Gain	-
Line 11	Other Income (Loss)	
	E Cancellation of Debt	-
	Line 11, F*	
	F Other Income/(Loss)	-
	F PFIC Income	-
	F Section 475 Gain/(Loss)	-
	F Section 988 Income/(Loss)	-
	F Foreign Currency Gains/Losses	-
Line 13	Other Deductions	
	G Contributions (100%)	-
	H Investment Interest Expense	-
	I Deductions - Royalty Income	-
	J Section 59(e)(2) Expenditures	-
	K Deductions - Portfolio (2% Floor)	-
	L Deductions - Portfolio (Other)	-
	Line 13, W*	
	W Other Deductions	-
Line 16	Foreign Transactions	
	H Other	-
	I Passive Category	-
	J General Categories	-
	L Total Foreign Taxes Paid	-
Line 17	Other AMT Items	
	Line 17, F*	-

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PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

1. YOUR SHARE OF DIVIDENDS THAT QUALIFY FOR THE DIVIDENDS RECEIVED DEDUCTION IS:
2. LINE 20 --- BASED UPON INTERNAL REVENUE CODE (IRC) SECTION 163(d) ALL 'NON-PASSIVE' ITEMS OF INCOME AND EXPENSE REPORTED TO YOU ON THIS SCHEDULE K-1 MAY QUALIFY AS INVESTMENT INCOME OR EXPENSE. PLEASE REFER TO 2011 PARTNER'S INSTRUCTIONS FOR SCHEDULE K-1 (FORM 1065) AND THE INSTRUCTIONS FOR FORM 4952. PLEASE CONSULT YOUR TAX ADVISOR.
3. THE PARTNERSHIP HAS MADE A TIMELY QUALIFIED ELECTING FUND ("QEF") ELECTION WITH RESPECT TO ITS INVESTMENT IN UNDERLYING PASSIVE FOREIGN INVESTMENT COMPANIES ("PFICS"), EFFECTIVE FOR EACH YEAR OF OWNERSHIP, AND HAS FILED THE REQUIRED FORM 8621 FOR ALL YEARS OF OWNERSHIP. EACH PFIC WAS ACQUIRED FOR CASH.

THE FIRST U.S. SHAREHOLDER THAT HAS MADE A QEF ELECTION FOR A PFIC IS REQUIRED TO INCLUDE INCOME CURRENTLY UNDER IRC SECTION 1293 AND TO FILE FORM 8621. AS A PARTNER IN A U.S. PARTNERSHIP THAT HAS MADE THE QEF ELECTION AND FILED FORM 8621, YOUR ALLOCABLE SHARE OF THIS INCOME IS NOT REQUIRED TO BE FURTHER REPORTED ON AN ADDITIONAL FORM 8621. THE SERVICE HAS CLARIFIED BY CHANGING THE INSTRUCTIONS TO FORM 8621 THAT NO ADDITIONAL FORM 8621 REPORTING IS NECESSARY UNDER THESE FACTS. PLEASE CONSULT YOUR TAX ADVISOR.

4. A FORM 8865 WAS EITHER FILED BY OR ON BEHALF OF HIGHLAND CAPITAL MANAGEMENT, LP FOR CONTRIBUTIONS MADE DIRECTLY OR INDIRECTLY TO THE FOLLOWING FOREIGN PARTNERSHIPS:

CUMMINGS BAY HEALTHCARE MASTER FUND, LP  
PAM CAPITAL FUNDING, LP  
HIGHLAND MULTI-STRATEGY MASTER FUND, LP

YOU MAY HAVE A SEPARATE FILING REQUIREMENT, IF YOU MADE A CONTRIBUTION TO ANY OF THESE FOREIGN PARTNERSHIPS APART FROM THE CONTRIBUTIONS MADE BY HIGHLAND CAPITAL MANAGEMENT, LP. PLEASE CONSULT YOUR TAX ADVISOR.

5. HIGHLAND CAPITAL MANAGEMENT, LP IS INDIRECTLY INVESTED IN CANYON FALLS LAND PARTNERS, LP ("FUND") THROUGH ITS DIRECT INVESTMENT IN HCREA CANYON FALLS, L.P. THE FUND FILED FORM 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENT IN THE CURRENT YEAR DUE TO ITS ORDINARY LOSS ON THE FORECLOSURE OF LAND HELD FOR DEVELOPMENT. YOUR SHARE OF THE REPORTABLE TRANSACTION'S LOSS IS LESS THAN \$2 MILLION FOR THE CURRENT YEAR AND LESS THAN \$4 MILLION CUMULATIVELY. NONE OF THE REPORTABLE LOSS AROSE FROM A SECTION 988 TRANSACTION. PLEASE CONSULT YOUR TAX ADVISOR.
6. FORM 8886 DISCLOSURE  
ATTACHED TO YOUR SCHEDULE K-1 ARE FORMS 8886 REPORTABLE TRANSACTION DISCLOSURE STATEMENTS THAT WERE OR WOULD BE FILED BY HIGHLAND CAPITAL MANAGEMENT, LP TO REPORT ITS SHARE OF REPORTABLE TRANSACTION LOSSES FROM VARIOUS TRANSACTIONS. TO DETERMINE YOUR SHARE OF THE AMOUNTS SHOWN ON THE ATTACHED DISCLOSURES, MULTIPLY THE AMOUNTS BY THE FOLLOWING PERCENTAGE.

PLEASE CONSULT YOUR TAX ADVISOR CONCERNING ANY POTENTIAL FILING REQUIREMENT YOU MAY HAVE RELATED TO THIS DISCLOSURE.

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PATRICK DAUGHERTY

HIGHLAND CAPITAL MANAGEMENT, L.P.

75-2716725

ATTACHMENT TO SCHEDULE K-1

7. THE AMOUNT ON SCHEDULE L, CURRENT YEAR INCREASE/(DECREASE) IS COMPRISED OF THE FOLLOWING:
- |  |             |
|--|-------------|
| CURRENT YEAR BOOK INCOME/(LOSS):       | 34,325.54   |
| CURRENT YEAR ADJUSTMENT TO CAPITAL:    | (11,874.54) |
| TOTAL CURRENT YEAR INCREASE/(DECREASE) | 22,451.00   |
8. YOUR SHARE OF FOREIGN QUALIFIED DIVIDEND INCOME IS: -
9. YOUR SHARE OF INVESTMENT INTEREST EXPENSE THAT MAY BE DEDUCTED ON SCHEDULE E AS INVESTMENT INTEREST EXPENSE FROM UNDERLYING TRADER ACTIVITIES IS: -

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**For Paperwork Reduction Act Notice, see separate instructions.**  
(HTA)



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Form 8886 (Rev. 3-2011) HERA

Page 2

**7 Facts****a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

<input type="checkbox"/> Deductions	<input type="checkbox"/> Exclusions from gross income	<input type="checkbox"/> Absence of adjustments to basis	<input type="checkbox"/> Tax Credits
<input checked="" type="checkbox"/> Capital loss	<input type="checkbox"/> Nonrecognition of gain	<input type="checkbox"/> Deferral	
<input type="checkbox"/> Ordinary loss	<input type="checkbox"/> Adjustments to basis	<input type="checkbox"/> Other _____	

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

HIGHLAND CAPITAL MANAGEMENT, LP ("HIGHLAND") WAS FORMERLY THE SOLE MEMBER OF HIGHLAND EMPLOYEE RETENTION ASSETS, LLC ("HERA"), A DISREGARDED ENTITY (DRE). UPON THE VESTING OF OTHER LLC MEMBER INTERESTS IN HERA DURING 2011, THE DRE BECAME AN ENTITY TAXABLE AS A PARTNERSHIP. PURSUANT TO REV. RUL. 99-5, HIGHLAND RECOGNIZED A LONG-TERM CAPITAL LOSS ON THE DEEMED SALE OF ITS SHARE OF THE ASSETS DEEMED SOLD TO THE NEW HERA MEMBERS IN THE AMOUNT OF \$(8,685,716).

**8** Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.**a** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name \_\_\_\_\_ Identifying number \_\_\_\_\_

Address \_\_\_\_\_

Description \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**b** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name \_\_\_\_\_ Identifying number \_\_\_\_\_

Address \_\_\_\_\_

Description \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Form **8886**  
(Rev. March 2011)  
Department of the Treasury  
Internal Revenue Service**Reportable Transaction Disclosure Statement**

OMB No. 1545-1800

- ▶ **Attach to your tax return.**  
▶ **See separate instructions.**

Attachment  
Sequence No. **137**

Name(s) shown on return (individuals enter last name, first name, middle initial)

Identifying number

HIGHLAND CAPITAL MANAGEMENT, LP

75-2716725

Number, street, and room or suite no.

City or town

State

ZIP code

300 CRESCENT COURT, SUITE 700

DALLAS

TX

75201

**A** If you are filing more than one Form 8886 with your tax return, sequentially numbereach Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number 2 of 2**B** Enter the form number of the tax return to which this form is attached or related . . . . . ▶ 1065

Enter the year of the tax return identified above . . . . . ▶

Is this Form 8886 being filed with an amended tax return? . . . . . ▶ ☐ Yes ☒ No**C** Check the box(es) that apply (see instructions). ☒ Initial year filer ☐ Protective disclosure**1a** Name of reportable transaction

CAPITAL LOSS ON DISPOSITION OF PARTNERSHIP INTEREST

**1b** Initial year participated in transaction**1c** Reportable transaction or tax shelter registration number (see instructions)

2011

**2** Identify the type of reportable transaction. Check all boxes that apply (see instructions).

- a** ☐ Listed **c** ☐ Contractual protection **e** ☐ Transaction of interest  
**b** ☐ Confidential **d** ☒ Loss

**3** If you checked box 2a or 2e, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶**4** Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ 1**5** If you participated in this reportable transaction through a partnership, S corporation, trust, and foreign entity, check the applicable boxes and provide the information below for the entity(s) (see instructions). (Attach additional sheets, if necessary.)

- a** Type of entity . . . . . ▶ ☐ Partnership ☐ Trust ☐ Partnership ☐ Trust  
☐ S corporation ☐ Foreign ☐ S corporation ☐ Foreign

**b** Name . . . . . ▶**c** Employer identification number (EIN), if known . . . . . ▶**d** Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received). . . . . ▶**6** Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)

**a** Name Identifying number (if known) Fees paid  
\$

Number, street, and room or suite no. City or town State ZIP code

**b** Name Identifying number (if known) Fees paid  
\$

Number, street, and room or suite no. City or town State ZIP code

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Form 8886 (Rev. 3-2011) AFM HIGHLAND VILLAGE

Page 2

**7 Facts****a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

<input type="checkbox"/> Deductions	<input type="checkbox"/> Exclusions from gross income	<input type="checkbox"/> Absence of adjustments to basis	<input type="checkbox"/> Tax Credits
<input checked="" type="checkbox"/> Capital loss	<input type="checkbox"/> Nonrecognition of gain	<input type="checkbox"/> Deferral	
<input type="checkbox"/> Ordinary loss	<input type="checkbox"/> Adjustments to basis	<input type="checkbox"/> Other _____	

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

IN 2011, HIGHLAND CAPITAL MANAGEMENT, LP ("HIGHLAND") RECOGNIZED A  
 \$(2,825,782) LONG-TERM CAPITAL LOSS UPON DISPOSITION OF ITS  
 PARTNERSHIP INTEREST IN AFM HIGHLAND VILLAGE, LP. IT IS NOT  
 ANTICIPATED THAT THE TRANSACTION WILL RESULT IN TAX BENEFITS IN ANY  
 PRIOR OR FUTURE YEARS.

**8** Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.**a** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name \_\_\_\_\_ Identifying number \_\_\_\_\_

Address \_\_\_\_\_

Description \_\_\_\_\_

**b** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name \_\_\_\_\_ Identifying number \_\_\_\_\_

Address \_\_\_\_\_

Description \_\_\_\_\_

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Form <b>8886</b> (Rev. March 2011) Department of the Treasury Internal Revenue Service	<b>Reportable Transaction Disclosure Statement</b> ▶ Attach to your tax return. ▶ See separate instructions.	OMB No. 1545-1800 Attachment Sequence No. <b>137</b>
Name(s) shown on return (Individuals enter last name, first name, middle initial)		Identifying number
HE SUGAR LAND PROJECT, LLC		26-0397175
Number, street, and room or suite no.	City or town	State ZIP code
300 CRESCENT COURT, SUITE 700	DALLAS	TX 75201
<b>A</b> If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886 . . . . . ▶ Statement number <u>1</u> of <u>1</u>		
<b>B</b> Enter the form number of the tax return to which this form is attached or related . . . . . ▶ <u>2011</u>		
Enter the year of the tax return identified above . . . . . ▶ <u>2011-12</u>		
Is this Form 8886 being filed with an amended tax return? . . . . . ▶ <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>C</b> Check the box(es) that apply (see instructions). <input checked="" type="checkbox"/> Initial year filer <input checked="" type="checkbox"/> Protective disclosure		
<b>1a</b> Name of reportable transaction LOSS ON FORECLOSURE OF BUILDING AND OTHER ASSETS		
<b>1b</b> Initial year participated in transaction 2011	<b>1c</b> Reportable transaction or tax shelter registration number (see instructions)	
<b>2</b> Identify the type of reportable transaction. Check all boxes that apply (see instructions).		
<b>a</b> <input type="checkbox"/> Listed	<b>c</b> <input type="checkbox"/> Contractual protection	<b>e</b> <input type="checkbox"/> Transaction of interest
<b>b</b> <input type="checkbox"/> Confidential	<b>d</b> <input checked="" type="checkbox"/> Loss	
<b>3</b> If you checked box 2a or 2e, enter the published guidance number for the listed transaction or transaction of interest . . . . . ▶		
<b>4</b> Enter the number of "same as or substantially similar" transactions reported on this form . . . . . ▶ <u>1</u>		
<b>5</b> If you participated in this reportable transaction through a partnership, S corporation, trust, and foreign entity, check the applicable boxes and provide the information below for the entity(s) (see instructions). (Attach additional sheets, if necessary.)		
<b>a</b> Type of entity . . . . . ▶	<input type="checkbox"/> Partnership <input type="checkbox"/> S corporation	<input type="checkbox"/> Trust <input type="checkbox"/> Foreign
<b>b</b> Name . . . . . ▶		
<b>c</b> Employer identification number (EIN), if known . . . . . ▶		
<b>d</b> Date Schedule K-1 received from entity (enter "none" if Schedule K-1 not received). . . . . ▶		
<b>6</b> Enter below the name and address of each individual or entity to whom you paid a fee with regard to the transaction if that individual or entity promoted, solicited, or recommended your participation in the transaction, or provided tax advice related to the transaction. (Attach additional sheets, if necessary.)		
<b>a</b> Name	Identifying number (if known)	Fees paid \$
Number, street, and room or suite no.	City or town	State ZIP code
<b>b</b> Name	Identifying number (if known)	Fees paid \$
Number, street, and room or suite no.	City or town	State ZIP code

For Paperwork Reduction Act Notice, see separate Instructions.

Form 8886 (Rev. 3-2011)

JSA

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Form 8886 (Rev. 3-2011) LOSS ON FORECLOSURE OF BUILDING AND OTHER ASSETS

Page 2

**7 Facts****a** Identify the type of tax benefit generated by the transaction. Check all the boxes that apply (see instructions).

<input type="checkbox"/> Deductions	<input type="checkbox"/> Exclusions from gross income	<input type="checkbox"/> Absence of adjustments to basis	<input type="checkbox"/> Tax Credits
<input checked="" type="checkbox"/> Capital loss	<input type="checkbox"/> Nonrecognition of gain	<input type="checkbox"/> Deferral	
<input type="checkbox"/> Ordinary loss	<input type="checkbox"/> Adjustments to basis	<input type="checkbox"/> Other _____	

**b** Further describe the amount and nature of the expected tax treatment and expected tax benefits generated by the transaction for all affected years. Include facts of each step of the transaction that relate to the expected tax benefits including the amount and nature of your investment. Include in your description your participation in the transaction and all related transactions regardless of the year in which they were entered into. Also, include a description of any tax result protection with respect to the transaction.

HE SUGAR LAND PROJECT, LLC IS IN THE BUSINESS OF RENTING REAL ESTATE PROPERTY. ON JANUARY 4, 2011, HE SUGAR LAND PROJECT, LLC DISPOSED OF ITS INVESTMENT IN A BUILDING AND OTHER ASSETS THAT WAS PURCHASED ON JANUARY 1, 2009. THE INVESTMENT WAS DISPOSED AT A LOSS OF \$12,437,529. THIS TRANSACTION IS PART OF THE FUND'S REGULAR INVESTING ACTIVITY AND DECISIONS AND IS BASED ON BUSINESS ECONOMICS RATHER THAN ANY PLAN TO ACHIEVE A TAX BENEFIT.

STMT 6

**8** Identify all individuals and entities involved in the transaction that are tax-exempt, foreign, or related. Check the appropriate box(es) (see instructions). Include their name(s), identifying number(s), address(es), and a brief description of their involvement. For each foreign entity, identify its country of incorporation or existence. For each individual or related entity, explain how the individual or entity is related. Attach additional sheets, if necessary.**a** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name \_\_\_\_\_ Identifying number \_\_\_\_\_

Address \_\_\_\_\_

Description \_\_\_\_\_

**b** Type of individual or entity: ☐ Tax-exempt ☐ Foreign ☐ Related

Name \_\_\_\_\_ Identifying number \_\_\_\_\_

Address \_\_\_\_\_

Description \_\_\_\_\_



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HE SUGAR LAND PROJECT, LLC  
LOSS ON FORECLOSURE OF BUILDING AND OTHER ASSETS  
=====

FORM 8886, PAGE 2 DETAIL

LINE 7B - EXPECTED TAX BENEFITS  
-----

EACH PARTNER'S SHARE OF THE CAPITAL LOSS REFERRED TO ABOVE IS NETTED WITH OTHER CAPITAL GAINS AND LOSSES AND REPORTED ON THE 2011 SCHEDULE K-1. THE AMOUNT OF ANY POTENTIAL TAX BENEFIT TO THE FUND'S PARTNERS WILL VARY BASED ON EACH PARTNER'S TAX STATUS, MARGINAL RATES, AND APPLICABLE LIMITATIONS.

STATEMENT 6

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## **EXHIBIT 57**



Patrick H. Daugherty - 6/14/2013

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>6</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>8</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

Patrick H. Daugherty - 6/14/2013

<p>9</p> <p>1 counsel?</p> <p>2 A. I think I was the general counsel from 2004 to</p> <p>3 2006. Kevin Ciavarra -- whenever Kevin Ciavarra took</p> <p>4 over the role. I don't really recall exactly.</p> <p>5 Q. Okay. You had the role until Kevin started,</p> <p>6 until Kevin took over the role?</p> <p>7 A. Until he took over, because he started. and then</p> <p>8 he got promoted into that role and I moved out.</p> <p>9 Q. Okay. And then when -- what time period were</p> <p>10 you the interim general counsel?</p> <p>11 A. I think that was late 2007 -- I'm sorry -- late</p> <p>12 2006 to June or July of 2007 when Michael Colvin was</p> <p>13 hired.</p> <p>14 Q. Okay. And I'm going -- on behalf of -- you</p> <p>15 understand that one of the parties I represent in this</p> <p>16 matter is Highland Capital?</p> <p>17 A. I do.</p> <p>18 Q. And also you understand that one of the parties</p> <p>19 I represent in this case is Cornerstone?</p> <p>20 A. Yes.</p> <p>21 Q. I'm going to instruct you that on behalf of</p> <p>22 Highland and Cornerstone, you are not to disclose any</p> <p>23 attorney-client information of either one of those</p> <p>24 entities that you may have had during your employment or</p> <p>25 relationship with either one. And I am not waiving any</p>	<p>11</p> <p>1 questions that you ask him, so ...</p> <p>2 SPECIAL MASTER KAPLAN: Here's how we're</p> <p>3 going to proceed: Mr. Katz, don't ask a question that</p> <p>4 you think will elicit attorney-client information. If</p> <p>5 unknowingly you ask such a question -- Mr. Sargent is</p> <p>6 here on behalf of Highland.</p> <p>7 Mr. Sargent, you're an attorney?</p> <p>8 MR. SURGENT: Yes.</p> <p>9 SPECIAL MASTER KAPLAN: I will allow</p> <p>10 Mr. Sargent to make an objection on the record on the</p> <p>11 grounds of attorney-client privilege. That way we have</p> <p>12 two sets of lawyers on the Highland side that are capable</p> <p>13 of objecting to all or part of any answer that</p> <p>14 Mr. Daugherty has.</p> <p>15 I do think it's unfair to place on</p> <p>16 Mr. Daugherty, who is the adverse party in this</p> <p>17 litigation, the burden of determining what you think may</p> <p>18 be privileged.</p> <p>19 So that's how we'll proceed.</p> <p>20 Q. Okay. Where did you go to law school,</p> <p>21 Mr. Daugherty?</p> <p>22 A. Univers- -- I'm sorry. University of Houston.</p> <p>23 Q. Okay. And did you say you graduated in 1992?</p> <p>24 A. I did.</p> <p>25 Q. Okay. How did you do in law school? How did</p>
<p>10</p> <p>1 of the privileges by questions that I'm asking you. And</p> <p>2 if you feel that any of my questions calls for what you</p> <p>3 believe to be attorney-client-privilege information,</p> <p>4 rather than disclosing that information, would you let me</p> <p>5 know?</p> <p>6 A. I'm not sure I understand the direction.</p> <p>7 Q. Okay. The direction is not to disclose</p> <p>8 attorney-client-privilege information.</p> <p>9 A. About what or when?</p> <p>10 Q. Any attorney-client-privilege information that's</p> <p>11 in your possession about Highland Capital or Cornerstone.</p> <p>12 A. Okay, but I am -- you're going to have to give</p> <p>13 more clarification than that because I don't know what</p> <p>14 you're talking about. I don't know what's</p> <p>15 attorney-client privilege, what isn't. I don't know what</p> <p>16 you consider to be attorney-client privilege.</p> <p>17 Q. Okay. Well, I am -- I am giving you the</p> <p>18 instruction on behalf of Highland and Cornerstone not to</p> <p>19 disclose attorney-client-privilege information.</p> <p>20 MS. DANIELS: And I'm going to object to</p> <p>21 that instruction in that he's already expressed to you</p> <p>22 that it's not workable. And I'm not going to have him</p> <p>23 under an instruction that either is not workable for him,</p> <p>24 that he doesn't understand and that doesn't define what</p> <p>25 it is that he's not supposed to talk about in response to</p>	<p>12</p> <p>1 you do in law school?</p> <p>2 A. Fine.</p> <p>3 Q. Okay. Do you know what your final GPA was?</p> <p>4 A. No.</p> <p>5 Q. Do you know what your class rank was?</p> <p>6 A. Yes.</p> <p>7 Q. What was that?</p> <p>8 A. Top third.</p> <p>9 Q. Now, how many times have you given a deposition?</p> <p>10 A. I don't know.</p> <p>11 Q. More than 20?</p> <p>12 A. Yes.</p> <p>13 Q. How many -- do you know how many depositions you</p> <p>14 have given in 2013?</p> <p>15 A. I think, including this one -- wait. 2013. I</p> <p>16 think I've given two or three this -- this year.</p> <p>17 Q. And what about 2012?</p> <p>18 A. I think I gave four.</p> <p>19 Q. Okay. Do you consider yourself an honest</p> <p>20 person?</p> <p>21 A. I do.</p> <p>22 Q. Have you ever told a lie?</p> <p>23 A. Not that I can recall.</p> <p>24 Q. Have you ever asked anybody to lie in your</p> <p>25 behalf?</p>



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<p>13</p> <p>1 A. No. 2 (Exhibit 30 marked.) 3 Q. I'll show you what's marked as Exhibit 30. Can 4 you tell me if you recognize that document, please? 5 A. (Reviewing document.) Yes. 6 Q. Okay. Is this an e-mail that you sent to 7 Matthieu Wirz, with the Wall Street Journal? 8 A. Yes, it is. 9 Q. Okay. And that was an e-mail that you sent on 10 May 23rd, 2012, at 2:23 p.m.? 11 A. I think so. 12 Q. Okay. 13 A. That's what it has -- says there. 14 Q. Okay. And do you see on the subject line -- 15 well, I'm sorry. Let me ask you this: This e-mail also 16 attached several documents to it, didn't it? 17 A. Yes. 18 Q. And those documents were your initial answer and 19 counterclaim in this, and a motion for sanctions and 20 motion for disqualification? 21 A. Yeah, I don't have a recollection. It was 22 whatever those three documents were filed as. It says -- 23 it's abbreviated, or whatever. It doesn't say. 24 Q. The initial three pleadings that your counsel 25 filed in this case?</p>	<p>15</p> <p>1 A. I didn't keep track. 2 Q. Okay. More than five? 3 A. I don't think so. 4 Q. Do you recall your prior deposition in this 5 case? 6 A. Vaguely. 7 Q. Do you recall testifying that Mr. Wirz had been 8 hounding you? 9 A. Yes. 10 Q. And what did you mean when you said that he had 11 been hounding you? 12 A. Calling me on multiple occasions. 13 Q. Okay. Anything else? 14 A. Not that comes to mind. 15 Q. Okay. And did he call you on your cell phone? 16 A. Yes. 17 Q. Did he ever -- 18 A. Yes. 19 Q. I'm sorry. Did he ever call you on any other 20 phone number? 21 A. I don't think so. 22 Q. And what was the cell phone number that he -- 23 which he called you? 24 A. (972) 679-7487. 25 Q. And since September 2011 have you ever had any</p>
<p>14</p> <p>1 MS. DANIELS: Objection, form. 2 A. Yeah, I don't -- I don't know what their initial 3 documents were, but these three I do remember attaching. 4 Q. Okay. Okay. Do you see your statement that -- 5 "Sorry I have not been able to be responsive to your 6 numerous requests for information"? 7 A. Yes. 8 Q. Okay. You did make that statement? 9 A. It's in the e-mail. 10 Q. You wrote those words? 11 A. I wrote this e-mail. 12 Q. Yes. 13 A. I don't know if I made the statement. 14 Q. What did you mean when you said "numerous 15 requests for information"? 16 A. He had made numerous requests for information. 17 Q. How did -- 18 A. Because he had heard about me, Highland, Mark 19 Okada, various other things. 20 Q. And he made those requests for information to 21 you? 22 A. Yes. 23 Q. To you directly? 24 A. He called me. 25 Q. Okay. How many times did he call you?</p>	<p>16</p> <p>1 other cell phone number? 2 A. I have not. 3 Q. Do you recognize the number (972) 955-5552? 4 A. That's my wife's number. 5 Q. Your wife's cell phone number? 6 A. It is. 7 Q. Do you ever use your wife's cell phone? 8 A. Never. Well, I'm not going to say never, but 9 not that I can recall, especially as it relates to 10 anything we just discussed. 11 Q. Okay. Would you ever use your wife's cell phone 12 for business-related matters? 13 A. No. 14 Q. And what did you mean when you wrote to Mr. Wirz 15 that "on advice of counsel, I am forced to let my answer 16 speak for itself"? 17 A. They told me -- 18 MS. DANIELS: Object to the extent that it 19 calls for privileged attorney-client communications. I 20 would instruct the witness, in making his answer, not to 21 reveal such communications. 22 A. I'm going to defer to my counsel on that. 23 Q. Okay. You're going to refuse to answer the 24 question on the advice of your counsel? 25 A. That's right.</p>

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<p>17</p> <p>1 MS. DANIELS: I'll instruct him not to</p> <p>2 answer because there's no way to answer that question</p> <p>3 without revealing privileged communication.</p> <p>4 MR. KATZ: I understand your instruction,</p> <p>5 Counsel. I just wanted to see if your client was</p> <p>6 following the instruction.</p> <p>7 Q. What did you mean by "advice of counsel"?</p> <p>8 MS. DANIELS: Again, same objection.</p> <p>9 To the extent that you can respond to that</p> <p>10 question without revealing privileged communications, you</p> <p>11 can respond to the question, but otherwise I'm going to</p> <p>12 instruct you not to answer in a way that would reveal any</p> <p>13 communications with counsel.</p> <p>14 A. Yeah, in consultation or directive of counsel.</p> <p>15 Q. Okay. The statement "On advice of counsel, I am</p> <p>16 forced to let my answer speak for itself," was that a</p> <p>17 true statement?</p> <p>18 A. Yes.</p> <p>19 Q. And then the next statement is -- it says,</p> <p>20 "Please see the attached documents as filed with the</p> <p>21 court." Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Okay. Was that a true statement?</p> <p>24 A. To the best of my understanding, yes.</p> <p>25 Q. Okay. How did you know the documents were filed</p>	<p>19</p> <p>1 area is.</p> <p>2 Q. Okay. What kind of restaurant was it?</p> <p>3 A. I don't know for sure. I mean, it was -- it was</p> <p>4 catered with food, had pizza and -- he rented out the</p> <p>5 whole restaurant. I don't -- I don't know what their</p> <p>6 usual menu is.</p> <p>7 Q. Okay. Were there any other current Highland</p> <p>8 employees there, that you were aware of?</p> <p>9 A. No. It was a lot of former Highland employees.</p> <p>10 Q. And what did you discuss with Mr. Dameris?</p> <p>11 A. With what -- with Mr. Dameris?</p> <p>12 Q. Yes.</p> <p>13 A. All kinds of things.</p> <p>14 Q. Did you discuss anything related to this case?</p> <p>15 A. No.</p> <p>16 Q. Did you mention to Mr. Dameris that you were</p> <p>17 being deposed today?</p> <p>18 A. I did.</p> <p>19 Q. What did you tell him?</p> <p>20 A. That I'm being deposed today.</p> <p>21 Q. Did Mr. Dameris make any comments to you about</p> <p>22 that?</p> <p>23 A. No.</p> <p>24 Q. Prior to last night, when was the last time</p> <p>25 before that that you spoke to any current Highland</p>
<p>18</p> <p>1 with the court?</p> <p>2 A. I think they had a stamp at the top of it.</p> <p>3 Q. Have you spoken to Mr. Wirz since May 23rd -- or</p> <p>4 have you had any -- I'm sorry. Let me start that</p> <p>5 question over.</p> <p>6 Have you had any communications with</p> <p>7 Mr. Wirz since May 23rd, 2012?</p> <p>8 A. Not that I recall.</p> <p>9 Q. When was the last time that you spoke to a</p> <p>10 current Highland employee?</p> <p>11 A. Last night.</p> <p>12 Q. And who was that?</p> <p>13 A. Ted Dameris.</p> <p>14 Q. And where did that communication take place?</p> <p>15 A. It was at Davis Deadman's 50th birthday party.</p> <p>16 Q. Okay. And where was that party?</p> <p>17 A. I don't remember the name of the restaurant.</p> <p>18 Q. Was it a restaurant in Dallas?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember the location of the restaurant?</p> <p>21 A. That area, you take -- go down Greenville and go</p> <p>22 east -- I'm sorry -- go, yeah, east on Richmond.</p> <p>23 Whatever area that is.</p> <p>24 Q. Okay.</p> <p>25 A. Is that -- I don't know what the name of that</p>	<p>20</p> <p>1 employee?</p> <p>2 A. Earlier that day.</p> <p>3 Q. And who was that?</p> <p>4 A. Isaac Levenson (sic).</p> <p>5 Q. Okay. And did you speak to Mr. Leventon in</p> <p>6 person or on the phone?</p> <p>7 A. Actually, I did not speak with Levenson (sic)</p> <p>8 yesterday. I spoke with him the day before.</p> <p>9 Q. Okay. And was that up here in these offices</p> <p>10 where we are today?</p> <p>11 A. Yes.</p> <p>12 Q. Can you tell me every current Highland employee</p> <p>13 that you recall speaking to since you have left Highland?</p> <p>14 A. I can, but can I go back to one of your</p> <p>15 questions you asked me a second ago? You asked me if</p> <p>16 there are any current employees of Highland. There was</p> <p>17 another employee named Richard. He's an employee of a</p> <p>18 Highland affiliate, NexBank. I talked to him, too.</p> <p>19 Q. Okay. And when did you talk to him?</p> <p>20 A. Last night, at the party.</p> <p>21 Q. Do you recall his last name?</p> <p>22 A. No. I think he ran the branch for NexBank</p> <p>23 when -- when we -- when I worked at the Galleria. And</p> <p>24 now I guess he's closing a branch somewhere in Plano, I</p> <p>25 think, and opening another one up someplace else. And we</p>

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<p>21</p> <p>1 talked about that.</p> <p>2 Q. Okay. So back to my question. Can you -- since</p> <p>3 you left -- since -- when was your last day at Highland?</p> <p>4 A. October 17th, I think.</p> <p>5 Q. Okay.</p> <p>6 A. 2011.</p> <p>7 Q. Okay. Since that time, can you give me the list</p> <p>8 of every individual to whom you have spoken who at the</p> <p>9 time of the conversation or communication was a current</p> <p>10 Highland employee?</p> <p>11 A. Yeah, I'll do the best I can. I mean --</p> <p>12 Q. Sure.</p> <p>13 A. -- I think it's a long list.</p> <p>14 Q. Okay.</p> <p>15 A. You want me to give it now?</p> <p>16 Q. Please.</p> <p>17 A. Thomas Surgent, Jim Dondero, Mark Okada, Lane</p> <p>18 Britain, Patrick Boyce, Brian Collins, Nathan Schray,</p> <p>19 Greg Stuecheli, Martin Downen, Tom Pereira, Tim Lawler,</p> <p>20 Clay Callan, David Smith, Christina Dandar, Meredith</p> <p>21 Etheredge, Jake Tomlin, Kevin Rourke, Chris Lombardi,</p> <p>22 Jeff -- I can't remember his last name, on my team. Amy</p> <p>23 Jenkins, Jason Ziegler, Paul Kaufman, Clint Gilchrist,</p> <p>24 Lauren Garza, Scott Ellington, Isaac Levenson (sic), John</p> <p>25 Honis. I'm sure there's some others.</p>	<p>23</p> <p>1 A. I don't have -- not that I -- no. I mean, I use</p> <p>2 Twitter.</p> <p>3 Q. And what do you use Twitter for?</p> <p>4 A. To tweet Patrick Boyce.</p> <p>5 Q. And how long have you been doing that?</p> <p>6 A. Once.</p> <p>7 Q. Any other social media application sites that</p> <p>8 you use?</p> <p>9 A. I use them. I just don't have -- you asked if I</p> <p>10 had a LinkedIn account, for example. I don't -- I don't</p> <p>11 have a LinkedIn account.</p> <p>12 Q. Okay.</p> <p>13 A. But I use a lot of sites.</p> <p>14 Q. Okay. Which ones do you use?</p> <p>15 A. Which sites?</p> <p>16 Q. Yes.</p> <p>17 A. Twitter, as I discussed. Facebook, Zooloo,</p> <p>18 Willow. There's a litany. ESPN, Fox News, CNN News, the</p> <p>19 engine curve site, LinkedIn, the SAS Asset Recovery site.</p> <p>20 I think they have two sites.</p> <p>21 Q. Okay. Maybe I -- maybe I didn't ask my question</p> <p>22 clearly. What I wanted to know is, are there social</p> <p>23 media sites that you use for purpose of communicating</p> <p>24 with others?</p> <p>25 A. I Google.</p>
<p>22</p> <p>1 Q. And --</p> <p>2 A. I'd have to just come back to you, think about</p> <p>3 it.</p> <p>4 Q. Yeah, and just for purpose of clarification,</p> <p>5 were you including in-person communications as well as</p> <p>6 telephone communications?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. I think so. I'd have to think about it, but ...</p> <p>10 Q. Okay. Are there any -- are there any</p> <p>11 individuals with whom you've communicated since your last</p> <p>12 day at Highland, either in person, on the phone, via</p> <p>13 e-mail, social media, anything else, that you recall?</p> <p>14 A. Jonathan Hubble, Danielle, the office manager,</p> <p>15 Britney Cunningham, Lexie something or other. I can't</p> <p>16 remember her last name.</p> <p>17 Q. What was -- well, I'm sorry. Go ahead.</p> <p>18 A. I don't mean to imply that that's a</p> <p>19 comprehensive list because I'm sure there's others. I'd</p> <p>20 just have to think about it.</p> <p>21 Q. Okay. Do you have -- do you have a LinkedIn</p> <p>22 profile?</p> <p>23 A. I don't, no.</p> <p>24 Q. Are there any -- do you use Facebook or any</p> <p>25 other social media sites?</p>	<p>24</p> <p>1 Q. Anything else?</p> <p>2 A. That's all I can think of at this time.</p> <p>3 Q. And what computers or devices have you used to</p> <p>4 access those sites?</p> <p>5 A. My iPhone and my Mac computer. I think it's a</p> <p>6 Mac Pro Retina.</p> <p>7 Q. And how long have you had that computer?</p> <p>8 A. I got it about April or May of 2012, when you</p> <p>9 guys quarantined my PC and my iPad.</p> <p>10 MR. KATZ: Object as nonresponsive to</p> <p>11 everything after "2012."</p> <p>12 Q. Do you remember being in court on August 31st,</p> <p>13 2012, in this case?</p> <p>14 A. I don't remember the precise date, but I</p> <p>15 remember being in court regarding this case.</p> <p>16 Q. Okay. How many of the court hearings in this</p> <p>17 case have you attended?</p> <p>18 A. I don't know. I don't know how many there have</p> <p>19 been.</p> <p>20 Q. Well, I'm asking how many you personally have</p> <p>21 attended.</p> <p>22 A. You know, I don't know if they were technically</p> <p>23 hearings or if they were more informal sessions, so I'm</p> <p>24 not sure.</p> <p>25 Q. Okay. How many times have you been in Judge</p>

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<p>25</p> <p>1 Hoffman's courtroom with respect to this case?</p> <p>2 A. I think once. I mean, I've been in this case</p> <p>3 multiple occasions, as you know, with Reliant and --</p> <p>4 yeah, Reliant, Reliant/Cornerstone litigation. So I</p> <p>5 can't remember if I was in there -- you know what I mean?</p> <p>6 I was in that court, it was in Hoffman's court, but it</p> <p>7 was a different matter.</p> <p>8 Q. And what I'm asking you is about this matter.</p> <p>9 You remember one time?</p> <p>10 A. I remember once.</p> <p>11 Q. And do you remember having a communication --</p> <p>12 you personally having a communication with the Judge at</p> <p>13 that hearing?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall the Judge telling you not to</p> <p>16 allow your counsel to make any statements that might not</p> <p>17 be true because they didn't have all the information that</p> <p>18 you might have?</p> <p>19 MS. DANIELS: Objection, form.</p> <p>20 A. I don't know if that's what he said or not.</p> <p>21 Q. What do you recall him saying?</p> <p>22 A. I remember him asking me how much money I made,</p> <p>23 and -- I don't know. He was talking about a bunch of</p> <p>24 stuff. There were lawyers in the room. I think you were</p> <p>25 there, James Stanton was there, my lawyers were there,</p>	<p>27</p> <p>1 Yeah, there's one guy who worked in the retail group. I</p> <p>2 can't remember his name. I spoke a lot with him.</p> <p>3 Q. Do you remember what his position was?</p> <p>4 A. He was on the investment side in the retail</p> <p>5 group. And he left the firm, and he wanted me to review</p> <p>6 a case study that he had done because he was interviewing</p> <p>7 with somebody.</p> <p>8 Q. So he was a former -- a former employee at the</p> <p>9 time that you spoke to him?</p> <p>10 A. He was a former employee at the time I spoke</p> <p>11 with him, but he was a current employee at the time I</p> <p>12 left Highland, which was, I thought, the question.</p> <p>13 Q. Okay. To be clear, what I -- what I wanted to</p> <p>14 ask you was folks who were current Highland employees at</p> <p>15 the time you spoke to them, but that's okay.</p> <p>16 A. Yeah, and it's kind of nebulous. I might have</p> <p>17 spoken to him while he was an employee as well.</p> <p>18 Q. Yeah.</p> <p>19 A. I didn't take note of it, to be honest.</p> <p>20 Q. Okay. So are there folks who are former</p> <p>21 employees of Highland or its affiliates that you have</p> <p>22 spoken -- that you have communicated with since you left</p> <p>23 Highland in addition to the people you've mentioned?</p> <p>24 A. There might be. And like I said, as they come</p> <p>25 to my mind --</p>
<p>26</p> <p>1 and you-all were talking about a lot of things that --</p> <p>2 Q. Okay. Well --</p> <p>3 A. -- I didn't pay any attention to.</p> <p>4 Q. I'm just asking what you recall the Judge</p> <p>5 telling you directly.</p> <p>6 MS. DANIELS: Objection, form.</p> <p>7 A. That's what I was alluding to earlier. I</p> <p>8 remember him asking me about my communication. I</p> <p>9 remember there was some discussion about my</p> <p>10 communications with the press, at which point I said I'd</p> <p>11 be happy to give you the whole story. And he -- he just</p> <p>12 wanted to hear from the lawyers.</p> <p>13 By the way, on your question earlier about</p> <p>14 people I have spoken with, am I supposed to include</p> <p>15 Highland affiliates on that as well?</p> <p>16 Q. Sure.</p> <p>17 A. Okay.</p> <p>18 Q. Are there others that that would --</p> <p>19 A. Including the affiliates?</p> <p>20 Q. Yes.</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell us who those are, please?</p> <p>23 A. Dirk Allison, Kevin Dowd, Reece Fulgham, David</p> <p>24 Petal, the CEO of NexBank. I can't remember -- Holt, I</p> <p>25 think is his name. Let's see. Mike Rossi, Steve Bishop.</p>	<p>28</p> <p>1 Q. Yeah.</p> <p>2 A. -- I'm going to let you know.</p> <p>3 Q. Okay. But when you were -- when you were giving</p> <p>4 us the list, you were including folks that were former</p> <p>5 Highland or affiliate employees at the time you spoke to</p> <p>6 them?</p> <p>7 A. Sorry. I'm not understanding.</p> <p>8 Q. Okay.</p> <p>9 A. And I don't mean to be difficult.</p> <p>10 Q. No, that's --</p> <p>11 A. So what I gave you was a list of people who --</p> <p>12 at the time I resigned, any conversations I had after</p> <p>13 that time, they may have been Highland -- Highland</p> <p>14 employees at some point during that time, which is, I</p> <p>15 thought, what you were asking me.</p> <p>16 Q. Okay. I think you just confused me.</p> <p>17 A. Sorry.</p> <p>18 Q. That's all right. Okay. And that's fine. You</p> <p>19 answered -- I was going to ask you that -- I was going to</p> <p>20 ask you that question to follow up, but just -- just so</p> <p>21 we're absolutely clear, if I want to know every person</p> <p>22 who you've spoken to since you left Highland who was</p> <p>23 either a current or former employee of Highland or its</p> <p>24 affiliates at the time that you spoke to them, you gave</p> <p>25 the information?</p>

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<p style="text-align: right;">29</p> <p>1 A. Give me that one more time.</p> <p>2 Q. Sure.</p> <p>3 A. Now I'm confused.</p> <p>4 Q. Anybody that you spoke to since you left --</p> <p>5 A. Yes.</p> <p>6 Q. -- who at the time you spoke to them --</p> <p>7 A. Yes.</p> <p>8 Q. -- was either a current Highland or affiliate</p> <p>9 employee or a former Highland or affiliate employee?</p> <p>10 A. No, I did not give you that list.</p> <p>11 Q. Okay.</p> <p>12 A. What I gave you was a list of people that --</p> <p>13 after I resigned and sometime I spoke to them, they were</p> <p>14 an employee at some point during that time period between</p> <p>15 now and the time I resigned.</p> <p>16 By the way, a name just popped into my</p> <p>17 head. Shawn Lederman.</p> <p>18 Q. Okay. But the individual that you're talking</p> <p>19 about who was on the investment side of the retail group</p> <p>20 was a former individual at the time that you spoke to</p> <p>21 him, former employee?</p> <p>22 A. Yeah. The guy I was talking about before, whose</p> <p>23 name just doesn't come to mind, and I'm sure it will</p> <p>24 eventually, he may have been employed at Highland at some</p> <p>25 point while he was talking to me. He also talked to me</p>	<p style="text-align: right;">31</p> <p>1 flux, so ...</p> <p>2 Q. Just the best you understand it.</p> <p>3 A. Yeah, I was going to say, you know, all I can go</p> <p>4 with is what people tell me.</p> <p>5 So Amy Jenkins, Jason Ziegler, Paul</p> <p>6 Kaufman, Kurt Plumer, Todd Travers, Wes Olfers, Davis</p> <p>7 Deadman, Shawn Ward, Kevin Rourke, Clay Shumway, Dan</p> <p>8 Drabinski, Evan Gonzalez, Nam Kwok, Bruce Jacob, Jack</p> <p>9 Yang, Lee Brown, Mark Martinson, Christina Dandar,</p> <p>10 Meredith Etheredge. Did I say Amy Jenkins? I don't</p> <p>11 remember.</p> <p>12 Q. You did.</p> <p>13 A. Did I say Chris Lombardi?</p> <p>14 Q. I'm not sure.</p> <p>15 A. Okay.</p> <p>16 Q. But he's in the list?</p> <p>17 A. Add him to the list.</p> <p>18 Steve Bishop, Mike Rossi, Fred Florjancic.</p> <p>19 Actually, check that. He was at Safety-Kleen, but that's</p> <p>20 not a Highland affiliate.</p> <p>21 A bunch of guys in the accounting team.</p> <p>22 Clint Gilchrist, Mohan. I don't know what his last name</p> <p>23 is, and don't ask me how to spell Mohan.</p> <p>24 Again, there will probably be others. As</p> <p>25 they come to mind ...</p>
<p style="text-align: right;">30</p> <p>1 after he left. I don't know if he was in some type of,</p> <p>2 you know, notice period or transition period.</p> <p>3 Q. Sure.</p> <p>4 A. So I might have -- like, I didn't keep track of</p> <p>5 when he was at Highland, but I'm just saying he might</p> <p>6 have been at Highland.</p> <p>7 Q. I'm with you. Okay.</p> <p>8 What about -- okay. So let me ask -- then</p> <p>9 the second part of that is anybody that you've spoken</p> <p>10 to --</p> <p>11 A. Ah, another name: Mike Hasenauer.</p> <p>12 Q. Hasenauer?</p> <p>13 A. Hasenauer.</p> <p>14 Q. Okay. Anybody that you've spoken to or</p> <p>15 communicated with since you left Highland who, at the</p> <p>16 time that you communicated with them, was a former</p> <p>17 employee of Highland or one of its affiliates?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Can you give me those -- those names,</p> <p>20 please?</p> <p>21 A. Amy Jenkins -- or affiliates. So Amy Jenkins,</p> <p>22 Dirk Allison. Well, I don't -- I was under the</p> <p>23 impression that Dirk was a former employee of Cornerstone</p> <p>24 because that's the impression that Dirk left me with, but</p> <p>25 after hearing Mr. Boyce's testimony, it seemed to be in</p>	<p style="text-align: right;">32</p> <p>1 Q. Okay.</p> <p>2 A. As you can tell, it's a long list, and you're</p> <p>3 asking me to -- you know, if something comes to my mind,</p> <p>4 I'll let you know.</p> <p>5 Q. All right. Appreciate that.</p> <p>6 A. Oh, Julio Cifuentes, Jaime -- I don't know what</p> <p>7 Jaime's last name is. Ricky Sanchez, Louis Koven, Mark</p> <p>8 Murray, Kevin Latimer, Brad Borud, Ethan Underwood, Jay</p> <p>9 Carvell, Britt Brown, Morton Wendell. What was that</p> <p>10 guy's name? He was one of our head of HRs. I'll think</p> <p>11 of his name. I think his name was Brian. Brian Cox,</p> <p>12 Harold Siegel.</p> <p>13 There was another marketing guy. His name</p> <p>14 is on the tip of my tongue, just on the tip of my tongue.</p> <p>15 And I talked to him a lot. I just can't remember his</p> <p>16 name. Marion. I think it was Marion.</p> <p>17 I'll let you know if there's another dose.</p> <p>18 Q. All right.</p> <p>19 A. I don't want to take up all your time by me</p> <p>20 trying to remember a hundred names.</p> <p>21 Q. Okay. So back to the one hearing that you</p> <p>22 attended in this case in front of Judge Hoffman.</p> <p>23 Do you recall Judge Hoffman making the</p> <p>24 statement to you that, quote, If you're in a situation</p> <p>25 that you know you've done something and your attorney</p>



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<p>33</p> <p>1 doesn't know about it and you see that your attorney is 2 making some type of misrepresentation, you make sure that 3 you say, Hey, that's not what's going on? 4 MS. DANIELS: Objection, form. 5 A. You know, actually I do remember something to 6 that effect. 7 Q. Okay. And do you recall you responded: I 8 agree. I wouldn't have done anything like that? 9 A. Yeah. Something like that, yeah. 10 Q. Okay. And do you recall also making the 11 statement, I wouldn't misrepresent anything to you and I 12 wouldn't have somebody representing me do it blindly 13 either? 14 A. That's correct. 15 Q. Okay. Were those true statements at the time 16 that you made them? 17 A. From my perspective, yes. 18 Q. Okay. And are they true statements today? 19 A. That I wouldn't have somebody misrepresent 20 something? Yes. 21 Q. And that when you were in court that day, did 22 you hear your attorneys saying anything that you believe 23 not to be true? 24 A. No. 25 Q. As you sit here today, do you believe your</p>	<p>35</p> <p>1 Mr. Collins in this case; isn't that true? 2 A. It is true. 3 Q. Okay. Did you take notes during those 4 depositions? 5 A. No. Well, let me clarify. I passed notes to my 6 counsel during probably all of those depositions, but 7 I -- so -- 8 MS. DANIELS: And to the extent that he was 9 engaged in that or any kind of communications or 10 activities at the direction of counsel, I will instruct 11 the witness not to communicate that, those instructions. 12 Q. The notes that you gave your counsel, those were 13 notes that you wrote? 14 A. Yes. 15 Q. And they were notes that you wrote during the 16 depositions? 17 A. That's correct. 18 Q. Okay. And what was the purpose of you making 19 those notes? 20 MS. DANIELS: And, again, I'm going to 21 object to the extent that that calls for the revelation 22 of any privileged communications with counsel. 23 To the extent you can answer that without 24 conveying communication from counsel, you may do so, but 25 otherwise I'm going to instruct you not to answer.</p>
<p>34</p> <p>1 attorneys said anything at that hearing that you don't 2 believe was true? 3 A. I didn't hear my attorneys say anything that I 4 felt was untrue at that hearing. 5 Q. Okay. Both at the time that you heard them make 6 the statements and as you sit here today? 7 A. I mean, what goes for what I heard at that 8 hearing, from what I can recall, goes for now. Yes. 9 Q. Okay. That was my question. Thank you. 10 A. Yeah. 11 Q. Okay. What did you do to prepare for the 12 deposition today? 13 A. Oh, I read a little Winston Churchill, I watched 14 Braveheart, and I listened to some Tom Petty on the way 15 in. 16 Q. Okay. And did you talk to anybody in 17 preparation for the deposition? 18 A. No. 19 Q. Did you take any notes? 20 A. No. 21 Q. Have you made any notes in connection with this 22 case at any time? 23 A. Yes. 24 Q. Did you make notes -- well, you attended the 25 depositions of Mr. Boyce, Mr. Lawler, Mr. Britain, and</p>	<p>36</p> <p>1 A. Yeah, I think this is fine. I mean, I think 2 testimony was evasive. I think in some instances people 3 were lying. And so I helped my counsel ask more-directed 4 questions that -- that, frankly, broke down the barrier 5 for which they were trying to hide behind and telling the 6 truth. 7 Q. Did your counsel direct you to make those notes? 8 A. No. 9 Q. Where are those notes right now? 10 A. Well, let me just clarify. Counsel told me to 11 give them notes to the extent I thought I could help. 12 The individual notes, per se, no. 13 Q. Where are those notes right now? 14 A. Garbage can someplace. 15 Q. Did you throw them away? 16 A. I didn't take note. I think Rachel probably 17 threw them away. 18 Q. Okay. Are there any of them that were not 19 thrown away? 20 A. No, not that I know of. 21 Q. Did you direct your attorney to throw them away? 22 A. I did not. 23 Q. Are you taking any medications? 24 A. No. 25 Q. Any reason, as you sit here today, that you</p>

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<p>37</p> <p>1 can't tell the truth?</p> <p>2 A. No.</p> <p>3 Q. Any condition you are currently suffering from</p> <p>4 that may affect your memory?</p> <p>5 A. No.</p> <p>6 Q. Have you ever told anybody that you have any</p> <p>7 type of condition that might affect your memory?</p> <p>8 A. I have not.</p> <p>9 Q. Are you currently -- are you currently working?</p> <p>10 A. No, unfortunately not.</p> <p>11 Q. Are you involved with any business enterprises</p> <p>12 currently?</p> <p>13 MS. DANIELS: Objection, form.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Which -- what are the names of the --</p> <p>16 well, is there more than one?</p> <p>17 A. No.</p> <p>18 Q. What is the name of the business enterprise?</p> <p>19 A. Broadacre.</p> <p>20 Q. Broadacre?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is that two words?</p> <p>23 A. I'm not sure.</p> <p>24 Q. And what is your -- what type of business is</p> <p>25 Broadacre in?</p>	<p>39</p> <p>1 A. Yes.</p> <p>2 Q. On how many occasions?</p> <p>3 A. I don't recall.</p> <p>4 Q. A significant number?</p> <p>5 A. I don't know what you mean by "significant."</p> <p>6 Q. Sure. More than ten?</p> <p>7 A. No.</p> <p>8 Q. More than five?</p> <p>9 A. No.</p> <p>10 Q. Would those communications have been in writing</p> <p>11 or in person or on the phone? I'm sorry. That was a bad</p> <p>12 question.</p> <p>13 A. I'm not going to play hard-to-get.</p> <p>14 Q. Okay, yeah.</p> <p>15 A. It was in writing. I'm sorry. It was not in</p> <p>16 writing. It was on the phone and in person.</p> <p>17 Q. Okay. And approximately what time was the first</p> <p>18 communication you recall having with Kevin about this</p> <p>19 litigation?</p> <p>20 A. Within days of when you guys filed the original</p> <p>21 petition against me.</p> <p>22 Q. Okay. And when was the last communication you</p> <p>23 recall having with him about this litigation?</p> <p>24 A. I was up in New York, and he just asked me how</p> <p>25 it was going.</p>
<p>38</p> <p>1 A. It's an agricultural farmland company with</p> <p>2 operations in Canada, primarily the Saskatchewan area.</p> <p>3 Q. And what is your role with Broadacre?</p> <p>4 A. I'm on the board of directors.</p> <p>5 Q. And how long have you been on the board of</p> <p>6 directors?</p> <p>7 A. I guess about a month.</p> <p>8 Q. Who else is on the board?</p> <p>9 A. A guy named Phil -- I don't recall his last</p> <p>10 name -- me, and I think Kevin Ulrich.</p> <p>11 Q. And the board is just the three of you?</p> <p>12 A. As I understand it, yeah.</p> <p>13 Q. Okay. And do you remember Phil's last name?</p> <p>14 A. No.</p> <p>15 Q. And how did you come to be involved with</p> <p>16 Broadacre?</p> <p>17 A. Kevin brought me the idea a couple of years ago.</p> <p>18 Q. Okay. And is Kevin a -- how do you know Kevin?</p> <p>19 A. He's a friend, professional colleague. Our</p> <p>20 families are friends.</p> <p>21 Q. Is Kevin a former Highland or Highland affiliate</p> <p>22 employee?</p> <p>23 A. No.</p> <p>24 Q. Have you ever spoken to Kevin about this</p> <p>25 litigation?</p>	<p>40</p> <p>1 Q. Okay. When were you up in New York?</p> <p>2 A. Several times. It was one of the times I was up</p> <p>3 in New York but not the last time. I was in New York in</p> <p>4 October. I didn't meet with him then. So I went up to</p> <p>5 New York prior to that. I think it was September. And</p> <p>6 that's when he asked me about it.</p> <p>7 Q. September of 2012?</p> <p>8 A. That's correct.</p> <p>9 Q. What do you recall speaking to Mr. Ulrich about</p> <p>10 with regard to the lawsuit?</p> <p>11 A. Just said it was ongoing and I -- and I felt</p> <p>12 like we were finally starting to get some traction on</p> <p>13 discovery and getting a court date set.</p> <p>14 Q. Have you ever made any comments to Kevin -- have</p> <p>15 you ever made any negative comments about Highland to</p> <p>16 Mr. Ulrich?</p> <p>17 A. No.</p> <p>18 Q. Have you ever made any negative comments to</p> <p>19 Mr. Ulrich about Patrick Boyce?</p> <p>20 A. No. He doesn't even know Patrick Boyce.</p> <p>21 Q. Any negative comments to Mr. Ulrich about Jim</p> <p>22 Dondero?</p> <p>23 A. No.</p> <p>24 Q. Lane Britain?</p> <p>25 A. No, and he doesn't know Lane Britain.</p>

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<p style="text-align: right;">41</p> <p>1 Q. Do you have any other positions with Broadacre 2 other than being on the board? 3 A. No. 4 Q. What type of corporation is Broadacre? 5 A. I don't know the details. It's some kind of 6 Canadian entity. 7 Q. Okay. Are you at all responsible for finding 8 investors for Broadacre? 9 A. No. They have an employee that's designated to 10 do just that. 11 Q. Have you ever represented to anybody that you 12 are in business with Greg Stuecheli? 13 A. No, I haven't represented that I'm in business 14 with Greg Stuecheli. I've represented that we were 15 trying to start a business together. 16 Q. Okay. And to whom did you make those 17 representations? 18 A. It's a lot of people. 19 Q. Okay. Approximately how many people? 20 A. Could be a couple hundred. 21 Q. Have you ever made that representation in 22 writing? 23 A. That we are in business together? 24 Q. No, that you are -- I'm sorry. Your words, that 25 you are planning to go into business or that you're</p>	<p style="text-align: right;">43</p> <p>1 A. Yes, I have. 2 Q. Okay. And what investors or clients have -- 3 prospective investors or clients have you spoken to? 4 A. Like, what are their names? 5 Q. Yes. 6 A. I think that's confidential. I don't think you 7 should have a right to have that. 8 MS. DANIELS: Yeah, I'm going to object to 9 that information as -- as his confidential business 10 information, not relevant to any claim in this lawsuit or 11 any claim that Highland's made and potentially damaging 12 to his efforts and abilities to try to start a business, 13 make a living, move on with his own professional 14 activities. So I'm going to instruct the witness not to 15 answer. 16 MR. KATZ: Your Honor, do we want to take 17 those -- these issues up now or ... 18 SPECIAL MASTER KAPLAN: Tell me what your 19 question was again. 20 MR. KATZ: I was asking him what 21 prospective investors or clients that he has spoken to 22 with respect to this business venture that he is trying 23 to start. 24 SPECIAL MASTER KAPLAN: There's -- there's 25 no way around discovery on this issue, but it is a proper</p>
<p style="text-align: right;">42</p> <p>1 trying to start a business with Mr. Stuecheli. 2 A. No, I haven't told anybody -- well, I might have 3 sent some e-mails saying -- no, I don't think so. I 4 don't think I've sent e-mails saying that Greg and I are 5 trying to go to (sic) business together. 6 Q. Okay, but you are trying with Mr. Stuecheli -- 7 A. Yes. 8 Q. -- to go into business? 9 A. Sorry. 10 Q. And what type of business are you trying to 11 start with Mr. Stuecheli? 12 A. A credit strategy business. 13 Q. And what do you mean by "credit strategy 14 business"? 15 A. I mean investing in the credit tranches of the 16 capital structures of companies. So loans, bonds, that 17 type of thing. 18 Q. Okay. And what efforts have you -- have you 19 personally made as part of the -- to try to start that 20 business? 21 A. I'm not sure I understand what you mean. 22 Q. Okay. Have you formed an entity? 23 A. No. 24 Q. Have you spoken to potential investors or other 25 clients?</p>	<p style="text-align: right;">44</p> <p>1 subject for attorneys-eyes-only type thing. 2 MS. DANIELS: Under the definition of 3 attorneys' eyes only in the protective order, that is 4 problematic for us -- and we're preparing documents to 5 address that, but under that attorneys-eyes-only 6 instruction that they put in the order, 7 attorneys-eyes-only information can be shown to them and 8 their employees. 9 That would not protect the interests that 10 we have in Pat Daugherty's information that he's willing 11 to testify to because we believe that they will take 12 efforts with these people that he's identified or 13 companies that he's identified in order to, you know, 14 waylay Mr. Daugherty's opportunities with them. 15 So I'm concerned about -- 16 SPECIAL MASTER KAPLAN: Refresh my memory. 17 It seems like we've been down this road before with 18 regard to some kind of an order where I authorized 19 information be disclosed but prohibited the other side 20 from contacting the third parties. I'm not sure that had 21 to do with investors. That might have -- 22 MR. KATZ: Your Honor, if I can -- if I can 23 address that. 24 SPECIAL MASTER KAPLAN: Yeah. 25 MR. KATZ: The issue there was when Looper</p>

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<p style="text-align: right;">45</p> <p>1 Reed took the position that they could show  2 attorneys-eyes-only documents to Mr. Daugherty, and --  3 SPECIAL MASTER KAPLAN: No, that's not what  4 I'm thinking of.  5 MR. KATZ: Okay.  6 SPECIAL MASTER KAPLAN: There was an order  7 in --  8 MR. KATZ: We can make it simple, Your  9 Honor. We will agree that the attorneys-eyes-only  10 designations, unless further ordered from the Court,  11 cannot be shown to non-attorneys.  12 SPECIAL MASTER KAPLAN: Well, I'll go one  13 step further, that you can't do anything with this -- you  14 can't contact these investors without court approval.  15 MR. KATZ: Okay.  16 SPECIAL MASTER KAPLAN: You can get the  17 information. I just don't think there's any way around  18 getting the information because it goes to the heart of  19 your claims in this lawsuit.  20 MR. KATZ: Sure.  21 SPECIAL MASTER KAPLAN: But I can further  22 limit it to just the attorneys in the case, and I can  23 prohibit the lawyers and their clients from contacting  24 any of these investors.  25 And so just to be clear, you're entitled to</p>	<p style="text-align: right;">47</p> <p>1 about the trial team --  2 MS. DANIELS: Okay.  3 SPECIAL MASTER KAPLAN: -- not the in-house  4 Highland lawyers.  5 MS. DANIELS: Okay.  6 SPECIAL MASTER KAPLAN: In-house Highland  7 lawyers are out.  8 MR. MOORE: Does that include in-house  9 litigation as opposed to --  10 SPECIAL MASTER KAPLAN: Yes. Anybody on  11 Highland's payroll, anybody who's in-house, out.  12 MR. LEVENTON: Your Honor, just one point  13 of --  14 SPECIAL MASTER KAPLAN: You're not a trial  15 counsel.  16 MR. LEVENTON: I'm not --  17 SPECIAL MASTER KAPLAN: Are you attorney of  18 record in this case?  19 MR. LEVENTON: I'm not addressing the last  20 comment you made.  21 SPECIAL MASTER KAPLAN: Are you addressing  22 anything?  23 MR. LEVENTON: Yes, Your Honor.  24 SPECIAL MASTER KAPLAN: Are you an attorney  25 of record in this case?</p>
<p style="text-align: right;">46</p> <p>1 know -- just the lawyers are entitled to know who these  2 investors are, and that's it. You cannot act on any of  3 this information.  4 MR. KATZ: And, Your Honor, just -- and I  5 think this is what Mr. Leventon's concern is --  6 absolutely, I understand. The issue is -- and we can  7 address it if and when it comes up --  8 SPECIAL MASTER KAPLAN: Right.  9 MR. KATZ: -- what happens if the investors  10 he's contacting are already investors or prospective  11 investors of Highland and they are --  12 SPECIAL MASTER KAPLAN: We can sort that  13 out later.  14 MR. KATZ: But we wouldn't know that unless  15 I could talk to people.  16 SPECIAL MASTER KAPLAN: We can sort all  17 this out later.  18 MR. KATZ: Okay.  19 SPECIAL MASTER KAPLAN: All you're entitled  20 to right now is the information, and you can't do  21 anything with it, and you can't show it to your clients.  22 MS. DANIELS: And, Judge Kaplan, in that  23 regard, I would ask that the internal non-trial counsel  24 here for Highland be asked to leave in order --  25 SPECIAL MASTER KAPLAN: I'm talking just</p>	<p style="text-align: right;">48</p> <p>1 MR. LEVENTON: I am not.  2 SPECIAL MASTER KAPLAN: I'm not interested  3 in hearing it.  4 MR. LEVENTON: Okay.  5 SPECIAL MASTER KAPLAN: You've got very  6 talented, gifted, and high-priced lawyers that are  7 capable of communicating any of your concerns to me.  8 MR. LEVENTON: Okay.  9 SPECIAL MASTER KAPLAN: So I will ask that  10 anybody who is not a member of the outside trial team to  11 excuse themselves from the room.  12 (Messrs. Leventon, Boyce, Surgent leave the  13 room.)  14 MR. KATZ: Thank you, Your Honor.  15 MS. DANIELS: And, Judge Kaplan, I just  16 want to make sure we're clear that to the extent that  17 he's asking him about people that he's talked to in  18 connection with starting a new business, that that  19 information cannot go beyond the folks in this room, in  20 any way, shape or form, without further -- without  21 further involvement by you or -- or our judge in the case  22 in saying what they can or cannot do with it.  23 SPECIAL MASTER KAPLAN: I think I've said  24 that two different ways.  25 But on the record, Mr. Katz, you understand</p>

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<p style="text-align: right;">49</p> <p>1 that to be the case?</p> <p>2 MR. KATZ: I understand your order</p> <p>3 perfectly, Your Honor.</p> <p>4 SPECIAL MASTER KAPLAN: All right.</p> <p>5 Proceed.</p> <p>6 MR. KATZ: Okay. Thank you, Your Honor.</p> <p>7 SPECIAL MASTER KAPLAN: Let the record</p> <p>8 reflect that only the trial team outside counsel are</p> <p>9 present in the room, along with the reporter and the</p> <p>10 videographer.</p> <p>11 Proceed.</p> <p>12 (Beginning of attorneys-eyes-only excerpt.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">82</p> <p>1 noncompetition, some other restrictions?</p> <p>2 A. Vaguely.</p> <p>3 (Messrs. Leventon, Boyce and Surgent enter</p> <p>4 the room.)</p> <p>5 Q. When was the last time you reviewed those</p> <p>6 restrictions?</p> <p>7 A. I think I was in a deposition last summer, and</p> <p>8 you and James Stanton presented it as an exhibit.</p> <p>9 Q. So you have not -- between that prior deposition</p> <p>10 and today, you've not reviewed that at all?</p> <p>11 A. That's correct.</p> <p>12 Q. Do you recall at that last deposition if you had</p> <p>13 reviewed that agreement at any time -- do you recall</p> <p>14 the -- start over here.</p> <p>15 Prior to that last deposition, do you</p> <p>16 recall reviewing that employment agreement at any time?</p> <p>17 A. No.</p> <p>18 Q. When did you first start --</p> <p>19 A. You have five minutes.</p> <p>20 Q. -- taking steps to -- when did you first start</p> <p>21 thinking about starting your new venture?</p> <p>22 A. Probably around Christmas 2012, first week of</p> <p>23 January 2013.</p> <p>24 Q. Okay. And what triggered that thought?</p> <p>25 A. I went to New York. I went to New York to do a</p>
<p style="text-align: right;">81</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 (End of attorneys-eyes-only excerpt.)</p> <p>17 Q. (By Mr. Katz) Now, you signed an employment --</p> <p>18 MR. MOORE: I'll grab the clients. I think</p> <p>19 we're past this sensitive material, but if not, if we get</p> <p>20 back to it, we'll ask them to leave.</p> <p>21 MS. DANIELS: Thanks.</p> <p>22 Q. You're aware that you signed an employment</p> <p>23 agreement with Highland Capital, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And are you aware that that agreement contained</p>	<p style="text-align: right;">83</p> <p>1 damage assessment from this litigation, the accusations,</p> <p>2 everything else; talked to some headhunters. Actually,</p> <p>3 I'd talked to the headhunters earlier.</p> <p>4 And the feedback came back very negative,</p> <p>5 and it was suggested to me that my best bet, given what</p> <p>6 was going on, was to go out and try and start my own</p> <p>7 firm. Probably had better -- better luck doing it that</p> <p>8 way.</p> <p>9 Q. Who were the headhunters that you talked to?</p> <p>10 A. Spencer Stuart, Pearson Partners. There might</p> <p>11 have been another one in there. Heidrick &amp; Struggles.</p> <p>12 Heidrick &amp; Struggles.</p> <p>13 Q. Okay. And who was it that told you you would be</p> <p>14 better off doing your own thing?</p> <p>15 A. Peter Gonye.</p> <p>16 Q. And who was he with?</p> <p>17 A. Spencer Stuart.</p> <p>18 Q. Is it your testimony that you had not thought</p> <p>19 about starting your own venture prior to those</p> <p>20 conversations?</p> <p>21 A. Yeah, not in any material sense. I really</p> <p>22 hadn't put any thought behind it. I hadn't put any --</p> <p>23 no, I hadn't.</p> <p>24 Q. When you say you were doing a damage assessment,</p> <p>25 was there ever any documentation of that assessment?</p>



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<p style="text-align: right;">84</p> <p>1 A. No. I just went around and met with people that 2 I knew in New York to get their honest feedback. 3 Q. Okay. The notebook that you mentioned earlier, 4 how many -- approximately how many conversations did you 5 take notes about that are in that notebook? 6 A. I don't -- I don't recall. 7 Q. Is it more than ten? 8 A. I don't know. 9 Q. More than two? 10 A. Yes. 11 MS. DANIELS: Objection, form. 12 A. Yes, it is more than two. 13 Q. Who do you -- what conversations do you recall 14 taking notes about that are included in that notebook? 15 A. Tim Lawler, Kevin Dowd, Reece Fulgham, Christina 16 Dandar, Kurt Plumer, Gibran Mahmud, Ethan Underwood, Jay 17 Carvell, Mark Okada. 18 Q. Anything else? 19 A. Those are just the ones I can think of off the 20 top of my head. There's others, I -- I imagine. 21 Q. Have you ever taken -- and all those 22 conversations that you took notes about happened after 23 you left Highland? 24 A. That's correct. 25 Q. Did they all happen after this litigation</p>	<p style="text-align: right;">86</p> <p>1 MS. DANIELS: And, again, to the extent 2 that that calls for you to reveal communications with 3 counsel or any substance of communications with counsel, 4 I'm going to instruct you not to answer. 5 Q. I don't want to know the substance right now. I 6 just want to know what -- are those notes of telephone 7 calls that you've taken? 8 MS. DANIELS: Again, to the extent that his 9 questions would require you to reveal substantive 10 communications with counsel by the question themselves 11 and the information that you'll have to use to answer it, 12 I'm going to instruct you not to answer it. 13 A. Yeah, but I'm okay saying it was a combination 14 of phone calls and face-to-face meetings. 15 Q. Okay. And were these notes taken in a similar 16 spiral-type notebook, like the other one? 17 A. Just -- yeah. I mean, to be honest with you, 18 yes, other -- I don't -- not exactly like it, but other 19 type notebooks. 20 Q. Okay. 21 A. Or pieces of paper. 22 Q. Were -- the notes that you took, did you take 23 them while you were having the conversations? 24 A. Yes, sometimes. 25 Q. But sometimes after?</p>
<p style="text-align: right;">85</p> <p>1 commenced? 2 A. That's correct. 3 Q. And have you ever taken notes from a 4 conversation you've had with anybody after this 5 litigation commenced that are not in your possession 6 currently? 7 A. I'm not sure. Can you clean that one up a 8 little bit? 9 Q. Sure. Have you -- are there any notes that you 10 have taken from any conversation that are not in your -- 11 currently in your possession? 12 A. Yes. 13 Q. Okay. And are those notes not in your 14 possession because you've thrown them away? 15 A. No. I -- it's matters that were under direction 16 of counsel, and so counsel has those. 17 Q. Okay. Were those notes of -- the ones that are 18 in the possession of your counsel, those are notes of 19 conversations with third parties? 20 A. I don't -- what do you mean by "third parties"? 21 Q. Okay. Well, tell me what -- 22 A. I mean, everybody's with the conversation other 23 than me. 24 Q. Sure. Tell me what notes you're referring to 25 that are in possession of counsel.</p>	<p style="text-align: right;">87</p> <p>1 A. Right after. 2 Q. And is it your testimony that these 3 conversations about which you took notes were -- that the 4 conversations were at the direction of counsel? 5 A. Yes. 6 Q. Okay. And were those conversations with any 7 current or former Highland employees? 8 A. Yes. 9 Q. Okay. And who do you recall taking notes about? 10 MS. DANIELS: Again, I'll object to the 11 extent that it involves -- that the identity of the 12 persons involves communications, directives of counsel in 13 connection with the litigation or that are -- that are 14 privileged communications. 15 I would instruct you not to answer the 16 question to that extent. 17 A. I'm going to not answer the question, then. 18 Q. I'm not asking you about your conversations with 19 counsel. I'm asking you about your notes. 20 MS. DANIELS: And, again, to the extent 21 that the notes -- 22 MR. KATZ: Let me finish my question, 23 please. 24 MS. DANIELS: Oh, I thought you were. You 25 go right ahead, and then I'll make my objection.</p>

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<p style="text-align: right;">88</p> <p>1 Q. I want to know who you spoke to that you took 2 notes of the conversations.</p> <p>3 MS. DANIELS: Again, to the extent that who 4 you spoke to identifies directives and communications -- 5 directives of counsel or communications with counsel, 6 I'll instruct you not to answer the question.</p> <p>7 A. On that basis, I'm not going to answer the 8 question.</p> <p>9 MR. KATZ: Let's go off the record. 10 THE VIDEOGRAPHER: Off the record, 11:10 11 a.m.</p> <p>12 (Recess taken from 11:10 to 11:22.) 13 SPECIAL MASTER KAPLAN: We're back on the 14 record.</p> <p>15 (Written record only, not on videotaped 16 record.)</p> <p>17 MR. KATZ: Mr. Daugherty indicated that he 18 had taken notes of phone calls that he had. He had two 19 sets of notes, one that he says is in his possession, 20 which hasn't been turned over to us. That's -- we'll 21 take that for another time, but that's an issue.</p> <p>22 The bigger issue, the immediate issue is he 23 said he has another set of notes that he has given to his 24 counsel that he said he took -- that Ms. Daniels said 25 that was taken at her direction. It was of -- it was of</p>	<p style="text-align: right;">90</p> <p>1 MS. DANIELS: Under the work-product 2 privilege and under the attorney-client privilege related 3 to communications, if I have communicated with my client 4 or he's communicated with me and said, you know, Hey, can 5 I talk to so-and-so, or, I ran into so-and-so, can I 6 communicate with him, and et cetera, he has substantive 7 communications with me in which he is seeking, you know, 8 legal advice, opinion and direction, and based upon my 9 communications with him he then goes and does something 10 and then prepares information from what he learned and 11 sends it to me, I do not believe that that is 12 discoverable, in this proceeding, by counsel.</p> <p>13 SPECIAL MASTER KAPLAN: What about 14 Mr. Katz's argument that that would then be instructing 15 Mr. Daugherty to do something that you couldn't do 16 yourself? You couldn't talk to Highland employees, could 17 you? Actually, there's probably a group of employees you 18 could talk to.</p> <p>19 MS. DANIELS: I could talk to noncontrol 20 employees --</p> <p>21 SPECIAL MASTER KAPLAN: Right.</p> <p>22 MS. DANIELS: -- at any time, if they would 23 talk to me, and -- and certainly we could talk to former 24 employees.</p> <p>25 And, again, to the extent that I'm, you</p>
<p style="text-align: right;">89</p> <p>1 communications with current and former Highland 2 employees.</p> <p>3 She's asserted attorney-client-privilege 4 objection to that and instructed him not to disclose any 5 information about who those individuals are. And that's 6 where we stopped at.</p> <p>7 MS. DANIELS: Specifically, Judge Kaplan, 8 his question was who did you talk to, and Mr. Daugherty's 9 clear response was, I talked to people at the direction 10 of counsel. And he said who, and I said based upon that 11 being a substantive communication with counsel, I'm 12 instructing the witness not to answer.</p> <p>13 MR. KATZ: Here's the problem, Your Honor: 14 He indicated these were current and former Highland 15 employees.</p> <p>16 First of all, I'm just trying to get -- 17 there's no attorney-client privilege about his knowledge 18 of what those notes are. He took them.</p> <p>19 Secondly, and more disconcerting to me, 20 what I hear Ms. Daniels saying is she instructed her 21 client to go talk to people that she cannot be talking 22 to, he's taking notes about it, withholding them for 23 privilege. They're all probably witness statements 24 anyway and should have been turned over. It's a pretty 25 serious issue.</p>	<p style="text-align: right;">91</p> <p>1 know, okaying it or saying, Sure, if you see them in 2 so-and-so, you can talk to them --</p> <p>3 SPECIAL MASTER KAPLAN: I'm not sure I can 4 hash out this issue standing here. If this becomes a big 5 deal, we'll let you guys brief it and let me make a more 6 informed decision on it.</p> <p>7 MS. DANIELS: Okay.</p> <p>8 SPECIAL MASTER KAPLAN: But for now 9 let's -- and in the event that -- I think you can get 10 into it. Mr. Daugherty is here for all the depositions 11 anyway, so we'll let you examine him on that -- on that 12 point.</p> <p>13 MR. KATZ: Okay.</p> <p>14 SPECIAL MASTER KAPLAN: So let's move on 15 for now.</p> <p>16 MR. KATZ: Okay.</p> <p>17 Q. (By Mr. Katz) Mr. Daugherty, when you went to 18 New York, you said you spoke to --</p> <p>19 SPECIAL MASTER KAPLAN: Wait a minute. Get 20 back on the --</p> <p>21 MR. KATZ: I apologize.</p> <p>22 THE WITNESS: Are you done with this 23 exhibit?</p> <p>24 MR. KATZ: For now, yeah.</p> <p>25 THE VIDEOGRAPHER: Back on the record,</p>

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<p style="text-align: right;">92</p> <p>1 11:26 a.m.</p> <p>2 Q. (By Mr. Katz) Mr. Daugherty, I want to be</p> <p>3 absolutely clear. The notes that we've been talking</p> <p>4 about are notes that you made of conversations that you</p> <p>5 had with current and former Highland employees, correct?</p> <p>6 A. I don't -- I don't recall if it does cover</p> <p>7 current Highland employees. Actually, that's not true.</p> <p>8 Tim Lawler was one of them, so, yeah.</p> <p>9 Q. Okay. And there's -- there's two notebooks,</p> <p>10 correct? One in your possession and one in the</p> <p>11 possession of your counsel?</p> <p>12 A. No.</p> <p>13 MS. DANIELS: Objection, form.</p> <p>14 A. Yeah, you came up with that. I don't know where</p> <p>15 you came up with that.</p> <p>16 Q. Okay. You -- you indicated to me that you had a</p> <p>17 notebook in your possession?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. Are there separate notes of conversations</p> <p>20 that you have turned over to your counsel?</p> <p>21 A. Yes. There are notes but not in a notebook.</p> <p>22 Q. Okay. And the notes that are in the notebook</p> <p>23 that is in your possession, those are notes that you have</p> <p>24 taken of conversations with current and former Highland</p> <p>25 employees or affiliates?</p>	<p style="text-align: right;">94</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Did it also apply to the notebook that</p> <p>3 you have in your possession?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did the individuals with whom you spoke,</p> <p>6 did you identify -- start over here.</p> <p>7 Just with respect to the conversations that</p> <p>8 relate to the notes that you gave to your counsel, did --</p> <p>9 were any of those conversations the reason that you</p> <p>10 identified any of the individuals earlier on in this</p> <p>11 deposition when you gave me the list of former and</p> <p>12 current Highland employees to whom you had spoken?</p> <p>13 MS. DANIELS: I'm going to object, again,</p> <p>14 to the extent that that's a back-door effort at trying to</p> <p>15 discover the identity --</p> <p>16 MR. KATZ: Counsel, please, "objection,</p> <p>17 form" or instruct your --</p> <p>18 MS. DANIELS: Sure.</p> <p>19 MR. KATZ: -- give an instruction.</p> <p>20 MS. DANIELS: Therefore, it's</p> <p>21 attorney-client privileged.</p> <p>22 And I'm going to instruct the witness not</p> <p>23 to reveal the identity, in any way, shape or form, of the</p> <p>24 people that he conferred with with respect to talking to</p> <p>25 his attorneys.</p>
<p style="text-align: right;">93</p> <p>1 A. Yes.</p> <p>2 MS. DANIELS: And, again --</p> <p>3 THE WITNESS: I'm sorry.</p> <p>4 MS. DANIELS: Go ahead.</p> <p>5 A. The answer to the question is yes.</p> <p>6 Q. The -- were each of those conversations taken --</p> <p>7 that you took -- I'm sorry. Were each of the</p> <p>8 conversations about which you took notes telephone</p> <p>9 conversations?</p> <p>10 A. As I told you -- I think you asked me this.</p> <p>11 Some were telephone, and some were face to face.</p> <p>12 Q. Okay. The ones that were face to face, were you</p> <p>13 taking notes as you were talking to these folks?</p> <p>14 A. I don't recall.</p> <p>15 Q. Were the conversations about which you took</p> <p>16 notes that you gave to your counsel both telephone and in</p> <p>17 person?</p> <p>18 A. Can you tighten that one up a little bit? I'm</p> <p>19 not -- I'm not following you.</p> <p>20 Q. Okay. When you indicated that some of the</p> <p>21 conversations were phone and some were in person --</p> <p>22 A. Right.</p> <p>23 Q. -- did that apply to the conversations about</p> <p>24 which you took notes and gave those notes to your</p> <p>25 counsel?</p>	<p style="text-align: right;">95</p> <p>1 Instruct you not to answer.</p> <p>2 MR. KATZ: So I can be clear, your position</p> <p>3 is that information that he's already disclosed in this</p> <p>4 deposition would be attorney-client information?</p> <p>5 MS. DANIELS: Well, you're misinterpreting</p> <p>6 me, sir.</p> <p>7 MR. KATZ: That was my question. Let me</p> <p>8 ask --</p> <p>9 MS. DANIELS: No.</p> <p>10 MR. KATZ: -- the question again.</p> <p>11 MS. DANIELS: No.</p> <p>12 MR. KATZ: Let me ask the question again.</p> <p>13 SPECIAL MASTER KAPLAN: Hold on.</p> <p>14 Ostensibly, I'm here for a reason. So if you want to</p> <p>15 make an objection and instruct the witness not to answer</p> <p>16 it, do it.</p> <p>17 Mr. Katz, if you want to insist on an</p> <p>18 answer to the question, ask me to rule on it.</p> <p>19 MR. KATZ: Okay.</p> <p>20 SPECIAL MASTER KAPLAN: All right? Ask</p> <p>21 your question again.</p> <p>22 MR. KATZ: Okay.</p> <p>23 Q. Conversations about which you took notes that</p> <p>24 you gave to your counsel, were any of the individuals</p> <p>25 that you had those conversations with individuals that</p>

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<p style="text-align: right;">96</p> <p>1 you identified earlier because of those conversations 2 that you had with them? 3 MS. DANIELS: Again, I'm going to instruct 4 the witness not to answer based upon the invasion of the 5 attorney-client privilege. 6 The witness has already testified that he 7 did that -- the conversations you're referring to now, he 8 did those at the direction of counsel. 9 A. I got a different answer. I don't understand 10 what the question is. 11 Q. Sure. Were the conversations that you had that 12 you took those notes about, was it those conversations 13 you were -- that you were identifying when you identified 14 individuals earlier today when I asked you who you had 15 spoken to? 16 MS. DANIELS: Objection, attorney-client 17 privilege. Instruct the witness not to answer. 18 A. I just don't understand the question. 19 Q. Sure. For the individuals that you took the 20 notes of the conversations with that you turned over to 21 your counsel, did you have any conversations with any of 22 those individuals where you didn't take notes? 23 A. Yes. 24 Q. Okay. Were those -- were there any of those 25 individuals about which you -- the conversations about</p>	<p style="text-align: right;">98</p> <p>1 A. Yeah, there was never any situation I can recall 2 where I took detailed notes or copious notes. 3 Q. Okay. 4 A. Unless it was something I got out of the 5 conversation, like, Talked to -- like, I wouldn't say 6 talked to. I would say, John Doe, phone number, agreed 7 to buy 5 million. Something like that. 8 Q. So is it also your testimony that you did not 9 have a practice of keeping notes from telephone 10 conversations with individuals while you were at 11 Highland? 12 A. That's correct. 13 Q. Would the same be true for conversations -- 14 in-person conversations you had with people while you 15 were -- while you were at Highland? 16 A. Yeah. I mean, unless it was something I needed 17 to go do, like Jim's office -- come out of Jim's office 18 and I need to do two or three things, so I'd make a note 19 to myself to make sure I'd covered those three things. 20 And I don't limit that just to Jim. 21 There are also e-mails, where I would send 22 e-mails to Jim, or whoever, occasionally. I wasn't a big 23 e-mail kind of guy, but there were occasions where I 24 would send detailed -- detailed e-mails discussing 25 whatever. And I would consider those effectively notes.</p>
<p style="text-align: right;">97</p> <p>1 which you took notes that you only had the conversation 2 where you took the notes about? 3 A. I don't recall. 4 Q. Do you have a regular practice of taking notes 5 of conversations you have with individuals? 6 A. No. 7 Q. Did you have that practice when you were 8 employed at Highland? 9 A. No. 10 Q. Have you ever told anybody that you had that 11 practice? 12 A. Not that I'm aware of -- aware of. 13 Q. Is it your testimony that prior to leaving 14 Highland you'd never taken notes of a phone conversation 15 you had with anybody? 16 MS. DANIELS: Objection, form. 17 A. No, I'm not saying that. 18 Q. Okay. So you have taken -- while you were at 19 Highland, you did take notes on occasion about phone 20 conversations? 21 A. I mean ... Let's clarify. I might have said 22 talked to so-and-so, or not even talked to so-and-so; 23 just put their name and a phone number and the date. 24 Q. Okay. Did you ever have any phone conversations 25 where you took more notes than that?</p>	<p style="text-align: right;">99</p> <p>1 Q. When you were in New York, you mentioned earlier 2 you were meeting with some headhunters? 3 A. Which time? 4 Q. Was there more than one trip that you went there 5 to meet with headhunters? 6 A. No, no. 7 Q. Okay. 8 A. And, by the way, I didn't go to New York to meet 9 with headhunters. That's why I'm a little confused. 10 Q. Okay. During the -- but there was only one trip 11 you went to New York where you were meeting with 12 headhunters? 13 MS. DANIELS: Objection, form. 14 A. I didn't meet with any headhunters in New York. 15 Q. Okay. When you went to New York, you mentioned 16 you were going to do your damage assessment? 17 A. Yes. 18 Q. Okay. And that must have been my 19 misunderstanding. 20 So the headhunters that you were talking 21 about earlier, were they located here in Dallas? 22 A. One was in L.A. Several were in -- two were in 23 New York. But I didn't go to New York to talk -- I could 24 just talk to them on the phone. 25 Q. Okay. Did you ever have any in-person meetings</p>



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<p style="text-align: right;">100</p> <p>1 with any of the headhunters?</p> <p>2 A. I had video meetings with them.</p> <p>3 Q. Okay. With all of them, video?</p> <p>4 A. No. Actually, the Heidrick &amp; Struggles person,</p> <p>5 I met with her face to face; and then the Spencer Stuart</p> <p>6 people I met with -- with videoconference --</p> <p>7 videoconferencing. There'd be, like, a camera on me.</p> <p>8 And they would take it from Dallas, and they would be</p> <p>9 wherever.</p> <p>10 Q. So when you went to New York to do damage</p> <p>11 assessment, who did you meet with?</p> <p>12 A. Cerberus, Anchorage, DK.</p> <p>13 Q. Anyone else?</p> <p>14 A. JPMorgan. I'm trying to think.</p> <p>15 (Special Master Kaplan leaves the room.)</p> <p>16 A. I think it's Solus or Solstice, something like</p> <p>17 that. Chris Pucillo's firm. Those are the ones I recall</p> <p>18 off the top of my head.</p> <p>19 Q. Okay.</p> <p>20 A. I also went to see Apollo. Ted -- I can't</p> <p>21 remember. Ted Dalster (phonetic), I think is his name.</p> <p>22 Q. Did you personally set up these meetings, or did</p> <p>23 you have somebody set them up on your behalf?</p> <p>24 A. I called them up and set them up.</p> <p>25 Q. And did you talk to any -- anyone at any of</p>	<p style="text-align: right;">102</p> <p>1 A. What do you want me to do?</p> <p>2 Q. Does that appear to be the employment agreement</p> <p>3 that you entered into with Highland Capital?</p> <p>4 A. I don't know.</p> <p>5 Q. Can you turn to page 11 of that document?</p> <p>6 A. Yes.</p> <p>7 Q. Is that your signature on that document?</p> <p>8 A. It looks like my signature and Jim Dondero's</p> <p>9 signature.</p> <p>10 Q. And you did enter into an employment agreement</p> <p>11 at Highland Capital?</p> <p>12 A. At some point.</p> <p>13 Q. Okay. Is this that employment agreement?</p> <p>14 A. I don't know.</p> <p>15 Q. Why don't you know?</p> <p>16 A. Because I didn't commit it to memory.</p> <p>17 Q. Okay. Do you have any reason to believe that's</p> <p>18 not the employment agreement?</p> <p>19 A. I don't have any reason to believe it is or it</p> <p>20 isn't. I just don't remember the document.</p> <p>21 Q. Okay. Do you have -- is there anything --</p> <p>22 but -- okay. But this is a document that does have your</p> <p>23 signature on it?</p> <p>24 A. It looks -- that appears to be my signature,</p> <p>25 yes.</p>
<p style="text-align: right;">101</p> <p>1 these entities about employment opportunities?</p> <p>2 A. Not specifically.</p> <p>3 Q. Generally you did?</p> <p>4 A. Yeah. I made it clear that I was interested in</p> <p>5 employment opportunities.</p> <p>6 (Exhibit 31 marked.)</p> <p>7 Q. I'll show you what's marked here as Exhibit 31.</p> <p>8 MS. DANIELS: Thank you.</p> <p>9 Q. Do you recall seeing this, this letter before?</p> <p>10 A. Vaguely.</p> <p>11 MS. DANIELS: If you need to take time to</p> <p>12 read it, please do so before answering any questions.</p> <p>13 Q. Okay. We'll get into that in a minute. I want</p> <p>14 to ask you about the document that's attached thereto.</p> <p>15 A. I'm sorry. What do you want to do?</p> <p>16 Q. I want to ask you about the document that's</p> <p>17 attached to the letter.</p> <p>18 A. Okay.</p> <p>19 Q. It's entitled "Amended Employment Agreement."</p> <p>20 A. Okay.</p> <p>21 MS. DANIELS: Do you need to review that?</p> <p>22 Q. Does that look --</p> <p>23 A. Counsel, do you really want me to read every</p> <p>24 part of this?</p> <p>25 Q. I didn't ask you that.</p>	<p style="text-align: right;">103</p> <p>1 Q. Okay. Okay. Can you turn to page 7 for me,</p> <p>2 please?</p> <p>3 A. Okay.</p> <p>4 Q. And actually starting at the bottom of page 6,</p> <p>5 it says "Article V." See the provision "Confidentiality,</p> <p>6 Non-Competition, Non-Solicitation, and Non-Recruitment"?</p> <p>7 (Special Master Kaplan reenters the room.)</p> <p>8 A. I do.</p> <p>9 Q. Okay. You understood you were bound by these</p> <p>10 restrictions as a result of your employment with</p> <p>11 Highland, didn't you?</p> <p>12 MS. DANIELS: Objection, form.</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 A. Because I didn't think that many of the</p> <p>16 provisions in the agreement were enforceable.</p> <p>17 Q. Okay. Specifically which provisions did you not</p> <p>18 think were enforceable?</p> <p>19 A. I was generally under the impression that the</p> <p>20 whole document wasn't enforceable.</p> <p>21 Q. Did you ever make any attempts to -- well, after</p> <p>22 you left Highland, was it your intent to comply with the</p> <p>23 restrictions?</p> <p>24 MS. DANIELS: Again, I'll object.</p> <p>25 And to the extent that this calls for you</p>



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<p style="text-align: right;">104</p> <p>1 to reveal any communications that you had with counsel</p> <p>2 concerning this agreement after you left Highland, I'll</p> <p>3 instruct you not to answer.</p> <p>4 A. On that basis, I'm not going to answer.</p> <p>5 Q. So it's your testimony that you never</p> <p>6 formulated -- when did you -- the communications you had</p> <p>7 with counsel about these restrictions, were those</p> <p>8 communications with Looper Reed?</p> <p>9 A. About what restrictions?</p> <p>10 Q. About the restrictions in the agreement.</p> <p>11 A. I had -- if I'm understanding the question</p> <p>12 correctly, I had conversations with Looper Reed about</p> <p>13 what presumably this agreement represents. I don't know</p> <p>14 if it's mine or not. I haven't had a chance to compare</p> <p>15 and contrast.</p> <p>16 Does that answer your question?</p> <p>17 Q. And when did those conversations occur?</p> <p>18 A. Which ones?</p> <p>19 Q. The conversations with Looper Reed about these</p> <p>20 restrictions.</p> <p>21 A. Oh, I don't recall. Sometime in 2011.</p> <p>22 Q. I'm sorry?</p> <p>23 A. Sometime in 2011.</p> <p>24 Q. Okay. Prior to your resignation or after your</p> <p>25 resignation?</p>	<p style="text-align: right;">106</p> <p>1 question?</p> <p>2 A. That's correct.</p> <p>3 Q. Can you turn to page 2 for me?</p> <p>4 A. Yes.</p> <p>5 Q. Can you read the definition of confidential</p> <p>6 information that's contained there on page 2?</p> <p>7 A. You want me to read -- from what to what?</p> <p>8 Q. The definition of confidential information.</p> <p>9 A. You're talking about all six of those ...</p> <p>10 Q. Yes.</p> <p>11 A. You want me to just start reading?</p> <p>12 Q. Yes.</p> <p>13 A. Okay. "Confidential Information" --</p> <p>14 Q. You don't have to read it out loud. I just</p> <p>15 wanted --</p> <p>16 A. Oh.</p> <p>17 Q. -- you to read it. You can read it out loud if</p> <p>18 you'd like.</p> <p>19 A. I don't really want to. I just didn't</p> <p>20 understand what you wanted me to do.</p> <p>21 (Reviewing document.) Okay.</p> <p>22 Q. Okay. Do you have any information or documents</p> <p>23 in your possession that fall under that definition?</p> <p>24 A. Which definition?</p> <p>25 Q. The definition of confidential information.</p>
<p style="text-align: right;">105</p> <p>1 A. After my resignation.</p> <p>2 Q. Prior to or after your last day of employment?</p> <p>3 A. I'm sorry?</p> <p>4 Q. Was it before or after your last day of</p> <p>5 employment?</p> <p>6 A. Was what before?</p> <p>7 Q. The conversations.</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. Can you read on page 7, for me, paragraph</p> <p>10 5.3(b)? It's entitled "Non-Recruitment."</p> <p>11 MS. DANIELS: And to the extent you need to</p> <p>12 read anything more than that to put that in context --</p> <p>13 I'm going to instruct the witness that he</p> <p>14 should fully satisfy himself that he understands its</p> <p>15 context before answering any questions.</p> <p>16 A. (Reviewing document.) Okay.</p> <p>17 Q. Okay. Do you believe that you have complied</p> <p>18 with that provision?</p> <p>19 MS. DANIELS: I'll object, again, to the</p> <p>20 extent that it calls for communications with counsel.</p> <p>21 Instruct the witness not to answer. I'll also object to</p> <p>22 the form of that question.</p> <p>23 A. I'm going to take my counsel's advice on that,</p> <p>24 or direction, I should say.</p> <p>25 Q. Okay. You're going to refuse to answer the</p>	<p style="text-align: right;">107</p> <p>1 MS. DANIELS: Again, to the extent that</p> <p>2 that calls for revealing any communications with counsel</p> <p>3 in the nature of advice or analysis, I'll instruct the</p> <p>4 witness not to answer. I'll also object to the form of</p> <p>5 the question.</p> <p>6 A. On that basis, I'm not going to answer the</p> <p>7 question.</p> <p>8 Q. I'm not asking you for your communications with</p> <p>9 counsel. What I am asking for is if you have documents</p> <p>10 in your possession relating to Highland's -- let me just</p> <p>11 ask the specific question.</p> <p>12 Do you have documents in your possession</p> <p>13 relating to Highland's customers, clients, marketing,</p> <p>14 business or operational methods?</p> <p>15 A. Yes. Well, I may.</p> <p>16 Q. Okay. Do you not know for sure?</p> <p>17 A. I don't.</p> <p>18 Q. Do you not know if those documents are in your</p> <p>19 possession, or what don't you know for sure?</p> <p>20 MS. DANIELS: And, again, to the extent</p> <p>21 that it calls for revealing communications with counsel,</p> <p>22 I'll instruct you not to answer. If you can answer</p> <p>23 otherwise, then obviously do so.</p> <p>24 A. Give me the question again.</p> <p>25 Q. Sure. Why don't you know whether you have</p>

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<p style="text-align: right;">108</p> <p>1 documents relating to Highland's customers, clients, 2 marketing, business or operational methods in your 3 possession? 4 A. Because I don't know what this means, so I'd 5 have to rely on interpretation of counsel. 6 Q. Okay. You were the general counsel of Highland 7 in 2004, weren't you? 8 A. Around that time period, yes. I had nothing to 9 do with the preparation of this document. 10 MR. KATZ: Object as nonresponsive to 11 everything after "yes." 12 A. And, by the way, just to clarify, it might have 13 been 2005 when I was the GC. I just don't recall 14 exactly, precisely. 15 Q. Have you ever listed the dates on which you were 16 the GC on any resumé or source of information about your 17 employment history? 18 A. No, not that I'm aware of. 19 (Exhibit 32 marked.) 20 Q. I'll show you what's marked as Exhibit 32. Can 21 you tell me if you recognize that document? 22 MS. DANIELS: Thank you. 23 Q. Do you recognize this document? 24 A. No. 25 Q. Okay. Have you ever seen an employee handbook</p>	<p style="text-align: right;">110</p> <p>1 A. I do. 2 Q. Okay. You have e-mails that were created, sent 3 or retrieved on Highland's server in your possession, 4 don't you? 5 A. They're in the possession of my counsel. 6 Q. Okay. And you had those e-mails when you left 7 Highland? 8 A. Yes. 9 Q. Okay. And you had them up until the time -- is 10 it your testimony that you had them up until the time 11 they were delivered to your counsel? 12 A. Yes. 13 Q. Okay. And is it your testimony that they are no 14 longer in your possession and exclusively in the 15 possession of your counsel? 16 A. That's true. 17 Q. Okay. Have you reviewed them -- any of them at 18 any time since they've been in your possession, 19 possession of your counsel? 20 A. No. 21 Q. Exhibit 31 -- this one. 22 A. By the way, I just want to point out this 23 handbook is dated January 2005, and this sheet over here, 24 the signature is dated September 27th, 2005. So I 25 don't -- I don't know if they're correlated or not. I</p>
<p style="text-align: right;">109</p> <p>1 at Highland before? 2 A. Not that I recall. 3 Q. Have you ever signed an acknowledgment of 4 receipt of an employee handbook at Highland? 5 A. Maybe. 6 Q. Okay. 7 (Exhibit 33 marked.) 8 Q. I'll show you what's marked as Exhibit 33. Is 9 that your signature on that document? 10 A. It appears to be, yes. 11 Q. And this is a document entitled "Highland 12 Employee Handbook Acknowledgment Form." Do you see that? 13 A. I do. 14 Q. And it's dated September 27, 2005. Do you see 15 that? 16 A. It is. 17 Q. Okay. Can you turn to page 17 of the Exhibit 32 18 for me, please? 19 A. Okay. 20 Q. Do you see the bullet point that says "Security 21 Issues"? 22 A. I do. 23 Q. Okay. See the first sentence there? It says, 24 "All messages created, sent or retrieved on the Company's 25 systems are the property of Highland."</p>	<p style="text-align: right;">111</p> <p>1 don't see my signature on this, which is attached to the 2 January document. 3 MR. KATZ: Object as nonresponsive. 4 MS. DANIELS: I would also -- I would also 5 point out -- 6 Q. Can you look at Exhibit 31, please? 7 MS. DANIELS: I need to also point out -- 8 MR. KATZ: Ms. Daniels -- 9 MS. DANIELS: -- for clarification that 10 this handbook acknowledgment form attached to the 11 employee handbook -- 12 MR. KATZ: Ms. Daniels, you do not need 13 to -- 14 MS. DANIELS: -- is a different document. 15 MR. KATZ: -- be testifying. 16 MS. DANIELS: I'm not testifying. I'm -- 17 MR. KATZ: You absolutely are. 18 MS. DANIELS: -- pointing that out for 19 the -- 20 SPECIAL MASTER KAPLAN: Mr. Katz, 21 Ms. Daniels, if you have an objection, make it. I'll 22 rule on it. Don't argue with one another. 23 Mr. Katz, do you have an objection? 24 MR. KATZ: I have an objection to counsel 25 making statements other than "objection, form" and</p>

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<p style="text-align: right;">112</p> <p>1 instructions to the witness, per the rules.</p> <p>2 SPECIAL MASTER KAPLAN: That objection is</p> <p>3 sustained.</p> <p>4 A. I did want to basically clarify my answer to</p> <p>5 make that point, and I consider that part of my answer in</p> <p>6 the overall context of what you were asking me.</p> <p>7 MR. KATZ: I'm going to object as</p> <p>8 nonresponsive.</p> <p>9 Q. Can you -- in Exhibit 31 --</p> <p>10 A. Yes.</p> <p>11 Q. -- you understand this was a letter that was</p> <p>12 sent by counsel at Andrews Kurth to Mr. Ribman, who was</p> <p>13 your counsel?</p> <p>14 MS. DANIELS: Objection, form.</p> <p>15 Q. Do you?</p> <p>16 A. No, I do not.</p> <p>17 Q. Okay. Is Mr. Ribman your counsel?</p> <p>18 A. He was at one point. I don't think he's</p> <p>19 involved in the case going forward.</p> <p>20 Q. Is he no longer your attorney? I'm sorry. Is</p> <p>21 he no longer an attorney representing you?</p> <p>22 A. I don't know what his level of representation is</p> <p>23 in this matter as we currently -- or as I currently</p> <p>24 answer that question.</p> <p>25 Q. Was he representing you on February 10, 2012?</p>	<p style="text-align: right;">114</p> <p>1 MS. DANIELS: To the extent that calls for</p> <p>2 communications with counsel, I will object as privileged</p> <p>3 and instruct the witness not to answer.</p> <p>4 A. On that basis, I don't have an answer for you.</p> <p>5 Q. Okay. So when you left Highland, you had an</p> <p>6 e-mail folder on your computer that contained Highland</p> <p>7 e-mails, correct?</p> <p>8 A. I don't know what you mean by "e-mail folder."</p> <p>9 Q. Okay. The e-mails that we discussed earlier</p> <p>10 that you said would have been subject to the security</p> <p>11 provision in Exhibit 33, where are those e-mails located?</p> <p>12 MS. DANIELS: I'll object to the form of</p> <p>13 the question.</p> <p>14 A. I don't think I said that either.</p> <p>15 Q. Okay. Well, let's look at Exhibit 33 again.</p> <p>16 A. Okay.</p> <p>17 Q. And, I'm sorry, Exhibit 32, the Security Issues.</p> <p>18 "All messages" --</p> <p>19 MS. DANIELS: What page is that, Counsel?</p> <p>20 Q. -- "created, sent" --</p> <p>21 MR. KATZ: Page 17.</p> <p>22 Q. "All messages created, sent or retrieved on the</p> <p>23 Company's systems are the property of Highland."</p> <p>24 My understanding was -- well, was it true</p> <p>25 that you testified that you had e-mails that fell into</p>
<p style="text-align: right;">113</p> <p>1 A. He was.</p> <p>2 Q. Okay. Do you understand that this is a</p> <p>3 document -- that this document requests that you return</p> <p>4 all Highland property in your possession to Highland?</p> <p>5 MS. DANIELS: Objection, form.</p> <p>6 A. No.</p> <p>7 Q. What do you understand this letter to do?</p> <p>8 A. I don't --</p> <p>9 MS. DANIELS: Objection, form.</p> <p>10 A. I don't know. I wasn't involved in this letter.</p> <p>11 Q. So you ignored this letter?</p> <p>12 MS. DANIELS: Objection, form.</p> <p>13 A. I don't know if I ever got this letter. It's</p> <p>14 addressed to James Ribman.</p> <p>15 Q. Okay. So sitting here today, you do not recall</p> <p>16 ever seeing this letter?</p> <p>17 A. I don't --</p> <p>18 MS. DANIELS: Objection, form.</p> <p>19 A. I don't recall this letter.</p> <p>20 Q. Do you recall ever receiving a demand, directly</p> <p>21 or through your counsel, for return of property that's in</p> <p>22 your possession?</p> <p>23 MS. DANIELS: To the --</p> <p>24 Q. I'm sorry. Highland property that's in your</p> <p>25 possession?</p>	<p style="text-align: right;">115</p> <p>1 that category in your possession and then they were</p> <p>2 turned over to your counsel?</p> <p>3 MS. DANIELS: Objection, form.</p> <p>4 A. I do not think I testified to that.</p> <p>5 Q. Okay. What is your recollection of your</p> <p>6 testimony?</p> <p>7 A. You asked me to relate -- what I have related to</p> <p>8 this, and I had no comment on that.</p> <p>9 Q. Okay. Well, let me ask it again.</p> <p>10 A. Okay.</p> <p>11 Q. At the time that you left Highland, you had</p> <p>12 e-mails in your possession that were created, sent or</p> <p>13 retrieved on Highland's system, correct?</p> <p>14 A. I guess. I don't know. I don't know if it was</p> <p>15 Highland's system or not.</p> <p>16 Q. Okay. You had e-mails that were sent to or</p> <p>17 received on your Highland e-mail address?</p> <p>18 A. I'll help you out. From my -- from my computer</p> <p>19 or whatever? From my Highland ... Is that what you're</p> <p>20 asking?</p> <p>21 Q. Well, that's part of --</p> <p>22 A. You said "in." I don't know what you mean by</p> <p>23 "in."</p> <p>24 Q. Okay. You had e-mails --</p> <p>25 A. Uh-huh.</p>

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<p style="text-align: right;">116</p> <p>1 Q. -- in your possession that were sent to or from 2 your Highland e-mail address? 3 A. I think so. 4 Q. Okay. And those are now in the possession of 5 your counsel? 6 A. That is correct. 7 Q. Okay. And where were those e-mails prior to 8 being delivered to your counsel? 9 A. I don't know. 10 Q. How did you know you had them? 11 A. Had what? 12 Q. The e-mails. 13 A. Well, some of them are uploaded to my inbox on 14 my PC, and some of them were in a folder. 15 Q. Okay. That was the folder that I was asking you 16 about a few minutes ago when I asked you if those -- 17 A. I thought you were referring to an electronic 18 folder, and I don't remember having an electronic folder. 19 Q. Okay. Okay. So why did you walk off with those 20 e-mails? 21 MS. DANIELS: Objection, form. 22 A. Why did I walk off with them? 23 Q. Yes. 24 A. I don't even know what that means. 25 Q. Why did you leave Highland with them?</p>	<p style="text-align: right;">118</p> <p>1 MR. KATZ: Judge Kaplan, can we have a 2 ruling on that objection? 3 SPECIAL MASTER KAPLAN: Give me the 4 question again. 5 MR. KATZ: The question was, You reviewed 6 some of those e-mails in drafting versions of the 7 pleading that you filed in this case? 8 MS. DANIELS: My objection is not only to 9 the form but to the attorney-client-privileged nature of 10 the information that's called for. 11 MR. KATZ: I just asked him if he reviewed 12 the e-mails, so ... 13 SPECIAL MASTER KAPLAN: Hold on. Hold on. 14 You're asking him if he reviewed what e-mails? 15 MR. KATZ: His e-mails he -- e-mails that 16 he had in his possession after he left Highland that were 17 from Highland's e-mail server. 18 SPECIAL MASTER KAPLAN: You can answer that 19 question. Answer the question. 20 A. Okay. Can you give it to me again? 21 Q. Sure. The e-mails that were uploaded to your 22 inbox or that were in the folder that you identified 23 earlier, did you review any of those e-mails in 24 connection with preparing the -- any version of the 25 pleading in this case?</p>
<p style="text-align: right;">117</p> <p>1 A. I didn't take them with me from Highland. 2 Q. How did they get in your folder? 3 A. They were in my folder over the years. When I 4 left Highland, I didn't necessarily take them. They were 5 already in my possession. 6 Q. You didn't give them back? 7 A. No. 8 Q. Why not? 9 A. I didn't think I had to. 10 Q. Okay. And what was your basis for not thinking 11 you had to? 12 MS. DANIELS: Again, to the extent that you 13 are -- that the question calls for you to convey or 14 reveal communications with counsel, I will instruct you 15 not to answer. 16 And object as privileged. 17 A. On that basis, I'm not going to answer that 18 question. 19 Q. You reviewed those e-mails -- or you reviewed 20 some of those e-mails in drafting versions of the 21 pleading that you filed in this case, didn't you? 22 MS. DANIELS: Again, to the extent that 23 that calls for you to reveal communications with counsel 24 with respect to that, I will instruct you not to answer. 25 A. On that basis, I'm not going to answer.</p>	<p style="text-align: right;">119</p> <p>1 MS. DANIELS: Objection, form. Same 2 objection, as to privilege. 3 A. No. 4 Q. Have you reviewed any of those e-mails at any 5 time since you left Highland? 6 A. Yes. 7 Q. Okay. And when -- on more than one occasion? 8 A. I don't recall. 9 Q. How many occasions do you recall? 10 A. Once. 11 Q. Okay. And what was that occasion? 12 MS. DANIELS: Again, to the extent it calls 13 for communications with counsel or actions at the 14 directive of counsel, I'm going to instruct you not to 15 answer. 16 A. Yeah, I don't know what you mean by "occasion." 17 You've introduced "occasion" into it. 18 I've reviewed them once, that I can recall. 19 Q. Yes. And when was that? 20 A. I don't recall. 21 Q. What do you recall about reviewing them? 22 A. That I -- 23 MS. DANIELS: Again, I'll instruct you to 24 not reveal any communications with the client (sic). If 25 you can answer the -- with your counsel. If you can</p>

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<p style="text-align: right;">120</p> <p>1 answer the question without doing so, then you're free to 2 answer it. 3 A. I reviewed them. That's all I know. 4 Q. What was the purpose of you reviewing them? 5 MS. DANIELS: Same objection, privilege. 6 Don't answer if you reveal communications 7 with counsel or from counsel. 8 A. I'm not going to answer the question on that 9 basis. 10 Q. So you did not have any purpose in reviewing 11 them other than what was conveyed to you by counsel? 12 A. That is correct. 13 Q. How long did you -- did the review process take? 14 A. I don't recall. 15 Q. The e-mails that were in your inbox, did -- did 16 you review those on a computer, or did you print the 17 documents out first? 18 A. Give me that again. 19 Q. The e-mails that were in -- that were uploaded 20 to your inbox, when you reviewed those, did you review 21 them on the computer, or did you print them out? 22 A. I didn't review them all. There's like 40,000 23 of them. 24 Q. The ones that you did review. 25 A. I reviewed them first on a computer, and then I</p>	<p style="text-align: right;">122</p> <p>1 A. It appears to be the signature -- yes, my 2 signature and that of my wife. 3 Q. Okay. And do you recall that at some point 4 during your tenure with Highland that you entered into a 5 buy and -- a buy-sell agreement? 6 A. I do. 7 Q. Okay. 8 MR. KATZ: Let's take a break. 9 THE VIDEOGRAPHER: Off the record, 12:07 10 p.m. 11 (Recess taken from 12:07 to 12:55.) 12 THE VIDEOGRAPHER: Back on the record, 13 12:55 p.m., starting tape three. 14 Q. Mr. Daugherty, you -- you just indicated, right 15 before we went back on the record, that you've recalled 16 some additional names of current or former Highland folks 17 that you've spoken to since you've left? 18 A. That's true. 19 Q. Okay. Are the folks you remembered current, 20 former or both? 21 A. They are now former. 22 Q. Okay. And who is that? 23 A. Mandy Gauntt; and Steve Carlson was the name I 24 was trying to search for earlier; and Stacey Rugg; and a 25 woman named Whitney, but I don't remember her last name.</p>
<p style="text-align: right;">121</p> <p>1 printed them out. 2 Q. And then what did you do with them? 3 A. I don't know. Nothing. 4 Q. Did you -- 5 A. Put them in a folder. 6 Q. Did you give them to your counsel at some point? 7 A. Eventually, at some point. 8 (Exhibit 34 marked.) 9 Q. I'll show you what's marked here as Exhibit 34. 10 A. Okay. 11 Q. Would you tell me if you recognize that 12 document, please? 13 A. Kind of. 14 Q. Okay. What do you mean by "kind of"? 15 A. I don't know the contents of this document. 16 It's got a heading on it that seems vaguely familiar. 17 Q. Okay. The heading being "Amended and Restated 18 Buy-Sell and Redemption Agreement Among Highland Capital 19 Management, L.P. and its Limited Partners"? 20 A. That's right. 21 Q. Okay. Can you turn -- there's Bates labels on 22 the bottom right-hand corner. Can you turn to the page 23 that's got the label "Plaintiffs 000063" for me, please? 24 A. Excuse me. Yes. Sorry about that. Okay. 25 Q. Is that your signature on that page?</p>	<p style="text-align: right;">123</p> <p>1 Q. You understand that -- when did you learn that 2 Mr. Lawler was intending to leave his employment at 3 Highland? 4 A. I don't recall. 5 Q. How did you learn that Mr. Lawler was leaving 6 his employment at Highland? 7 A. From someone in that network that I was just 8 referring to. 9 Q. Okay. What -- when you say the network you were 10 referring to, what do you mean? 11 A. For the list. From people on that list. 12 Q. From the four names you just gave me? 13 A. No, no, no. The comprehensive list. 14 Q. Okay. So from some current or former employees, 15 were you saying? 16 A. Yes, yes. 17 Q. Okay. Who told you? 18 A. Who told me about what? 19 MS. DANIELS: Objection, form. 20 Q. About Tim Lawler leaving. 21 A. About -- I'm sorry. I didn't hear you. 22 Q. I'm sorry. Who told you about Tim Lawler 23 leaving? 24 MS. DANIELS: Objection, form. 25 A. Tim Law- -- Tim told me.</p>



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<p style="text-align: right;">124</p> <p>1 Q. Okay.</p> <p>2 A. Kevin Rourke told me. I think there were a</p> <p>3 couple of other people, but I'm not exactly sure.</p> <p>4 Q. The -- you don't recall who the first person</p> <p>5 that told you was?</p> <p>6 A. I don't. I don't recall the order.</p> <p>7 Q. Do you recall if you learned it from Tim first?</p> <p>8 A. I don't. Todd Travers told me. I'm not saying</p> <p>9 he told me first. I'm just -- he's one of the guys that</p> <p>10 told me.</p> <p>11 Q. Okay. How did you learn that Clay Shumway was</p> <p>12 leaving?</p> <p>13 A. I don't recall who told me that. Let me think</p> <p>14 about it. I don't recall.</p> <p>15 Q. Was Mr. Shumway one of the folks you've spoken</p> <p>16 to since you've left Highland?</p> <p>17 A. Yes.</p> <p>18 Q. Did you try to get Mr. Shumway to be part of</p> <p>19 your -- your venture that you're hoping to start?</p> <p>20 A. Yeah. When I talked to him, I told him, Look, I</p> <p>21 don't know what your status is, but, you know, here's</p> <p>22 what we're trying to do and love for you to be a part of</p> <p>23 that or at least like to get together with you and walk</p> <p>24 you through what we're thinking about doing.</p> <p>25 Q. Is there anybody else that you had those types</p>	<p style="text-align: right;">126</p> <p>1 of those individuals?</p> <p>2 A. No.</p> <p>3 Q. Did you share any information about any of the</p> <p>4 prospects that we talked about earlier, investor</p> <p>5 prospects, client prospects, with any of those</p> <p>6 individuals?</p> <p>7 A. No. I might have mentioned it to Dan Drabinski</p> <p>8 as well.</p> <p>9 Q. I'm sorry. Dan ...</p> <p>10 A. Dan Drabinski.</p> <p>11 Q. You might have mentioned what to Dan Drabinski?</p> <p>12 A. What I was working on.</p> <p>13 Q. Would you have talked to him about potentially</p> <p>14 joining you?</p> <p>15 A. I don't remember the details of the</p> <p>16 conversation. I just told him conceptually of what I was</p> <p>17 working on.</p> <p>18 Q. How many times have you spoken to David Smith</p> <p>19 since you left Highland?</p> <p>20 A. I don't know exactly. I can think of a couple.</p> <p>21 Q. Okay. Are those in person or telephone or both?</p> <p>22 A. I can think of one in person and one by</p> <p>23 telephone that come to mind.</p> <p>24 Q. Okay. Any e-mail communications with them since</p> <p>25 you've left?</p>
<p style="text-align: right;">125</p> <p>1 of conversations with, about joining your venture, other</p> <p>2 than the people you've identified earlier?</p> <p>3 A. That are -- that are Highland or affiliate</p> <p>4 employees?</p> <p>5 Q. Yes.</p> <p>6 A. No, I don't think so.</p> <p>7 Q. What about those types of conversations with</p> <p>8 folks who were not current or former Highland or</p> <p>9 affiliates?</p> <p>10 A. What about them?</p> <p>11 Q. Have you talked to anybody else about</p> <p>12 potentially joining your --</p> <p>13 A. Yes.</p> <p>14 Q. -- your venture? And who was that?</p> <p>15 A. I talked to -- what's his name? Scott Sporn or</p> <p>16 Jason Sporn.</p> <p>17 Q. Anybody else?</p> <p>18 A. Chris Haga.</p> <p>19 Q. Who else?</p> <p>20 A. Brian Horton.</p> <p>21 Q. Who else?</p> <p>22 A. Jay Lifton.</p> <p>23 Q. Who else?</p> <p>24 A. That's it.</p> <p>25 Q. Did you share any of your pitch books with any</p>	<p style="text-align: right;">127</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. Where was the in-person meeting?</p> <p>3 A. At the American Heart Association Côtés du Coeur</p> <p>4 Heart Ball.</p> <p>5 Q. And --</p> <p>6 A. It was in April.</p> <p>7 Q. April of 2013?</p> <p>8 A. Yes.</p> <p>9 Q. And how long did that conversation last?</p> <p>10 A. I didn't take note.</p> <p>11 Q. Was anybody else present when you were speaking</p> <p>12 to Mr. Smith?</p> <p>13 A. There were all kinds of people around. There</p> <p>14 was a whole table of Highland people and a whole table of</p> <p>15 NexBank people, and I was talking to all of them.</p> <p>16 Q. Okay. What did you tell Mr. Smith?</p> <p>17 A. I think I told him, you know, always loved him,</p> <p>18 loved working with him and proud of him for being</p> <p>19 president of Cornerstone.</p> <p>20 Q. What did Mr. Smith tell you?</p> <p>21 A. He said thanks.</p> <p>22 Q. Anything else you recall about that</p> <p>23 conversation?</p> <p>24 A. Not in particular.</p> <p>25 Q. Anything that came up about this lawsuit?</p>

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<p style="text-align: right;">128</p> <p>1 A. I don't think so.</p> <p>2 Q. Anything --</p> <p>3 A. I don't recall.</p> <p>4 Q. Anything that came up about Jim Dondero?</p> <p>5 A. No.</p> <p>6 Q. Patrick Boyce?</p> <p>7 A. I don't think so.</p> <p>8 Q. Lane Britain?</p> <p>9 A. No.</p> <p>10 Q. Anything about Highland -- anything about</p> <p>11 Highland Capital during that conversation with David</p> <p>12 Smith?</p> <p>13 A. No. It was more about Cornerstone.</p> <p>14 Q. What did you talk about Cornerstone?</p> <p>15 A. I told him I heard they're doing really well.</p> <p>16 Q. Anything else that you told him?</p> <p>17 A. That I heard that they did 55 million of EBITDA</p> <p>18 last year and projected to do 60 this year and expected</p> <p>19 to exceed that.</p> <p>20 Q. Where did you hear that from?</p> <p>21 A. Might have been Kevin Dowd. Not sure. Maybe it</p> <p>22 was Reece Fulgham.</p> <p>23 Q. Anything else that you discussed regarding</p> <p>24 Cornerstone with Mr. Smith at that conversation?</p> <p>25 A. I think we talked about some of their</p>	<p style="text-align: right;">130</p> <p>1 there other conversations other than with David Smith</p> <p>2 that you might have written down?</p> <p>3 A. That night, with other people?</p> <p>4 Q. I'm asking what you meant when you said you may</p> <p>5 have written some of them down.</p> <p>6 A. Well, as I mentioned, I spoke to him on several</p> <p>7 occasions. Once, it was just the two of us around --</p> <p>8 you've got to understand the whole layout. Do you know</p> <p>9 what the Côtes du Cœur is, where they've got the booths</p> <p>10 set up all around the conference room --</p> <p>11 Q. I don't.</p> <p>12 A. -- ballroom, and then there's a chef and there's</p> <p>13 a wine pairing. And so you go to these various stations.</p> <p>14 And I bumped into him, you know, a couple</p> <p>15 of times, saw him at their table another time, once with</p> <p>16 a bunch of people, once with just the two of us, you</p> <p>17 know.</p> <p>18 Q. When you -- were the notes that you took -- did</p> <p>19 you take them while you were at that event?</p> <p>20 A. No.</p> <p>21 Q. They would have been when you got home, later</p> <p>22 that night?</p> <p>23 A. I don't recall exactly when I recorded it, but</p> <p>24 I -- I did record it in the journal.</p> <p>25 Q. Okay. And is this the journal that you have at</p>
<p style="text-align: right;">129</p> <p>1 acquisitions that they were able to accomplish, talked</p> <p>2 about the Reliant litigation.</p> <p>3 Q. Was any of -- do you know if anybody else was in</p> <p>4 earshot when you were talking to Mr. Smith?</p> <p>5 A. I didn't focus on it.</p> <p>6 Q. Was anybody else participating in the</p> <p>7 conversation, or was it just the two of you?</p> <p>8 A. It was just the two of us. Well, at one point</p> <p>9 it was just the two of us. At other points in the night,</p> <p>10 as I mentioned, it was a mixture of people.</p> <p>11 Q. You weren't sitting at the same table with</p> <p>12 Mr. Smith, were you?</p> <p>13 A. No, absolutely not.</p> <p>14 Q. Anything significant that -- anything that</p> <p>15 Mr. Smith told you that you thought was significant?</p> <p>16 A. I guess it all depends on what your definition</p> <p>17 of "significant" is.</p> <p>18 Q. I'm asking you what you thought.</p> <p>19 A. I guess I mentioned to you the things that had</p> <p>20 significance, because that's what I can recall.</p> <p>21 Q. Okay. Did you record any of those</p> <p>22 conversations?</p> <p>23 A. No. I might have written some of those down. I</p> <p>24 don't recall.</p> <p>25 Q. Okay. When you say "those," are you -- are</p>	<p style="text-align: right;">131</p> <p>1 home, or are these notes that you've turned over to your</p> <p>2 attorney?</p> <p>3 A. I'm sorry. What was --</p> <p>4 Q. Are these the notes that are in the notebook</p> <p>5 that is in your possession?</p> <p>6 A. I don't recall where this went.</p> <p>7 Q. Okay.</p> <p>8 A. Or if it went. I'm trying to be as cooperative</p> <p>9 as possible. I think I might have, but I can't say for</p> <p>10 sure. I haven't looked at it in a while.</p> <p>11 Q. Is it possible that you have notes from</p> <p>12 conversations that have not been turned over to counsel</p> <p>13 and that are not in the notebook that we talked about</p> <p>14 earlier?</p> <p>15 A. No.</p> <p>16 Q. And you just don't recall --</p> <p>17 A. That's not true. Sometimes I write things down</p> <p>18 on blank sheets of paper.</p> <p>19 Q. Okay.</p> <p>20 A. So I might have those in my possession, too.</p> <p>21 Q. Okay. And you don't recall the notes about</p> <p>22 David Smith's conversations, whether that is in the group</p> <p>23 of the notes you've turned over to your counsel or the</p> <p>24 group that you still have in your possession?</p> <p>25 A. That's right.</p>

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<p style="text-align: right;">132</p> <p>1 Q. Okay. Did your attorneys instruct you to speak 2 to Mr. Smith?</p> <p>3 A. Yes.</p> <p>4 Q. Did they identify questions that you should ask 5 Mr. Smith?</p> <p>6 A. I'm going to --</p> <p>7 MS. DANIELS: Again, to the extent that you 8 are now, I think, invading substantive communications, 9 I'm going to instruct the witness not to answer.</p> <p>10 Q. I don't want to know the identity of any 11 questions they asked you to ask. I just want to know 12 whether they asked you to ask questions.</p> <p>13 MS. DANIELS: Well, even the fact of 14 whether we directed him to ask questions or what we 15 directed him to do. I think. invades the substance.</p> <p>16 I object, instruct the witness not to 17 answer.</p> <p>18 A. On that basis, I'm not going to answer.</p> <p>19 MR. KATZ: Judge Kaplan?</p> <p>20 SPECIAL MASTER KAPLAN: Sustained.</p> <p>21 Q. Okay. Was -- tell me about the telephone call 22 you had with Mr. Smith.</p> <p>23 A. What about it?</p> <p>24 Q. When did that occur?</p> <p>25 A. November of 2011. There might have been others,</p>	<p style="text-align: right;">134</p> <p>1 he's already testified. To the extent that it was, it's 2 privileged as work product and it's privileged as 3 something that is being communicated at the instruction 4 of counsel.</p> <p>5 Q. Are you following your counsel's instruction?</p> <p>6 A. I am.</p> <p>7 MR. KATZ: Judge?</p> <p>8 SPECIAL MASTER KAPLAN: Well, it's not 9 privileged. Without briefing, I can't determine whether 10 or not it's work product or not.</p> <p>11 MR. KATZ: Can I speak to that for a 12 moment?</p> <p>13 SPECIAL MASTER KAPLAN: Sure.</p> <p>14 MR. KATZ: He said -- I'm not asking him 15 about any notes that he took. He said he didn't remember 16 any notes. I'm asking him what David Smith, a Highland 17 and Cornerstone employee, said.</p> <p>18 SPECIAL MASTER KAPLAN: I understand.</p> <p>19 MR. KATZ: There can't possibly be a basis 20 for privilege for that statement.</p> <p>21 SPECIAL MASTER KAPLAN: I said it's not 22 privileged.</p> <p>23 MR. KATZ: Okay.</p> <p>24 SPECIAL MASTER KAPLAN: It's not subject to 25 the attorney-client privilege. What I don't know -- this</p>
<p style="text-align: right;">133</p> <p>1 but that's one that I recall.</p> <p>2 Q. What -- November of 2011?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And was that a call that occurred -- were 5 you on your cell phone for that call?</p> <p>6 A. Yes.</p> <p>7 Q. Did you call Mr. Smith, or did he call you?</p> <p>8 A. I called him.</p> <p>9 Q. And what was the purpose of that call?</p> <p>10 MS. DANIELS: Again, to the extent that 11 that reveals communications with counsel, I'm instructing 12 you not to answer. If it doesn't, obviously, go ahead.</p> <p>13 A. On that basis, I'm not going to answer the 14 question.</p> <p>15 Q. Did your counsel instruct you to have that 16 conversation?</p> <p>17 A. Yes.</p> <p>18 Q. Did you make notes of that telephone call?</p> <p>19 A. I don't --</p> <p>20 MS. DANIELS: Go ahead.</p> <p>21 A. I don't recall.</p> <p>22 Q. What did Mr. Smith tell you in that 23 conversation?</p> <p>24 MS. DANIELS: Object to the extent that the 25 communication was held at the direction of counsel, as</p>	<p style="text-align: right;">135</p> <p>1 raises the same issue we raised before, whether or not -- 2 to the extent that Ms. Daniels is asserting the attorney 3 work product through Mr. Daugherty, who I guess was her 4 investigative arm to take statements, I want to see 5 briefing on that.</p> <p>6 MR. KATZ: Okay.</p> <p>7 SPECIAL MASTER KAPLAN: I just can't make 8 an intelligent ruling on it.</p> <p>9 MR. KATZ: Okay. I understand, Your Honor.</p> <p>10 Let me just make one -- one note, and then I'll move on.</p> <p>11 SPECIAL MASTER KAPLAN: Sure.</p> <p>12 MR. KATZ: The work product could only 13 cover the attorney or their agent's impressions recording 14 these notes. I'm not asking for any of that information. 15 I'm simply asking for what this Highland/Cornerstone 16 representative said.</p> <p>17 SPECIAL MASTER KAPLAN: I know exactly what 18 you're asking.</p> <p>19 MR. KATZ: Okay.</p> <p>20 SPECIAL MASTER KAPLAN: I still don't have 21 enough information to make an informed ruling. I would 22 invite briefing on the issue. And in the event that I 23 determine you're entitled to the information, I'll allow 24 you to re-question Mr. Daugherty about it.</p> <p>25 MR. KATZ: Okay. Thank you.</p>

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<p style="text-align: right;">136</p> <p>1 Q. (By Mr. Katz) Any other communications you had 2 with Mr. Smith after leaving -- after you left Highland 3 other than the phone call and the in-person meeting at 4 the American Heart Ball? 5 A. There may have been some others. I just don't 6 recall them. 7 Q. Okay. 8 A. Nothing of substance. Nothing that I would find 9 significant enough to commit it to memory. 10 Q. Okay. Have you made any other tape recordings, 11 digital recordings, transcripts, any other -- any other 12 record of your communications with current or former 13 Highland employees since you left Highland other than 14 what we've discussed already? 15 A. No. 16 Q. Are you aware of anybody -- of anybody else 17 making recordings of current or former Highland 18 employees? 19 A. No. I don't know. 20 Q. Have you heard any audio or video recordings of 21 current or former Highland employees since you left 22 Highland? 23 A. Yes. 24 Q. Okay. What have you heard or seen? 25 A. Recordings.</p>	<p style="text-align: right;">138</p> <p>1 MS. DANIELS: Go ahead. 2 A. I saw a recording of Patrick Boyce at a 3 Mavericks basketball game. 4 Q. Okay. Was this a video recording or an audio 5 recording? 6 A. It was a -- it was a video recording, and I 7 guess it had some audio, too. 8 Q. Okay. 9 A. He's slapping these noise-makers together. 10 Q. Okay. And who -- who showed you that recording? 11 A. Ted Dameris's significant other. 12 Q. Okay. Were you at the game when you saw the 13 recording? 14 A. No. 15 Q. Where were you when you saw the recording? 16 A. I was at that party last night. 17 Q. Okay. Any other recordings other than that? 18 A. None that come to mind. 19 Q. Have you seen any -- 20 A. Actually, that's not true. Sorry. 21 Q. Go ahead. 22 A. On Patrick Boyce's Twitter account, there's some 23 recordings of -- he took a picture of his tooth and 24 posted it. He's got a gold tooth, nub, or something, and 25 he posted it and put it on his Twitter site.</p>
<p style="text-align: right;">137</p> <p>1 Q. Okay. How many? 2 A. I didn't count. 3 Q. Okay. Are the -- what was the form of the 4 recordings? 5 A. What do you mean? 6 Q. Where were you when you heard them? 7 A. I don't know. 8 Q. Were they audio or video? 9 A. Audio. 10 Q. Okay. Have they ever been in your possession? 11 A. Yes. 12 Q. Okay. Are you talking about the messages on 13 your cell phone? 14 A. Yes. 15 Q. Okay. I want to know anything other than what 16 we've talked about today already. Anything other than 17 that? 18 A. Not that I'm aware of. I don't know what other 19 people are doing. 20 Q. Okay, but you've not heard -- no one else has 21 played recordings for you that they may have made? 22 A. Maybe. I just haven't focused on it. 23 Q. Well, who do you think may have played them for 24 you? 25 A. I saw a ...</p>	<p style="text-align: right;">139</p> <p>1 Q. Okay. Anything else? 2 A. Took a picture of himself with Daryl Johnston. 3 Q. Well, other -- any other recordings you've seen 4 or heard? 5 A. I think there's some pictures of his kids. 6 Q. But other than Mr. Boyce's Twitter account and 7 the other things we've talked about, are there any other 8 recordings that you've seen or heard? 9 A. None that come to mind. 10 Q. What about -- have you seen any notes that 11 anyone other than yourself have made of conversations 12 with current or former Highland employees since you left 13 Highland? 14 A. I don't recall. I think I've heard discussions 15 of that kind of stuff, but I don't recall. 16 Q. When you say you heard discussion of that, what 17 do you mean? What are you referring to? 18 MS. DANIELS: To the extent that you are 19 referring to any communications with counsel, I'll 20 instruct you not to answer. 21 THE WITNESS: No, I don't think this falls 22 into that. 23 MS. DANIELS: Okay. 24 A. Britt Brown. 25 Q. Okay. And what specifically with respect to</p>

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<p style="text-align: right;">140</p> <p>1 Britt Brown?</p> <p>2 A. I think at some point he had some recordings of</p> <p>3 some such.</p> <p>4 Q. And when you say "recordings," are you referring</p> <p>5 to notes or video recordings or audio recordings?</p> <p>6 A. Yeah, something like that. I mean, it's been a</p> <p>7 while.</p> <p>8 Q. And, I'm sorry, I think I asked an unclear</p> <p>9 question. When you say "something like that," what do</p> <p>10 you mean? Something like what?</p> <p>11 A. Something like a hand recorded -- I mean a</p> <p>12 written recorded.</p> <p>13 Q. Notes? Handwritten notes?</p> <p>14 A. Yeah.</p> <p>15 Q. I'm sorry. Is that a yes?</p> <p>16 A. Yes. I'm sorry. Yes.</p> <p>17 Q. So you recall that Britt Brown showed you some</p> <p>18 notes?</p> <p>19 A. No.</p> <p>20 Q. What do you recall?</p> <p>21 A. Him talking about them.</p> <p>22 Q. And who were the -- who was -- what did the</p> <p>23 notes relate to?</p> <p>24 A. I don't recall. Funny stuff about Boyce.</p> <p>25 Q. Okay. About Brown's conversations with Boyce?</p>	<p style="text-align: right;">142</p> <p>1 A. Within the last six months.</p> <p>2 Q. Okay. Did she -- did you see or hear any of</p> <p>3 these recordings?</p> <p>4 A. No.</p> <p>5 Q. Have you asked her for copies of any of the</p> <p>6 recordings?</p> <p>7 A. No.</p> <p>8 Q. Did she indicate what the purpose of the</p> <p>9 recordings were for?</p> <p>10 A. No. She just said she has tons of funny and</p> <p>11 weird stuff on Patrick Boyce.</p> <p>12 Q. And where was this conversation with Ms. Ward?</p> <p>13 A. At a bar.</p> <p>14 Q. Which bar?</p> <p>15 A. I don't recall.</p> <p>16 Q. Here in Dallas?</p> <p>17 A. Yes.</p> <p>18 Q. Was anybody else there?</p> <p>19 A. Yes.</p> <p>20 Q. Who else?</p> <p>21 A. It was a bunch of former Highland people.</p> <p>22 Q. Who do you recall?</p> <p>23 A. Want a long list again?</p> <p>24 Q. Yes.</p> <p>25 A. Paul Kaufman, Amy Jenkins, Shawn Ward, Amit</p>
<p style="text-align: right;">141</p> <p>1 The notes were of Brown's conversations with Boyce?</p> <p>2 A. I don't recall that level of detail.</p> <p>3 Q. Okay. How long ago was this that you had a</p> <p>4 communication with Brown about this?</p> <p>5 A. It's been a while.</p> <p>6 Q. Like, what do you mean by "a while"?</p> <p>7 A. Over a year.</p> <p>8 Q. Have you ever asked Brown for copies of any</p> <p>9 notes?</p> <p>10 A. No.</p> <p>11 Q. Anything else that you recall? Any other notes,</p> <p>12 recordings of any kind?</p> <p>13 A. Shawn Ward.</p> <p>14 Q. What do you recall with respect to Mr. Ward?</p> <p>15 A. She just mentioned that she --</p> <p>16 Q. She.</p> <p>17 A. -- recorded a lot of her interactions, I guess,</p> <p>18 with Boyce.</p> <p>19 Q. Okay.</p> <p>20 A. Just thought of some more people.</p> <p>21 Q. Okay. Well, I want to finish this. Then we'll</p> <p>22 go back to that.</p> <p>23 A. Okay.</p> <p>24 Q. When did Ms. Ward tell you about these</p> <p>25 recordings?</p>	<p style="text-align: right;">143</p> <p>1 Walia, Jeff Lonsdale, Ken McGovern, Jaime. I don't know</p> <p>2 his last name.</p> <p>3 Q. Anybody else?</p> <p>4 A. Brad Borud, Martin Downen -- not Martin Downen.</p> <p>5 Dave Martin, Gunnerson. I don't know his first name.</p> <p>6 Patrick Conner, Kurt Plumer, Meredith Etheredge. Michael</p> <p>7 Colvin might have been there. I think I saw him there.</p> <p>8 What was her name? Another woman. She was Russian. I</p> <p>9 think she was out of the accounting department. Talked</p> <p>10 to her a lot.</p> <p>11 There are just several other people there.</p> <p>12 I'd have to think about it to round out the list. I</p> <p>13 mean --</p> <p>14 Q. Was this an event?</p> <p>15 A. There is an unofficial get-together two times a</p> <p>16 year for Highland -- former Highland employees.</p> <p>17 Q. You don't remember where that occurred, though?</p> <p>18 A. It's some bar -- bar and restaurant down there</p> <p>19 in the Uptown area. I just don't remember the name of</p> <p>20 it.</p> <p>21 Q. Okay. Do you know who paid the bill?</p> <p>22 A. I think everybody pays their own bill. I mean,</p> <p>23 I bought my own drinks, put it that way. I don't know if</p> <p>24 somebody bought their --</p> <p>25 Q. Gotcha.</p>



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<p style="text-align: right;">144</p> <p>1 A. Sometimes people buy drinks for somebody else.</p> <p>2 Q. When did you engage Looper Reed?</p> <p>3 A. I don't recall exactly.</p> <p>4 Q. Was it after you left Highland?</p> <p>5 A. Yes. Well, it was after I resigned from</p> <p>6 Highland.</p> <p>7 Q. Okay. But before you left Highland?</p> <p>8 A. Maybe. I don't -- yeah, I think so. I mean, I</p> <p>9 left Highland October 17th, and by then I had Looper</p> <p>10 Reed. Actually, no, I didn't. I had Looper Reed later</p> <p>11 on in the month.</p> <p>12 Q. Okay. When did you engage them --</p> <p>13 A. Actually, I -- wait a second. I -- I'm not</p> <p>14 sure. I'm not sure. I might have had them earlier.</p> <p>15 You're asking me for exact days in October. It was</p> <p>16 sometime in October.</p> <p>17 Q. Okay. And when did you engage them with respect</p> <p>18 to this litigation?</p> <p>19 A. At the same time. I felt like I'd become an</p> <p>20 adverse party to Highland by the second -- second day</p> <p>21 after I resigned, so ...</p> <p>22 Q. Were you planning to sue Highland at that time?</p> <p>23 A. No, but I needed counsel. Highland told me to</p> <p>24 get counsel. Thomas Surgent told me to get counsel.</p> <p>25 Q. That was with respect to your -- the severance</p>	<p style="text-align: right;">146</p> <p>1 Q. Both conversations were at that event?</p> <p>2 A. I think so.</p> <p>3 Q. Did you make notes --</p> <p>4 A. Actually, that's since I left Highland, yeah.</p> <p>5 Q. Did you make notes of those conversations?</p> <p>6 A. Maybe. I don't recall.</p> <p>7 Q. Did you speak to her at the direction of</p> <p>8 counsel?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Tell me what you recall about each</p> <p>11 of those conversations.</p> <p>12 MS. DANIELS: Again, to the extent that it</p> <p>13 is at the direction of counsel, as he just testified, we</p> <p>14 will object and instruct the witness not to convey the</p> <p>15 information based upon work-product privilege.</p> <p>16 A. I honestly don't recall what I talked to her</p> <p>17 about.</p> <p>18 Q. Okay.</p> <p>19 A. I just thought she was good-looking and fun to</p> <p>20 talk to.</p> <p>21 Q. How long were those conversations?</p> <p>22 A. I didn't time it.</p> <p>23 Q. Approximately?</p> <p>24 A. Seemed like it was flying by.</p> <p>25 Q. Do you recall anything you told her?</p>
<p style="text-align: right;">145</p> <p>1 negotiations?</p> <p>2 A. Well, it was in -- it was in relation to the</p> <p>3 document you guys had given me where you were taking away</p> <p>4 my compensation, and then I had to agree to new</p> <p>5 documents, and I had to agree that I'd consulted counsel.</p> <p>6 And Thomas Surgent said I needed to go and get a counsel.</p> <p>7 Q. And that's what prompted you to go get counsel?</p> <p>8 A. That's right.</p> <p>9 Q. When did counsel start instructing you to talk</p> <p>10 to witnesses?</p> <p>11 A. I don't recall exactly.</p> <p>12 Q. Do you recall approximately?</p> <p>13 A. No.</p> <p>14 Q. Was it before the litigation was on file?</p> <p>15 A. I just don't recall that that acutely.</p> <p>16 Q. How many conversations have you had with</p> <p>17 Danielle Urech since you've left Highland?</p> <p>18 A. Two.</p> <p>19 Q. Were those in person or on the phone?</p> <p>20 A. In person.</p> <p>21 Q. And --</p> <p>22 A. She's awesome, by the way. Really cool.</p> <p>23 Q. And when -- when did those occur?</p> <p>24 A. At the Côtes du Coeur, American Heart Ball --</p> <p>25 American Heart Association event.</p>	<p style="text-align: right;">147</p> <p>1 MS. DANIELS: Same objection.</p> <p>2 To the extent that your communications with</p> <p>3 her were at the direction of counsel, as you testified,</p> <p>4 then I would instruct you not to reveal any</p> <p>5 substantive -- the substantive nature of the</p> <p>6 communications, as work product, instruct you not to</p> <p>7 answer.</p> <p>8 A. I'm not going to answer, on that basis.</p> <p>9 Q. Did you -- did your counsel instruct you</p> <p>10 specific questions to ask of any of the individuals --</p> <p>11 MS. DANIELS: Same objection.</p> <p>12 Q. -- that you spoke to -- that you spoke to at</p> <p>13 their direction?</p> <p>14 MS. DANIELS: Same objection as to work</p> <p>15 product, and further objection with (sic) that regard</p> <p>16 with respect to attorney-client-privileged</p> <p>17 communications. Instruct the witness not to answer.</p> <p>18 Q. Okay. And just to be clear, I'm not asking you</p> <p>19 for the substance of any communications. I'm just asking</p> <p>20 whether counsel asked you to ask specific questions.</p> <p>21 MS. DANIELS: Same objection. Instruct the</p> <p>22 witness not to answer.</p> <p>23 A. This one should be easy. I just don't recall.</p> <p>24 Q. With respect to any of the witnesses that you</p> <p>25 spoke to at your client's (sic) direction, did you -- did</p>

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<p style="text-align: right;">148</p> <p>1 your counsel give you specific instructions -- I'm 2 sorry -- yes, specific questions, messages or topics to 3 broach with these witnesses? 4 MS. DANIELS: And, again, to the extent 5 that invades the attorney-client communication, I'm 6 instructing the witness not to answer that question. 7 A. I don't understand that question. You said 8 she's my client or something or -- I didn't understand 9 what you were talking about. 10 Q. Okay. Let me ask it again. 11 With respect to any of the individuals that 12 you spoke to at your client's direction -- 13 A. You keep saying "client." 14 Q. -- at your attorney's direction -- 15 A. She's my lawyer. 16 Q. I'm with you now. 17 A. Okay. 18 Q. -- with any of the individuals that you spoke to 19 at your attorney's direction, did your attorney give you 20 specific instructions as to what questions to ask? 21 MS. DANIELS: Again, same objection. 22 Instruct the witness not to answer. 23 A. On that basis, I'm not going to answer. 24 MR. KATZ: Judge Kaplan? 25 SPECIAL MASTER KAPLAN: The privilege</p>	<p style="text-align: right;">150</p> <p>1 MR. KATZ: Okay. 2 SPECIAL MASTER KAPLAN: -- of the question. 3 It's just privileged. Ask your next one. 4 Q. Did you know before you attended the American 5 Heart Association event who was going to be there? 6 A. I knew some people were going to be there. 7 Q. Did you know that Ms. Urech was going to be 8 there? 9 A. No. 10 Q. Did you know Mr. Smith was going to be there? 11 A. No. 12 Q. Tell me about your -- well, how many 13 communications have you had since you left Highland with 14 Clay Callan? 15 A. One, maybe two. 16 Q. Okay. And back to Ms. Urech, did you have 17 any -- have you had any e-mail or other communications 18 with her other than the conversations you just 19 referenced? 20 A. No. 21 Q. Okay. Mr. Callan, you said one or two? 22 A. Yes. 23 Q. Okay. Would those have been in person, on the 24 phone, or both? 25 A. In person.</p>
<p style="text-align: right;">149</p> <p>1 objection is sustained. You're asking as directly as I 2 can imagine for Mr. Daugherty to testify about what his 3 lawyer told him. 4 MR. KATZ: I just asked him whether there 5 were instructions given, not what the instructions were. 6 SPECIAL MASTER KAPLAN: That's not what 7 your question was. 8 Read the question back. 9 THE REPORTER: "With any of the individuals 10 that you spoke to at your attorney's direction, did your 11 attorney give you specific instructions as to what 12 questions to ask?" 13 SPECIAL MASTER KAPLAN: The answer to that 14 question requires Mr. Daugherty to testify as to what the 15 instructions he got from his lawyer were, specifically 16 did your lawyer tell you to do something, in this case, 17 ask questions, what questions to ask. 18 MR. KATZ: Well, that's -- he's already 19 testified that they instructed him to talk to -- to the 20 witness. The extent that they are taking a work-product 21 privilege, it's certainly relevant to know did they ask 22 him to find out specific information versus was there a 23 general -- 24 SPECIAL MASTER KAPLAN: I don't question 25 the relevance --</p>	<p style="text-align: right;">151</p> <p>1 Q. Okay. Where would they have taken place? 2 A. Since I -- since, yeah, I left Highland. In 3 November of 2011, I saw him at the Capital for Kids hedge 4 fund event, and I want to say I saw him at another 5 charity function. Maybe it was the Côtés du Coeur of 6 another year. 7 Q. So not 2013? 8 A. I don't think I've seen him in 2013. 9 Q. Okay. But you -- 10 A. I may be wrong, but I don't -- I don't remember 11 it. 12 Q. Okay. Did you speak to him at any time at the 13 direction of counsel? 14 A. No. 15 Q. What do you recall about your communications 16 with him? 17 A. I don't recall very much. 18 Q. Did you talk to him at all about this 19 litigation? 20 A. I talked to him about the conditions that 21 existed precedent to this litigation, yes. I should say 22 preceding, not precedent. Sorry. 23 Q. You're talking about the events leading up to 24 the litigation? 25 A. I talked to him about Sierra Verde being taken</p>

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<p style="text-align: right;">152</p> <p>1 away from us all. I talked about the treatment I 2 received from Boyce and Britain on my way out. I talked 3 to him about those kind of things that ultimately ended 4 up being encapsulated in litigation. 5 Q. Okay. What did you tell him about Sierra Verde? 6 A. We were talking to each other, how disappointing 7 it was. Frankly, it was bullshit. 8 Q. Are those the words you used? 9 A. Probably. 10 Q. What did you tell him? 11 A. Just that, you know, they were taken away, and 12 he was -- he was very upset that they were taken away. 13 So was Lawler. Everybody just thought it was a farce. 14 Q. When you said so did Lawler, is that what you 15 said to Mr. Callan or Mr. Callan said to you, or was 16 Mr. Lawler -- 17 A. I'm summarizing a conversation that was 18 happening between the three of us. I think Louis Koven 19 was there. I think Tom Pereira was there just listening 20 when we were talking about it. 21 Q. Okay. And this was a conversation in November 22 of 2011? 23 A. That's right. 24 Q. Okay. So who else was there? 25 A. I just named it.</p>	<p style="text-align: right;">154</p> <p>1 or five of you? 2 A. Well, I mean, it was -- it was conversations 3 that ebbed and flowed throughout the night. You know, 4 talked about it for 20, 30 minutes and then talked to 5 other people. And the groups mixed and matched. I mean, 6 there were a bunch of people, and it was a fluid process. 7 Q. Tell me what specifically Clay Callan told you. 8 A. I don't remember the specifics. I mean, how 9 long does it take to have a conversation of, Hey, they're 10 taking this away from us? You know, it's all BS. 11 Boyce gets involved, comes up with some 12 kind of nonsensical argument and basically starts shoving 13 documents in front of people saying: Jim wants you to 14 sign this; it's over; we're unwinding it. People were 15 very disappointed by that. 16 Q. That's what you said at the meeting? 17 A. That's what we all said. 18 Q. So that's what Clay Callan said? 19 A. Yeah. 20 Q. That's what Tim Lawler said? 21 A. Various forms, yes. 22 Q. What else do you recall them saying? 23 A. That's it. I mean, we talked about a bunch of 24 other stuff. Kids, they thought I looked tan. Just 25 things like that.</p>
<p style="text-align: right;">153</p> <p>1 Q. Those are the -- 2 A. I mean, there were a ton of people at that deal, 3 and I think there were other Highland people, but at this 4 particular conversation it was the four or five of us. 5 It was me, it was Tim Lawler, Clay Callan, I think it was 6 Tom Pereira, and I think it was -- I know it was Louis 7 Koven. I don't know if Chuck Shifferd might have been 8 there or not, but I do remember talking to those guys. 9 Q. What specifically do you remember Mr. Lawler 10 saying in that conversation? 11 A. Just that he was disappointed and he really 12 counted on that compensation. 13 Q. Anything else? 14 A. Not that comes to mind right now. 15 Q. What about Tim Pereira -- or Tom Pereira? 16 A. Tom Pereira. 17 Q. Sorry. 18 A. Tom really didn't say much. He didn't have any 19 Sierra Verde. He was just listening. We chatted about 20 other stuff as well. It's not like we spent the whole 21 time talking about Sierra Verde. 22 Q. How long was your conversation about Sierra 23 Verde? 24 A. I have no idea. 25 Q. How long was the conversation between the four</p>	<p style="text-align: right;">155</p> <p>1 Q. Physically where were you when you were having 2 this conversation? 3 A. What do you mean? I mean, like -- 4 Q. Were you-all sitting at a table? Were you 5 standing in the corner? Where were you? 6 A. We were standing -- it's -- you know how these 7 things are. It's a bunch of people in a venue, and they 8 had been rent out and converted for entertainment 9 purposes. There were a few standing tables where you 10 could lay your drink, but there were no real chairs 11 because it's so -- standing room only. 12 Does that answer your question? 13 Q. So four or five of you were around one of these 14 tables, standing around it? 15 A. I think we were hanging close at the bar. We 16 wanted to be close to the bar. 17 Q. Okay. Did anybody else hear what you-all were 18 talking about, to your knowledge? 19 A. I don't know. I don't know. 20 Q. Did you say anything negative about Patrick 21 Boyce at that conversation? 22 A. No. 23 Q. Anything negative about Lane Britain? 24 A. No. 25 Q. Anything negative about Jim Dondero?</p>

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<p style="text-align: right;">156</p> <p>1 A. No.</p> <p>2 Q. Anything negative about Highland?</p> <p>3 A. No.</p> <p>4 Q. Any other communications you've had with</p> <p>5 Mr. Callan since you left Highland?</p> <p>6 A. As I mentioned, there might have been another</p> <p>7 one, but I just don't recall.</p> <p>8 Q. So certainly you don't recall any specifics of</p> <p>9 any other communications that may have occurred?</p> <p>10 A. That's what I said.</p> <p>11 Q. Did you make any notes of that conversation with</p> <p>12 Mr. Callan?</p> <p>13 A. No.</p> <p>14 Q. Did you make any notes of -- from any of the --</p> <p>15 any of the individuals that you spoke to in that group of</p> <p>16 four or five people?</p> <p>17 A. I did not, not on that occasion.</p> <p>18 Q. Why not?</p> <p>19 A. I just didn't. I don't know. At that point,</p> <p>20 I'll have to be honest with you, I thought Highland was</p> <p>21 eventually going to pay me and we were going to work it</p> <p>22 out. We were having these discussions about substitute</p> <p>23 compensation, a contract with Cornerstone, and I knew I</p> <p>24 was going to need -- I mean, I knew I needed counsel to</p> <p>25 kind of dot the I's and cross the T's, but I didn't</p>	<p style="text-align: right;">158</p> <p>1 Q. What do you recall about the substance of that</p> <p>2 conversation?</p> <p>3 MS. DANIELS: Again, to the extent that</p> <p>4 this is at the direction of counsel, as he's testified,</p> <p>5 we'll object, instruct the witness not to answer based</p> <p>6 upon work-product privilege -- work-product exemption.</p> <p>7 A. On that basis, I'm going to not answer the</p> <p>8 question.</p> <p>9 Q. Tell me what you -- was the -- the conversation</p> <p>10 in 2011, was that in person or on the phone?</p> <p>11 A. In person.</p> <p>12 Q. Where did that occur?</p> <p>13 A. I don't remember.</p> <p>14 Q. Do you recall what month that was?</p> <p>15 A. I don't.</p> <p>16 Q. But it was -- it was after you left Highland,</p> <p>17 correct?</p> <p>18 A. It was after I resigned. I just don't recall</p> <p>19 other than that.</p> <p>20 Q. Okay. What do you recall speaking to</p> <p>21 Mr. Lederman about?</p> <p>22 THE WITNESS: Do you want me to answer</p> <p>23 that?</p> <p>24 MS. DANIELS: No. Sorry.</p> <p>25 A. I'm not going to answer that.</p>
<p style="text-align: right;">157</p> <p>1 think -- I thought we'd get it all worked out.</p> <p>2 Q. How many conversations have you had with Shawn</p> <p>3 Lederman since you left Highland?</p> <p>4 A. One or two.</p> <p>5 Q. Well, how many do you recall?</p> <p>6 A. One or two.</p> <p>7 Q. Okay. Well, tell me about -- tell me about</p> <p>8 them.</p> <p>9 A. The last one I had with him was, again, at the</p> <p>10 Côtés du Coeur American Heart Association event, and I</p> <p>11 talked to him for some period of time. And then I think</p> <p>12 I talked to him at some point in 2011, after I resigned.</p> <p>13 Q. Any other communications other than those two?</p> <p>14 A. Not that I recall.</p> <p>15 Q. At the American Heart Association, was this a</p> <p>16 one-on-one conversation, or was anyone else involved?</p> <p>17 A. It was one-on-one.</p> <p>18 Q. And how long did it last?</p> <p>19 A. Again, I didn't really take notice of it. It</p> <p>20 was -- it was more than just a passing hello, good-bye.</p> <p>21 Q. Was -- did you have that conversation at the</p> <p>22 direction of counsel?</p> <p>23 A. Yes.</p> <p>24 Q. Did you make notes of that conversation?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">159</p> <p>1 MS. DANIELS: I'm going to instruct, again,</p> <p>2 that you not convey any of the substance of the</p> <p>3 communication, based on the work-product exemption.</p> <p>4 Q. So your conversation with Mr. Lederman in 2011</p> <p>5 was at the direction of counsel?</p> <p>6 MS. DANIELS: Object to the form of the</p> <p>7 question.</p> <p>8 A. I thought you were talking about the one in</p> <p>9 2013.</p> <p>10 Q. I was talking about 2011.</p> <p>11 A. Oh, yeah. Sorry.</p> <p>12 MS. DANIELS: Was that at the direction of</p> <p>13 counsel?</p> <p>14 THE WITNESS: No.</p> <p>15 MS. DANIELS: Okay.</p> <p>16 Q. Tell me what you recall about that conversation.</p> <p>17 A. Not much. I appreciated him for his work, for</p> <p>18 his effort; told him if there was anything I could do for</p> <p>19 him, recommendation or anything, you know, let me know;</p> <p>20 don't be a stranger.</p> <p>21 Q. What did he tell you?</p> <p>22 A. I don't recall. Thanks.</p> <p>23 Q. Any other communications with Mr. Lederman other</p> <p>24 than those two?</p> <p>25 A. Not that I recall.</p>



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<p style="text-align: right;">160</p> <p>1 Q. What about Lexie Sereni?</p> <p>2 A. I couldn't pronounce her name either, so ...</p> <p>3 What about her?</p> <p>4 Q. Do you know if that's a correct pronunciation?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay.</p> <p>7 A. I just remember I couldn't -- I had problems</p> <p>8 when I was listing up the names. So it's nice to see you</p> <p>9 have the same problems I do.</p> <p>10 Q. What -- how many times have you spoken to her</p> <p>11 since you left Highland?</p> <p>12 A. Since I resigned or left Highland?</p> <p>13 Q. Since you left.</p> <p>14 A. Once.</p> <p>15 Q. And when was that conversation?</p> <p>16 A. It was in April of 2013.</p> <p>17 Q. Was that also at the American Heart Association?</p> <p>18 A. It was.</p> <p>19 Q. And was that communication at the direction of</p> <p>20 counsel?</p> <p>21 A. No.</p> <p>22 Q. Did you make notes from that -- of that</p> <p>23 conversation?</p> <p>24 A. No.</p> <p>25 Q. Tell me what you told Ms. Sereni.</p>	<p style="text-align: right;">162</p> <p>1 A. No.</p> <p>2 Q. Did you tell her anything about Mr. Dondero?</p> <p>3 A. No.</p> <p>4 Q. Did you tell her anything about Lane Britain or</p> <p>5 Patrick Boyce?</p> <p>6 A. No.</p> <p>7 Q. Have you had any other communications with</p> <p>8 her -- phone, e-mail, social media -- since you left</p> <p>9 Highland?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Did -- did you have a communication with her</p> <p>12 between the time you gave your notice of resignation and</p> <p>13 when you actually left?</p> <p>14 A. Yes.</p> <p>15 Q. And was that in person or on the phone?</p> <p>16 A. In person. Maybe on the phone as well.</p> <p>17 Q. Okay.</p> <p>18 A. I had multiple conversations because she was my</p> <p>19 secretary after Brittney Cunningham left.</p> <p>20 Q. Okay. Okay.</p> <p>21 THE WITNESS: Can we take a break?</p> <p>22 MR. KATZ: Absolutely.</p> <p>23 THE VIDEOGRAPHER: Off the record, 1:44</p> <p>24 p.m.</p> <p>25 (Recess taken from 1:44 to 1:56.)</p>
<p style="text-align: right;">161</p> <p>1 A. I told her she looked good, I liked her shoes.</p> <p>2 Q. Do you remember what they looked like?</p> <p>3 A. Yeah. Very sexy.</p> <p>4 Q. Do you remember what color they were?</p> <p>5 A. Kind of sparkly.</p> <p>6 Q. Anything else you told her?</p> <p>7 A. Not really.</p> <p>8 Q. Do you remember what she told you?</p> <p>9 A. Yeah.</p> <p>10 Q. What did she tell you?</p> <p>11 A. Said I looked good, she liked my long hair.</p> <p>12 Q. Anything else?</p> <p>13 A. Said she'd been wondering what I was up to.</p> <p>14 Q. Anything else?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Did you talk about Highland with her at all?</p> <p>17 A. Briefly.</p> <p>18 Q. What did you -- what did you talk to her about</p> <p>19 with respect to Highland?</p> <p>20 A. Just how is it going.</p> <p>21 Q. You asking her how it's going?</p> <p>22 A. That's right.</p> <p>23 Q. Okay. What did she tell you?</p> <p>24 A. I don't recall.</p> <p>25 Q. Did -- did you tell her anything about Highland?</p>	<p style="text-align: right;">163</p> <p>1 THE VIDEOGRAPHER: Back on the record, 1:56</p> <p>2 p.m., starting tape four.</p> <p>3 Q. Mr. Daugherty, are you aware of any</p> <p>4 individual -- are you aware of any recording that's been</p> <p>5 made of any current or former Highland employee that you</p> <p>6 have not specifically identified today?</p> <p>7 A. In the list that I gave you, of names? Are you</p> <p>8 asking me am I aware of a recording that's taken place by</p> <p>9 someone that was not on the list of names that I gave</p> <p>10 you? I'm just trying to understand what you're asking.</p> <p>11 Q. Yeah.</p> <p>12 A. No. If that's the question, the answer is no.</p> <p>13 Q. Okay. You said the list of names that you've</p> <p>14 given me. You mean -- you mentioned recordings by Shawn</p> <p>15 Ward.</p> <p>16 A. That's right.</p> <p>17 Q. Okay. Who, other than Ms. Ward and yourself, do</p> <p>18 you know has recordings of current or former Highland</p> <p>19 employees?</p> <p>20 THE WITNESS: You want me to answer that?</p> <p>21 MS. DANIELS: Just to clarify, I mean, to</p> <p>22 the extent that it calls for communication or information</p> <p>23 that you only know by virtue of talking to counsel, at no</p> <p>24 time do I want you to reveal any attorney-client</p> <p>25 communications.</p>



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<p style="text-align: right;">164</p> <p>1 If you have independent knowledge of other 2 recordings, in a broad sense, I think any recording 3 that's made of any current or former Highland employee 4 besides recordings that you have or records that you have 5 or recordings that Shawn Ward has, and you know it 6 independently, without communications with counsel, then 7 I think you can answer the question. 8 A. On that basis, I'm not going to answer. 9 Q. Have you heard of any -- have you heard of the 10 existence of any recordings of any current or former 11 Highland employee from anyone other than your counsel or 12 Ms. Ward? 13 A. Yes. 14 Q. Okay. Who have you heard that from? 15 A. Ken McGovern. Jeff Lonsdale. 16 Q. Anybody else? 17 A. That's all I can think of right now. 18 Q. Okay. And what -- what did you hear from 19 Ms. McGovern? 20 MS. DANIELS: If that is a communication 21 you had at the direction of counsel, information learned 22 and communications had are privileged as work product. 23 I'll instruct you not to answer on that basis. 24 A. On that basis, I'm not going to answer the 25 question.</p>	<p style="text-align: right;">166</p> <p>1 A. Yes. 2 Q. And did you take notes of either conversation? 3 A. I think so. 4 Q. Of both of them? 5 A. No. 6 Q. Which -- when were the two -- the two 7 communications? 8 A. I don't recall. 9 Q. Was it the first or second one that you took 10 notes of? 11 A. First. 12 Q. And you gave those notes to your counsel? 13 A. I don't recall. 14 Q. Did you have any communications with 15 Mr. McGovern that were not at the direction of counsel? 16 A. Yes. 17 Q. Did you have any communications after you left 18 Highland with Mr. McGovern that were not at the direction 19 of counsel? 20 A. Yes. 21 Q. Okay. And when did those occur? 22 A. I didn't focus on it, but as recently as April. 23 Q. How many times have you spoken to Mr. McGovern 24 since you left Highland? 25 A. I didn't take an inventory.</p>
<p style="text-align: right;">165</p> <p>1 Q. Did -- 2 MR. KATZ: Is the Judge in here? 3 Judge Kaplan, I presume it's not necessary 4 for me to challenge each -- 5 SPECIAL MASTER KAPLAN: It is. 6 MR. KATZ: -- each designation. 7 SPECIAL MASTER KAPLAN: It is. 8 MR. KATZ: Thank you. And just so we're 9 clear, when you say "it is," it's not necessary? 10 SPECIAL MASTER KAPLAN: I'm sorry. It's 11 not necessary. 12 MR. KATZ: Okay. Thank you. 13 Q. Obviously you had a communication with 14 Ms. McGovern at the direction of your counsel? 15 A. It's Ken McGovern, not Kim. 16 Q. Ken. Oh, I'm sorry. 17 A. A he. 18 Q. You had a conversation with Ken McGovern at the 19 direction of your counsel? 20 A. I did. 21 Q. More than one? 22 A. Yes. 23 Q. How many? 24 A. Two. 25 Q. Both at the direction of your counsel?</p>	<p style="text-align: right;">167</p> <p>1 Q. Approximately? 2 MS. DANIELS: Objection, form. 3 A. Three times, maybe. 4 Q. Okay. 5 A. Maybe four. 6 Q. In addition to the two at direction of counsel? 7 A. No, including. 8 Q. Okay. So you had the two at direction of 9 counsel and one or two others? 10 A. Well, and just to be clear, some of the 11 communications were at the direction of counsel and other 12 of the communications were not. 13 Q. I understand. You had two at the direction of 14 counsel and one or two not at the direction of counsel; 15 is that correct? 16 A. That's -- that -- sorry. That's correct. 17 Q. Okay. And during the two conversations that you 18 had that were not at the direction of -- I'm sorry. 19 During the two conversations you had that were at the 20 direction of counsel, did you talk about anything with 21 Mr. McGovern that your counsel did not tell you to 22 discuss? 23 A. Yes. 24 Q. And what was that? 25 A. Well, my counsel did not instruct me not to talk</p>

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<p style="text-align: right;">168</p> <p>1 about it, but my counsel didn't care whether I talked  2 about it or not. Is that fair?  3 Q. What do you mean by that?  4 A. You know, I'm not -- I'm confused.  5 MS. DANIELS: Yeah. Let's --  6 Q. Sure.  7 A. Give me yours again.  8 MS. DANIELS: Do not convey communications  9 with counsel.  10 THE WITNESS: Right.  11 Q. During the two conversations that you had with  12 Mr. McGovern that were at the direction of counsel --  13 A. Yes.  14 Q. -- did you go -- did you have communications  15 during those two communications that went outside the  16 scope of what you were instructed by counsel to speak to  17 Mr. McGovern about?  18 A. Yes.  19 Q. Okay. Tell me the substance of those  20 communications that were outside the scope of what your  21 counsel instructed you to speak to Mr. McGovern about.  22 A. I was getting ready to go to an Indian Princess  23 outing with my youngest daughter, and he has -- it made  24 him have fond memories of when he took his daughter to do  25 that stuff. And we talked about that for quite a bit,</p>	<p style="text-align: right;">170</p> <p>1 this is not at the direction of counsel, you can convey  2 the information. If it was at the direction of counsel,  3 then I'm going to instruct you not to answer.  4 A. Which conversation are we talking about?  5 Q. Talking about the conversation you had on your  6 cell phone with Mr. McGovern.  7 A. There was more than one.  8 Q. How many were there?  9 A. I think two.  10 Q. Okay. And were either of those at the direction  11 of counsel?  12 A. Yes.  13 Q. Just one or both?  14 A. One.  15 Q. Okay. The one that was not at the direction of  16 counsel, what did you talk about?  17 A. The Indian Princess camp-out. I was at a  18 service station or a convenience store buying all these  19 treats, as I just went through. I mean, do you really  20 want to hear about them all?  21 Q. Okay. I don't think you understood my question,  22 then, earlier, but I appreciate that.  23 Did -- did your counsel -- did you talk  24 about -- did your counsel instruct you to talk to  25 Mr. McGovern about recordings?</p>
<p style="text-align: right;">169</p> <p>1 and that was not at the direction of counsel.  2 Q. Anything else?  3 A. Talked about I was ordering cupcakes and Ding  4 Dongs and chips and sodas, the small ones, so that the  5 girls could splurge on treats at the camp-out.  6 Q. The two -- the one or two conversations that you  7 had with Mr. McGovern that were not at the direction of  8 counsel, were those in person?  9 A. One was, and one was by phone.  10 Q. Okay. Where was the in-person communication?  11 A. I don't recall. It might have been at a  12 restaurant.  13 Q. Just the two of you?  14 A. I think so.  15 Q. And when was that?  16 A. I don't recall.  17 Q. And was that before or after the phone call?  18 A. I don't -- I don't recall the exact order, to be  19 honest with you. The phone call was such a nonfactor to  20 me, so I don't know how to position it versus other.  21 Q. Was that phone call on your cell phone?  22 A. Yes.  23 Q. Okay. What did you talk about when you were on  24 the phone with Mr. McGovern?  25 MS. DANIELS: Again, to the extent that</p>	<p style="text-align: right;">171</p> <p>1 MS. DANIELS: Objection, calls for  2 attorney-client communications, privileged.  3 Do not answer the question.  4 A. On that basis, I'm not going to answer the  5 question.  6 Q. Did you speak to Mr. McGovern about recordings  7 at either of the conversations you had with him that were  8 not at the direction of counsel?  9 A. No.  10 Q. You mentioned earlier that you heard about  11 recordings from an individual named Jeff Lonsdale?  12 A. Yes.  13 Q. What did Mr. Lonsdale tell you?  14 MS. DANIELS: And, again, to the extent  15 that that communication was at the direction of counsel,  16 you're not to convey anything about the substance that  17 was learned. I'll instruct you not to answer based upon  18 work product.  19 A. On that basis, I'm not going to answer the  20 question.  21 Q. How many conversations have you had with  22 Mr. Lonsdale since you left Highland?  23 A. Two.  24 Q. Were they in person or on the phone?  25 A. In person.</p>

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<p style="text-align: right;">172</p> <p>1 Q. Were they both at the direction of counsel?</p> <p>2 A. Yes.</p> <p>3 Q. Did counsel give you specific topics to talk</p> <p>4 about with Mr. Lonsdale?</p> <p>5 MS. DANIELS: Again, same objection that</p> <p>6 we've had a bunch of different times. That invades the</p> <p>7 attorney-client-communication privilege, and I'm</p> <p>8 instructing the witness not to answer that question.</p> <p>9 A. On that basis, I'm not going to answer the</p> <p>10 question.</p> <p>11 Q. Did you have any communications with</p> <p>12 Mr. Lonsdale that were -- since you left Highland that</p> <p>13 were not at the direction of counsel?</p> <p>14 A. No.</p> <p>15 Q. Have you heard any recordings that Mr. Lonsdale</p> <p>16 has?</p> <p>17 A. I have --</p> <p>18 MS. DANIELS: Again, to the extent that</p> <p>19 that occurred in connection with a conversation or an</p> <p>20 interview that was conducted at the direction of counsel,</p> <p>21 I will instruct the witness not to answer based on</p> <p>22 work-product privilege.</p> <p>23 MR. KATZ: Judge Kaplan?</p> <p>24 A. On that basis --</p> <p>25 Q. I'm sorry.</p>	<p style="text-align: right;">174</p> <p>1 MS. DANIELS: Again, based upon our</p> <p>2 objection and conversations about this previously, if the</p> <p>3 source of your information is based upon communications</p> <p>4 with counsel, in that regard, I'm going to instruct you</p> <p>5 not to answer.</p> <p>6 If you have other knowledge that's not</p> <p>7 based upon instructions of counsel or communications with</p> <p>8 counsel, then you may answer. Otherwise, I'll direct you</p> <p>9 not to answer.</p> <p>10 A. What she said didn't apply.</p> <p>11 Q. I'm sorry. Did apply?</p> <p>12 A. Did not. So on that basis, she said to answer</p> <p>13 your question.</p> <p>14 Q. Okay.</p> <p>15 A. Could you repeat it for me?</p> <p>16 Q. Sure. Please identify --</p> <p>17 MR. KATZ: Well, could you read the</p> <p>18 question back?</p> <p>19 THE REPORTER: "Have you heard or seen any</p> <p>20 other recordings of current or former Highland employees</p> <p>21 that you have not specifically identified during this</p> <p>22 deposition?" Answer was, "Maybe." And then, "What</p> <p>23 recordings?"</p> <p>24 A. I think I've seen some things at these</p> <p>25 functions, you know, these ex-Highland employee</p>
<p style="text-align: right;">173</p> <p>1 A. Sorry. On that basis, I'm not going to answer.</p> <p>2 MR. KATZ: Judge Kaplan?</p> <p>3 SPECIAL MASTER KAPLAN: What's the question</p> <p>4 again?</p> <p>5 MR. KATZ: The question was, Did you have</p> <p>6 any communications with Mr. Lonsdale -- I'm sorry, that's</p> <p>7 not the question. Have you heard any recordings that</p> <p>8 Mr. Lonsdale had?</p> <p>9 SPECIAL MASTER KAPLAN: Well, he can answer</p> <p>10 that question yes or no.</p> <p>11 A. I'm sorry. Can you repeat it?</p> <p>12 Q. Sure. Have you heard any recordings that</p> <p>13 Mr. Lonsdale had?</p> <p>14 A. No.</p> <p>15 Q. Have you seen any notes of any communications</p> <p>16 that Mr. Lonsdale made?</p> <p>17 A. No.</p> <p>18 Q. Have you seen any written statements or written</p> <p>19 recordings of any communications that Mr. Lonsdale had?</p> <p>20 A. No.</p> <p>21 Q. Have you heard or seen any other recordings of</p> <p>22 current or former Highland employees that you have not</p> <p>23 specifically identified during this deposition?</p> <p>24 A. Maybe.</p> <p>25 Q. What recordings?</p>	<p style="text-align: right;">175</p> <p>1 functions, that depict -- that depict both current and</p> <p>2 former Highland employees.</p> <p>3 Q. Okay. What have you seen?</p> <p>4 A. Just videos and pictures.</p> <p>5 Q. Anything other than videos or pictures?</p> <p>6 A. Not that I recall.</p> <p>7 Q. What videos or pictures do you recall that you</p> <p>8 haven't specifically identified already?</p> <p>9 A. You know, nothing that comes to mind directly.</p> <p>10 Just stuff's out there.</p> <p>11 Q. What stuff?</p> <p>12 A. Pictures of Highland people at parties, that</p> <p>13 kind of thing.</p> <p>14 Q. Okay. Where have you seen these?</p> <p>15 A. As I mentioned, when you get these</p> <p>16 get-togethers, people whip out their iPhones and they're,</p> <p>17 like, Look at this.</p> <p>18 Q. Who --</p> <p>19 A. Or it's not just iPhones. It could be other --</p> <p>20 you know, those devices that have -- that show videos or</p> <p>21 pictures.</p> <p>22 Q. Who has shown you videos or pictures?</p> <p>23 A. Just lots of people. I ...</p> <p>24 Q. Who?</p> <p>25 A. I'd have to think about it.</p>

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<p style="text-align: right;">176</p> <p>1 Q. Okay. Think about it, please, and let me know.</p> <p>2 A. Jason Ziegler, maybe David Martin, maybe Amy</p> <p>3 Jenkins. I'm just -- I'm not sure. I really didn't just</p> <p>4 record my every experience, so ...</p> <p>5 Q. Anybody else?</p> <p>6 A. Maybe.</p> <p>7 Q. Anybody provide any videos or pictures to you?</p> <p>8 A. No. I mean, when you say "provide," like send</p> <p>9 it to me?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. How many times have you spoken to Martin Downen</p> <p>13 since you left Highland?</p> <p>14 A. Twice, I think.</p> <p>15 Q. Were either of those communications at the</p> <p>16 direction of counsel?</p> <p>17 A. Yes.</p> <p>18 Q. Both?</p> <p>19 A. The second one.</p> <p>20 Q. Okay. Tell me about the first one.</p> <p>21 A. I don't remember that much about it.</p> <p>22 Q. Was it on the phone or in person?</p> <p>23 A. Person. Saw him socially someplace.</p> <p>24 Q. Where?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">178</p> <p>1 A. Yeah. I mean, we're at a conference together.</p> <p>2 Q. How long did you speak to him?</p> <p>3 A. I spoke to him on multiple occasions.</p> <p>4 Q. Multiple occasions at that conference?</p> <p>5 A. That's correct. It was a two-day or three-day</p> <p>6 conference. Something like that.</p> <p>7 Q. Each of those communications were at the</p> <p>8 direction of counsel?</p> <p>9 A. Yes.</p> <p>10 Q. The entire -- the entirety of each of those</p> <p>11 conversations was at the direction of counsel?</p> <p>12 A. No.</p> <p>13 Q. Tell me the substance of the communications that</p> <p>14 were not at the direction of counsel.</p> <p>15 A. Talked about his kids, sports the kids were</p> <p>16 playing, that kind of stuff. Had breakfast with him.</p> <p>17 Q. Anything about --</p> <p>18 A. I sat at his table. These are -- I don't</p> <p>19 know -- eight-, ten-person tables. I sat at his table.</p> <p>20 I had lunch with him in a similar scenario,</p> <p>21 bunch of ex-Highland guys, and so we all sat together. I</p> <p>22 think there was, like, 17 ex-Highland guys, although he's</p> <p>23 not ex-Highland. There were about 17 ex-Highland guys</p> <p>24 there and probably three or four Highland guys.</p> <p>25 Q. Who -- when you were at the table for breakfast,</p>
<p style="text-align: right;">177</p> <p>1 Q. When?</p> <p>2 A. I don't recall.</p> <p>3 Q. What did you talk about?</p> <p>4 A. Just how he was doing.</p> <p>5 Q. How he was doing at Highland or how he was doing</p> <p>6 in general?</p> <p>7 A. Both.</p> <p>8 Q. What specifically about Highland did you discuss</p> <p>9 with him?</p> <p>10 A. I don't recall. I just knew he was doing well,</p> <p>11 or he felt like he was doing well.</p> <p>12 Q. Was anybody else a party to that conversation?</p> <p>13 A. The first one or the second one?</p> <p>14 Q. The first one.</p> <p>15 A. I don't think so.</p> <p>16 Q. Did you run into him randomly, or was this a</p> <p>17 planned meeting?</p> <p>18 A. It was random.</p> <p>19 Q. Approximately how long was that conversation?</p> <p>20 A. I don't recall.</p> <p>21 Q. When did the second conversation occur?</p> <p>22 A. At the JPMorgan conference.</p> <p>23 Q. When was that?</p> <p>24 A. February of this year.</p> <p>25 Q. Was that an in-person conversation?</p>	<p style="text-align: right;">179</p> <p>1 who was -- who was at the table?</p> <p>2 A. Just me and Martin.</p> <p>3 Q. What about at the lunch? Who else was at that</p> <p>4 table?</p> <p>5 A. Our table, there was David Martin, Kurt Plumer,</p> <p>6 Gibran Mahmud, Greg Stuccheli. I think maybe Tom</p> <p>7 Pereira. I can't remember if he was at that conference</p> <p>8 or not. I think he was there. A couple of other guys.</p> <p>9 I'd have to think about it.</p> <p>10 Q. Did you take notes of your conversations with</p> <p>11 Mr. Downen at the JPMorgan conference?</p> <p>12 A. Maybe.</p> <p>13 Q. Where are those notes?</p> <p>14 A. They would be in my journal.</p> <p>15 Q. The one at -- the one that you have in your</p> <p>16 possession?</p> <p>17 A. That's correct.</p> <p>18 Q. Did you talk to Mr. Downen at all about your</p> <p>19 potential business venture?</p> <p>20 A. I think so.</p> <p>21 Q. What did you tell him?</p> <p>22 A. Just that Greg and I were trying to start a</p> <p>23 credit fund firm.</p> <p>24 Q. Was --</p> <p>25 A. Let me answer that better. Start a firm with a</p>

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<p style="text-align: right;">180</p> <p>1 credit focus for strategy.  2 Q. And where were you when you had that  3 communication with him?  4 A. I don't remember exactly. I mean, I had several  5 conversations with him at cocktail parties, at lunch, at  6 breakfast, intermittently throughout the halls, and I  7 might have mentioned it on certainly more than one  8 occasion, but I just don't remember which ones I did and  9 which ones I didn't.  10 Q. Did you ever talk to him about being a part of  11 your venture?  12 A. No.  13 Q. Was it -- at all times when you spoke to  14 Mr. Morgan -- I'm sorry -- Mr. Downen during the JPMorgan  15 conference, was it just the two of you speaking?  16 A. No, not at all times. As I said, we were --  17 sometimes it was just the two of us, and sometimes I was  18 at a table full of people. Sometimes I was standing at a  19 cocktail party and it was three or four guys  20 chitchatting.  21 Q. Did Mr. Stuecheli participate in any of those  22 conversations with Mr. Downen and yourself?  23 A. Some. I think he was sitting at our table at  24 lunch, as I mentioned.  25 Q. Okay. Tell me everything you talked to</p>	<p style="text-align: right;">182</p> <p>1 A. The first one was that -- let's see. The first  2 one, I -- I thought it was him at the cocktail reception.  3 I'm sorry, not cocktail reception. Capital for Kids.  4 Q. Okay.  5 A. So that one might have been on direction of  6 counsel. I just don't recall.  7 Q. What did you talk to him about at that event?  8 MS. DANIELS: To the extent that it was at  9 the direction of counsel, I'm going to instruct you not  10 to reveal the information based upon the  11 attorney-work-product privilege.  12 THE WITNESS: I don't -- I don't think  13 that's going to apply in this case because I was talking  14 to Lawler and I was talking to Clay, and he just happened  15 to be standing there.  16 Q. Was this the communication --  17 A. So I really wasn't talking to him. I mean, I  18 was talking to a group of people, and they were talking  19 to me. But, you know, when we got into stuff like Sierra  20 Verde, he didn't have any Sierra Verde, so for him, he  21 was just an interested observer -- or uninterested  22 observer.  23 Q. So he would have -- he was -- he was there when  24 you were talking about the Sierra Verde, and that's the  25 communication you discussed earlier?</p>
<p style="text-align: right;">181</p> <p>1 Mr. Downen about at lunch.  2 A. That wasn't on direction of counsel?  3 Q. I want to know everything you talked to him  4 about at lunch.  5 MS. DANIELS: I'll object to the extent  6 that he is communicating or learning information at the  7 direction of counsel and instruct the witness not to  8 answer. Work-product exemption.  9 A. On that basis, I'm not going to answer the  10 question.  11 Q. Have you had any communications with Mr. Downen  12 since the JPMorgan conference?  13 A. No.  14 Q. Tell me about your communications with Tom  15 Pereira. I'm sorry. Bad question.  16 How many times have you spoken with  17 Mr. Pereira since you left Highland?  18 A. Three, maybe four.  19 Q. Any of those at the direction of counsel?  20 A. No.  21 Q. Okay. Tell me about those -- well, were  22 those -- each of those four, were they -- communications,  23 were they in person?  24 A. Yes.  25 Q. When was the first one?</p>	<p style="text-align: right;">183</p> <p>1 A. That's right.  2 Q. Okay. Did you have any other communications  3 with him at that event?  4 A. Yeah.  5 Q. Okay. What did you talk to him about?  6 A. Was he going to move back to New York, his wife  7 was going back to work, how are the kids.  8 Q. Did you tell him anything about Highland?  9 A. Nothing other than what we discussed earlier  10 regarding my discussions with the guys on Sierra Verde.  11 Q. Did he say anything to you about Highland?  12 A. No. Tom's pretty quiet.  13 Q. What was the second communication you had with  14 him after you left, after you left Highland?  15 A. You know, there's probably -- I said four.  16 There might be ten. Tom and I go to the same church, so  17 there's a lot of hi, how are you doing, beautiful Sunday,  18 blah, blah, blah.  19 Q. Have you ever spoken to Tom about Highland at  20 any of those -- any of those conversations?  21 A. Yes.  22 Q. What did you talk about?  23 A. Just, How's it going?  24 Q. You were asking him how it was going?  25 A. Uh-huh, yes.</p>



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<p style="text-align: right;">184</p> <p>1 Q. And what did he tell you?</p> <p>2 A. Good.</p> <p>3 Q. Did you ever talk about Mr. Dondero with Tom?</p> <p>4 A. Brief -- I mean, indirectly, maybe, or -- that's</p> <p>5 probably not the right description. He might have come</p> <p>6 up, but it really wasn't talking about him.</p> <p>7 Q. In what context did Mr. Dondero come up?</p> <p>8 A. Just that from Tom's perspective, it was, like:</p> <p>9 Man, you guys were friends. Surely there's got to be a</p> <p>10 way for you to find a way to get a solution to this.</p> <p>11 Q. What did you say?</p> <p>12 A. I'm willing.</p> <p>13 Q. Anything else that you said about Mr. Dondero?</p> <p>14 A. No. I mean, like I said, it really wasn't about</p> <p>15 Mr. Dondero. It was more, like, Can't you guys figure</p> <p>16 out a way to kiss and make up?</p> <p>17 Q. Did you say anything negative about Mr. Dondero</p> <p>18 to Tom?</p> <p>19 A. No.</p> <p>20 Q. Anything negative about Highland?</p> <p>21 A. No.</p> <p>22 Q. Anything negative about Lane Britain or Patrick</p> <p>23 Boyce?</p> <p>24 A. They didn't even come up.</p> <p>25 Q. During any of the conversations that you've had</p>	<p style="text-align: right;">186</p> <p>1 A. I mean, we already listed off just a ton of</p> <p>2 people.</p> <p>3 Q. I'm talking about the ones that you have</p> <p>4 contacted because you heard they were leaving Highland</p> <p>5 that fall into that category that you just described.</p> <p>6 A. Sure. You want me to start at the top?</p> <p>7 Q. Yes.</p> <p>8 A. Kevin Rourke, Chris Lombardi, Dan Drabinski,</p> <p>9 Clay Shumway, Joe Dougherty, Kurt Plumer, Todd Travers,</p> <p>10 Davis Deadman, Amy Jenkins. Actually, check that. I --</p> <p>11 I didn't reach out to her. I bumped into her.</p> <p>12 These are people that I reached out to talk</p> <p>13 to, right?</p> <p>14 Q. After you left Highland.</p> <p>15 A. Uh-huh.</p> <p>16 Q. Yes, in connection with them leaving Highland.</p> <p>17 A. Mike Rossi.</p> <p>18 And affiliates, I'm assuming. Correct?</p> <p>19 Q. Yes.</p> <p>20 A. Michael Colvin. You guys are killing me with</p> <p>21 these lists. I'm sure there's more. Oh, Carlson, Steve</p> <p>22 Carlson. We mentioned him earlier. Nathan Schray,</p> <p>23 Brittney Cunningham.</p> <p>24 There's more. I'm starting to get tired</p> <p>25 head on these lists.</p>
<p style="text-align: right;">185</p> <p>1 with Tom since you left Highland, none of that's come up?</p> <p>2 A. I'm sorry. I didn't follow that question.</p> <p>3 Q. During all of the conversations that you've had</p> <p>4 with Mr. Pereira since you left Highland, you have never</p> <p>5 said anything negative about Highland?</p> <p>6 A. That's correct.</p> <p>7 Q. You've never said anything negative about Jim</p> <p>8 Dondero?</p> <p>9 A. That's correct.</p> <p>10 Q. Never said anything negative about Patrick Boyce</p> <p>11 or Lane Britain?</p> <p>12 A. As I said, they don't even come up.</p> <p>13 Also, just full disclosure, I have a kid</p> <p>14 that goes to St. Mark's, and Tom's got a kid that goes to</p> <p>15 St. Mark's. So I see him at St. Mark's events, too.</p> <p>16 Q. What made you call Clay Shumway when you heard</p> <p>17 that he was leaving Highland?</p> <p>18 A. Just wanted to check in.</p> <p>19 Q. Because you heard that he was leaving?</p> <p>20 A. That's right.</p> <p>21 Q. Do you make it a practice to talk to employees</p> <p>22 that are leaving Highland?</p> <p>23 A. Only the ones that know about my situation or</p> <p>24 that I worked with.</p> <p>25 Q. And who would those people be?</p>	<p style="text-align: right;">187</p> <p>1 Q. Okay. How many times have you spoken to</p> <p>2 Jonathan Hubble since you left Highland?</p> <p>3 A. I think two.</p> <p>4 Q. Okay. Were either of those at the direction of</p> <p>5 counsel?</p> <p>6 A. No. Yes, yes.</p> <p>7 Q. Both of them?</p> <p>8 A. No. Just one.</p> <p>9 Q. When did that conversation occur that was at the</p> <p>10 direction of counsel?</p> <p>11 A. In April.</p> <p>12 Q. At the American Heart Association?</p> <p>13 A. That's correct.</p> <p>14 Q. Did you have any communications with Mr. Hubble</p> <p>15 at the American Heart Association event that were not at</p> <p>16 the direction of counsel?</p> <p>17 A. Yes.</p> <p>18 Q. Tell me about those.</p> <p>19 A. We were talking about him and how happy he is</p> <p>20 with his significant other.</p> <p>21 Q. Anything else?</p> <p>22 A. Morton Wendell. How happy he is just in general</p> <p>23 to be doing HR.</p> <p>24 Q. Anything about Highland?</p> <p>25 A. That stuff would be on direction of counsel.</p>

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<p style="text-align: right;">188</p> <p>1 Q. Anything about the lawsuit?</p> <p>2 A. That would be on direction of counsel.</p> <p>3 Q. Anything about Mr. Dondero?</p> <p>4 A. No.</p> <p>5 Q. Anything about Patrick Boyce?</p> <p>6 A. That would be on direction of counsel.</p> <p>7 Q. Anything about Lane Britain?</p> <p>8 A. Direction of counsel.</p> <p>9 Q. Anything about any other Highland employee or</p> <p>10 affiliate employee?</p> <p>11 A. I don't recall.</p> <p>12 Q. When was the other conversation you had with</p> <p>13 Mr. Hubble?</p> <p>14 A. I don't recall the exact date.</p> <p>15 Q. Was that in person or on the phone?</p> <p>16 A. I think it was on -- I think it was in person.</p> <p>17 Q. Where did that occur?</p> <p>18 A. I bumped into him and Morton at a restaurant.</p> <p>19 Q. Was that -- do you remember the year?</p> <p>20 A. 2011. Maybe it was 2012, early 2012.</p> <p>21 Q. What did you talk about at that meeting?</p> <p>22 A. We talked about -- Morton was working for --</p> <p>23 what's that guy's name? Seemed like an Iranian name.</p> <p>24 Q. Let me ask you this: Did you talk about</p> <p>25 anything to do with Highland at that conversation?</p>	<p style="text-align: right;">190</p> <p>1 Q. Okay.</p> <p>2 A. Goldman Sachs distressed conference.</p> <p>3 Q. Did you make any notes from that communication?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you make any notes from your conversation</p> <p>6 with Mr. Hubble that was at the direction of counsel?</p> <p>7 A. Yes.</p> <p>8 Q. Where are those notes?</p> <p>9 A. In my book.</p> <p>10 Q. Your book at home?</p> <p>11 A. Yes. That's the only book I have.</p> <p>12 Q. Okay. And when did you make those notes in</p> <p>13 connection with when you had that conversation?</p> <p>14 A. I don't -- I don't -- I don't recall.</p> <p>15 Q. Could it have been a while after?</p> <p>16 A. No. It was pretty soon after.</p> <p>17 Q. Days or weeks?</p> <p>18 A. Days.</p> <p>19 Q. How many times have you spoken to Michael Colvin</p> <p>20 since you left Highland?</p> <p>21 A. Maybe ten. I'm estimating.</p> <p>22 Q. Any of those at the direction of counsel?</p> <p>23 A. Yes.</p> <p>24 Q. How many?</p> <p>25 A. Most of them.</p>
<p style="text-align: right;">189</p> <p>1 A. Nothing other than my role at Highland, my</p> <p>2 history and my background and ... Gosh, what is that</p> <p>3 guy's name? I can't remember.</p> <p>4 Anyway, this guy was looking for a manager</p> <p>5 to fund, and he was affiliated with some people in New</p> <p>6 York, and they thought of me.</p> <p>7 Q. Did you talk to Mr. Hubble about anything with</p> <p>8 respect to this lawsuit at that conversation?</p> <p>9 A. No.</p> <p>10 Q. Anything --</p> <p>11 A. This lawsuit didn't exist at the time of that</p> <p>12 conversation.</p> <p>13 Q. Anything about your disputes with Highland?</p> <p>14 A. I don't think so, not at that time. I mean, I</p> <p>15 had my issues, but I -- I really wasn't talking to</p> <p>16 them -- talking about them to too many people.</p> <p>17 Q. How many times have you spoken to Jeff Lee since</p> <p>18 you left Highland?</p> <p>19 A. Three or four.</p> <p>20 Q. Any of those at the direction of counsel?</p> <p>21 A. Yes.</p> <p>22 Q. How many?</p> <p>23 A. One.</p> <p>24 Q. When was that?</p> <p>25 A. I think I saw him at a conference.</p>	<p style="text-align: right;">191</p> <p>1 Q. Did you make notes of any of those</p> <p>2 communications?</p> <p>3 A. I think so.</p> <p>4 Q. Did you use those notes to help draft the</p> <p>5 lawsuit in this matter?</p> <p>6 A. Some of them, I think. I -- first of all, I</p> <p>7 didn't draft the lawsuit, but I certainly used those</p> <p>8 notes in coordinating with my counsel.</p> <p>9 Q. Where are those notes?</p> <p>10 A. I think my lawyers have them.</p> <p>11 Q. You understand that Mr. Colvin is a licensed</p> <p>12 attorney, don't you?</p> <p>13 A. The last I heard, he was a licensed attorney,</p> <p>14 yes.</p> <p>15 Q. Are you ever aware of Mr. Colvin not being a</p> <p>16 licensed attorney?</p> <p>17 A. I don't know what he's doing right now.</p> <p>18 Actually, that's not true. He's at a law firm of a</p> <p>19 friend of mine, so I assume he's still a licensed</p> <p>20 attorney.</p> <p>21 Q. At any time since you left Highland through</p> <p>22 today, are you aware of Mr. Colvin not being a licensed</p> <p>23 attorney?</p> <p>24 A. No.</p> <p>25 Q. Have you ever told anybody that Mr. Colvin is</p>

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<p style="text-align: right;">192</p> <p>1 not a licensed attorney?</p> <p>2 A. No.</p> <p>3 Q. Do you have any reason to know why your counsel</p> <p>4 would have represented to the Court that Mr. Colvin was</p> <p>5 not a licensed attorney?</p> <p>6 MS. DANIELS: Objection, form.</p> <p>7 A. I'm not even aware that they did such a thing.</p> <p>8 Q. Did you ever speak to Mr. Colvin about the HFP</p> <p>9 note transaction?</p> <p>10 MS. DANIELS: Again, to the extent that he</p> <p>11 is delving into communications that you had at the</p> <p>12 direction of counsel, I'll instruct you not to answer.</p> <p>13 If -- if not, then you can convey the communication.</p> <p>14 A. On that basis, I'm not going to answer the</p> <p>15 question.</p> <p>16 Q. Did you ever have any communications with</p> <p>17 Mr. Colvin after -- since the time you left Highland</p> <p>18 about Sierra Verde?</p> <p>19 A. Excuse me. Sorry.</p> <p>20 Q. That's all right.</p> <p>21 A. That would have been at the direction of</p> <p>22 counsel.</p> <p>23 Q. What conversations did you have?</p> <p>24 A. I don't understand the question.</p> <p>25 Q. What conversations did you have with Mr. Colvin</p>	<p style="text-align: right;">194</p> <p>1 SPECIAL MASTER KAPLAN: The instruction is</p> <p>2 work -- work product, attorney-client privilege. You're</p> <p>3 instructing him not to answer the question.</p> <p>4 MS. DANIELS: That's right, but what</p> <p>5 he's --</p> <p>6 SPECIAL MASTER KAPLAN: Okay.</p> <p>7 MS. DANIELS: But what he's doing is</p> <p>8 saying, Well, did you talk about this?</p> <p>9 SPECIAL MASTER KAPLAN: I don't want to</p> <p>10 hear an argument about it. I just -- I just want to know</p> <p>11 the basis for the objection, the instruction. I assume</p> <p>12 the witness is going to follow the instruction.</p> <p>13 This is the same issue that I need further</p> <p>14 consideration and deliberation on.</p> <p>15 We'll move on to the next question.</p> <p>16 MS. DANIELS: Thank you.</p> <p>17 A. Just on the basis of that, I'm not going to</p> <p>18 answer the question.</p> <p>19 Q. Okay. Did you -- after you left Highland, have</p> <p>20 you had any communications with Mr. Colvin about</p> <p>21 Tunstall?</p> <p>22 MS. DANIELS: Again, I'm objecting to the</p> <p>23 extent that the question itself -- by -- by us having to</p> <p>24 assert the privilege with respect to that subject matter</p> <p>25 when we -- when the client's -- when the witness has</p>
<p style="text-align: right;">193</p> <p>1 about Sierra Verde?</p> <p>2 MS. DANIELS: Again, he's -- he's already</p> <p>3 testified that -- and, in fact, I'm going to --</p> <p>4 MR. KATZ: I'm just waiting for you to give</p> <p>5 him the instruction so we can move on.</p> <p>6 MS. DANIELS: I'm going to instruct the --</p> <p>7 I'm going to instruct -- I think that by you ...</p> <p>8 Judge Kaplan, by him identifying topic by</p> <p>9 topic, did you discuss this at the direction of counsel</p> <p>10 or did you discuss this, so that he's having to answer</p> <p>11 "at the direction of counsel," he, in effect, is going</p> <p>12 behind the asserted work-product privilege to attempt to</p> <p>13 identify the topics that were discussed at the direction</p> <p>14 of counsel, and I think that that's an improper invasion</p> <p>15 of -- an objection to an exemption that I've already</p> <p>16 made.</p> <p>17 SPECIAL MASTER KAPLAN: Let's table that</p> <p>18 issue and move on.</p> <p>19 MR. KATZ: Well, I was just trying to get</p> <p>20 the instruction and the answer. Counsel didn't instruct</p> <p>21 him not to answer, which is why I think he answered. If</p> <p>22 she would have just instructed --</p> <p>23 SPECIAL MASTER KAPLAN: That's fair.</p> <p>24 MR. KATZ: Yeah. I want to just make a</p> <p>25 record on this.</p>	<p style="text-align: right;">195</p> <p>1 already testified that those communications were at the</p> <p>2 direction of counsel, by eliminating or defining subject</p> <p>3 matters that we further have to respond to in addition to</p> <p>4 that goes into the subject matter of the privilege -- of</p> <p>5 the conversation that we're trying to protect.</p> <p>6 SPECIAL MASTER KAPLAN: Ms. Daniels, all</p> <p>7 you need to do is object, state the grounds for the</p> <p>8 objection -- either attorney-client privilege, work</p> <p>9 product or both -- and then give your instruction to the</p> <p>10 witness. That's all you have to do.</p> <p>11 At this point, we're now moving on to --</p> <p>12 into the area of speaking objections, which are</p> <p>13 borderline improper.</p> <p>14 MS. DANIELS: I'll object to</p> <p>15 privileged-work-product nature.</p> <p>16 Do not answer the question.</p> <p>17 A. On that basis, I'm not going to answer the</p> <p>18 question.</p> <p>19 Q. Okay. Did you have any communications with</p> <p>20 Mr. Colvin since you left Highland about Crusader or</p> <p>21 credit strat wind-downs or any issues that went into</p> <p>22 the -- your counterclaim you filed in this case?</p> <p>23 MS. DANIELS: Object, based upon the</p> <p>24 work-product exemption.</p> <p>25 Do not answer the question.</p>

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196	198
1 A. On that basis, I'm not going to answer the	1 (Mr. Surgent leaves the room.)
2 question.	2 MS. DANIELS: Designate this as attorneys'
3 Q. Have you had any communications with Jason	3 eyes only.
4 Vanacour since you left Highland?	4 (Beginning of attorneys-eyes-only excerpt.)
5 A. No.	5
6 Q. And by "communications," I mean telephone,	6
7 e-mail, anything. Social media.	7
8 A. I was going to reach out to him, but I haven't	8
9 gotten around to it.	9
10 MR. KATZ: Take a quick break?	10
11 SPECIAL MASTER KAPLAN: Sure.	11
12 THE VIDEOGRAPHER: Off the record, 2:39	12
13 p.m.	13
14 (Recess taken from 2:39 to 2:52.)	14
15 (Messrs. Boyce and Leventon are not	15
16 present.)	16
17 Q. Mr. Daugherty, how many times have you spoken to	17
18 Chris Lombardi since you've left Highland?	18
19 A. Probably about seven, eight.	19
20 Q. Any of those at the direction of counsel?	20
21 A. No.	21
22 Q. Did you take notes of any of those	22
23 communications?	23
24 A. Maybe some.	24
25 Q. Where would those notes be?	25
197	203
1 A. In my notebook.	1
2 Q. Did Mr. Lombardi ever show you any recordings	2
3 that he made of any current or former Highland employee?	3
4 A. No.	4
5 Q. Did he ever show you any -- did he ever show you	5
6 any recordings of any current or former Highland employee	6
7 that anybody else had made?	7
8 A. No.	8
9 Q. Did he ever mention any recordings of any	9
10 current or former Highland employee to you?	10
11 A. No.	11
12 Q. When was the last time you spoke to	12
13 Mr. Lombardi?	13
14 A. Maybe last week.	14 (End of attorneys-eyes-only excerpt.)
15 Q. Okay. And did you discuss your new business	15 MR. KATZ: I think they can come back.
16 venture with him in that communication?	16 Q. You mentioned an individual, and I'm probably
17 A. Yes.	17 going to get this name wrong. Drabinski?
18 Q. What did you -- what did you talk about?	18 A. Dan Drabinski.
19 A. Well, that would be on direction of counsel.	19 Q. Dan Drabinski. Who is Dan Drabinski?
20 No, that's confidential, I'm sorry, not direction of	20 A. Former Highland guy, trader.
21 counsel.	21 Q. And have you had any communications with him
22 Q. Okay.	22 since you left Highland?
23 A. So the Highland guys would have to leave.	23 A. Yes.
24 MR. KATZ: Thomas, do you mind stepping out	24 Q. How many?
25 for a minute?	25 A. One.

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<p style="text-align: right;">204</p> <p>1 Q. Was that at the direction of counsel?</p> <p>2 A. No.</p> <p>3 (Mr. Leventon reenters the room.)</p> <p>4 Q. And when did that occur?</p> <p>5 A. In April.</p> <p>6 Q. Was this also at the American Heart Association</p> <p>7 event?</p> <p>8 A. Actually, I say April. I'm not sure it was</p> <p>9 April. It might have been March. It was at that</p> <p>10 Highland ex-employee happy hour, or whatever,</p> <p>11 get-together.</p> <p>12 (Mr. Surgent reenters the room.)</p> <p>13 Q. Okay. What did you talk to Mr. Drabinski about?</p> <p>14 A. Just what's he up to, tell him what I'm up to.</p> <p>15 Q. Anything about this litigation?</p> <p>16 A. No, I don't think so.</p> <p>17 Q. Did Mr. Drabinski mention any recordings of</p> <p>18 current or former Highland employees to you?</p> <p>19 A. No.</p> <p>20 Q. Did he show you any recordings of current or</p> <p>21 former Highland employees?</p> <p>22 A. No.</p> <p>23 Q. Do you know if Mr. Drabinski is aware of any</p> <p>24 recordings of current or former Highland employees?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">206</p> <p>1 MS. DANIELS: Objection, form.</p> <p>2 A. Not specifically.</p> <p>3 Q. Generally?</p> <p>4 A. Possibly.</p> <p>5 Q. What would -- what do you mean by that?</p> <p>6 A. People mention things at these events, and I</p> <p>7 just don't have a recollection to put this story on that</p> <p>8 person, but I -- it just comes up a lot.</p> <p>9 Q. Okay. Well, what -- what stories -- without</p> <p>10 putting it on a person, what stories do you recall?</p> <p>11 A. None specifically right now. I'd have to go</p> <p>12 home and think about it.</p> <p>13 There are two more people to add to your</p> <p>14 list, you know, that I've been in contact with, Joe</p> <p>15 Dougherty and Amy Dougherty, that were former Highland</p> <p>16 employees. Not related to me.</p> <p>17 Q. How many times have you spoken to Joe since</p> <p>18 you've left Highland?</p> <p>19 A. Probably about six or seven.</p> <p>20 Q. Any of those at the direction of counsel?</p> <p>21 A. No.</p> <p>22 Q. Did you take notes of any of those</p> <p>23 communications?</p> <p>24 A. No. I might have, actually. I might have.</p> <p>25 Q. Would those be in your notebook? I'm sorry.</p>
<p style="text-align: right;">205</p> <p>1 Q. Other than the people we've talked about today,</p> <p>2 are you aware of anybody else being aware of recordings</p> <p>3 of current or former Highland employees?</p> <p>4 A. I'm sorry. Give me that one more time.</p> <p>5 Q. Sure. I don't want to talk about any of the</p> <p>6 recordings we've already talked about today, but other</p> <p>7 than that, are you aware of any individual who is aware</p> <p>8 of any current or former -- I'm sorry -- of any</p> <p>9 recordings of current or former Highland employees?</p> <p>10 MS. DANIELS: Object to the form of the</p> <p>11 question. Object to the extent that it calls for any</p> <p>12 attorney-client communications that are privileged --</p> <p>13 that would be privileged, and therefore instruct the</p> <p>14 witness not to answer, if that is the case.</p> <p>15 A. Frankly, there's just a lot about that question.</p> <p>16 It was -- it was three generation- -- three iterations of</p> <p>17 complexity that I didn't quite follow.</p> <p>18 Q. Okay.</p> <p>19 A. Or three multiples of complexity.</p> <p>20 Q. I want to know if you are aware -- if you have</p> <p>21 knowledge --</p> <p>22 A. Yes.</p> <p>23 Q. -- of anybody else having knowledge of</p> <p>24 recordings of current or former Highland employees other</p> <p>25 than what we've spoken about already today.</p>	<p style="text-align: right;">207</p> <p>1 Where would those notes be?</p> <p>2 A. I don't know because I'm not sure I have. I</p> <p>3 just might have.</p> <p>4 Q. If you have them, where would they be?</p> <p>5 A. I'm not sure. Either in my notebook or they</p> <p>6 would have been with my attorneys.</p> <p>7 Q. Have you spoken to Mr. Dougherty about this</p> <p>8 litigation?</p> <p>9 A. Certain elements, yes.</p> <p>10 Q. What elements?</p> <p>11 A. HERA.</p> <p>12 Q. Anything else?</p> <p>13 A. That's all I can think of.</p> <p>14 Q. Have -- when did you speak to him about HERA?</p> <p>15 A. I spoke to him about HERA on multiple occasions.</p> <p>16 Q. Okay. Multiple occasions after you left</p> <p>17 Highland?</p> <p>18 A. That's correct. You know, and I'm going to go</p> <p>19 back and I'm going to have to change, because I do</p> <p>20 remember one conversation that was on direction of</p> <p>21 counsel. I just -- it escaped my mind earlier.</p> <p>22 Q. Was that conversation about HERA?</p> <p>23 A. Yeah.</p> <p>24 Q. Do you recall if you have notes about that --</p> <p>25 from that conversation?</p>



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<p style="text-align: right;">208</p> <p>1 A. I don't know off the top of my head.</p> <p>2 Q. Okay. Tell me about that conversation.</p> <p>3 A. I can't because it was on direction of counsel.</p> <p>4 So on that basis, I don't think I should answer the</p> <p>5 question.</p> <p>6 Q. Okay. Did you have any other communications</p> <p>7 other than that one about Mr. -- with Mr. Dougherty about</p> <p>8 HERA since you left Highland?</p> <p>9 A. No.</p> <p>10 Q. Any other communications with Mr. Dougherty</p> <p>11 about this litigation other than that one communication</p> <p>12 about HERA since you left Highland?</p> <p>13 A. You know, maybe mentioning it in passing. I</p> <p>14 can't put my finger on it specifically. I seem to bump</p> <p>15 into him at Mexican food restaurants all the time, so</p> <p>16 they're not in-depth conversations. The kids are running</p> <p>17 around.</p> <p>18 (Exhibit 35 marked.)</p> <p>19 Q. All right. I'm going to show you what I've</p> <p>20 marked here as Exhibit 35 and ask you if you recognize</p> <p>21 that document, please.</p> <p>22 MR. KATZ: Sorry.</p> <p>23 MS. DANIELS: That's okay.</p> <p>24 A. This appears to be a copy of Daugherty's Third</p> <p>25 Amended Answer, Counterclaim and Third-Party Petition.</p>	<p style="text-align: right;">210</p> <p>1 document that came to my attention. I believe Scott</p> <p>2 Ellington was there, my counsel was there. And as soon</p> <p>3 as I saw it, I recognized that it was an error, and I</p> <p>4 made that clear.</p> <p>5 Q. What was that error?</p> <p>6 A. The HFP note being a hundred million dollars, or</p> <p>7 something like that.</p> <p>8 Q. Okay. The -- what do you remember the -- do you</p> <p>9 remember what the inaccurate statement was and what the</p> <p>10 facts were?</p> <p>11 A. Not verbatim, but it said something like</p> <p>12 Highland -- I don't remember the exact language, but it</p> <p>13 was something to the effect that Highland sent funds and</p> <p>14 took back a note, or whatever, for a hundred million</p> <p>15 dollars to HFP. And it was 36 -- I think it was 36, 38</p> <p>16 million dollars, something like that. I don't know where</p> <p>17 that hundred million came from.</p> <p>18 Q. Okay. Do you know if that's been corrected?</p> <p>19 A. To the best of my knowledge, it's been</p> <p>20 corrected. I brought that to the attention of my</p> <p>21 counsel, and I believe they corrected it.</p> <p>22 Q. Okay. Other than that situation, are you aware</p> <p>23 of anything factually that is not correct in the</p> <p>24 petition -- in the counterclaim? Sorry.</p> <p>25 A. No. There's nothing else that I would -- that</p>
<p style="text-align: right;">209</p> <p>1 Q. And you are familiar with the document, aren't</p> <p>2 you?</p> <p>3 A. It's been a while.</p> <p>4 Q. You have read -- did you read this before it was</p> <p>5 filed?</p> <p>6 A. As I mentioned, there were several iterations of</p> <p>7 this --</p> <p>8 Q. Uh-huh.</p> <p>9 A. -- before it was filed, so I was certainly</p> <p>10 involved and read several of them. I don't know if I</p> <p>11 read this version or not.</p> <p>12 Q. Okay. Did you ever -- in connection with your</p> <p>13 counterclaim -- okay if I refer to this document as your</p> <p>14 counterclaim?</p> <p>15 A. I think I'm fine with that.</p> <p>16 Q. Okay. In connection with your counterclaim, are</p> <p>17 you aware of any facts stated in there that are not</p> <p>18 correct?</p> <p>19 A. You know, I came across an error when we were</p> <p>20 doing depositions this summer. I think it was at the UBS</p> <p>21 deposition. And I don't know if they took it out of here</p> <p>22 or one -- you know, there were multiple pleadings,</p> <p>23 whatever you want to call these things. There were</p> <p>24 multiple documents filed.</p> <p>25 And there was an error in one particular</p>	<p style="text-align: right;">211</p> <p>1 I'm aware of that's incorrect.</p> <p>2 Q. Okay. Can you turn to page 6 for me, please.</p> <p>3 I'm going to refer you specifically to paragraph 30.</p> <p>4 A. Sure.</p> <p>5 Q. And this paragraph says, "For high ranking</p> <p>6 employees," and then it's got, in parentheses and quotes,</p> <p>7 "Partners," "HCM also awarded LTIP interests that tracked</p> <p>8 the performance of the Highland Partnership. This</p> <p>9 program was separate from the LTIP/Vessel program. The</p> <p>10 LTIP program (the 2005 HCMLP Long-Term Incentive Plan) is</p> <p>11 an incentive plan created for non-voting partners in HCM,</p> <p>12 a partnership controlled by Strand Advisors which is</p> <p>13 controlled by affiliates of Dondero. Daugherty also had</p> <p>14 an interest in the Defined Benefit Pension Plan."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. The -- is the LTIP/Vessel program</p> <p>18 distinct from the 2005 HCMLP Long-Term Incentive Plan?</p> <p>19 A. I honestly don't understand this sentence.</p> <p>20 Frankly, you know, you pointed out this -- this program</p> <p>21 was separate from the LTIP/Vessel program. I wouldn't</p> <p>22 have put that sentence in there.</p> <p>23 Q. Okay. Well, let me ask you this: Part of what</p> <p>24 you're claiming in this lawsuit, isn't it, that Highland</p> <p>25 owes you an LTIP bonus payment?</p>

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<p style="text-align: right;">212</p> <p>1 A. That's right.</p> <p>2 Q. Okay.</p> <p>3 A. I don't know how that relates to this</p> <p>4 LTIP/Vessel program, from my perspective.</p> <p>5 Q. Is the LTIP that you are -- that you are</p> <p>6 bringing your claim about the 2005 HCMLP Long-Term</p> <p>7 Incentive Plan?</p> <p>8 A. I'm going to have to defer to my counsel on</p> <p>9 that. I handed them all the documents.</p> <p>10 Q. Okay. Is --</p> <p>11 A. Basically, from my perspective, as a guy that</p> <p>12 didn't focus on the legalese of it all, I'm bringing one</p> <p>13 of my claims as you owe me my LTIP --</p> <p>14 Q. Okay.</p> <p>15 A. -- compensation.</p> <p>16 Q. To the best -- tell me what you understand --</p> <p>17 well, tell me what you mean when you say "my LTIP." What</p> <p>18 is that referring to?</p> <p>19 (Mr. Boyce enters the room.)</p> <p>20 A. It's a long-term incentive plan that was awarded</p> <p>21 to me -- I thought it was in 2004, but according to this</p> <p>22 it's 2005, as being a -- call it a quasi partnership</p> <p>23 interest at Highland.</p> <p>24 And there was great debate over that fact.</p> <p>25 If you asked some guys over the years, they said, Well,</p>	<p style="text-align: right;">214</p> <p>1 see this language? Paragraph 124 reads, "Pursuant to the</p> <p>2 Employment Agreement, Daugherty was entitled to</p> <p>3 participate in any bonus, option or similar incentive</p> <p>4 compensation plan, including the LTIP, the HERA Plan,</p> <p>5 Sierra Verde and HCM's Defined Benefit Pension Plan."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. Is that a true statement?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. Why don't you know?</p> <p>11 A. Because it seems to be a legal interpretation,</p> <p>12 and I didn't make the legal interpretation.</p> <p>13 Q. Okay. Do you know any reason why that is not a</p> <p>14 correct statement?</p> <p>15 MS. DANIELS: Objection, form.</p> <p>16 A. To me this is a conclusion of law, and I don't</p> <p>17 have a view on this particular --</p> <p>18 Q. Okay.</p> <p>19 A. -- statement.</p> <p>20 Q. Would the -- okay. You're seeking your LTIP</p> <p>21 through this lawsuit, aren't you?</p> <p>22 A. As one of the things that I'm suing for? Yes.</p> <p>23 Q. Yes.</p> <p>24 A. Absolutely.</p> <p>25 Q. You're seeking your interest in the HERA plan?</p>
<p style="text-align: right;">213</p> <p>1 you're not really a partner. And then -- like, Colvin.</p> <p>2 I think Michael Colvin used to say that. And then other</p> <p>3 guys would say you are a partner.</p> <p>4 But it was supposed to be a proxy for my</p> <p>5 ownership in the partnership, which was about 1.17</p> <p>6 percent. That much I know.</p> <p>7 Q. Okay. So is it -- is it a true statement that</p> <p>8 this -- that the LTIP plan or program is something that</p> <p>9 was created for partners at Highland?</p> <p>10 A. It was created for employees. It was created to</p> <p>11 approximate what we referred to ourselves as, partners.</p> <p>12 Q. Okay.</p> <p>13 A. But depending on who you talked to, and this</p> <p>14 happened while I was at Highland all the time, some say</p> <p>15 you're a partner, and someone says, well, you're not</p> <p>16 really a partner; you have a partnership interest.</p> <p>17 Q. And is the partnership interest the LTIP</p> <p>18 interest?</p> <p>19 A. As I understand it.</p> <p>20 Q. Okay.</p> <p>21 A. But, again, I'm going to defer to my counsel and</p> <p>22 their -- their understandings of the documents on all</p> <p>23 that stuff.</p> <p>24 Q. Okay. Can you turn to paragraph 124, please.</p> <p>25 It's on -- starts on the bottom of page 41. And do you</p>	<p style="text-align: right;">215</p> <p>1 A. That's correct.</p> <p>2 Q. You're seeking --</p> <p>3 A. Well, listen, what I'm seeking is a function of</p> <p>4 what my lawyers describe it and define it as. I don't</p> <p>5 want to try and interpret that.</p> <p>6 So all I can tell you is I'm seeking what</p> <p>7 the counterclaim, as you defined it --</p> <p>8 Q. Okay.</p> <p>9 A. -- says I'm seeking.</p> <p>10 Q. I understand that. I just -- I want to ask</p> <p>11 you -- I'm asking you -- I'm trying to ask you</p> <p>12 more-discrete factual questions, and maybe I'm not doing</p> <p>13 a good job.</p> <p>14 A. Okay.</p> <p>15 Q. I'll try again. Do you understand that you have</p> <p>16 made claims around the HERA plan?</p> <p>17 A. Absolutely.</p> <p>18 Q. Okay. And you understand you've made claims</p> <p>19 around the Sierra Verde entity?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. And you have made claims around LTIP,</p> <p>22 that we just mentioned a minute ago?</p> <p>23 A. That's correct.</p> <p>24 Q. And you've made claims about HCM's defined</p> <p>25 benefit pension plan?</p>

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<p style="text-align: right;">216</p> <p>1 A. I think that's been paid, but --</p> <p>2 Q. Okay.</p> <p>3 A. Yes. At the time of this, yes.</p> <p>4 Q. Okay. That was one of my questions.</p> <p>5 The -- are you aware of any other</p> <p>6 compensation that you were seeking from Highland?</p> <p>7 A. I don't understand the question.</p> <p>8 Q. Sure. Is there any other bonus, benefit plan,</p> <p>9 anything else that you contend Highland has not paid you?</p> <p>10 A. I think those are all functions of the legal</p> <p>11 work product that's coming out of my counsel. I'm going</p> <p>12 to defer to them on that.</p> <p>13 Q. Were you paid all of your salary through your</p> <p>14 last day of employment with Highland?</p> <p>15 MS. DANIELS: Objection, form.</p> <p>16 A. All monies owed to me and the -- and the manner</p> <p>17 by which that originates, I'm going to defer to my</p> <p>18 counsel.</p> <p>19 Q. So you don't know whether you were paid all your</p> <p>20 salary?</p> <p>21 A. I didn't say I didn't know. I just said in</p> <p>22 getting to whether I got everything I was supposed to get</p> <p>23 and in what manner and degree that was supposed to be</p> <p>24 paid, I'm going to defer to my counsel.</p> <p>25 Q. Well, I'm not -- I'm not -- to be clear, I'm not</p>	<p style="text-align: right;">218</p> <p>1 Q. Were you receiving any of those forms of</p> <p>2 compensation in 2011?</p> <p>3 A. Yes.</p> <p>4 Q. What were those other forms of compensation?</p> <p>5 A. The LTIP, the STIP, Option-ITs, Sierra Verde,</p> <p>6 HERA, and then a bonus that was paid out in some kind of</p> <p>7 incremental installments, NexBank, and board fees.</p> <p>8 Q. Okay. When --</p> <p>9 A. And there were some other things. I don't mean</p> <p>10 to list that as an exclusive list. I just mean to list</p> <p>11 it as things that come to mind.</p> <p>12 Q. When you say "NexBank," what do you mean?</p> <p>13 A. Shares in NexBank, or some type of economic</p> <p>14 interest --</p> <p>15 Q. Okay.</p> <p>16 A. -- in NexBank.</p> <p>17 Q. And your -- your compensation was -- was per the</p> <p>18 employment agreement that we looked at earlier?</p> <p>19 A. I don't know what the basis of my compensation</p> <p>20 was per. There's the employment agreement, there's award</p> <p>21 letters, compensation letters, and then there's a litany</p> <p>22 of other documents that, frankly, my lawyers are much</p> <p>23 better to answer than I am.</p> <p>24 Q. Yeah, and I'm just -- but I want to know what</p> <p>25 information you have.</p>
<p style="text-align: right;">217</p> <p>1 asking you about the extent of all your claims. I'm not</p> <p>2 even asking you what your legal claim is.</p> <p>3 All I'm asking you is, Do you know if you</p> <p>4 were paid your salary at Highland through your last day</p> <p>5 of employment?</p> <p>6 A. I'm just not going to commit on whether -- how</p> <p>7 my compensation was paid and what that means to me and</p> <p>8 whether that was what I was owed. I'm going to leave</p> <p>9 that to my attorneys, to decide what ultimately I was</p> <p>10 owed, and then take it from there.</p> <p>11 Q. Okay. So are you refusing to answer the</p> <p>12 question?</p> <p>13 MS. DANIELS: Object to the form of the</p> <p>14 question. It's --</p> <p>15 A. I answered it to the best of my ability.</p> <p>16 Q. What are all the -- what was your compensation</p> <p>17 when you left -- when you submitted your resignation to</p> <p>18 Highland?</p> <p>19 A. What do you mean by that?</p> <p>20 Q. What was your base salary? What was your base</p> <p>21 salary?</p> <p>22 A. My base salary was \$500,000, U.S.</p> <p>23 Q. Did you receive any other forms of compensation</p> <p>24 when you were at Highland?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">219</p> <p>1 Paragraph 124, "Pursuant to the Employment</p> <p>2 Agreement, Daugherty was entitled to participate in any</p> <p>3 bonus, option or similar incentive compensation plan,</p> <p>4 including the LTIP, the HERA Plan, Sierra Verde and HCM's</p> <p>5 Defined Benefit Pension Plan."</p> <p>6 I just want to know every compensation plan</p> <p>7 of which you are aware that you were eligible for</p> <p>8 pursuant to your employment agreement.</p> <p>9 MS. DANIELS: Again, I'll object to the</p> <p>10 form of the question.</p> <p>11 I'll also instruct the witness, to the</p> <p>12 extent that any information you have in that regard is</p> <p>13 derived from communications with counsel, that you are</p> <p>14 being instructed not to answer.</p> <p>15 A. I'm going to defer to counsel on that. I didn't</p> <p>16 write this. I don't know what it means. I told you what</p> <p>17 my understanding was.</p> <p>18 MR. KATZ: Object, nonresponsive.</p> <p>19 Q. So you don't know -- tell me what compensation</p> <p>20 Highland has not paid you.</p> <p>21 MS. DANIELS: Again, object to the extent</p> <p>22 that -- well, object to the form of the question.</p> <p>23 And to the extent that your information or</p> <p>24 opinion or conclusions about that matter are derived from</p> <p>25 communications with counsel, instruct you not to answer.</p>

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<p style="text-align: right;">220</p> <p>1 A. On that basis, I'm not going to answer.</p> <p>2 Q. How much are you suing for?</p> <p>3 A. It hasn't been determined yet.</p> <p>4 Q. Can you turn to page 55 of that document,</p> <p>5 please?</p> <p>6 A. Yes, yes.</p> <p>7 Q. Do you see under the Prayer, little paragraph</p> <p>8 "a," it says, "Actual damages and exemplary damages in</p> <p>9 the maximum amount of \$100 million as to HCM, Sierra</p> <p>10 Verde, and Dondero, and in the maximum amount of \$60</p> <p>11 million as to HERA, Boyce, and Britain"? Do you see</p> <p>12 that?</p> <p>13 A. I do.</p> <p>14 Q. Where did those numbers come from?</p> <p>15 MS. DANIELS: Object to the extent that --</p> <p>16 well, object to the form of the question. And I would</p> <p>17 further object to the extent that it calls for</p> <p>18 information communicated or conveyed in the course of the</p> <p>19 attorney-client relationship and instruct you not to</p> <p>20 answer.</p> <p>21 A. On that basis, I'm not going to answer the</p> <p>22 question.</p> <p>23 Q. Have you discussed -- have you retained an</p> <p>24 expert witness in this case?</p> <p>25 A. That would be an aspect of legal strategy, and</p>	<p style="text-align: right;">222</p> <p>1 Have you spoken to any individual other</p> <p>2 than your counsel about -- about the amount of</p> <p>3 compensation you believe Highland owes you?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. Well, not just Highland but Highland and the</p> <p>7 parties listed.</p> <p>8 Q. Okay. Who are those individuals?</p> <p>9 A. I didn't keep a list.</p> <p>10 Q. Okay. Who do you recall?</p> <p>11 A. My wife.</p> <p>12 Q. Anybody else?</p> <p>13 A. No one in particular.</p> <p>14 Q. There are other people you've spoken to about</p> <p>15 that?</p> <p>16 A. Probably.</p> <p>17 Q. Who are not your attorneys?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. Who are they?</p> <p>20 A. I don't recall.</p> <p>21 Q. What did you tell them?</p> <p>22 A. I have damages in excess of 10 million.</p> <p>23 Q. Okay. How did you come up with that number?</p> <p>24 MS. DANIELS: Again, to the extent that</p> <p>25 that's part of communications with counsel, instruct you</p>
<p style="text-align: right;">221</p> <p>1 I'm going to leave that to my counsel.</p> <p>2 Q. So you're refusing to answer the question?</p> <p>3 MS. DANIELS: Yes. Object to the question.</p> <p>4 Object to its form, and object to the fact that he's now</p> <p>5 conveyed to you that that's attorney-client</p> <p>6 communication. Instruct the witness not to answer.</p> <p>7 A. On that basis, I'm not going to answer the</p> <p>8 question.</p> <p>9 Q. Have you -- just to be clear, let me ask, Have</p> <p>10 you retained any testifying experts in this case?</p> <p>11 MS. DANIELS: Same objections. Objection</p> <p>12 to the form and objection -- to the extent that you have</p> <p>13 any information about that that you derived from counsel,</p> <p>14 instruct you not to answer.</p> <p>15 A. On that basis, I'm not going to answer the</p> <p>16 question.</p> <p>17 Q. Have you spoken to any witness -- have you</p> <p>18 spoken to any individual other than your counsel about</p> <p>19 the damages you're seeking in this lawsuit?</p> <p>20 MS. DANIELS: Again, same instructions.</p> <p>21 Instruct the witness not to answer based on</p> <p>22 attorney-client privilege and work product.</p> <p>23 A. On that basis, I'm not going to answer the</p> <p>24 question.</p> <p>25 Q. Really? Okay.</p>	<p style="text-align: right;">223</p> <p>1 not to answer. To the extent it's not, you may provide</p> <p>2 the information.</p> <p>3 A. On that basis, I'm not going to answer the</p> <p>4 question.</p> <p>5 Q. Did --</p> <p>6 A. It came from communications with my counsel.</p> <p>7 Q. Did you explain to any of these people you</p> <p>8 talked to how you came up with that number?</p> <p>9 A. No.</p> <p>10 (Exhibit 36 marked.)</p> <p>11 Q. Mr. Daugherty, I want to show you what I'm</p> <p>12 marking here as Exhibit 36.</p> <p>13 A. Are you done with this one, Marc?</p> <p>14 Q. Yes.</p> <p>15 A. Okay.</p> <p>16 Q. Can you tell me if you recognize that document,</p> <p>17 please?</p> <p>18 A. Daugherty's Second Amended --</p> <p>19 Q. And, I'm sorry, let me get your counsel copies.</p> <p>20 A. Sorry. I'm assuming you don't want me to read</p> <p>21 it out loud?</p> <p>22 Q. I'm just asking if you -- if you recognize this</p> <p>23 document.</p> <p>24 A. Not off -- on the surface of it, no.</p> <p>25 Q. Okay. Let me show you what I'm marking here as</p>



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<p style="text-align: right;">224</p> <p>1 Exhibit 37. 2 (Exhibit 37 marked.) 3 Q. Let me show you what's marked here as Exhibit 4 37. 5 A. Okay. 6 Q. And, really, what I want to ask on Exhibit 37 7 is -- if you can turn to the second page, please. 8 A. Page 11? 9 Q. Yeah. The second page of Exhibit 37, which is 10 page 11 of Daugherty's Amended Objections and Responses 11 to Highland Capital Management, L.P.'s Second Set of 12 Interrogatories and Second Request for Production. 13 A. Okay. 14 Q. Okay. Is that your signature? 15 A. It appears to be. 16 Q. Okay. Do you recall signing this verification? 17 A. Not specifically. 18 Q. Okay. This -- do you see where it says this was 19 sworn to and subscribed before the notary it listed there 20 on May 16th, 2013? 21 A. Excuse me. Yes, I do. 22 Q. Okay. Was that the date that you signed this? 23 A. Like I said, I don't recall. It's certainly the 24 date on the page. 25 Q. Do you have any reason to believe that's the</p>	<p style="text-align: right;">226</p> <p>1 Q. Okay. These interrogatories there, Exhibit 2 36 -- 3 A. Yes. 4 Q. -- is it your testimony that you did not attest 5 that those factual answers are within your personal 6 knowledge and are true and correct? 7 A. No, that's not my testimony. 8 Q. Okay. Have you attested to that? Have you ever 9 verified the truth and accuracy of those answers? 10 A. I don't know what this is. I don't recognize 11 it. I knew -- I do know at some point in the summer I 12 had to file some interrogatory answers. 13 Q. Okay. Did you read them? 14 A. At the time? Yes. 15 Q. Okay. And did you sign a verification at the 16 time you read them that they were true and correct? 17 A. I guess. Excuse me. I guess. 18 Q. Well, you either did or you didn't. 19 A. Or I don't remember. 20 Q. Okay. Well, let's look at the interrogatories, 21 then. 22 MS. DANIELS: Does this purport to be a 23 complete copy of the interrogatories? Because I'm 24 looking at Interrogatory No. 7. There's no response 25 below it. It looks like it's cut off, or something.</p>
<p style="text-align: right;">225</p> <p>1 date -- that's not the date that you -- that you signed 2 this? 3 A. No, I have no reason to believe it is or it 4 isn't. I just don't recall. 5 Q. Okay. Did you -- and the verification says, 6 "Before me the undersigned authority, on this day 7 personally appeared Patrick Daugherty, who being by me 8 first duly sworn, deposed on his oath and said that he 9 has read the foregoing Patrick Daugherty's Responses to 10 Highland Capital Management, L.P.'s Second Set of 11 Interrogatories, Interrogatories Nos. 1 through 7, and 12 such factual answers are within his personal knowledge, 13 and are true and correct." 14 Do you see that? 15 A. Yes. 16 Q. Okay. Is that a true statement? 17 A. As far as I know. 18 Q. And you did verify that statement, didn't you? 19 A. I don't know what that means. 20 Q. You did sign this verifying that the factual 21 answers are within your personal knowledge and true and 22 correct? 23 A. I don't know if that's -- look, this has got 11 24 pages on it, and this is only page 2. So there -- looks 25 like there's more to it.</p>	<p style="text-align: right;">227</p> <p>1 MR. MOORE: This is the version we got by 2 fax. 3 MS. CROCKETT: So the fax didn't come 4 through fully? You never got a full -- never requested a 5 full set? We're just trying to figure out -- make sure 6 that it's clear why it's not there. 7 MS. DANIELS: This says 11 of 30. 8 Q. Okay. Let's look at Interrogatory No. 1. 9 A. On which exhibit? 10 Q. On 36. Actually, let's start with Interrogatory 11 No. 2. It's on page 5 there. Do you see that 12 interrogatory? 13 A. Which interrogatory? 14 Q. No. 2. 15 A. Yes. 16 Q. It asks to identify all facts that support your 17 contention in paragraph 114 of the counterclaim that, 18 quote, by reason of the foregoing acts and conduct of 19 Highland, and breach of numerous agreements, including 20 the Employment Agreement, Daugherty has been damaged in 21 an amount in excess of the minimal -- minimum 22 jurisdictional limits of this court. 23 Do you see that? 24 A. I do. 25 Q. Okay. Can you turn to the answer?</p>



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<p style="text-align: right;">228</p> <p>1 MS. DANIELS: And, again, to the extent</p> <p>2 that he is going to ask you questions, I need you to read</p> <p>3 that in full.</p> <p>4 Q. Well, why don't you read the answer in full, and</p> <p>5 then I'll ask you my question.</p> <p>6 A. (Reviewing document.)</p> <p>7 (Special Master Kaplan reenters the room.)</p> <p>8 THE WITNESS: Can I talk to you guys?</p> <p>9 We're in the middle of a question? Okay. I'm not</p> <p>10 allowed to talk to you.</p> <p>11 A. Can I ask for a break, or do you want me to</p> <p>12 answer your question first?</p> <p>13 Q. Yeah, I'd like to ask my question first.</p> <p>14 A. Fair enough.</p> <p>15 Q. Okay. So --</p> <p>16 MS. DANIELS: Is there not a question</p> <p>17 pending?</p> <p>18 MR. KATZ: I am asking a question.</p> <p>19 THE WITNESS: I'm fine with it. I'm fine.</p> <p>20 A. Go ahead.</p> <p>21 Q. Do you see, following the -- the objections,</p> <p>22 where it says -- starts "Therein, specifically," on</p> <p>23 the ...</p> <p>24 A. No. I don't know what you're talking about.</p> <p>25 Q. Okay. The 11th line down from the top of the</p>	<p style="text-align: right;">230</p> <p>1 Employment Agreement, Highland presented Daugherty with a</p> <p>2 General Release and Separation Agreement on October 27,</p> <p>3 2011 which did not resemble, in any respect, Exhibit "A"</p> <p>4 to the Employment Agreement.</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Okay. That was the answer that you verified.</p> <p>8 MS. DANIELS: Actually, Counsel, you didn't</p> <p>9 read the last sentence of the answer.</p> <p>10 A. She's right. I was wondering why you didn't.</p> <p>11 "Further" --</p> <p>12 Q. Okay.</p> <p>13 A. "Further, discovery is ongoing and Daugherty</p> <p>14 cannot calculate the full extent of his damages, which</p> <p>15 continue to accrue."</p> <p>16 Q. Was that part of the answer that you verified?</p> <p>17 A. Was that last sentence part of this overall</p> <p>18 paragraph? Yes.</p> <p>19 Q. No, that's not my question. My question was,</p> <p>20 Was that last sentence part of the facts that you</p> <p>21 verified when you signed your verification with respect</p> <p>22 to this answer?</p> <p>23 A. Yeah, I don't know. This was prepared by my</p> <p>24 counsel. I worked with counsel on this, and I'll defer</p> <p>25 to counsel on what was said in here.</p>
<p style="text-align: right;">229</p> <p>1 answer.</p> <p>2 A. Okay. Yeah.</p> <p>3 Q. Okay. It says: Therein, specifically in</p> <p>4 paragraphs 2 to 113, Daugherty states the basis for his</p> <p>5 claim that the foregoing acts and conduct of Highland and</p> <p>6 breach of numerous agreements, including the Employment</p> <p>7 Agreement, have caused Daugherty damages in excess of the</p> <p>8 jurisdictional limits of the court. Pursuant to the</p> <p>9 Employment Agreement, Daugherty was entitled to</p> <p>10 participate in any bonus, option or similar incentive</p> <p>11 compensation plan, including the 2005 HCMLP Long-Term</p> <p>12 Incentive Plan (LTIP) and the Highland Employee Retention</p> <p>13 Assets Plan (HERA Plan), the Sierra Verde vessel and</p> <p>14 Highland's Defined Benefit Pension Plan. Daugherty's</p> <p>15 termination under the Employment Agreement was a</p> <p>16 "Voluntary Termination - Non-Competing Business," as</p> <p>17 dictated by Section 4.5 of the Employment Agreement,</p> <p>18 which requires Highland to honor any amounts or rights to</p> <p>19 which the employee would be entitled to under any other</p> <p>20 written agreements with Highland. Highland has failed to</p> <p>21 do so. Section 4.5 of the Employment Agreement further</p> <p>22 required Highland to pay Daugherty severance pay</p> <p>23 dependent upon his execution of a separation agreement</p> <p>24 and release "substantially in the form" as Exhibit "A" to</p> <p>25 the Employment Agreement. In further breach of the</p>	<p style="text-align: right;">231</p> <p>1 Q. Well, are those factual answers within your</p> <p>2 personal knowledge?</p> <p>3 A. What factual answers?</p> <p>4 Q. The ones that I just read.</p> <p>5 A. I don't know. I think they call for conclusions</p> <p>6 of law that I'm, quite frankly, not skilled enough to</p> <p>7 determine on my own. I'd have to defer to counsel.</p> <p>8 Q. Do you know whether they're true and correct?</p> <p>9 A. I don't.</p> <p>10 MR. KATZ: Okay. We can take a break.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 THE VIDEOGRAPHER: Off the record, 3:35</p> <p>13 p.m.</p> <p>14 (Recess taken from 3:35 to 3:51.)</p> <p>15 THE VIDEOGRAPHER: Back on the record, 3:51</p> <p>16 p.m., starting tape five.</p> <p>17 (Messrs. Regas, Boyce and Leventon are not</p> <p>18 present.)</p> <p>19 Q. Mr. Daugherty, after May 23rd --</p> <p>20 A. Are you still on this?</p> <p>21 Q. No. We'll go back to that in a minute.</p> <p>22 A. Okay.</p> <p>23 Q. After May 23rd of 2012, when you sent the</p> <p>24 documents to Matt Wirz, or the Wall Street Journal, after</p> <p>25 that time have you had any further communications with</p>

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<p style="text-align: right;">232</p> <p>1 Mr. Wirz?</p> <p>2 A. I don't think so.</p> <p>3 MS. DANIELS: Objection, form.</p> <p>4 Q. Have you had any further -- I'm sorry. Have you</p> <p>5 had -- since that time, have you had any communications</p> <p>6 with anybody at the Wall Street Journal?</p> <p>7 A. I might have called Mike Spector.</p> <p>8 Q. Okay. Who is Mike Spector?</p> <p>9 A. He's a guy that worked at the Wall Street</p> <p>10 Journal, on MGM Studios.</p> <p>11 Q. And, I'm sorry, what do you mean when you say he</p> <p>12 worked for the Wall -- "at the Wall Street Journal, on</p> <p>13 MGM Studios"?</p> <p>14 A. When I was taking over MGM Studios with a group</p> <p>15 of other institutions, he was the media contact that was</p> <p>16 doing the story behind the scenes for the Wall Street</p> <p>17 Journal. Obviously, you can imagine, it's a big movie</p> <p>18 company, and there's a lot of press.</p> <p>19 Q. He was a Wall Street Journal employee?</p> <p>20 A. He was a reporter for the Wall Street Journal.</p> <p>21 Q. Yeah. Okay. And so you believe you had one</p> <p>22 communication with him after May 23rd, 2012?</p> <p>23 A. Well, I use that term "communication" loosely.</p> <p>24 I might have pocket-dialed him.</p> <p>25 Q. Okay, but you did not speak to him?</p>	<p style="text-align: right;">234</p> <p>1 Q. Any e-mails?</p> <p>2 A. No.</p> <p>3 Q. Tell me what you discussed with -- I'm sorry.</p> <p>4 Is Spector his first name?</p> <p>5 A. Mike Spector.</p> <p>6 Q. Mike Spector. Okay.</p> <p>7 A. Spector is his last name.</p> <p>8 Q. Okay. Tell me about your communications with</p> <p>9 Mike Spector.</p> <p>10 A. You know, we had an employee that was leaking</p> <p>11 information to Carl Icahn, and there was a big</p> <p>12 investigation. And we talked a little bit about that, on</p> <p>13 background.</p> <p>14 Q. Okay. What else?</p> <p>15 A. That was it.</p> <p>16 Q. Did you discuss your departure from Highland</p> <p>17 with him?</p> <p>18 A. I don't think so.</p> <p>19 (Mr. Leventon enters the room.)</p> <p>20 Q. Did you discuss anything about any disputes with</p> <p>21 Highland?</p> <p>22 A. No, definitely not.</p> <p>23 Q. Have you ever communicated with him about this</p> <p>24 lawsuit?</p> <p>25 A. No.</p>
<p style="text-align: right;">233</p> <p>1 A. No.</p> <p>2 Q. Did you leave him a message?</p> <p>3 A. No. Well, I might have left him a message of,</p> <p>4 you know, noise of my phone in my pocket.</p> <p>5 Q. Okay. Fair enough.</p> <p>6 After May 23rd, 2012, did you have any</p> <p>7 other communications with anybody at the Wall Street</p> <p>8 Journal?</p> <p>9 A. No.</p> <p>10 Q. What about between the time -- between the time</p> <p>11 you left Highland and May 23rd, 2012? Other than Matt</p> <p>12 Wirz, did you have any communications with anybody at the</p> <p>13 Wall Street Journal?</p> <p>14 A. I think when I resigned I called up Spector, or</p> <p>15 he called me, because I was a big contact for him to get</p> <p>16 background information on MGM. So there might have been</p> <p>17 some contact there.</p> <p>18 Q. Okay. And did you have more than one</p> <p>19 communications with him?</p> <p>20 A. Maybe. There was a story building, in the</p> <p>21 September, October time frame, on MGM, and he had -- I</p> <p>22 was just wrapping up my communications with him, I think.</p> <p>23 Q. And would these communications have been on the</p> <p>24 phone?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">235</p> <p>1 Q. Have you ever had anybody communicate -- let me</p> <p>2 start that question over.</p> <p>3 Since your resignation from Highland, have</p> <p>4 you ever had anybody on your behalf communicate with the</p> <p>5 Wall Street Journal?</p> <p>6 A. No.</p> <p>7 (Mr. Regas enters the room.)</p> <p>8 A. You know, I had that one communication with Mara</p> <p>9 Lemos-Stein, and she was at Dow Jones. You know about</p> <p>10 that. And that's a sister company to the Wall Street</p> <p>11 Journal. But that was it.</p> <p>12 Q. Okay. Tell me --</p> <p>13 A. Stern (sic). Mara Lemos-Stern (sic).</p> <p>14 Q. Okay. Tell me about Ms. Stern -- your</p> <p>15 communications with Ms. Stern. How many -- how many</p> <p>16 times have you communicated with her since your</p> <p>17 resignation?</p> <p>18 A. I think there were just a couple of e-mails.</p> <p>19 Actually, that's not true. We talked about -- in the</p> <p>20 summer of 2012, when she called me, and I was -- no, it</p> <p>21 was October of 2011. She called me, and I was going to</p> <p>22 Disney Land with the kids.</p> <p>23 And then she called me, I guess, right</p> <p>24 around that May time period. I'm sorry. She e-mailed me</p> <p>25 around the May time period and wanted to know what I was</p>

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<p style="text-align: right;">236</p> <p>1 up to.</p> <p>2 Q. And did you respond?</p> <p>3 A. I think I did.</p> <p>4 Q. Via e-mail or on the phone?</p> <p>5 A. E-mail.</p> <p>6 Q. And what did you tell her?</p> <p>7 A. I don't remember the details. Basically it was</p> <p>8 just all's good, how are your kids, those kind of things.</p> <p>9 Didn't talk about the case or anything like that, at</p> <p>10 least on that one.</p> <p>11 Q. Okay. At any time have you talked to Ms. Stern</p> <p>12 about this litigation?</p> <p>13 A. No. I had an e-mail conversation -- well, an</p> <p>14 e-mail that referenced it, what court it was filed in.</p> <p>15 Q. Okay. Other than that e-mail, have you had any</p> <p>16 communications with Ms. Stern about this lawsuit?</p> <p>17 A. No.</p> <p>18 Q. When was the last time you had communications</p> <p>19 with Ms. Stern?</p> <p>20 A. I think it was whenever this lawsuit -- within</p> <p>21 days of this lawsuit being filed.</p> <p>22 Q. Okay.</p> <p>23 A. Whenever that last communication was, where I</p> <p>24 told her what court it was filed in. I didn't check the</p> <p>25 date.</p>	<p style="text-align: right;">238</p> <p>1 A. Yeah. And I -- and I would say since I left</p> <p>2 Highland, I don't think I've spoken to Mike.</p> <p>3 Q. Okay. Have you -- since your resignation, have</p> <p>4 you spoken to anybody other than Ms. Stern at Dow Jones?</p> <p>5 A. Oh, anybody else at Dow Jones?</p> <p>6 Q. Yes.</p> <p>7 A. No, no.</p> <p>8 Q. Have you had -- since your resignation, have you</p> <p>9 had any communications of any type with anybody at Dow</p> <p>10 Jones other than Ms. Stern?</p> <p>11 A. No. I think Dow Jones has some information</p> <p>12 services, so I'm not -- there's a Capital IQ that might</p> <p>13 be associated with Dow Jones, or it's associated with</p> <p>14 S&amp;P. I don't -- it would have nothing to do with this</p> <p>15 lawsuit, but ...</p> <p>16 Q. Well, what is it that you're -- that you're</p> <p>17 thinking about that you may have had communications with?</p> <p>18 A. Capital IQ is like tear sheet and spreadsheet</p> <p>19 information on companies, financials.</p> <p>20 Q. So you may have gathered information --</p> <p>21 A. I think Dow Jones -- it's kind of funky. I</p> <p>22 mean, you've got --</p> <p>23 Q. Let me ask the question -- let me ask the</p> <p>24 question --</p> <p>25 A. -- news, whatever, owned by Murdoch, and then he</p>
<p style="text-align: right;">237</p> <p>1 Q. I'm sorry. And that would have been an e-mail?</p> <p>2 A. Yeah.</p> <p>3 Q. When you talked to Mike Spector, were those</p> <p>4 calls made from your cell phone?</p> <p>5 A. Yeah. I pocket-dialed him, so --</p> <p>6 Q. Yeah.</p> <p>7 A. I'm sorry. You're talking about when I</p> <p>8 talk-talked to him?</p> <p>9 Q. Yes.</p> <p>10 A. Like, on the MGM stuff? Yeah, it would have</p> <p>11 been from my cell phone.</p> <p>12 Q. And that's the same cell phone that we just --</p> <p>13 A. Well, let me check that. Not necessarily. I</p> <p>14 probably called him from Highland's office.</p> <p>15 Q. Okay.</p> <p>16 A. Sometimes he'd call me on my cell, or I'd call</p> <p>17 him. He'd call me, usually. Sometimes I'd talk to him</p> <p>18 at Highland; sometimes I'd talk to him on my cell.</p> <p>19 So I don't -- I don't recall. In that time</p> <p>20 frame when I was still working at Highland and -- and we</p> <p>21 had that issue going on at MGM.</p> <p>22 Q. But certainly since the time you've left</p> <p>23 Highland you have not had any telephone communications</p> <p>24 with Mike Spector that would not have been on your cell</p> <p>25 phone that you've previously identified?</p>	<p style="text-align: right;">239</p> <p>1 owns the Wall Street Journal and the Dow Jones -- you</p> <p>2 know, Dow Jones. And then Dow Jones, I think, owns S&amp;P</p> <p>3 and Capital IQ.</p> <p>4 Q. Okay. Have you had any communications with</p> <p>5 Capital IQ, with anybody there?</p> <p>6 A. Well, yes. You know, again, having nothing to</p> <p>7 do with me or this lawsuit, but to get financial</p> <p>8 information and what the cost would be to get that data</p> <p>9 pursuant to --</p> <p>10 Q. Okay.</p> <p>11 A. -- you know, having financial information on</p> <p>12 companies.</p> <p>13 Q. Okay. Have you had anybody on your behalf</p> <p>14 communicate with any reporters at Dow Jones since you</p> <p>15 left Highland?</p> <p>16 A. No.</p> <p>17 Q. Have you had any communications with anybody at</p> <p>18 the Dallas Observer since you left Highland?</p> <p>19 A. I've never spoken to anybody at the Dallas</p> <p>20 Observer.</p> <p>21 Q. Since you submitted your resignation, have you</p> <p>22 had any communications with any members of the press</p> <p>23 other than what we've just talked about?</p> <p>24 A. I don't think so.</p> <p>25 Q. Have you had anybody communicate on your behalf</p>

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<p style="text-align: right;">240</p> <p>1 with any members of the press other than what we've just 2 talked about?</p> <p>3 A. No.</p> <p>4 Q. Have you received any inquiries from the press, 5 other than from Ms. Stern and Mr. Wirz and Mr. Spector, 6 since your resignation?</p> <p>7 A. Seth Lubove. I forgot about him. Seth Lubove.</p> <p>8 Q. And who is he?</p> <p>9 A. He is a writer for Bloomberg.</p> <p>10 Q. And have you actually spoken to him?</p> <p>11 A. I have spoken to him.</p> <p>12 Q. How many times have you spoken to him since your 13 resignation?</p> <p>14 A. You know, there's been e-mails, there's been 15 phone conversations. I don't know. You know, two or 16 three e-mails and two or three phone conversations.</p> <p>17 Q. The phone calls have been on your cell phone?</p> <p>18 A. Yeah. He might have called me at my place in 19 Montana, which would have been on my hard line.</p> <p>20 Q. When was that?</p> <p>21 A. Let's see. It was around -- I think it was 22 January or February of 2012. Maybe March. He was 23 working on a story for Highland, or on Highland.</p> <p>24 Q. When was --</p> <p>25 A. And for Highland.</p>	<p style="text-align: right;">242</p> <p>1 going on with my compensation, but I didn't think it was 2 something that we couldn't work through.</p> <p>3 So, yeah, my mind set at that time was that 4 it was still amicable, although annoying. I don't think 5 I told him it was annoying.</p> <p>6 Q. Okay. Have you ever spoken to him about the 7 lawsuit?</p> <p>8 A. No.</p> <p>9 Q. Has he ever made any inquiries to you about the 10 lawsuit?</p> <p>11 A. No. I haven't spoken to him -- the last time 12 I -- the last time I got an e-mail from him -- I'll 13 correct that -- was right before I got sued, right before 14 the Dondero versus Dondero testimony. And he sent me an 15 e-mail asking me if it was true that Dondero was going to 16 declare that he was insolvent.</p> <p>17 Q. And what did you tell him?</p> <p>18 A. I said I wasn't going to talk about that, that I 19 had -- I had issues of my own and I was just going to 20 have to leave it at that.</p> <p>21 And, to be honest with you, I didn't know 22 he was going to declare that he was insolvent at that 23 point.</p> <p>24 But he told me there was a court date that 25 he heard I was going to be testifying on, I think. Not</p>
<p style="text-align: right;">241</p> <p>1 Q. When was the first communication that you had 2 with him since you -- since your resignation?</p> <p>3 A. Well, actually the dialogue started when I was 4 at Highland. Patrick Boyce introduced him to me.</p> <p>5 Q. Okay, but my question was, Since you left 6 Highland, when was your first communication with him?</p> <p>7 A. I don't know. Sometime after Highland, he -- 8 after I left Highland, he called me up.</p> <p>9 Q. Okay.</p> <p>10 A. Like -- I don't know. Maybe it was November.</p> <p>11 Q. Okay. And did he leave you a message, or did 12 you talk to him?</p> <p>13 A. I don't recall. I eventually ended up talking 14 to him for quite a long period of time.</p> <p>15 Q. And what did you tell him?</p> <p>16 A. He wanted to know a lot about the MGM deal, the 17 behind the scenes, the players, level of involvement.</p> <p>18 Q. Did you talk about anything unrelated to MGM at 19 that time?</p> <p>20 A. We talked briefly about me leaving.</p> <p>21 Q. What did you tell him about you leaving?</p> <p>22 A. Said it was amicable.</p> <p>23 Q. Was that a true statement?</p> <p>24 A. You know, at the time, I felt like it was 25 amicable. I mean, I was certainly annoyed with what was</p>	<p style="text-align: right;">243</p> <p>1 for my case but for Dondero versus Dondero.</p> <p>2 Q. How did he know what you were going to testify 3 about?</p> <p>4 A. I don't know. I mean, I don't think he knew 5 what I was going to testify about. I think he knew I was 6 going to testify. I think he knew I had been called to 7 testify.</p> <p>8 Q. How did he get your e-mail address?</p> <p>9 A. Well, as I said, I was working on this story 10 with him. I think after I left Highland I gave him my -- 11 my new e-mail address.</p> <p>12 Q. And that's your Gmail account?</p> <p>13 A. That's right.</p> <p>14 Q. Have you turned the e-mails you've received 15 from -- from him over to your attorneys?</p> <p>16 A. I don't think so.</p> <p>17 Q. Have you sent --</p> <p>18 A. I honestly don't know. I mean, I might have, 19 but I don't know why I would need to.</p> <p>20 Q. Have you sent him any e-mails?</p> <p>21 A. As I said, when he ... When was the Dondero 22 versus Dondero thing? Because it's what changed my whole 23 life and, frankly, a lot of people in this room.</p> <p>24 He sent me an e-mail and -- asking me: 25 Hey -- I'm paraphrasing, but: Hey, Pat, normally don't</p>



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<p style="text-align: right;">244</p> <p>1 get involved in stuff like this, but -- talking about the</p> <p>2 Dondero divorce. I don't really care about that stuff.</p> <p>3 Normally not going to get involved in stuff like this,</p> <p>4 but we hear Dondero is going to testify that he's</p> <p>5 insolvent at his divorce proceedings. What do you know</p> <p>6 about this?</p> <p>7 So he sent me that.</p> <p>8 MR. KATZ: Okay. I'm going to object as</p> <p>9 nonresponsive.</p> <p>10 Q. My question --</p> <p>11 A. Oh, I thought that was your question.</p> <p>12 Q. No. My question was, Did you send him any</p> <p>13 e-mails?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. In response to that e-mail, I sent him an</p> <p>17 e-mail.</p> <p>18 Q. Have -- have you turned those e-mails over to</p> <p>19 your counsel?</p> <p>20 A. No, but I don't know why I would.</p> <p>21 Q. Did you discuss Mr. Dondero in any of those</p> <p>22 e-mails that you sent to him?</p> <p>23 A. Well, first of all, there's -- I think there's</p> <p>24 one.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">246</p> <p>1 A. -- in my life had any -- any communications with</p> <p>2 Nathan Vardi.</p> <p>3 Q. Okay. And I apologize. Let me ask my full</p> <p>4 question.</p> <p>5 A. Sorry.</p> <p>6 Q. When I said -- when I say "communications," I</p> <p>7 mean whether on the phone, e-mail, social media, Twitter,</p> <p>8 anything.</p> <p>9 A. Look, this is a great opportunity to get this</p> <p>10 stuff out there, and I'm happy to do it.</p> <p>11 I have never had any conversations or</p> <p>12 e-mails or Twitter or faxes or smoke signals with Nathan</p> <p>13 Vardi.</p> <p>14 Q. Any other members of the press that you have had</p> <p>15 communications with since you left Highland other than</p> <p>16 what we've discussed here?</p> <p>17 A. That's all I can think of.</p> <p>18 Q. Okay.</p> <p>19 (Exhibit 38 marked.)</p> <p>20 Q. Let me show you what's marked here as Exhibit</p> <p>21 38.</p> <p>22 A. Did you want me to keep 36 and '7 handy, or are</p> <p>23 you done with them?</p> <p>24 Q. No. We'll get back to those in a little bit.</p> <p>25 A. So you do want me to keep them handy?</p>
<p style="text-align: right;">245</p> <p>1 A. And I said, I'm not going to comment on that. I</p> <p>2 got legal issues of my own. Something like, We're just</p> <p>3 going to have to leave it at that.</p> <p>4 Q. Okay.</p> <p>5 A. And I said, I think you got the court date</p> <p>6 wrong. And he goes, Well -- I think he sent back, Well,</p> <p>7 my court -- my source is a good one and says it's on</p> <p>8 such-and-such date.</p> <p>9 Here's the irony of all ironies or the</p> <p>10 misery of all miseries: I would have missed that court</p> <p>11 date because my attorney, Jamie Ribman, had the date</p> <p>12 wrong. Had he not called me and corrected me on the</p> <p>13 date, I would have missed it. True story.</p> <p>14 MR. KATZ: Object as nonresponsive.</p> <p>15 Q. The -- tell me about your communications with</p> <p>16 Nathan Vardi.</p> <p>17 A. I've never had any communications with Nathan</p> <p>18 Vardi.</p> <p>19 Q. Do you know who Mr. Vardi is?</p> <p>20 A. Uh-huh. He's the one that's more than happy to</p> <p>21 put your pleadings on the Internet, about me.</p> <p>22 Q. Have you had any communications with Mr. Vardi</p> <p>23 at all?</p> <p>24 A. I just told you I have never --</p> <p>25 MS. DANIELS: Objection, form.</p>	<p style="text-align: right;">247</p> <p>1 Q. Yes, please.</p> <p>2 A. Okay.</p> <p>3 Q. I'll show you what's marked as Exhibit 38.</p> <p>4 A. Okay.</p> <p>5 Q. Do you recognize this document?</p> <p>6 A. No.</p> <p>7 Q. Can you turn to page 6 for me, please.</p> <p>8 A. Okay.</p> <p>9 Q. Is that your signature on the verification?</p> <p>10 A. Excuse me. It appears to be my signature, yes.</p> <p>11 Q. Okay. And this is a document that you verified</p> <p>12 on April 26, 2013?</p> <p>13 A. It appears to be, yes.</p> <p>14 Q. And your verification states that "Before me the</p> <p>15 undersigned authority, on this day personally appeared</p> <p>16 Patrick Daugherty, who being by me first duly sworn,</p> <p>17 deposed on his oath and said that he has read the</p> <p>18 foregoing Daugherty's discovery responses to Plaintiff</p> <p>19 and Counter-Defendant Highland Capital Management, L.P.</p> <p>20 as ordered by Special Master Judge Jeff Kaplan on</p> <p>21 February 8, 2013 in his Order regarding Highland's Motion</p> <p>22 to Compel Daugherty's Discovery Responses and Production</p> <p>23 Relating to Defamation, Damages and Employment</p> <p>24 Opportunities, Interrogatories No. 1, and such factual</p> <p>25 answers are within his personal knowledge, and are true</p>



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<p style="text-align: right;">248</p> <p>1 and correct."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did you read the interrogatory answers at</p> <p>5 the time you verified it?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Did you determine that they were within</p> <p>8 your personal knowledge and true and correct?</p> <p>9 A. I assume so.</p> <p>10 Q. Well, were they?</p> <p>11 A. I just don't recall.</p> <p>12 MS. DANIELS: If you need -- if you need an</p> <p>13 opportunity to testify by looking at the document with</p> <p>14 respect to what he's asking you about, you can take time</p> <p>15 to do that.</p> <p>16 A. Yeah, can I do that? Because I just haven't</p> <p>17 read through that.</p> <p>18 Q. Sure. Let me ask the question first, because</p> <p>19 I'm just asking, At the time that you verified it, did</p> <p>20 you determine that they were true and correct and within</p> <p>21 your personal knowledge?</p> <p>22 A. Yes.</p> <p>23 Q. Okay.</p> <p>24 A. To the best of my knowledge, yes.</p> <p>25 Q. Okay. Okay. Can you turn to Interrogatory</p>	<p style="text-align: right;">250</p> <p>1 Q. Okay. Did -- is the information in the answer,</p> <p>2 the response to (a), complete?</p> <p>3 A. As far as I recall, yes.</p> <p>4 Q. There are no other individuals, entities or</p> <p>5 organizations you've discussed employment offers or</p> <p>6 potential employment with since September 1st, 2011?</p> <p>7 A. Not that come to mind.</p> <p>8 Q. Did you provide any additional information to</p> <p>9 your counsel other than the three entities listed in</p> <p>10 these responses?</p> <p>11 MS. DANIELS: Again, to the extent that --</p> <p>12 to the extent that he had communications with counsel</p> <p>13 concerning this --</p> <p>14 MR. KATZ: I'll withdraw the question.</p> <p>15 I'll withdraw the question.</p> <p>16 Q. Mr. Daugherty, we talked earlier today about</p> <p>17 your trip to New York, where you listed five or six</p> <p>18 entities that you discussed general employment</p> <p>19 opportunities with.</p> <p>20 A. That's right. Well, no, no, no, no. I went and</p> <p>21 I did -- they weren't employment opportunities. It was</p> <p>22 going and meeting peers, you know, former competitors,</p> <p>23 people in the market that knew me, and assessing what my</p> <p>24 opportunities were, what damage was done, that kind of</p> <p>25 thing.</p>
<p style="text-align: right;">249</p> <p>1 No. 1, which starts on page 3, please?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you see Interrogatory No. 1(a) asks</p> <p>4 for the identity of all individuals, entities or</p> <p>5 organizations with which Daugherty has discussed</p> <p>6 employment offers or potential employment since September</p> <p>7 1, 2011?</p> <p>8 A. I do.</p> <p>9 Q. Do you see that? Okay.</p> <p>10 MS. DANIELS: And, again, to the extent</p> <p>11 that this is -- this is substantively going to be</p> <p>12 discussed, this is the same topic in which we had</p> <p>13 instructions earlier that all -- it's attorneys' eyes</p> <p>14 only and that all parties involved are to leave under</p> <p>15 Kaplan's -- under Judge Kaplan's previous directive that</p> <p>16 he doesn't have to discuss his job opportunities in front</p> <p>17 of Highland personnel.</p> <p>18 Q. Okay. Mr. Daugherty --</p> <p>19 A. Sure.</p> <p>20 Q. -- do you see the question, to provide the</p> <p>21 identity of all individuals, entities or organizations</p> <p>22 with which Daugherty has discussed --</p> <p>23 A. You're talking about (a)?</p> <p>24 Q. Yes.</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">251</p> <p>1 Q. Okay.</p> <p>2 A. That was the purpose of that trip in September.</p> <p>3 Q. Is it your testimony that you have not had any</p> <p>4 written communications with any individual or entity</p> <p>5 about potential employment other than the three listed in</p> <p>6 here?</p> <p>7 A. Yeah, that is my suggestion.</p> <p>8 Q. Is that your testimony?</p> <p>9 A. That's my testimony, as far as I know.</p> <p>10 Q. Have you had any communications with any of the</p> <p>11 individuals or entities listed in this -- in this</p> <p>12 interrogatory response since April 26th?</p> <p>13 A. Of what year?</p> <p>14 Q. Of this year.</p> <p>15 A. Maybe.</p> <p>16 Q. What communications have you had?</p> <p>17 THE WITNESS: Is this confidential?</p> <p>18 MS. DANIELS: For clarification, Judge</p> <p>19 Kaplan, these are interrogatories that Mr. Daugherty was</p> <p>20 ordered by you to answer. I think the instruction at the</p> <p>21 time that you had us have him answer them and verify them</p> <p>22 was that this information was going to be protected in</p> <p>23 that there were not to be any communications made</p> <p>24 relative to the information that was being provided with</p> <p>25 respect to job opportunities that he had explored.</p>

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<p style="text-align: right;">252</p> <p>1 And I think that's what we all just want  2 some clarification on. Even though we're discussing them  3 now in this context as opposed to in the interrogatory  4 context, I'm assuming that those directives are still in  5 place.  6 MR. KATZ: This hasn't been designated even  7 confidential, let alone attorneys' eyes only.  8 SPECIAL MASTER KAPLAN: Well, I think I --  9 if I understand what you're saying correctly, this might  10 have been what I was alluding to this morning. I think  11 there may be an order that I entered that -- does it  12 reference that interrogatory?  13 MS. DANIELS: Yes.  14 SPECIAL MASTER KAPLAN: Was it in  15 connection with that interrogatory?  16 MS. DANIELS: Yes.  17 SPECIAL MASTER KAPLAN: That basically says  18 you can get the information but you can't contact the  19 employers or the prospective employers.  20 MR. KATZ: And, if Your Honor remembers, we  21 had a conversation about that in which we were  22 specifically authorized to contact them.  23 MS. DANIELS: Huh-uh.  24 SPECIAL MASTER KAPLAN: I don't remember  25 that, Counsel.</p>	<p style="text-align: right;">254</p> <p>1 this information is -- is accurate. That's all I'm  2 asking.  3 SPECIAL MASTER KAPLAN: That's fine. He  4 can answer that question.  5 MS. DANIELS: Okay.  6 MR. KATZ: And if it's complete, yeah.  7 MS. DANIELS: For purposes of any further  8 discussion of this information, I would request  9 attorneys' eyes only.  10 SPECIAL MASTER KAPLAN: The question is, is  11 the information in that interrogatory answer accurate.  12 MS. DANIELS: He's already asked that.  13 MR. KATZ: And I was asking him if -- now  14 I'm asking if it's complete. If counsel wants to  15 designate something AEO --  16 SPECIAL MASTER KAPLAN: Hold on. Just  17 answer the question.  18 MR. KATZ: Okay. I'm just trying to not  19 waste time here.  20 Q. (By Mr. Katz) Okay. Mr. Daugherty, have you  21 had any communications with any of the entities or  22 individuals listed in this interrogatory response since  23 you verified this response on April 26, 2013?  24 A. I think, yes, with one of the parties.  25 Q. Which party was that?</p>
<p style="text-align: right;">253</p> <p>1 MR. KATZ: Yeah, you said counsel could  2 contact them.  3 SPECIAL MASTER KAPLAN: Is there an -- is  4 there an order? I mean, what's happened in this case?  5 MR. KATZ: I understand, Your Honor, and  6 that was -- that was -- and I don't remember --  7 SPECIAL MASTER KAPLAN: I do remember you  8 appealed that aspect of the order.  9 MR. KATZ: Yes, and we had the -- we had --  10 we had a conference about it, and I don't know offhand if  11 that was -- I assume it was transcribed. We'd have to  12 look for that, where -- it's irrelevant, I think, for the  13 purpose --  14 SPECIAL MASTER KAPLAN: Okay.  15 MR. KATZ: -- of this deposition, but that  16 they indicated -- I was -- because Judge Hoffman had  17 instructed us to circle back with you. You --  18 SPECIAL MASTER KAPLAN: Well, let me just  19 stop you there. You had me at it's irrelevant for the  20 purposes of the deposition.  21 MR. KATZ: Well, unless he's going to  22 answer the question.  23 SPECIAL MASTER KAPLAN: We can sort all  24 this out later.  25 MR. KATZ: Yeah. I just want to know if</p>	<p style="text-align: right;">255</p> <p>1 MS. DANIELS: Okay. And, again, at this  2 point I'd like to designate this attorneys' eyes only if  3 we're going to identify information in this  4 interrogatory --  5 MR. KATZ: That's fine.  6 MS. DANIELS: -- on the record --  7 MR. KATZ: That's fine.  8 MS. DANIELS: -- and ask the Highland folks  9 to please leave the room.  10 SPECIAL MASTER KAPLAN: If we're going to  11 mention the substance of the answer, that's fine.  12 MS. DANIELS: Thank you.  13 (Messrs. Leventon, Boyce and Surgent leave  14 the room.)  15 (Beginning of attorneys-eyes-only excerpt.)  16  17  18  19  20  21  22  23  24  25</p>

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<p style="text-align: right;">258</p> <p>1</p> <p>2</p> <p>3 (End of attorneys-eyes-only excerpt.)</p> <p>4 Q. Okay. Okay. Tell me --</p> <p>5 A. Are you done with this?</p> <p>6 Q. Oh, yes.</p> <p>7 A. And these two?</p> <p>8 Q. Yes, for now.</p> <p>9 Okay. So you have filed a claim against</p> <p>10 Highland, Mr. Dondero and Sierra Verde -- well, actually,</p> <p>11 let me start at the beginning.</p> <p>12 You said earlier you think your defined</p> <p>13 benefit pension plan has been paid?</p> <p>14 A. I think it has.</p> <p>15 Q. So as you sit here today, you're not aware of</p> <p>16 any part of that benefit plan that is unpaid?</p> <p>17 A. That's correct.</p> <p>18 Q. What part of your LTIP has not been paid?</p> <p>19 A. All of it.</p> <p>20 Q. And how much is that?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you have any idea how much that is?</p> <p>23 A. What it's worth? No. I'd have to get in and</p> <p>24 see how much Highland's worth, because it was a -- it was</p> <p>25 an option-like structure priced off the value of</p>	<p style="text-align: right;">260</p> <p>1 A. Yeah. This was one of the documents I was just</p> <p>2 referring to. I think this is it, anyway.</p> <p>3 Q. This is a document entitled "2005 HCMLP</p> <p>4 Long-Term Incentive Plan"; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And can you turn to page 19 for me, please?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. I'm sorry. I think I got the wrong page.</p> <p>9 (Messrs. Leventon, Boyce and Surgent</p> <p>10 reenter the room.)</p> <p>11 Q. Can you identify any provisions of this</p> <p>12 agreement that you believe Highland has breached?</p> <p>13 A. I haven't looked through this agreement, and I</p> <p>14 would leave that to my lawyers. I know they didn't pay</p> <p>15 me what they owed me.</p> <p>16 Q. Okay. What other documents are you aware of</p> <p>17 that relate to your -- the basis for your claim for your</p> <p>18 LTIP?</p> <p>19 A. There's several other documents and agreements</p> <p>20 that, frankly, I turned over to my lawyers and I haven't</p> <p>21 seen since two thousand -- early 2012.</p> <p>22 Q. Okay. And --</p> <p>23 A. I didn't memorize the names of those documents</p> <p>24 and the titles of those documents.</p> <p>25 Q. How did you get those documents?</p>
<p style="text-align: right;">259</p> <p>1 Highland's stock. When I left, Highland told me it was</p> <p>2 worth 200,000 after a discount was applied to it.</p> <p>3 Q. Who -- who at Highland told you that?</p> <p>4 A. Brian Collins and Surgent.</p> <p>5 By the way, you want to let them back in</p> <p>6 now?</p> <p>7 Q. And what is the -- the basis for your claim</p> <p>8 that --</p> <p>9 A. They can't hear you.</p> <p>10 Q. -- they owe you the LTIP?</p> <p>11 A. You might want to put your mic on.</p> <p>12 Q. Can you answer my question, please?</p> <p>13 A. I wasn't concentrating.</p> <p>14 Q. What is the basis for your claim that Highland</p> <p>15 owes you the LTIP?</p> <p>16 A. It's compensation that was owed to me.</p> <p>17 Q. Is that pursuant to a contract?</p> <p>18 A. It was pursuant to a multitude of documents.</p> <p>19 Q. What documents?</p> <p>20 A. My lawyers have them, but I don't know them off</p> <p>21 the top of my head.</p> <p>22 (Exhibit 39 marked.)</p> <p>23 Q. I'll show you what's marked here as Exhibit 39.</p> <p>24 A. Okay.</p> <p>25 Q. Can you tell me if you recognize that document?</p>	<p style="text-align: right;">261</p> <p>1 A. Highland HR personnel.</p> <p>2 Q. Did you get them before you left or after you</p> <p>3 left?</p> <p>4 A. I'm sorry. Yes, before I left.</p> <p>5 Q. Okay. Do you understand from this document that</p> <p>6 if you're in violation of your noncompete provisions that</p> <p>7 you forfeit your interest in the LTIP?</p> <p>8 MS. DANIELS: Objection, form.</p> <p>9 A. No.</p> <p>10 Q. Let's talk about Sierra Verde.</p> <p>11 A. Are you done with this one, Marc? Are you done</p> <p>12 with this one, Marc?</p> <p>13 Q. For now.</p> <p>14 A. Okay.</p> <p>15 Q. What was your role in the formation of Sierra</p> <p>16 Verde?</p> <p>17 A. I was in the chain of command.</p> <p>18 Q. Well, what -- what part of the chain?</p> <p>19 A. Just one of the guys involved in it.</p> <p>20 Q. Okay. Who were the guys involved in it?</p> <p>21 A. Dondero, me, Carl Moore, Matt Lyons, Thomas</p> <p>22 Surgent, Clay Callan, David Smith, Tim Lawler, to some</p> <p>23 degree. Those are the guys involved in its formation or</p> <p>24 development. Everybody on the private equity team was a</p> <p>25 recipient.</p>

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<p style="text-align: right;">262</p> <p>1 Q. Okay. 2 (Exhibit 40 marked.) 3 Q. I'll show you what's marked here as Exhibit 40. 4 MR. REGAS: And, Marc, that one is already 5 Exhibit 3 in the notebook. 6 MR. KATZ: Okay. Well, let's just -- 7 THE WITNESS: It's Exhibit 40 here. 8 MR. KATZ: Yeah, that's fine. That's fine. 9 That's fine. It's an important document. We can mark it 10 twice. 11 A. Okay. 12 Q. Do you recognize this as the LLC agreement for 13 Sierra Verde? 14 A. That's what it says. I haven't committed this 15 document to memory, so I'll just take your word for it 16 and assume that it is. 17 Q. Well, can you turn to the document that has the 18 Bates number that ends with 12 in the bottom right-hand 19 corner for me, please? 20 A. Okay. 21 Q. Is that your signature on that document? 22 A. It is. 23 Q. Now, is your claim -- your claim for your Sierra 24 Verde compensation -- you tell me what you're claiming 25 with respect to -- what do you think you're owed with</p>	<p style="text-align: right;">264</p> <p>1 grants? 2 A. Granting procedures, or whatever. 3 Q. Okay. I just want to make sure I heard you. 4 What are the other interactions, dealings 5 and grants? 6 A. The board of both companies agreeing to it, 7 allocating it to me individually and the rest of the team 8 members individually. 9 Q. Okay. 10 THE WITNESS: Can I take another break? 11 I'm so full of liquids, it's ... 12 SPECIAL MASTER KAPLAN: Let's take a quick 13 one. 14 MR. KATZ: Sure. 15 THE VIDEOGRAPHER: Off the record, 4:30 16 p.m. 17 (Recess taken from 4:30 to 4:34.) 18 THE VIDEOGRAPHER: Back on the record, 4:34 19 p.m. 20 Q. Mr. Daugherty -- 21 A. Daugherty. 22 Q. What did I call you? 23 A. Daugherty. 24 Q. Daugherty. I apologize. 25 A. No problem.</p>
<p style="text-align: right;">263</p> <p>1 respect to your Sierra Verde claim? 2 MS. DANIELS: Objection, form. 3 A. You know, I'd have to get the up-to-date 4 details, but I think it's in excess of 6 million dollars. 5 Q. Okay. And why do you think you're owed that 6 money? 7 A. Because the two assets in it, Cornerstone and 8 Trussway, have gone up significantly in value, and that 9 was part of the grant that was given to us. 10 Q. Okay, but what in this -- do you think this 11 contract entitles you to that money? 12 A. I don't -- 13 MS. DANIELS: Objection, form. 14 A. Yeah, I don't know what you mean. I'm not going 15 to take a legal interpretation of what the contract 16 entitles me to. I'll leave that to my lawyers. 17 Q. Okay. I'm not asking you that. I'm asking you, 18 Do you think that this contract entitles you to that 19 money? 20 MS. DANIELS: Objection, form. 21 A. I think I'm entitled to the money via this 22 contract and other interactions, dealings, et cetera -- 23 Q. Okay. 24 A. -- and grants. 25 Q. What are the other -- I'm sorry. Did you say</p>	<p style="text-align: right;">265</p> <p>1 Q. Since -- since you have left Highland, have you 2 had any communications with any of Highland's investors? 3 A. Yes. 4 Q. Who? 5 A. Kevin Winter. 6 Q. Who else? 7 A. Brandt Behr. 8 Q. Was it Brad? 9 A. Brent, Brent. Brandt, actually. Brandt Behr. 10 Tom. I can't remember Tom's last name. He's at 11 Grosvenor. And another guy, at Baylor University, whose 12 name I don't recall off the top of my head. 13 Q. Anybody else? 14 A. I think that's it. 15 Q. Have you had any -- since the time you left 16 Highland, have you had any communications with any -- any 17 prospective investors of Highland? 18 A. No. Any communication? No, I don't think so. 19 Q. When did you have a communication with Kevin 20 Winter? 21 A. It's been a long time, but I'm thinking right 22 around January of 2012. 23 Q. And was that an in-person communication, over 24 the phone? 25 A. It was by phone.</p>

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<p style="text-align: right;">266</p> <p>1 Q. On your cell phone?</p> <p>2 A. Yes.</p> <p>3 Q. Did you call him or he call you?</p> <p>4 A. I called him.</p> <p>5 Q. And what was the purpose of that call?</p> <p>6 A. It was twofold, as I recall. One was to see if</p> <p>7 he wanted to go fly fishing at my place in Montana. We</p> <p>8 had talked about it earlier. And I had lots of time on</p> <p>9 my hands.</p> <p>10 And then two was to see if -- or to correct</p> <p>11 the reality or the facts, if he had heard that I had left</p> <p>12 Highland for lifestyle reasons or that I was burned out</p> <p>13 or that I was trying to find myself.</p> <p>14 Q. Okay. How long did this conversation last?</p> <p>15 A. Less than five minutes. Kevin's a quick talker.</p> <p>16 Q. Okay. And what did you speak to him about on</p> <p>17 the phone?</p> <p>18 A. I just told you.</p> <p>19 Q. So -- and I may have misunderstood. I thought</p> <p>20 you were telling me what the -- the purpose -- what your</p> <p>21 intent in calling him was.</p> <p>22 A. That was my intent, and that was the -- that</p> <p>23 was -- those were the topics discussed.</p> <p>24 Q. Okay. And what specifically did you tell him?</p> <p>25 A. I don't remember specifically what I told him.</p>	<p style="text-align: right;">268</p> <p>1 A. I think so, yeah.</p> <p>2 Q. And when was the last one?</p> <p>3 A. The last one was after Highland sued me and I</p> <p>4 think before I sued Highland. That's not true. I talked</p> <p>5 to him again, I think, in October of 2012. It might have</p> <p>6 been November. I don't know exactly.</p> <p>7 Q. Were any of these communications in person?</p> <p>8 A. Yes.</p> <p>9 Q. Were all of them in person?</p> <p>10 A. No.</p> <p>11 Q. How many in-person meetings did you have with</p> <p>12 him?</p> <p>13 A. One.</p> <p>14 Q. And when did that occur?</p> <p>15 A. I think it was January -- I don't know. Late</p> <p>16 January 2012.</p> <p>17 Q. Okay.</p> <p>18 A. I don't remember the exact day, date.</p> <p>19 Q. Okay. What -- was that your first communication</p> <p>20 with him after you left --</p> <p>21 A. No.</p> <p>22 Q. -- was the in-person one?</p> <p>23 A. No.</p> <p>24 Q. Okay. How did the first communication you had</p> <p>25 with him come about?</p>
<p style="text-align: right;">267</p> <p>1 Q. Did -- what did he tell you?</p> <p>2 A. Specifically or generally? Because I'm not</p> <p>3 going to be able to tell you what specifics are. I can</p> <p>4 tell you generally.</p> <p>5 Q. Okay. Give me general.</p> <p>6 A. He said he wanted my -- he wanted me to send him</p> <p>7 my cell phone -- my contact information and we could get</p> <p>8 together for fly fishing or whatever. And he said nobody</p> <p>9 told him anything about me leaving Highland for lifestyle</p> <p>10 reasons or any of those other things I mentioned.</p> <p>11 Q. Did -- did you send him your contact</p> <p>12 information?</p> <p>13 A. I did not.</p> <p>14 Q. And that was the only communication you've had</p> <p>15 with him since you left?</p> <p>16 A. I haven't talked to him since.</p> <p>17 Q. What about Brandt Behr? When -- did you have</p> <p>18 more than one communication with Mr. Behr?</p> <p>19 A. Yes.</p> <p>20 Q. How many did you have?</p> <p>21 A. Three, four total communications. Something in</p> <p>22 that context.</p> <p>23 Q. Okay. And when was -- when was the first one?</p> <p>24 A. Right around the January time frame.</p> <p>25 Q. January 2012?</p>	<p style="text-align: right;">269</p> <p>1 A. Telephone.</p> <p>2 Q. But, I mean, who -- who initiated it?</p> <p>3 A. I called him.</p> <p>4 Q. Okay. And what was the purpose of the call?</p> <p>5 A. I was told by Michael Colvin that the Crusader</p> <p>6 committee wanted exit interviews with me. So he gave me</p> <p>7 the phone numbers of all -- the names and -- the names,</p> <p>8 the firms and the phone numbers of everybody on the -- on</p> <p>9 the Crusader steering committee, or whatever it's called.</p> <p>10 Some kind of Crusader committee.</p> <p>11 Q. And Mr. Behr is on the committee?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. So what did you talk to him about when</p> <p>14 you called him on that first occasion?</p> <p>15 A. Just introduced myself to him and said, I</p> <p>16 understand that you want to do an exit meeting with me</p> <p>17 and I'm happy to be cooperative in that regard.</p> <p>18 Q. Okay. And so was the in-person meeting the exit</p> <p>19 interview?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And who was there at the exit interview?</p> <p>22 A. It was Brandt; some young guy, who I can't</p> <p>23 remember his name; and then an older guy. Monahan, or</p> <p>24 something like that.</p> <p>25 Q. Okay.</p>



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<p style="text-align: right;">270</p> <p>1 A. Brian Monahan. I don't recall exactly. I mean, 2 I could find out, but -- 3 Q. Okay. 4 A. -- I just don't know off the top of my head. 5 Q. Was it -- but was it just that group, that small 6 group of people there? 7 A. No. It was Michael Colvin as well. 8 Q. Okay. Anybody else? 9 A. Me. 10 Q. Anybody else? 11 A. That's all I can think of. 12 Q. Okay. And then -- so then you had two or three 13 more conversations with Mr. Behr after that meeting? 14 A. That's right. 15 Q. Okay. And those -- each of those were on the 16 telephone? 17 A. That's right. 18 Q. Each of those were on your cell phone? 19 A. That's correct. 20 Q. Okay. What was the purpose of each of those 21 calls? 22 A. I think he called me on those two calls. 23 Q. Okay. 24 A. And his purpose was -- he was complaining, I 25 suppose -- or complaining is not the right word. He</p>	<p style="text-align: right;">272</p> <p>1 Q. Okay. What did he tell you? 2 A. That Highland had dropped the bid to a 50 3 percent discount for Crusader investors, and if they 4 didn't take the deal -- well, that he was going to get -- 5 they were going to -- they were going to get the 50 6 percent, they were going to get the majority, and they're 7 going to strip all the covenants, so you better sign in 8 or we're going to strip the covenants and stick it to 9 you. I'm paraphrasing his language. 10 Q. What did you tell him? 11 A. I said, That sucks. 12 Q. Anything else? 13 A. Yeah. 14 Q. What else? 15 A. I said, I just got sued by them. 16 Q. What did you tell him in regard to that? 17 A. Just I just got sued by them. This was just 18 like -- this was in a day or two days of me getting sued. 19 Q. Did he ask anything about the lawsuit? 20 A. No. 21 Q. You didn't tell him anything other than you just 22 had been sued? 23 A. I told him it was all bullshit. 24 Q. Did you talk about what the claims against you 25 were?</p>
<p style="text-align: right;">271</p> <p>1 was -- I guess he was frustrated. He was frustrated. 2 Q. What did he tell you? 3 A. Highland was trying to buy the LP interest of 4 the Crusader investors at a 25 percent discount to mark, 5 to mark it, to mark. 6 Q. Okay. Why was he talking -- do you know why he 7 was talking to you about that? 8 A. I think he was venting. 9 Q. Okay. Was Mr. Behr a friend of yours? 10 A. Not a close friend, but, I mean, we were 11 friendly, professional -- professionally friendly. 12 Q. What did you tell him on that call? 13 A. I said that's too bad. I mean, basically, that 14 sucks. I'm sorry to hear that. 15 Q. How long was that call? 16 A. I don't recall. 17 Q. Did you tell him anything else? 18 A. No. 19 Q. What about the -- 20 A. Oh ... No, at that call, I don't think I told 21 him anything else because I hadn't been sued. I don't 22 think I'd been sued by Highland at that point. 23 Q. What about the second call? 24 A. Second, he was much more frantic, much more 25 intense. He was pissed.</p>	<p style="text-align: right;">273</p> <p>1 A. No. Didn't even go into detail. 2 Q. Did you talk about your intent to file 3 counterclaims? 4 A. No, because at that time I still -- I hadn't -- 5 I was shocked, and I did not have a mind set of -- of 6 filing counterclaims. I was not -- that was not my mind 7 set. I was in shock. 8 I knew Jim was pissed off about my 9 testimony in his divorce, but I thought -- you know, Jim 10 can be emotional and erratic, but after a certain amount 11 of time he could come to his senses, and I thought 12 eventually he would. 13 But I was, like, I cannot believe he just 14 did this to me. And, frankly, you did, too, in helping 15 them write that thing. 16 Q. When was the first time that you thought about 17 filing a lawsuit against any of the parties or 18 individuals that you've filed claims on in this case? 19 A. You know, these -- there were some settlement 20 negotiations going on between my counsel and Thomas 21 Surgent. John Honis had reached out to me and asked me 22 if we were at the point of no return. And I said, Look, 23 John, I'm -- I'm pissed, but, no, we're not at the point 24 of no return. 25 And somewhere in that time period my</p>

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<p style="text-align: right;">274</p> <p>1 lawyers asked me to start assembling a narrative of my 2 story, so to speak, and so I started trying to pull that 3 together. I don't remember exactly when, Marc. 4 Q. But this was all after Highland filed its 5 lawsuit against you? 6 A. Totally, totally. I didn't want to sue 7 Highland, and I didn't want to be sued by Highland 8 either. 9 Q. When you did your exit interview with the -- the 10 Redeemer committee, did you sign a confidentiality or 11 nondisclosure agreement? 12 A. No. None was offered. 13 Q. You said Michael Colvin was there? 14 A. Yes. 15 Q. Was he representing you? 16 A. No. 17 Q. Do you know who he was representing? 18 A. Presumably Highland. Just I assumed he was 19 there to look over the process. I don't really know. He 20 didn't really say. I just assumed, I guess. 21 Q. And Mr. Colvin was -- or is the former general 22 counsel of Highland, correct? 23 A. Yeah. I think he'd been demoted before he left, 24 but he served at some point as the general counsel at 25 Highland.</p>	<p style="text-align: right;">276</p> <p>1 Q. Okay. And did -- was this a phone call? 2 A. Two phone calls. 3 Q. Okay. And on your cell, from your cell? 4 A. On my cell. I don't know if it was from it or 5 they called me. I don't -- I don't recall. 6 Q. Okay. Were they both phone calls right around 7 that same time period? 8 A. I'm sorry. In that January time period? Is 9 that -- 10 Q. Yes. 11 A. Yeah, yeah. It was like one day, then the next 12 day, or one day and a couple of days. I don't remember 13 exactly, but very close together. 14 Q. Tell me about the -- about the substance of 15 those calls. 16 A. You know, the first call was kind of short. Why 17 did I quit. You know, Tom didn't have a lot of -- Tom 18 had, like, two or three guys on the call. And he just 19 told me in advance, he goes, I want to break this into 20 two calls: One where you tell us why you quit, and the 21 other one, you talk to us about the portfolio. So the 22 first one was pretty short. 23 Q. What did you tell him about why you quit? 24 A. Just told him I couldn't get there on the 25 compensation element with Dondero. I couldn't get there</p>
<p style="text-align: right;">275</p> <p>1 Q. At some point while you were with Highland, he 2 was the general counsel of Highland? 3 A. Absolutely. 4 Q. Okay. And when did he leave Highland, if you 5 know? 6 A. I don't know. I heard he -- well, I don't know 7 when he left, because supposedly he left but then he had 8 a management contract, or some kind of contract. So he 9 had some hybrid status that I'm, frankly, not privy to 10 other than -- other than knowing it existed in some 11 capacity. 12 Q. Okay. You said you talked to an individual at 13 Grosvenor. Was it Tom? 14 A. Yeah. Tom -- I want to say Tom Watson, but I 15 don't think that's his name. 16 Q. Is it Rowland? 17 A. Tom Rowland. Thanks. 18 Q. And what is his position with Grosvenor, if you 19 know? 20 A. I don't know. 21 Q. When did you speak to him? 22 A. Around that same time period. 23 Q. I'm sorry. Which -- which time period are we 24 talking about? 25 A. That January time period.</p>	<p style="text-align: right;">277</p> <p>1 on the autonomy. I was ready for some more independence. 2 We had just gone through what I described as the shit 3 storm in the financial circus and, you know, I felt like 4 I'd gotten to a point where I was either going to have to 5 commit to be at Highland for another five years or I was 6 going to leave. And I just told him Jim and I didn't get 7 there. 8 Q. Was there any other reason you told him that you 9 quit? 10 A. Well, the autonomy. 11 Q. Did you tell him anything else about why you 12 quit? 13 A. I don't think there was much more to why I quit. 14 Q. Okay. And you told him the truth, didn't you? 15 A. Yeah. 16 Q. What did he say? 17 A. I mean, when I say tell him the truth, I did 18 tell him the truth. I didn't give him all the details. 19 You know, Jim and I had this e-mail 20 exchange toward the end that I didn't bother telling 21 anybody about, where he was just so emotional it was 22 ridiculous. So I didn't tell him that. 23 Q. What did he say? 24 A. What did who say? 25 Q. Tom.</p>

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<p style="text-align: right;">278</p> <p>1 A. I don't -- I don't recall anything of 2 significance. Just, you know, okay, you know. I mean, 3 look, I don't think he was terribly shocked. You know, 4 we had gone through a -- a whirlwind experience, and, you 5 know, I think he thought I was pretty good at what I did. 6 I think he knew I thought I was pretty good at what I did 7 and it was time for me to go do it on my own if I 8 couldn't get the right deal at Highland. It was really 9 that simple. 10 Q. Okay. What about the second phone call? 11 A. Second phone call was about the portfolio. 12 Q. And did you talk any more about your resignation 13 from Highland at that time, in the second call? 14 A. No. There wasn't anything else to say. 15 Q. Okay. What did you tell him about the 16 portfolio? 17 A. They were very concerned about the portfolio. 18 There was a very big lack of trust of Dondero, and I 19 guess to some degree Honis, although Honis was just 20 Dondero's mouthpiece. And they were very concerned about 21 the portfolio, and they were really pushing to liquidate 22 the portfolio. 23 And I went through name by name for 24 probably the top 20 names and gave them my opinion, and 25 many of which -- on many of the names, I encouraged</p>	<p style="text-align: right;">280</p> <p>1 with you as he tries to hold onto Safety-Kleen or 2 Cornerstone or whatever. He knows there's upside and I 3 know there's upside, and you guys would be crazy to leave 4 that value on the table. 5 Q. Okay. Did you say anything negative about 6 Highland in that call? 7 A. Not a word. Not a word. The only people I 8 mentioned at Highland, I wanted to say positive things 9 about them, because I also wanted -- they're, like, Who 10 can we trust? 11 And I -- I rattled off the names of several 12 guys on the team that I thought that they could trust, 13 that were men of integrity. 14 And -- and I said, Look, you've got guys 15 that are busting their ass for you. They're very 16 committed to this. They're good guys. They're honest 17 guys. And so if you want the straight skinny, you know, 18 talk to Carl Moore, talk to Tom Pereira, talk to Clay 19 Callan, talk to David Smith. 20 I mean, I went through several of the guys 21 on the team that I just thought were honorable guys, 22 hard-working guys. And I made a point to them that, you 23 know, these were good guys and these were guys that stuck 24 through. 25 When a lot of people bailed out on Highland</p>
<p style="text-align: right;">279</p> <p>1 them -- they really wanted to sell Cornerstone, they 2 really wanted to sell Safety-Kleen, they really wanted to 3 sell Realogy. 4 And, frankly, I -- I told the truth, but I 5 think what I said is exactly what Highland would have 6 wanted me to say on those names. I told -- You're going 7 to hurt yourself if you try and force Jim to sell 8 Safety-Kleen. It's going to double. I mean, I just came 9 out of a board meeting in September. We're getting 10 ranges in the 20 to 30 context. We've got it priced at 11 10 to 12. It doesn't really matter if you guys like 12 Highland or not; you're going to hurt yourself. 13 And, actually, does this -- you know, they 14 didn't really believe anything that Jim had to say, for a 15 multitude of reasons that -- some I knew and many I 16 didn't, but there was just no trust there. 17 And I was in a position where I was an 18 independent voice, and I went through name by name of, 19 again, as I said -- we can go through each of them if you 20 want. 21 Q. No. 22 A. But the theme on most of them was work with 23 Highland because they're trying to make money here for 24 you. I mean, Jim's got a vested interest to try and 25 improve the performance of this fund. He's not jacking</p>	<p style="text-align: right;">281</p> <p>1 and them, frankly, in the market downturn, these guys 2 stuck around and created a lot of value, and I felt like 3 they were in a position to create a lot more value. So I 4 was very complimentary of them. 5 Q. Did you say anything during that call that was 6 untrue? 7 A. I don't think so. 8 Q. Then you said you spoke to somebody at Baylor? 9 A. Yes. I don't know what that guy's name is. You 10 got a name you can refresh my memory? 11 Q. What was the -- was this an in-person 12 conversation, phone? 13 A. No. I'm sorry. I'm talking over you. 14 Q. That's all right. 15 A. It was a cell phone call, and it was probably 16 the shortest -- shortest of the three dialogues that I 17 had. 18 Q. And what did you talk about on that call? 19 A. Same stuff, although, as I said, shorter call. 20 We talked about the reasons why I left. Two minutes. He 21 just wanted to do a quick down -- you know, checklist 22 through the portfolio. 23 Q. Okay. Was that call also in the January 2012 24 time frame? 25 A. It was.</p>

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<p style="text-align: right;">282</p> <p>1 Q. When you did your exit interview with the 2 Redeemer committee that we spoke of earlier, were you 3 still employed by Highland at that time? 4 A. No. It was January of 2012. 5 Q. Okay. Who were -- you were on the Safety-Kleen 6 board at one time, correct? 7 A. Yes. 8 Q. Okay. Since you've left -- when did you -- when 9 did you leave that board? 10 A. October of 2011. 11 Q. Okay. And after leaving that board, since that 12 time have you had any communications with any -- anyone 13 on the Safety-Kleen board? 14 A. Yes, numerous communications. 15 Q. Okay. Who -- which -- which of the board 16 members have you spoken to? 17 A. And let's -- let's expand that. I'll help you 18 out here. 19 Q. Yeah. 20 A. Not just the board but management as well. I 21 had numerous conversations with all the above. 22 Q. Okay. Well, just from the board members first, 23 who did you speak to? 24 A. Ron Haddock, Randy Devening, Bill Raine, Phil 25 Raygorodetsky. Who else was on there? I mean, Jim</p>	<p style="text-align: right;">284</p> <p>1 a -- is a hoot, to begin with, so ... 2 Q. Did you ever hear anyone on the board make a 3 comment about Lane being a -- let me ask you this: Did 4 you ever make any negative comments about Lane Britain to 5 anyone on the board? 6 A. No, I didn't. 7 Q. Did you ever make any negative comments about 8 Jim Dondero? 9 A. No. Frankly, Jim had a well-established 10 reputation on that board, and it wasn't good. 11 Q. You don't consider your comment to Bob Craycraft 12 about Jim to be negative? 13 A. Which one was that? That Jim calls (sic) the 14 strings? No. Jim does pull the strings. 15 Q. Okay. 16 A. And it's up to Lane to fight back. He's a 17 little young. He didn't do it. I guess he followed 18 Dondero's mandate, but I don't think that's negative. I 19 just think that's reality. Jim -- Jim pulls the strings. 20 Q. When did you have that conversation with Bob? 21 A. You know, Bob Craycraft and I were on the board 22 of the American Heart Association together, and it just 23 came up one day. He was really frustrated with Lane. 24 Q. Who is Stefan Wolf? 25 A. Stefan Wolf. I think he's a -- I'm not sure</p>
<p style="text-align: right;">283</p> <p>1 Dondero. Jim and I had an active dialogue all the way 2 through February 2013. Bob Craycraft, Jeff Richard, Brad 3 Carl. I might have left somebody out. 4 Q. Did you ever talk to any of -- any of those 5 board members of Safety-Kleen about Lane Britain? 6 A. I don't recall. You know what? Yes, I did. 7 Q. Which ones? 8 A. Randy Devening brought him up. 9 Q. And tell me about that conversation. 10 A. Said he was driving him nuts and he had some 11 shouting match with him, and he said he didn't trust him. 12 Bob -- Bob Craycraft mentioned him as well. 13 Q. What did Bob say? 14 A. Said he's never seen somebody contradict himself 15 so many times in one paragraph. 16 Q. And what did you tell Bob when he said that? 17 A. Said he's young. Said don't hold it against 18 him; he's taking his direction from a higher authority. 19 Q. And what did you mean by that? 20 A. I meant Jim Dondero's pulling the strings and 21 Lane's just going and doing what he's told. Lane's not a 22 bad guy. 23 Q. What did you tell Randy when he made the comment 24 that he did about Lane? 25 A. Nothing. I just kind of chuckled. Randy is</p>	<p style="text-align: right;">285</p> <p>1 exactly what Stefan Wolf is. He's kind of a connected 2 guy, you know, in the Dallas area. Actually, more than 3 just the Dallas area. Internationally broad. 4 This is the German guy, right? 5 Q. I'm just asking if you know who he is. 6 A. Well, I'm trying to remember. He's the German 7 guy, right? 8 Q. Is he somebody you've spoken to? 9 A. There's a Stefan that was associated with some 10 PR firm, and then there's the Stefan that's the German 11 guy that I'm thinking of right now. I think that's the 12 guy I'm thinking of. 13 Q. Okay. 14 A. If I got it wrong, will you clarify it for me? 15 Q. Do you know a Stefan Wolf that's affiliated with 16 Abu Dhabi Investment Company? 17 A. He's not affiliated with them. I do know him. 18 He has -- his college roommate actually worked at the Abu 19 Dhabi Investment Authority, but he has since left. 20 Q. The roommate has left? 21 A. The roommate has left. 22 Q. Well, have you spoken to Mr. Wolf since you left 23 Highland? 24 A. Yes, on several occasions. 25 Q. Okay.</p>



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<p style="text-align: right;">286</p> <p>1 A. He introduced me to his roommate that left what</p> <p>2 we call Audia (phonetic).</p> <p>3 Q. And what was the purpose of him introducing you</p> <p>4 to his roommate?</p> <p>5 A. Well, his roommate made a ton of money at Audia.</p> <p>6 And he's found some guy that's like a kickboxer, or</p> <p>7 something, out of Indonesia, and he's got this personal</p> <p>8 story that they want to make a movie out of. So he</p> <p>9 wanted me to introduce him to Michael Ovitz and to Gary</p> <p>10 Barber. Michael Ovitz, with his contacts at Disney</p> <p>11 and -- and Hollywood in general, and Michael -- I mean,</p> <p>12 Michael Ovitz, with those contacts; and Gary Barber is</p> <p>13 the CEO of MGM Studios. And he wanted me to make</p> <p>14 introduction so that they could get a screen play</p> <p>15 reviewed.</p> <p>16 Q. When did that occur? When did -- when did the</p> <p>17 introduction occur?</p> <p>18 A. About four or five months ago, I'd guess. I</p> <p>19 could be wrong. I didn't really take note of it.</p> <p>20 Q. Okay. Have you ever heard anybody on the</p> <p>21 Safety-Kleen board make a comment to the effect of Lane</p> <p>22 Britain being a Patrick Daugherty starter kit?</p> <p>23 A. Yes.</p> <p>24 Q. Who made that comment?</p> <p>25 A. Jeff Richard.</p>	<p style="text-align: right;">288</p> <p>1 Q. Did you think you were a pain when you were on</p> <p>2 the board of Safety-Kleen?</p> <p>3 A. No. I think that I was a tough force on the</p> <p>4 board. I had my opinions. I listened to other people's</p> <p>5 opinions. I reserved the -- or I would let myself have</p> <p>6 my views changed, but I held people accountable. And I</p> <p>7 guess if people thought that was a pain, I really didn't</p> <p>8 care, because my job was there to make that company be</p> <p>9 all that it could be and should be. And to the extent</p> <p>10 Lane followed in those tracks, I'm with him.</p> <p>11 Q. What did you say to Mr. Richard when he made</p> <p>12 that comment to you?</p> <p>13 A. I laughed. I said, I'm just as -- I'm just</p> <p>14 Bambi now.</p> <p>15 Q. Is that a true statement?</p> <p>16 A. I feel like it. I feel neutered.</p> <p>17 Q. Because you're no longer at Highland?</p> <p>18 A. I'm no longer doing anything, which is not fun.</p> <p>19 And I love to work, as you well know, because I worked</p> <p>20 with you on a lot of things.</p> <p>21 Q. The LLC agreement for Sierra Verde --</p> <p>22 A. Yes.</p> <p>23 Q. -- you mentioned earlier that your claim was</p> <p>24 based on that contract and then some other -- some other</p> <p>25 matters, before we -- before we took that last break.</p>
<p style="text-align: right;">287</p> <p>1 Q. And when did -- Jeff Richard?</p> <p>2 A. Jeff Richard.</p> <p>3 Q. Richard. And when did --</p> <p>4 A. It's spelled "Richard," I think.</p> <p>5 Q. Okay. When did Mr. Richard make that comment?</p> <p>6 A. I don't know. We had -- it's another connection</p> <p>7 I have. We've got kids together at Armstrong. And his</p> <p>8 son was in class with my daughter, and I guess he was</p> <p>9 having a rough time with Lane, and he was just telling me</p> <p>10 what his thoughts were.</p> <p>11 Q. What did he say exactly?</p> <p>12 A. I think you hit it right on the head. You know,</p> <p>13 Lane -- I was, like, How's it going? And he goes, Well,</p> <p>14 you know, Lane's a pain in the butt to deal with. And</p> <p>15 I'm, like, Oh, yeah? How so? He goes -- he looked at me</p> <p>16 and goes, Well, Pat, he's like the Pat Daugherty starter</p> <p>17 kit without the credibility.</p> <p>18 Q. And you took that to be a negative comment about</p> <p>19 Lane?</p> <p>20 A. I don't think it was flattering. I think the</p> <p>21 good part was the part associating him with me.</p> <p>22 Q. The -- did you take that as a negative statement</p> <p>23 about you?</p> <p>24 A. No. Look, Lane's tough, and I trained Lane, and</p> <p>25 he's smart. So I like that about him.</p>	<p style="text-align: right;">289</p> <p>1 MS. DANIELS: Objection, form.</p> <p>2 Q. Tell me what those other matters are.</p> <p>3 A. I'm not sure I understand what you're saying.</p> <p>4 Q. Sure.</p> <p>5 A. Maybe I wasn't clear on my answer. I was --</p> <p>6 Q. Yeah.</p> <p>7 A. -- exploding in my bladder, so ...</p> <p>8 Q. What -- tell me about -- your Sierra Verde claim</p> <p>9 is based, in part, on that agreement, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. What else is it based on?</p> <p>12 A. Assurances made by Dondero, approvals and</p> <p>13 assurances made by the Cornerstone boards and the</p> <p>14 Trussway boards.</p> <p>15 Q. Anything else?</p> <p>16 A. Nothing comes to mind, but that doesn't mean</p> <p>17 there isn't something else.</p> <p>18 Q. Do you think the members of the LLC had the</p> <p>19 right to dissolve the LLC?</p> <p>20 MS. DANIELS: Objection, form.</p> <p>21 A. Look, you're getting into the legal aspects of</p> <p>22 it. Me, as a layman? No.</p> <p>23 Q. Okay. And I just want your lay understanding of</p> <p>24 it. Why do you think they did not have the right to do</p> <p>25 that?</p>



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<p style="text-align: right;">290</p> <p>1 A. It just gets into the legal aspects thing. I  2 don't think you can give somebody something and then just  3 dissolve it and take it away -- that's my common-sense  4 approach to it -- just because you don't like it that  5 somebody quit.  6 Q. Okay. What -- why do you think -- and it's your  7 understanding that Sierra Verde was wound down?  8 A. That's what I'd heard from several of the guys,  9 and I since have seen that confirmed in some of the  10 testimony of the Highland employees that have been in  11 this room and in other depositions in the last two weeks.  12 Q. Okay. And is it -- is it your testimony that it  13 was wound down because you quit?  14 A. I think that that's what started it. Patrick  15 Boyce came to me within days of me quitting and said, Jim  16 wants to -- Jim told me to find a way to get out of  17 paying you your options, but I'm going to take care of  18 you, Pat.  19 Q. Okay. When you said a moment ago that your  20 quitting started it, were there other factors that  21 resulted in the wind-down?  22 A. No, I don't think there are.  23 Q. Okay.  24 A. I heard a lot of different stories, and it  25 changed every time I asked about it; but the bottom line</p>	<p style="text-align: right;">292</p> <p>1 Well, did Tunstall get disclosed? You  2 know, in the ADV, I'm talking about.  3 No, it didn't get disclosed.  4 I'm like, So how is it that you're going to  5 unwind Sierra Verde because it didn't get disclosed but  6 you're not going to unwind Tunstall even though it didn't  7 get disclosed?  8 So then they kind of go away, and, like, a  9 week or two goes by, and they come back. And they're,  10 like, Well, we got another reason.  11 What was that?  12 This is when Surgent starts telling me.  13 He's like, Well, the option price was way -- the strike  14 price was way wrong. I was, like, Well, what was wrong  15 about it?  16 I'm not going to tell you.  17 You're not going to tell me?  18 No, but here's a Cornerstone consulting  19 contract which we have determined to be the value of your  20 shares in Sierra Verde.  21 And I'm like, Well, okay. If it was wrong  22 to begin with, why would you need to give me a consulting  23 contract at Cornerstone?  24 I mean, it just went on and on and on.  25 Dondero, when I asked him about it, Oh, there's something</p>
<p style="text-align: right;">291</p> <p>1 is Dondero told Boyce to take this away from me, and then  2 that led -- Britain getting involved, Surgent, whatever  3 he was doing.  4 And the next thing I get is some kind of  5 fabricated, ever-changing story on why we're going to  6 have to just unwind Sierra Verde.  7 Oh, by the way, we're not going to give you  8 anything. Oh, but we will give you something. We're  9 going to give you a Cornerstone contract, management  10 contract.  11 I mean, it just -- it was a different story  12 every time I talked to somebody. It was asinine.  13 Q. And so that's the basis of your belief that  14 Sierra Verde was wound down because of your resignation?  15 A. I -- again, I mean, once Jim -- the original  16 motive, at least according to Boyce, was that Jim told  17 him to take -- find a way to get out of paying Daugherty  18 his options or to take them back, and then -- whatever  19 happened.  20 I mean, the story changed two or three  21 times. On one hand, you know, Boyce runs in. He goes,  22 Oh, well, we didn't disclose it, so that's why we've got  23 to do it. I'm, like, Wow, are you going to unwind  24 Tunstall, too?  25 No, we're not going to unwind Tunstall.</p>	<p style="text-align: right;">293</p> <p>1 wrong with the indenture. It didn't comply with our  2 indenture.  3 Well, what?  4 I don't know. You'll have to talk to  5 legal.  6 It was just a jack-around session every  7 time I inquired about it.  8 Q. Okay. With respect to your claims based on  9 Sierra Verde, you've brought a breach of contract claim,  10 a minority shareholder oppression claim, a breach of  11 fiduciary duty claim, and a conversion claim. Do you  12 understand that?  13 A. Generally, yes.  14 Q. Okay. Are each of those claims based on the  15 same conduct, the allegations that you just referred to?  16 A. I don't know. That -- those are legal  17 conclusions that, frankly, I'm not skilled enough or  18 knowledgeable enough in law to be able to answer for you.  19 Q. Well, let's go through them. Can you --  20 A. Sure. What do you want me to look at?  21 Q. It is Exhibit 35. Here. If you'd turn to page  22 43 for me, please. You see the first claim there,  23 "Breach of Contract Against Sierra Verde and Dondero"?  24 A. I do.  25 Q. Okay. Do you know of any basis for the breach</p>

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<p style="text-align: right;">294</p> <p>1 of contract claim other than -- I'm sorry. Do you know  2 any factual basis supporting the breach of contract claim  3 other than the matters that you just described?  4 A. There may be --  5 MS. DANIELS: Objection, form.  6 THE WITNESS: Sorry.  7 A. There may be others. It's this document here.  8 It's promises that were made to me by various people at  9 Highland and on the boards of Cornerstone and -- and  10 Trussway, which were the underlying assets held in Sierra  11 Verde.  12 Q. Okay. And just for the record, the document  13 you're referring to --  14 A. Oh, I'm sorry.  15 Q. -- is the LLC agreement?  16 A. I'm going to call it Exhibit 40.  17 Q. Okay. Fair enough.  18 A. There -- there may be other documents. I  19 just -- I didn't take an inventory of what, quote,  20 unquote, factually proves up my claim, but I'm sure my  21 lawyers have it someplace.  22 Q. Okay. Can you turn the page for me, please?  23 A. Yes.  24 Q. The oppression -- see B there, "Oppression of a  25 Minority Shareholder Against Sierra Verde and Dondero"?</p>	<p style="text-align: right;">296</p> <p>1 Q. Okay. And you are seeking that remedy through  2 your breach of contract claim?  3 A. I'm not going to be pinholed on that. I'm  4 seeking that remedy as a layman. The type of the claim,  5 the legal analysis behind the claim, I'm going to leave  6 that to my lawyers.  7 Q. Okay. That is the remedy that you're seeking  8 for each of these Sierra Verde claims, though, right?  9 A. What I just said is my answer.  10 Q. Are you refusing to answer the question?  11 A. I thought I just did.  12 Q. Okay. Let's try again.  13 A. Okay.  14 Q. The Sierra Verde -- you're seeking the Sierra  15 Verde interest --  16 A. I'm seeking -- I'm sorry. I'm cutting you off,  17 and I'm not allowed to do that. I'm sorry. Go ahead.  18 Q. No. Tell me -- tell me what it is you're  19 seeking through your Sierra Verde claims.  20 A. Again, from a layman's perspective, I'm seeking  21 the value that was taken away from me as it relates to my  22 Sierra Verde interest, as well as all those other claims,  23 but we're talking Sierra Verde right now.  24 Q. Yes. Okay. And the -- I want to use your words  25 so we're on the same page. The value that was taken away</p>
<p style="text-align: right;">295</p> <p>1 Do you see that?  2 A. I do.  3 Q. Okay. Do you know of any facts that support  4 that claim other than the facts that support the breach  5 of contract claim?  6 A. As I said, you know, there's numerous facts to  7 this case. I don't know. I haven't committed them all  8 to memory. I'd have to sit down, sit down with my  9 counsel, figure out what's relevant, what's not, to  10 answer your question, which calls for me to provide the  11 facts that substantiate a legal position.  12 Q. Well, I guess maybe --  13 MS. DANIELS: Object to the form of the  14 question.  15 Q. Maybe I'm not being -- I may be asking a -- I  16 may be not asking my question as clearly as I should.  17 You're seeking, through the Sierra Verde  18 causes of action, your Sierra Verde interest?  19 A. I'm seeking compensation for the Sierra Verde  20 component that was taken away from me, or dissolved.  21 Q. Yes. And you said earlier that you think that  22 might be 6 million dollars?  23 A. I think it's north of 6 million dollars at this  24 point, judging on the performance of Cornerstone and the  25 performance of Trussway.</p>	<p style="text-align: right;">297</p> <p>1 from you as it relates to your Sierra Verde interest --  2 A. That's right.  3 Q. -- okay, you are seeking that, in part, based on  4 this LLC agreement, correct?  5 A. I'm seeking it based on the documents that  6 existed at the time, the spreadsheets, the tear sheets,  7 the board approvals, the minutes. Anything and  8 everything that relates to how and why I got this to me  9 is relevant in order for me to get this -- to be made  10 whole by what your client has taken away from me.  11 Q. Okay. And that includes that LLC agreement?  12 A. I presume so.  13 Q. Okay.  14 A. It's one of the documents of many.  15 Q. Okay. And then the action -- you believe that  16 there was a breach of fiduciary duty by Sierra Verde to  17 you?  18 A. You know, again, the legal --  19 MS. DANIELS: Object to the form of that  20 question.  21 THE WITNESS: Sorry.  22 Q. You can answer.  23 A. The legal aspects of it I'm going to leave to my  24 counsel.  25 Q. When do you think you were entitled to your</p>

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<p style="text-align: right;">298</p> <p>1 Sierra Verde interest?</p> <p>2 A. Upon realization of the sale. Well, I was</p> <p>3 entitled to the Sierra Verde interest immediately. I was</p> <p>4 entitled -- entitled to the payout upon realization of</p> <p>5 the sale of the underlying assets, which would be</p> <p>6 Trussway and Cornerstone.</p> <p>7 Q. Okay. They have not been sold yet, have they?</p> <p>8 A. No, they haven't.</p> <p>9 Q. Okay. So you're not entitled to any payout from</p> <p>10 Sierra Verde?</p> <p>11 A. Well --</p> <p>12 MS. DANIELS: I'll object to the form of</p> <p>13 that question.</p> <p>14 A. Sierra Verde has been taken away and dissolved,</p> <p>15 so I have been wronged. You have taken away my rights to</p> <p>16 the payouts from Cornerstone and Trussway.</p> <p>17 Q. And the valuation would be the value when it was</p> <p>18 sold or the value now?</p> <p>19 A. The value --</p> <p>20 MS. DANIELS: Objection, form.</p> <p>21 A. The way it was originally intended was to be the</p> <p>22 value when it was sold. However, because you've taken</p> <p>23 them away from me, I don't know. I think that gets into</p> <p>24 legal analysis because now we're going to have to</p> <p>25 evaluate the value that was taken away, the option value</p>	<p style="text-align: right;">300</p> <p>1 Q. What -- what did you -- tell me about your</p> <p>2 communication with your accountant.</p> <p>3 MS. DANIELS: To the extent that those</p> <p>4 communications were had at the direction of counsel</p> <p>5 involved, communications passed along by counsel, I'm</p> <p>6 going to object to the question as calling for privileged</p> <p>7 information, not only privileged communications but also</p> <p>8 work product, and instruct the witness not to answer.</p> <p>9 A. On the basis of that, I'm not going to answer</p> <p>10 the question.</p> <p>11 Q. Okay. Your breach of contract claim is brought</p> <p>12 against Sierra Verde and Jim Dondero?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What contract -- what contract did you</p> <p>15 have with Jim Dondero related to Sierra Verde?</p> <p>16 MS. DANIELS: Objection, form.</p> <p>17 A. I had both this contract and oral promises.</p> <p>18 Q. Okay. And for the record, we're referring to --</p> <p>19 A. I'm sorry.</p> <p>20 Q. -- Exhibit 40 again?</p> <p>21 A. I keep doing that. Exhibit 40 and oral promises</p> <p>22 from Dondero.</p> <p>23 Q. Okay.</p> <p>24 A. And, frankly, assurances from the Cornerstone</p> <p>25 board of directors and the Trussway board of directors on</p>
<p style="text-align: right;">299</p> <p>1 that was embedded within.</p> <p>2 I mean, there's just a lot of legal</p> <p>3 analysis and damage analysis that's going into this that,</p> <p>4 frankly, I haven't got in -- gotten into yet. My expert</p> <p>5 will do that.</p> <p>6 Q. Who is your expert?</p> <p>7 A. I can't remember the name. It's a valuation</p> <p>8 firm. I've given it to counsel.</p> <p>9 Q. Have you spoken to this expert?</p> <p>10 A. Not yet.</p> <p>11 MS. DANIELS: Objection, form.</p> <p>12 THE WITNESS: Sorry.</p> <p>13 A. Not yet.</p> <p>14 Q. You've brought this Sierra Verde claim --</p> <p>15 A. I've spoken to my accountant, who's spoken to</p> <p>16 them.</p> <p>17 Q. I'm sorry. You've spoken to your account, who's</p> <p>18 spoken to who?</p> <p>19 A. To them, to the valuation firm.</p> <p>20 Q. Okay. You've spoken to your accountant about</p> <p>21 the valuation firm?</p> <p>22 A. Yes.</p> <p>23 MS. DANIELS: Objection, form.</p> <p>24 THE WITNESS: Sorry. I'm answering too</p> <p>25 quickly.</p>	<p style="text-align: right;">301</p> <p>1 allocations that were allocated individually to me as</p> <p>2 well as members of the private equity team.</p> <p>3 But then Dondero got involved and said:</p> <p>4 No, I don't want you to have that in your name. I want</p> <p>5 it in a vessel like HERA -- I think at the time it was</p> <p>6 called the private equity comp vessel, or the PE</p> <p>7 vessel -- and I want it to be jumbled in there.</p> <p>8 So it was originally allocated to me in my</p> <p>9 name. Then Dondero usurped it with this thing, and then</p> <p>10 Carl Moore named it Sierra Verde, because Dondero and I</p> <p>11 could never keep up with the name. Of course, we know it</p> <p>12 well now. And that's what happened.</p> <p>13 Q. Okay. You've brought the oppression of a</p> <p>14 minority shareholder against both Sierra Verde and</p> <p>15 Dondero. Do you understand that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. What did Dondero do to oppress you as a</p> <p>18 minority shareholder?</p> <p>19 A. He took it away without consulting me, asking me</p> <p>20 or doing anything. He just took it away.</p> <p>21 Q. Okay. Did -- did -- did that also constitute a</p> <p>22 breach of that Exhibit 40 and these oral promises you</p> <p>23 referred to?</p> <p>24 MS. DANIELS: Objection, form.</p> <p>25 A. I'm not going to get into details of which</p>

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<p style="text-align: right;">302</p> <p>1 document was breached and how. I think those are legal</p> <p>2 issues that my lawyers can take up.</p> <p>3 I just know he took the compensation that</p> <p>4 he'd given me away without talking to me, without giving</p> <p>5 me substitute compensation. He just took it away and</p> <p>6 said that's the way it's going to be.</p> <p>7 It's -- I think the quote was: It's</p> <p>8 unwinding whether you agreed with it or not. You need to</p> <p>9 do this Cornerstone deal, consulting contract.</p> <p>10 Q. What did Sierra Verde do to oppress you as a</p> <p>11 minority shareholder?</p> <p>12 MS. DANIELS: Objection, form.</p> <p>13 A. Again, Sierra Verde, Jim Dondero, they're one</p> <p>14 and the same. And they took my economic value away and</p> <p>15 they just -- they effectively stole it from me.</p> <p>16 Q. Is that the basis of your conversion claim</p> <p>17 against Sierra Verde and Dondero?</p> <p>18 A. I'm not going to get into the legal basis of my</p> <p>19 conversion claim because that's just an area of expertise</p> <p>20 that I'm not prepared to answer, but the taking away of</p> <p>21 my compensation in a unilateral format has caused me</p> <p>22 damages that run the gamut of the things you see listed</p> <p>23 in there.</p> <p>24 MR. KATZ: Okay. Let's go off the record.</p> <p>25 THE VIDEOGRAPHER: Off the record, 5:23</p>	<p style="text-align: right;">304</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: Patrick H. Daugherty</p> <p>3 DATE OF DEPOSITION: June 14, 2013</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">303</p> <p>1 p.m.</p> <p>2 (Off-the-record discussion. Proceedings</p> <p>3 adjourned at 5:23 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">305</p> <p>1 I, PATRICK H. DAUGHERTY, have read the</p> <p>2 foregoing deposition and hereby affix my signature that</p> <p>3 same is true and correct, except as noted above.</p> <p>4</p> <p>5 PATRICK H. DAUGHERTY</p> <p>6</p> <p>7 THE STATE OF _____ )</p> <p>8 COUNTY OF _____ )</p> <p>9 Before me, _____, on this day</p> <p>10 personally appeared PATRICK H. DAUGHERTY, known to me (or</p> <p>11 proved to me under oath or through _____)</p> <p>12 (description of identity card or other document) to be</p> <p>13 the person whose name is subscribed to the foregoing</p> <p>14 instrument and acknowledged to me that they executed the</p> <p>15 same for the purposes and consideration therein</p> <p>16 expressed.</p> <p>17</p> <p>18 Given under my hand and seal of office this</p> <p>19 _____ day of _____, 2013.</p> <p>20</p> <p>21 NOTARY PUBLIC IN AND FOR</p> <p>22 THE STATE OF _____</p> <p>23</p> <p>24</p> <p>25</p>

Patrick H. Daugherty - 6/14/2013

<p>1 CAUSE NO. 12-04005</p> <p>2 HIGHLAND CAPITAL * IN THE DISTRICT COURT</p> <p>3 MANAGEMENT, L.P., AND *</p> <p>4 CORNERSTONE HEALTHCARE *</p> <p>5 GROUP HOLDING, INC., *</p> <p>6 Plaintiffs and *</p> <p>7 Counter-Defendants, *</p> <p>8 v. *</p> <p>9 PATRICK DAUGHERTY, * DALLAS COUNTY, TEXAS</p> <p>10 Defendant and *</p> <p>11 Counter-Plaintiff, *</p> <p>12 v. *</p> <p>13 SIERRA VERDE, LLC, HIGHLAND *</p> <p>14 EMPLOYEE RETENTION ASSETS *</p> <p>15 LLC, JAMES DONDERO, PATRICK *</p> <p>16 BOYCE, AND WILLIAM L. *</p> <p>17 BRITAIN, *</p> <p>18 Third-Party Defendants.* 68th JUDICIAL DISTRICT</p> <p>19 REPORTER'S CERTIFICATION</p> <p>20 ORAL AND VIDEOTAPED DEPOSITION OF</p> <p>21 PATRICK H. DAUGHERTY</p> <p>22 VOLUME 1</p> <p>23 JUNE 14, 2013</p> <p>24 I, Leah K. Osteen Dow, Certified Shorthand</p> <p>25 Reporter in and for the State of Texas, hereby certify to</p> <p>the following:</p> <p>That the witness, PATRICK H. DAUGHERTY, was</p> <p>duly sworn by me and that the transcript of the oral</p> <p>deposition is a true record of the testimony given by the</p> <p>witness;</p> <p>That the deposition transcript was submitted on</p>	<p>306</p> <p>1 Certified to by me this 21st day of June, 2013.</p> <p>2</p> <p>3 LEAH K. OSTEE DOW, Texas CSR #3916</p> <p>4 Certification expires: 12/31/2014</p> <p>5 Firm Registration No. 392</p> <p>6 Osteen &amp; Associates Reporting Services</p> <p>7 313 Northglen Dr.</p> <p>8 Hurst, Texas 76054-3024</p> <p>9 (817) 498-9990</p> <p>10</p> <p>11 FURTHER CERTIFICATION UNDER RULE 203 TRCP</p> <p>12 The original deposition was/was not returned to</p> <p>13 the deposition officer on _____, 2013;</p> <p>14 If returned, the attached Changes and Signature</p> <p>15 page contains any changes and the reasons therefor;</p> <p>16 If returned, the original deposition was</p> <p>17 delivered to Mr. Marc D. Katz, Custodial Attorney;</p> <p>18 That \$ _____ are my charges to</p> <p>19 Highland Capital Management, L.P., Cornerstone Healthcare</p> <p>20 Group Holding, Inc., James Dondero, Sierra Verde, LLC,</p> <p>21 for preparing the original deposition transcript and any</p> <p>22 copies of exhibits;</p> <p>23 That the deposition was delivered in accordance</p> <p>24 with Rule 203.3, and that a copy of this certificate was</p> <p>25 served on all parties shown herein and filed with the</p> <p>Clerk.</p> <p>Certified to by me this _____ day of</p> <p>_____, 2013.</p>
<p>307</p> <p>1 _____, 2013, to the witness or to the</p> <p>2 attorney for the witness for examination, signature, and</p> <p>3 return to me by _____, 2013;</p> <p>4 That the amount of time used by each party at</p> <p>5 the deposition is as follows:</p> <p>6 Mr. Marc D. Katz - 5 hours, 27 minutes</p> <p>7 Ms. Ruth Ann Daniels - 0 hours, 0 minutes</p> <p>8 That pursuant to information given to me at the</p> <p>9 time said testimony was taken, the following includes</p> <p>10 counsel for all parties of record:</p> <p>11 Mr. Marc D. Katz, Mr. Jason R. Regas, Mr.</p> <p>12 William Moore, Mr. James Stanton, Attorneys for</p> <p>13 Highland Capital Management, L.P., Cornerstone</p> <p>14 Healthcare Group Holding, Inc., James</p> <p>15 Dondero, Sierra Verde, LLC</p> <p>16 Mr. Mark L. Johansen, Attorney for Highland</p> <p>17 Employee Retention Assets LLC, Patrick Boyce,</p> <p>18 and William L. Britain</p> <p>19 Ms. Ruth Ann Daniels, Ms. Rachel M. Crockett,</p> <p>20 Attorneys for Patrick Daugherty</p> <p>21 I further certify that I am neither counsel</p> <p>22 for, related to, nor employed by any of the parties or</p> <p>23 attorneys in the action in which this proceeding was</p> <p>24 taken, and further that I am not financially or otherwise</p> <p>25 interested in the outcome of the action.</p> <p>Further certification requirements pursuant to</p> <p>Rule 203 of TRCP will be certified to after they have</p> <p>occurred.</p>	<p>308</p> <p>1</p> <p>2</p> <p>3 LEAH K. OSTEE DOW, Texas CSR #3916</p> <p>4 Certification expires: 12/31/2014</p> <p>5 Firm Registration No. 392</p> <p>6 Osteen &amp; Associates Reporting Services</p> <p>7 313 Northglen Dr.</p> <p>8 Hurst, Texas 76054-3024</p> <p>9 (817) 498-9990</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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## **EXHIBIT 58**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P., HIGHLAND  
EMPLOYEE RETENTION ASSETS  
LLC, HIGHLAND ERA  
MANAGEMENT LLC, and JAMES  
DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,

Nominal Defendant.

C.A. No.

**VERIFIED COMPLAINT**

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Thomas A. Uebler (#5074)  
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(302) 984-3800  
*Attorneys for Patrick Daugherty*

**A public version of this document will be filed on or before July 11, 2017.**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P., HIGHLAND  
EMPLOYEE RETENTION ASSETS  
LLC, HIGHLAND ERA  
MANAGEMENT LLC, and JAMES  
DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,

Nominal Defendant.

C.A. No.

**VERIFIED COMPLAINT**

Patrick Daugherty brings this action against Highland Capital Management, L.P., a Delaware limited partnership (“Highland Capital”), Highland Employee Retention Assets LLC, a Delaware limited liability company (“Highland Employee Retention Assets” or “HERA”), Highland ERA Management LLC (“Highland ERA Management”), and James Dondero to collect a judgment entered in Daugherty’s favor in Texas against

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Highland Employee Retention Assets; to return assets fraudulently transferred from Highland Employee Retention Assets; for dissolution of Highland Employee Retention Assets and distribution of its assets; for breach of fiduciary duty against Highland ERA Management and Dondero in connection with self-dealing transactions involving Highland Employee Retention Assets; for aiding and abetting breach of fiduciary duty against Highland Capital in connection with those self-dealing transactions; for breach of the implied covenant of good faith and fair dealing against Highland ERA Management and Dondero; and for indemnification and fees on fees against Highland Capital under its partnership agreement.

### **Introduction**

1. On December 1, 2016, the Court of Appeals for the Fifth District of Texas at Dallas issued a Mandate in the lawsuit captioned *Highland Capital Management, L.P. v. Daugherty*, 12-04005, District Court of Dallas County, Texas, 68th Judicial District (Dallas) (the “Texas Action”), concluding over four years of litigation between Highland Capital, Highland Employee Retention Assets, and Daugherty. The appellate court affirmed the final judgment of the trial court.

2. The final judgment of the trial court included the following provisions, with the judge's handwritten markup:

Furthermore, the Court, after considering the jury's findings regarding HERA's breach of the implied covenant of good faith and fair dealing, finds and concludes that Daugherty is entitled to relief hereinafter given.

It is therefore further ORDERED that Daugherty have and recover \$2,600,000 from HERA, ~~representing the full value of Daugherty's interest in HERA as determined by the jury.~~

It is further ORDERED that Daugherty shall no longer have any ownership or other interest in HERA or any proceeds or accounts arising from Daugherty's prior interest in HERA that were not distributed to Daugherty prior to the entry of this judgment, Daugherty having been awarded the full value of that interest in HERA as determined by the jury.

It is further ORDERED that total amount of the actual damages rendered against HERA herein will bear prejudgment interest at the rate of 5% simple interest from May 22, 2012, until the day before this judgment is signed.

It is further ORDERED that the total amount of the judgment here rendered against HERA will bear interest at the rate of 5% per annum, compounded annually, from the date this judgment is signed until paid.

3. Under the final judgment, Daugherty was awarded \$2.6 million in damages against Highland Employee Retention Assets, plus pre- and post-judgment interest, as compensation for the diminution of value of Daugherty's units as a result of Highland Employee Retention Assets' breach of the implied covenant of good faith and fair dealing.



4. The Texas court rejected the notion that the damages award extinguished Daugherty's interest in Highland Employee Retention Assets, striking that language from the form of judgment proposed by Highland Employee Retention Assets.

5. Highland Employee Retention Assets has failed to satisfy Daugherty's judgment. During 2013 and 2014, after the Texas Action commenced, Dondero, Highland ERA Management, and Highland Capital caused Highland Employee Retention Assets to fraudulently or otherwise wrongfully transfer its assets to Highland Capital, which purportedly left Highland Employee Retention Assets insolvent.

6. In this action, Daugherty seeks to have Highland Employee Retention Assets, Highland Capital, Dondero, and Highland ERA Management satisfy his Texas judgment and return fraudulently transferred assets to Highland Employee Retention Assets.

7. Further, because Highland Employee Retention Assets can no longer fulfill its original limited purpose, which was the retention of Highland Capital employees, it should be dissolved. Once its fraudulently or wrongfully transferred assets are returned, those assets should be distributed to Daugherty as the sole remaining member.

8. Daugherty also brings claims on behalf of himself and Highland Employee Retention Assets against Highland ERA Management, Dondero, and Highland Capital for self-dealing transactions that Highland ERA Management and Dondero caused Highland Employee Retention Assets to enter into for the benefit of Highland Capital.

9. Finally, Daugherty seeks indemnification from Highland Capital for his defense costs, including attorneys' fees, in the Texas Action to the extent that such costs were incurred in defending claims against him "by reason of any act performed or omitted to be performed in the name of or on behalf of [Highland Capital], or in connection with [Highland Capital's] business." He also seeks fees on fees in prosecuting this action.

### **The Parties**

10. Daugherty resides in Dallas, Texas. Daugherty was a partner and senior executive of Highland Capital and certain of its affiliates from 1998 until 2011, when Daugherty resigned.

11. Defendant Highland Capital is a Delaware limited partnership with its principal place of business at 300 Crescent Court #700, Dallas, Texas 75201. Highland Capital was co-founded by defendant Dondero and non-party Mark Okada and is controlled by them, their affiliates, and various trusts for their benefit and the benefit of their immediate families. Dondero

is Highland Capital's president. Highland Capital is an SEC-registered investment adviser that claims to have approximately \$14.9 billion of assets under management.

12. Defendant and nominal defendant Highland Employee Retention Assets is a Delaware limited liability company that was formed on June 23, 2009.

13. Defendant Highland ERA Management, a Delaware limited liability company, was formed on February 1, 2013. Dondero was and is the president and the sole member of Highland ERA Management. As demonstrated below, it is a mere instrumentality and Dondero's alter ego. Dondero is subject to this Court's jurisdiction under 10 *Del. C.* § 3104.

**Daugherty's Interest in Highland Employee Retention Assets**

14. Highland Capital performed poorly during the 2008-2009 financial crisis. Late in 2008, Highland Capital was viewed as a firm likely to default. It had very little cash and available assets for incentive-compensation purposes. Accordingly, Highland Employee Retention Assets was created by Highland Capital to curb employee resignations by offering

employees a replacement of their previously received deferred compensation that was awarded on February 27, 2009.

15. Highland Employee Retention Assets was intended to be an independent (from Highland Capital) standalone entity to retain, reward, and incentivize Highland Capital's employees (excluding Dondero and Okada) by granting them equity-like awards in certain funds, and then distributing the proceeds of those interests to the employees in their capacity as unit holders of Highland Employee Retention Assets.

16. When Highland Employee Retention Assets was formed, Highland Capital "represent[ed], warrant[ed] and covenant[ed]" that the three purposes for which Highland Employee Retention Assets was created were and would remain "limited solely to":

a. "directly owning and holding assets to be contributed by [Highland Capital] and to distribute the proceeds of such assets from time to time to certain employees of [Highland Capital] in order to create a retention incentive for such employees (the 'Retention Assets')";

b. "distribute the proceeds of the Retention Assets in accordance with the terms of the Series A Preferred Units of [Highland Employee Retention Assets]"; and

c. “transacting any and all lawful business for which a limited liability company may be organized under Delaware law that is incident, necessary and appropriate to accomplish the foregoing.”

17. Under the Limited Liability Company Agreement of Highland Employee Retention Assets LLC dated October 26, 2009, the purpose of Highland Employee Retention Assets

shall be to receive and hold assets to be contributed by [Highland Capital] and to distribute the proceeds of such assets from time to time to certain employees of [Highland Capital] (or of affiliates of [Highland Capital], as applicable) as the Board may from time to time determine in order to create a retention initiative for such employees and to engage in such other lawful purposes and activities in connection with the foregoing.

Ex. A, § 2.1.

18. Daugherty became a member of Highland Employee Retention Assets on October 26, 2009, subject to a vesting schedule requiring Daugherty to remain employed at Highland Capital through May 15, 2011.

19. Under his award agreement, Daugherty was initially awarded 1,571.86 Series A Preferred Units and was the largest holder in Highland Employee Retention Assets.

20. Daugherty’s ownership percentage increased as other employees resigned from Highland Capital prior to vesting. Daugherty



remains a member of Highland Employee Retention Assets and holds 1,909.69 vested Series A Preferred Units.

**Highland Employee Retention Assets' Mistreatment of Daugherty**

21. Daugherty resigned from Highland Capital on September 28, 2011. At the time of his resignation, Daugherty was a director of Highland Employee Retention Assets.

22. On February 16, 2012, all the directors of Highland Employee Retention Assets except Daugherty removed Daugherty as a director. *See* Ex. B. Immediately thereafter, the newly composed board executed a Second Amended and Restated Agreement (drafted by Thomas Surgent, Highland Capital's assistant general counsel and chief compliance officer) (the "2012 Amendment"). *See* Ex. C.

23. On March 6, 2012, Brian Collins, Highland Capital's director of human resources, distributed the 2012 Amendment to all unit holders of Highland Employee Retention Assets.

24. The 2012 Amendment added a new Article 12, which included dispute-resolution and confidentiality provisions:

a. If any member of Highland Employee Retention Assets, including a holder of Series A Preferred Units (i.e., Daugherty), "commences litigation" or "otherwise initiates any dispute or makes any claim ... related

to [Highland Employee Retention Assets]” against Highland Employee Retention Assets, any of its directors, officers, or agents, or any Highland Employee Retention Assets member, *including Highland Capital*, or that does or could adversely impact the assets held by Highland Employee Retention Assets, “then with the consent of 75% of the Board, all pending and future distributions to” that litigating member “shall be immediately suspended and held in escrow by [Highland Employee Retention Assets] until the final, non-appealable resolution of the Dispute.”

b. If the litigating member does not prevail, the full costs of the litigation, including attorneys’ fees, are deducted from the escrow account and the balance will be distributed to the litigating member. However, even if the litigating member prevails, the Board has sole discretion to withhold the escrowed funds to cover any diminution in value to Highland Employee Retention Assets “resulting from or in connection with” the litigation, as determined by the Board in its sole discretion. Any withheld funds are to be reallocated to the other Preferred Unit holders on a pro-rata basis.

**The Texas Action and Dondero’s Takeover  
of Highland Employee Retention Assets**

25. In 2012, after Daugherty participated in a Highland Capital-sanctioned exit interview with concerned investors and after Daugherty

testified under court order in another legal matter involving Dondero, Highland Capital commenced the Texas Action against Daugherty. The Texas Action was filed just seven weeks after the 2012 Amendment.

26. Daugherty responded in the Texas Action with counterclaims against Highland Capital for breach of contract and defamation and third-party claims against Highland Employee Retention Assets and others. Daugherty alleged breach of contract and breach of the covenant of good faith and fair dealing against Highland Employee Retention Assets and Highland Capital based on the 2012 Amendment.

27. During the Texas Action, Dondero sought to gain control of Highland Employee Retention Assets by buying its units held by current and former employees of Highland Capital.

28. On December 26, 2012, Dondero schemed with Ted Dameris, then a board member of Highland Employee Retention Assets and an employee of Highland Capital and a current board member of Highland Capital affiliate NexBank Capital, Inc., and employee of Highland Capital, to “offer everyone except 1 a buyout offer at 100% cash and 40% discount on” non-cash assets of Highland Employee Retention Assets.

29. On January 18, 2013, and January 31, 2013, Highland Capital presented an offer to all Highland Employee Retention Assets unit holders—

except Daugherty—to purchase their units for 100 percent of the value of their cash interests and 60 percent of the value of their non-cash interests.

30. On January 17, 2013, and January 18, 2013, the board of Highland Employee Retention Assets collaborated with Dondero to transfer the powers of the board to Highland ERA Management. At the time, Highland ERA Management was not validly formed under Delaware law.

31. On January 19, 2013, the board members of Highland Employee Retention Assets resigned after each received a buyout offer from Highland Capital, and Highland ERA Management (i.e., Dondero) became the sole manager of Highland Employee Retention Assets. At the time, Highland ERA Management was not validly formed under Delaware law.

32. Highland Capital's director of human resources, Brian Collins, and Surgent peddled Highland Capital's offer to buy out the unit holders of Highland Employee Retention Assets—except Daugherty—through an Offer to Purchase dated January 31, 2013. The Offer to Purchase expired on February 15, 2013.

33. On February 1, 2013, the date that Highland ERA Management was formed under Delaware law, Dondero executed the Third Amended and Restated Agreement of Highland Employee Retention Assets (again drafted

by Surgent), which stripped virtually all the rights of Highland Employee Retention Assets unit holders. It eliminated:

- a. the purposes for which Highland Employee Retention Assets was created;
- b. the requirement of Highland Employee Retention Assets to make cash distributions to unit holders to cover pass-through tax obligations attributable to Highland Employee Retention Assets; and
- c. members' rights to indemnification. *See* Ex. D.

34. Also on February 1, 2013, Dondero executed an Expense Allocation Agreement on behalf of Highland Capital and Highland Employee Retention Assets under which the parties reallocated 93.4 percent of Highland Capital's purported legal expenses related to the Texas Action to Highland Employee Retention Assets. *See* Ex. E.

35. Highland Capital supposedly incurred \$1,142,284 in legal expenses in the Texas Action as of December 31, 2012, compared to \$154,029 incurred by Highland Employee Retention Assets over the same time period.

36. On February 7, 2013, Highland Capital, at the direction of Dondero, offered Daugherty \$0 for his interest in Highland Employee Retention Assets. Highland Capital claimed that "the costs, expenses, and



diminution of the assets” exceeded Daugherty’s value in Highland Employee Retention Assets.

37. All Highland Employee Retention Assets unit holders except Daugherty purportedly sold their units to Highland Capital. Upon information and belief, however, Highland Capital used Highland Employee Retention Assets’ funds, not solely its own funds, to purchase the units.

38. On April 30, 2013, Dondero executed an Assignment Agreement on behalf of Highland Capital and Highland Employee Retention Assets, declaring that Highland Capital held the “sole economic interest in [Highland Employee Retention Assets]” following the consummation of the transactions pursuant to the Offer to Purchase. *See* Ex. F.

39. The Assignment Agreement further resolved that “[Highland Capital] and [Highland Employee Retention Assets] have each determined that it is in their respective best interest” to transfer substantially all the assets of Highland Employee Retention Assets as “in-kind distribution[s]” to Highland Capital (then valued at approximately \$9,700,000). *See id.*

40. Dondero, through Highland ERA Management, was and is in full control of Highland Employee Retention Assets and its assets. It was fitting, therefore, in the Texas Action when Dondero described himself as

“the man behind the curtain solving financial puzzles.” Dondero also refers to himself as “the wizard.”

41. In December 2013, approximately one month before trial in the Texas Action, Highland Capital placed Daugherty’s Highland Employee Retention Assets interests, valued at the time at approximately \$3.1 million, into escrow, with the law firm Abrams & Bayliss LLP as escrow agent (the “Escrow”). *See* Ex. G. One year earlier, Abrams & Bayliss had represented Highland Employee Retention Assets in responding to a books and records demand by Daugherty relating to the Texas Action.

42. Under the Escrow, if Daugherty prevailed in the Texas Action, escrowed funds in the amount of the judgment—or the entire amount if the judgment exceeded the balance—were to be transferred to Highland Employee Retention Assets and then to Daugherty.

43. During the Texas Action on January 23, 2014, Dondero testified as follows regarding the Escrow:

Q. Okay. So -- so if, if Mr. Daugherty somehow prevails in his lawsuit against Patrick Boyce and Lane Britain and [Highland Employee Retention Assets], **what happens to Mr. Daugherty’s interest that’s being escrowed right now with a third-party escrow agent?**

A. **They go to him.**

Q. I’m sorry?

A. They go **to him** via to [Highland Employee Retention Assets] and then **to him**. (Emphasis added.)

44. Dondero also confirmed that Highland Capital's buyout of the unit holders in January and February 2013 extinguished the original limited purpose of Highland Employee Retention Assets:

Q. So -- why did the escrow agreement not get signed until December of 2013?

A. My recollection is as follows: After [Highland Employee Retention Asset] went from being an employee retention program with 30-odd participants clamoring for their money but it all mucked up in litigation, Highland [Capital] wrote a check for \$10 million to give those people, in all fairness, liquidity and what they deserved for staying around at Highland [Capital]. Once Highland [Capital] bought out all their units, there were only two unit holders, Highland [Capital] and Pat Daugherty, and **there was no retention purpose left in the vehicle.** (Emphasis added.)

45. After a three-week trial in the Texas Action, the jury found that Highland Employee Retention Assets breached the implied covenant of good faith and fair dealing by adopting Section 12.1 in the 2012 Amendment. The jury awarded Daugherty damages of \$2.6 million plus interest. *See* Ex. H. The jury also found that Dondero and Highland Capital defamed Daugherty with malice. *See id.*

46. The jury also found that Daugherty breached contractual and fiduciary duties by retaining Highland Capital information after his Highland Capital employment, but awarded zero damages. Highland Capital would, however, recover its attorneys' fees in the amount of \$2.8 million plus interest. All parties appealed.

47. In September 2014, Highland Employee Retention Assets represented to the Texas court as follows regarding the Escrow:

A contingent interest in assets held in escrow pursuant to an Escrow Agreement, a true and correct copy of which is attached hereto as Exhibit 2 (the “Deposit Assets”). The Deposit Assets are not presently controlled by or available to [Highland Employee Retention Assets]. **Per the Escrow Agreement, if a final, non-appealable judgment against [Highland Employee Retention Assets] is reached, Abrams & Bayliss, LLP, as Escrow Agent, will transfer the Deposit Assets to [Highland Employee Retention Assets].**

Ex. I, Aff. ¶ 7 (emphasis added).

48. Highland Employee Retention Assets also filed an Affidavit with the Texas court disclosing that it was insolvent. Highland Employee Retention Assets further disclosed that it is liable to Highland Capital for legal expenses funded on its behalf in the total amount of \$7,459,568 and that only \$2,555,071 was included in the net worth computation because Highland Capital had written off \$4,904,497 of the liability as of December 31, 2013, because of “lack of collectability.”

### **The Disappearing Escrow Assets**

49. The appeal of the Texas Action lasted almost three years. On December 1, 2016, the appellate court affirmed the trial court judgment. Thus, Daugherty owed Highland Capital \$2.8 million (plus interest) in

attorneys' fees and Highland Employee Retention Assets owed Daugherty \$2.6 million (plus interest) in damages.

50. On December 2, 2016, Highland Capital filed a request for Writ of Execution, which was granted that same day.

51. Also on December 2, 2016—unknown to Daugherty—Abrams & Bayliss, which has served and currently serves as counsel for Highland Capital and its affiliates, resigned as escrow agent of the Escrow.

52. On December 5, 2016—unknown to Daugherty—Abrams & Bayliss delivered over \$3.1 million in Escrow assets to Highland Capital. It took only three days for Abrams & Bayliss to transfer to Highland Capital the same assets that took almost eight months for Highland Capital to transfer to the Escrow.

53. Also on December 5, 2016, the day Highland Capital secretly received the Escrow funds, Highland Capital filed a judgment lien on Daugherty's home. The judgment lien on Daugherty's home remains in place as of this filing.

54. On December 8, 2016, the Mandate of the appellate court was filed with the trial court in the Texas Action.

55. Also on December 8, 2016, Highland Capital requested a Writ of Garnishment in the Texas Action to seize Highland Employee Retention



Assets' assets owed to Daugherty under the judgment based on an affidavit of Scott Ellington, Highland Capital's general counsel and chief legal officer, that Daugherty had no other way to pay Highland Capital's attorneys' fees.

56. Also on December 8, 2016, the constable returned the first Writ of Execution unexercised as Daugherty was in New York on business through December 9, 2016.

57. On December 9, 2016, four days after Abrams & Bayliss returned the Escrow assets to Highland Capital, Highland Capital requested and was granted a second Writ of Execution.

58. Also on December 9, 2016, Highland Capital filed an Application for Turnover specifically directing that Daugherty's interest in NexBank Capital, Inc., and Trussway Holdings, Inc., be turned over to Highland Capital. Both NexBank and Trussway are entities controlled by Dondero, Okada, and Highland Capital, and both are the subject of related actions pending in this court. *See Hoyd v. Trussway Holdings, LLC*, Del. Ch., C.A. No. 2017-0260-SG; *Daugherty v. NexBank Capital, Inc.*, Del. Ch., C.A. No. 2017-0382-SG.

59. On December 14, 2016, nine days after Highland Capital secretly obtained the Escrow funds, Daugherty wired approximately \$3.2

million in cash to Highland Capital in satisfaction of its award of attorneys' fees in the Texas Action.

60. On February 16, 2017, following a request from Daugherty to Abrams & Bayliss regarding the Escrow, given that Highland Employee Retention Assets had not satisfied Daugherty's judgment, Abrams & Bayliss unveiled the earlier events and transfers by which Highland Capital received the Escrow assets held for Daugherty:

By letter dated December 2, 2016, Abrams & Bayliss notified Highland that it was resigning as Escrow Agent pursuant to Paragraph 5 of the Escrow Agreement. By letter dated December 2, 2016, Highland informed Abrams & Bayliss that it was (i) accepting Abrams & Bayliss' resignation as Escrow Agent, (ii) waiving the ten-day notice period under Paragraph 5 of the Escrow Agreement, and (iii) directing Abrams & Bayliss to return the Deposit Assets to Highland in accordance with the instructions provided in the letter.

On December 3, 2016, Abrams & Bayliss informed Highland in writing that it agreed to the waiver of the notice period, such that Abrams & Bayliss' resignation was effective immediately. On December 5, 2016, Abrams & Bayliss returned the Deposit Assets to Highland in accordance with the December 2, 2016 instructions. Accordingly, Abrams & Bayliss no longer serves as Escrow Agent or holds Deposit Assets.

Ex. J.

61. That is, at the same time Highland Capital placed a judgment lien on Daugherty's family home and was sending a constable to Daugherty's doorstep to seize his assets, Highland Capital and its agents

were secretly diverting Highland Employee Retention Assets' funds reserved for Daugherty to Highland Capital.

62. The Abrams & Bayliss letter, tellingly, copied Highland Capital's general counsel and chief legal officer, Ellington, and its assistant general counsel, Isaac Leventon, as well as its attorney, Mark Katz, but not Highland Employee Retention Assets' attorney.

63. Efforts to collect Daugherty's judgment have failed, as Highland Employee Retention Assets claims to be insolvent. Through this action, Daugherty hopes to undo the transfer of assets in the Escrow and any other fraudulent transfers from Highland Employee Retention Assets so that Daugherty can collect his judgment and restore full value to his continuing interest in Highland Employee Retention Assets.

#### **Daugherty's Indemnification Rights**

64. Section 4.1(h) of the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 31, 2004 (the "Highland Partnership Agreement"), states:

Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively, the "**GP Party**"), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys'

fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however*, the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct.

Ex. K, § 4.1(h).

65. The General Partner under the Highland Partnership Agreement is Strand Advisors, Inc., a Delaware corporation (“Strand”).

66. From 2004, if not earlier, until he resigned from Highland Capital in 2011, Daugherty was an officer and agent of Strand. Daugherty, therefore, is a GP Party for purposes of the Highland Partnership Agreement.

67. Some of the untrue and unproven allegations made against Daugherty by Highland Capital in the Texas action included:

a. “Daugherty’s tenure at Highland had been characterized by extreme behavior, and his performance and ability to function in his job diminished over the years. Daugherty became increasingly unmanageable, erratic, and insubordinate, as well as hostile and belligerent to peers and subordinates at Highland. Recently, Daugherty admitted to Highland that two strokes he suffered years earlier had left him with dead spots in his brain that impacted his mental competence and conduct.” Ex. L, ¶ 8.

b. “During his last year of employment, a number of employees made complaints regarding Daugherty’s actions. Management

discussed these complaints with Daugherty, but his behavior persisted. Specifically, these complaints centered on Daugherty's abusive tirades. Daugherty frequently dehumanized employees, publicly berating them .... A number of these employees subsequently resigned from Highland or requested to be reassigned to departments in which they would not have to interact with Daugherty. Further, when complaints were brought to Daugherty's attention, he refused to acknowledge any problems with what he had done and said that he had a right to insult any man or woman at Highland in any way he saw fit, regardless of the purpose or content." *Id.*, ¶ 9.

c. "Daugherty's work effort and performance also significantly declined over the last year of his employment as he devoted less time to his duties and spent large amounts of time out of the office tending to non-business matters." *Id.*, ¶ 10.

68. Highland Capital asserted in the Texas Action that the conduct described in the above-referenced allegations "violated [Daugherty's] common law duties to Highland, as well as several agreements between him and Highland." *Id.*, ¶ 12. Highland Capital further asserted that Daugherty "breached a number of common law obligations related to his employment relationship." *Id.*, ¶ 21.



69. Highland Capital asserted claims for declaratory judgment, breach of Daugherty's employment agreement, breach of a buy-sell agreement, breach of fiduciary duties, misappropriation of trade secrets, tortious interference, defamation, a request for attorneys' fees, and a request for a permanent injunction.

70. Many of the allegations against Daugherty—particularly the allegations concerning Daugherty's performance on behalf of Highland Capital—formed the basis for multiple claims, including both contractual and fiduciary-duty claims. Allegations regarding Daugherty's acts on behalf of Highland Capital, which trigger Daugherty's indemnification rights, pervaded Highland Capital's claims in the Texas Action.

71. Daugherty was liable for breach of contract and breach of fiduciary duties based on the retention of confidential information *post-employment*, for which zero damages were awarded. He was not liable for, and successfully defended, all claims and allegations concerning his performance on behalf of Highland Capital. In fact, on the eve of trial, Highland Capital "non-suited" its allegations concerning Daugherty's performance on behalf of Highland Capital. *See* Ex. M.

72. Daugherty incurred substantial attorneys' fees and costs in defending the baseless and unproven allegations regarding his performance on behalf of Highland Capital and is entitled to indemnification.

**Count One  
(Fraudulent Transfer)  
(Against All Defendants)**

73. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

74. One of the reasons that Highland Employee Retention Assets has failed to satisfy Daugherty's judgment in the Texas Action is that the defendants secretly caused the Escrow assets—reserved for a judgment in Daugherty's favor—to revert back to Highland Capital. Now Highland Employee Retention Assets claims to be insolvent.

75. Highland Capital and Dondero, through Highland ERA Management, exercise total control over Highland Employee Retention Assets and treat its funds as their own, which is routine for Dondero.

76. As an example, Josh Terry, a former Highland Capital employee, recently asserted in a lawsuit:

Okada, the co-founder of Highland, stated on February 10, 2016, "Dude are you aware Jim [Dondero] hasn't paid any taxes in the past year? And he took out a loan from NexBank to pay them but then he got caught up in one of the leverage situations he did with American [Airlines] and a couple of other stocks and he doesn't have the money until March 31 to

actually do this. So he's put a lien on his assets...but if some clerk there decides to put the lien on, it would be a PR nightmare. I was just in his office yelling at him, 'I approved the loan at the bank so you could pay your taxes but you never paid your taxes.'"

77. In this case, Dondero was not using money from his bank to pay his personal taxes, but was instead siphoning money from one of his subsidiaries. Highland ERA Management is nothing more than a mere instrumentality or alter ego of Dondero. All acts of Highland ERA Management advantaged Dondero and disadvantaged Daugherty.

78. Delaware has a potent fraudulent transfer statute enabling creditors, such as Daugherty, to challenge actions by parent companies siphoning assets from subsidiaries.

79. The transfer of Highland Employee Retention Assets' funds reserved for Daugherty in the Escrow to Highland Capital, achieved through the resignation of Abrams & Bayliss, constitutes a fraudulent transfer under Delaware law. It also contradicts sworn representations of the defendants and their agents in the Texas Action regarding the Escrow.

80. Highland Capital and Dondero should be required to return to Highland Employee Retention Assets all assets fraudulently or otherwise wrongfully transferred to Highland Capital by or on behalf of Highland Employee Retention Assets.

81. Given Highland Employee Retention Assets' failure to satisfy its judgment, and apparent lack of funds to do so, Daugherty is entitled to collect his judgment from Highland Capital and Dondero.

**Count Two  
(Dissolution of Highland Employee Retention Assets)  
(Against All Defendants)**

82. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

83. In the Texas Action, Daugherty was awarded damages that resulted from Highland Employee Retention Assets' breach of the implied covenant of good faith and fair dealing, which were measured by the devaluation of Daugherty's units at the time of the breach.

84. The trial judge in the Texas Action struck from the final order the concept that Daugherty was fully compensated for his units and those units were extinguished. To the contrary, Daugherty retains his interest in Highland Employee Retention Assets.

85. Daugherty is the sole remaining unit holder of Highland Employee Retention Assets. The purported purchases of units by Highland Capital in January and February 2013, using the funds of Highland Employee Retention Assets, were invalid transfers.

86. Because Highland Employee Retention Assets can no longer fulfill its original limited purpose, the retention of Highland Capital employees, Highland Employee Retention Assets should be dissolved.

87. Section 18-802 of the LLC Act provides for dissolution when “it is not reasonably practicable to carry on the business in conformity with the limited liability company agreement.” That standard is met here. There are no more unit holder-employees eligible for deferred compensation.

88. To the extent Dondero purported to change the purpose of Highland Employee Retention Assets in February 2013, that amendment should be invalidated and ignored because it was self-dealing and a breach of fiduciary duty or the implied covenant of good faith and fair dealing. The purported amendment was inconsistent with the fundamental agreement of the parties when Highland Employee Retention Assets was established.

89. Judicial dissolution of Highland Employee Retention Assets is appropriate. The funds transferred from Highland Employee Retention Assets must be returned and then distributed to Daugherty as the sole remaining member.



**Count Three**  
**(Breach of Fiduciary Duties)**  
**(Against Highland ERA Management and Dondero)**

90. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

91. As a fiduciary, Highland ERA Management owed fiduciary duties to Highland Employee Retention Assets and its members. Fiduciary duties were not expressly disclaimed in Highland Employee Retention Assets' operating agreement.

92. Highland ERA Management is nothing more than a mere instrumentality or alter ego of Dondero. Thus, Dondero is bound by the same duties and liable for the same acts as his alter ego.

93. The adoption by Highland ERA Management, on the date of its formation, and Dondero of the Third Amended and Restated Agreement of Highland Employee Retention Assets was self-dealing and constituted a breach of fiduciary duties.

94. The execution of the Expense Allocation Agreement by Highland ERA Management, on the date of its formation, and Dondero, under which the parties reallocated 93.4 percent of Highland Capital's purported legal expenses related to the Texas Action to Highland Employee Retention Assets, was self-dealing and a breach of fiduciary duties.

95. The execution by Highland ERA Management and Dondero of the April 30, 2013 Assignment Agreement, declaring that Highland Capital held the “sole economic interest in [Highland Employee Retention Assets]” and transferring substantially all of the remaining non-cash assets of Highland Employee Retention Assets to Highland Capital (valued at approximately \$9,700,000 at the time), was self-dealing and a breach of fiduciary duties.

96. To the extent this claim is considered a derivative claim, Daugherty may bring such claim on behalf of Highland Employee Retention Assets. A member of a limited liability company interest may bring an action in the Court of Chancery in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

97. Efforts to cause the manager, Highland ERA Management (or its alter ego, Dondero), to bring this claim are not likely to succeed because Highland Capital and its affiliates, including Highland ERA Management, have a direct and material conflict of interest in the transactions that are challenged. That is, the funds wrongfully transferred from Highland Employee Retention Assets went to Highland Capital and Dondero.

98. Daugherty has standing to bring a derivative claim because he is currently a member of Highland Employee Retention Assets and was a member of Highland Employee Retention Assets at the time of the transactions of which he complains.

99. Given Highland Employee Retention Assets' and Highland Capital's arguments in the Texas Action that Daugherty's interest in Highland Employee Retention Assets was extinguished, it was not until the Texas Action became final and non-appealable in December 2016 that it was clear Daugherty remained a member of Highland Employee Retention Assets and had standing to pursue this claim.

**Count Four  
(Aiding and Abetting Breach of Fiduciary Duties)  
(Against Highland Capital)**

100. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

101. The drafting of the Third Amended and Restated Agreement of Highland Employee Retention Assets by Highland Capital and its agents constituted aiding and abetting breach of fiduciary duties.

102. The receipt by Highland Capital of the assets of Highland Employee Retention Assets pursuant to the April 30, 2013 Assignment Agreement constituted aiding and abetting fiduciary duties.

103. A fiduciary relationship existed between Highland ERA Management and its alter ego, Dondero, and Highland Employee Retention Assets; there was a breach of fiduciary duties, as described above; and there was knowing participation in that breach by Highland Capital and its agents.

104. To the extent this claim is considered a derivative claim, Daugherty may bring such claim on behalf of Highland Employee Retention Assets. A member of a limited liability company interest may bring an action in the Court of Chancery in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

105. Efforts to cause the manager, Highland ERA Management (or its alter ego, Dondero), to bring this claim are not likely to succeed because Highland Capital and its affiliates, including Highland ERA Management, have a direct and material conflict of interest in the transactions that are challenged. That is, the funds wrongfully transferred from Highland Employee Retention Assets went to Highland Capital and Dondero.

106. Daugherty has standing to bring a derivative claim because he is currently a member of Highland Employee Retention Assets and was a

member of Highland Employee Retention Assets at the time of the transactions of which he complains.

107. Given Highland Employee Retention Assets' and Highland Capital's arguments in the Texas Action that Daugherty's interest in Highland Employee Retention Assets was extinguished, it was not until the Texas Action became final and non-appealable in December 2016 that it was clear Daugherty remained a member of Highland Employee Retention Assets and had standing to pursue this claim.

**Count Five**  
**(Breach of Implied Covenant of Good Faith and Fair Dealing)**  
**(Against Highland ERA Management and Dondero)**

108. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

109. Under Delaware law, a duty of good faith and fair dealing is implied in every contract, including LLC agreements. The implied covenant requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct that has the effect of preventing the other party to the contract from receiving the fruits of the bargain.

110. The implied covenant of good faith and fair dealing required Highland ERA Management and Dondero to refrain from arbitrary or



unreasonable conduct that benefited themselves at the expense of Highland Employee Retention Assets and its unit holders.

111. The adoption by Highland ERA Management, on the date of its formation, and Dondero of the Third Amended and Restated Agreement of Highland Employee Retention Assets was a breach of the implied covenant of good faith and fair dealing.

112. The execution of the Expense Allocation Agreement by Highland ERA Management, on the date of its formation, and Dondero, under which they reallocated 93.4 percent of Highland Capital's purported legal expenses related to the Texas Action to Highland Employee Retention Assets, was a breach of the implied covenant of good faith and fair dealing.

113. The execution by Highland ERA Management and Dondero of the April 30, 2013 Assignment Agreement, declaring that Highland Capital held the "sole economic interest in [Highland Employee Retention Assets]" and transferring substantially all of the remaining non-cash assets of Highland Employee Retention Assets to Highland Capital (valued at approximately \$9,700,000 at the time), was a breach of the implied covenant of good faith and fair dealing.

**Count Six**  
**(Indemnification for Texas Action)**  
**(Against Highland Capital)**

114. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

115. As an officer and agent of Strand, Daugherty is indemnified against all liabilities, losses, and damages incurred by [him] by reason of any act performed or omitted to be performed in the name of or on behalf of [Highland Capital], or in connection with [Highland Capital's] business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however*, [Highland Capital] shall have no obligation to indemnify and hold harmless [Daugherty] for any action or inaction that constitutes gross negligence or willful or wanton misconduct.

Ex. K, § 4.1(h).

116. Daugherty successfully defended all claims and allegations against him in the Texas Action that were based on his employment performance on behalf of Highland Capital. Indeed, those allegations and claims were "non-suited" on the eve of trial. Daugherty's only liability related to post-employment retention of information, for which zero damages were awarded.

117. Daugherty incurred substantial attorneys' fees in defending the baseless and unproven allegations regarding his performance as a Highland Capital employee. He is entitled to be indemnified for those fees.

**Count Seven  
(Fees on Fees)  
(Against Highland Capital)**

118. Daugherty restates each of the foregoing allegations as if fully set forth in this paragraph.

119. Daugherty is entitled to fees on fees in prosecuting his indemnification rights against Highland Capital in this action. Such a right is not specifically excluded from the Highland Partnership Agreement.

WHEREFORE, Daugherty respectfully requests that the Court:

- a. enter judgment in favor of Daugherty and against Highland Capital, Highland Employee Retention Assets, Highland ERA Management, and Dondero;
- b. order Highland Capital, Highland Employee Retention Assets, Highland ERA Management, and Dondero to satisfy the judgment against Highland Employee Retention Assets and in the Texas Action;
- c. order Highland Capital and Dondero to return to Highland Employee Retention Assets all of the assets that Highland Capital

fraudulently or otherwise wrongfully caused to be transferred from Highland

Employee Retention Assets to Highland Capital or Dondero;

d. declare that Daugherty remains a member of Highland Employee Retention Assets;

e. declare that Daugherty is the sole member of Highland Employee Retention Assets;

f. dissolve Highland Employee Retention Assets and distribute its assets to Daugherty;

g. declare that Highland ERA Management and Dondero breached their fiduciary duties owed to Highland Employee Retention Assets and its unit holders;

h. declare that Highland Capital aided and abetted Highland ERA Management and Dondero's breach of fiduciary duties;

i. declare that Highland ERA Management and Dondero breached the implied covenant of good faith and fair dealing;

j. award Daugherty indemnification for costs, including attorneys' fees, incurred in defending the Texas Action;

k. award Daugherty fees on fees in prosecuting this action;

l. award Daugherty pre- and post-judgment interest;

- m. award Daugherty his reasonable costs and expenses incurred in connection with this action, including reasonable attorneys' fees; and
- n. grant such other relief that is just and proper.

/s/ Thomas A. Uebler

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Jeremy D. Eicher (#5093)  
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*Attorneys for Patrick Daugherty*

Dated: July 6, 2017



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY,

Plaintiff,

v.

HIGHLAND CAPITAL  
MANAGEMENT, L.P., HIGHLAND  
EMPLOYEE RETENTION ASSETS  
LLC, HIGHLAND ERA  
MANAGEMENT LLC, and JAMES  
DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,

Nominal Defendant.

C.A. No.

**VERIFICATION**

I, Patrick Daugherty, having been duly sworn, state that I have read the Verified Complaint, and the statements made therein are true to the best of my knowledge, information, and belief.

00420060

003631

  
Patrick Daugherty

SWORN TO AND SUBSCRIBED before me this 5<sup>th</sup> day of July, 2017.

  
Notary Public



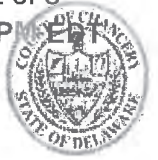
## **EXHIBIT 59**

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EFiled: Aug 23 2017 02:07PM

Transaction ID 61023157

Case No. 2017-0488-SG



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,  
HIGHLAND ERA MANAGEMENT LLC,  
and JAMES DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,

Nominal Defendant.

C.A. No.: 2017-0488-SG

**MOTION TO DISMISS VERIFIED COMPLAINT**

Defendants Highland Capital Management, L.P. ("Highland"), Highland Employee Retention Assets LLC ("HERA"), Highland ERA Management LLC ("HERA Management"), and James Dondero ("Dondero," collectively, "Defendants"), by and through their undersigned counsel, hereby move to dismiss Patrick Daugherty's ("Daugherty") Verified Complaint (the "Verified Complaint" or "Compl.") on the grounds set forth below and as will be more fully argued in

Defendants' forthcoming briefs in support of this Motion, to be filed in accordance with a schedule to be proposed by the parties or as ordered by the Court.<sup>1</sup>

Count I of the Verified Complaint asserts a claim of fraudulent transfer against all Defendants in connection with the transfer of HERA's funds to Highland. *See* Compl. at ¶ 70. The assets in question were transferred from HERA to Highland on April 30, 2013, thus Count I is time barred by the applicable statute of limitations under 6 *Del. C.* § 1309. Count I is also barred by the doctrines of collateral estoppel and/or res judicata because these issues were the subject of counterclaims and third-party claims that Daugherty asserted against HERA, Highland, and Dondero, amongst others, in a previous lawsuit, and were determined by a Texas state District Court in ruling on such claims during 2013 and 2014. In addition, Count I fails as to Dondero because Daugherty has not sufficiently pled allegations supporting a finding of alter ego as required to establish liability against Dondero.

Count II of the Verified Complaint asserts a claim seeking the judicial dissolution of HERA pursuant to 6 *Del. C.* § 18-802. *See* Compl. at ¶ 87. Judicial dissolution of a Delaware limited liability company is appropriate "whenever it is

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<sup>1</sup> The description of the grounds for dismissal described herein is intended to apprise Daugherty of the bases for dismissal of the Verified Complaint and are not intended to preclude any additional arguments Defendants may make in their brief in support of this Motion.



not reasonably practicable to carry on the business in conformity with a limited liability company agreement.” 6 *Del. C.* § 18-802. Under Section 2.1 of the Third Amended and Restated Limited Liability Company Agreement of Highland Employee Retention Assets LLC adopted February 1, 2013 (the “Third HERA LLC Agreement”), the purpose of HERA “shall be to do all such things for which limited liability companies may be formed under the Act.” Compl., Ex. D, § 2.1. Daugherty fails to allege that HERA cannot fulfill this broad purpose. Daugherty instead claims that the adoption of the Third LLC Agreement was a breach of fiduciary duty or the implied covenant of good faith. Compl. at ¶ 88. The adoption of the Third LLC Agreement occurred four years and five months before the Complaint was filed. Any claim of breach of fiduciary duty or breach of the implied covenant of good faith and fair dealing Daugherty may have had arising from the adoption of the Third LLC Agreement is barred by the statute of limitations under 8 *Del. C.* § 8106(a) and the doctrine of laches. Therefore, Count II must be dismissed for failure to state a claim for which relief can be granted.

Count III of the Verified Complaint asserts a claim of breach of fiduciary duty against HERA Management and Dondero, arising from: (i) the adoption of the Third HERA LLC Agreement on February 1, 2013 (Compl. ¶ 93), (ii) the execution of an Expense Allocation Agreement by HERA Management on February 1, 2013 (*id.* at ¶ 94), and (iii) “[t]he execution by [HERA Management]

and Dondero of the April 30, 2013 Assignment Agreement” and simultaneous transfer of assets from HERA to Highland (*id.* at ¶ 95). Count III of the Verified Complaint is time barred by the doctrine of laches given the applicable statute of limitations. Count III is also barred by the doctrines of collateral estoppel and/or res judicata because these issues were the subject of counterclaims and third-party claims, including claims for breach of fiduciary duty and shareholder oppression, that Daugherty asserted against Dondero, amongst others, in a previous lawsuit, and were determined by a Texas state District Court in ruling on such claims during 2013 and 2014. Further, Count III fails because the limited liability company agreement in question eliminates any and all liabilities for breach of fiduciary duties. Moreover, Count III fails with respect to Dondero as Daugherty has not established that Dondero—who was neither a manager nor member of HERA—owed any fiduciary duties to Daugherty with respect to his HERA interest. Finally, Count III fails because Daugherty has not identified any breach, particularly in light of the application of the business judgment rule.

Count IV of the Verified Complaint asserts a claim of aiding and abetting breach of fiduciary duty against Highland arising from: (i) the drafting of the Third HERA LLC Agreement (Compl. at ¶ 101), and (ii) the receipt by Highland of HERA’s assets pursuant to the April 30, 2013 Assignment Agreement (*id.* at ¶ 102). Count IV of the Verified Complaint is time barred by the doctrine of laches given

the applicable statute of limitations. Count IV is also barred by the doctrines of collateral estoppel and/or res judicata because these issues were the subject of counterclaims and third-party claims, including claims for breach of fiduciary duty and shareholder oppression, that Daugherty asserted against Dondero, amongst others, in a previous lawsuit, and were determined by a Texas state District Court in ruling on such claims during 2013 and 2014. In addition, as Count IV is contingent upon finding a violation with respect to the underlying breach asserted in Count III, Count IV fails for the same reasons Count III fails.

Count V of the Verified Complaint asserts a claim of breach of the implied covenant of good faith and fair dealing arising from the same conduct underlying Count III. Count V of the Verified Complaint merely restates Count IV. Additionally, all of the alleged conduct giving rise to the claim asserted in Count V of the Verified Complaint occurred, at a minimum, four years and two months before the Complaint was filed. *See* Compl. at ¶¶ 111-113. Claims of breach of the implied covenant of good faith and fair dealing are subject to the same statute of limitations under 8 *Del. C.* § 8106(a) as all other contracts claims. Therefore, Count V of the Verified Complaint must be dismissed. Finally, Count V fails to state a claim of breach of the implied covenant under applicable precedent and should be dismissed.

Count VI of the Verified Complaint asserts a claim of indemnification pursuant to the Second Amended Highland Limited Partnership Agreement (“Highland Partnership Agreement”) arising from fees that Daugherty purportedly incurred in defending certain allegations asserted in the Texas litigation relating to his performance as a former employee of Highland. Daugherty’s employment with Highland was terminated effective September 28, 2011, and the claims at issue were non-suited on January 14, 2014. *See* Compl. at ¶ 71. Count VI of the Verified Complaint is time barred by the statute of limitations under 8 *Del. C.* § 8106(a). Count IV also fails because the Texas lawsuit claims at issue relate to Daugherty’s personal contractual obligations, as opposed to acts performed in the name of Highland.

Count VII of the Verified Complaint asserts a claim of fees on fees against Highland, seeking recovery of fees incurred in prosecuting this lawsuit based on an indemnification provision set forth in the Highland Partnership Agreement. Count VII arises from the same conduct underlying Count VI, thus fails for the same reasons Count VI fails.

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Dated: August 23, 2017



## **EXHIBIT 60**

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Transaction ID 61153205



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY,

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT,

L.P., HIGHLAND EMPLOYEE

RETENTION ASSETS LLC,

HIGHLAND ERA MANAGEMENT LLC,

and JAMES DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE

RETENTION ASSETS LLC,

Nominal Defendant.

C.A. No.: 2017-0488-SG

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Dated: September 22, 2017

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**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY

Plaintiff,

V.

HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,  
HIGHLAND ERA MANAGEMENT LLC,  
and JAMES DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC.

### Nominal Defendant.

C.A. No.: 2017-0488-SG

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**OPENING BRIEF IN SUPPORT OF  
MOTION TO DISMISS VERIFIED COMPLAINT**

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Highland Capital Management, L.P. (“**Highland**”), Highland Employee Retention Assets LLC (“**HERA**”), Highland ERA Management LLC (“**HERA Management**”), and James Dondero (“**Dondero**,” collectively, “**Defendants**”) respectfully submit this opening brief in support of their Motion to Dismiss Verified Complaint [Tr. Id. No. 61023157] (the “**Motion**”), and respectfully state as follows:

### **SUMMARY OF ARGUMENT<sup>1</sup>**

The Complaint is the latest iteration of Daugherty’s mission to “settle the score” with his former employer and its executives. That battle already resulted in litigation spanning five years, a three-week jury trial, and a Final Judgment from the Texas Court (which was affirmed on appeal) that rejected nearly all relief Daugherty sought and ordered him to pay \$2.8 million in attorneys’ fees.

This Court should grant the Motion for several reasons. First, all of Daugherty’s claims are based on actions that occurred in 2013. Daugherty cannot dispute that by July 2013, at the latest, he knew all the facts about which he now complains. Nevertheless, Daugherty chose to wait until July of 2017 to take a

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<sup>1</sup> Capitalized terms used but not defined in this Summary of Argument are identified below.

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second bite at the apple by repackaging his claims for this Court. Each claim in the Complaint is time barred, as reflected in the chart below.

Counts	Date Accrued	Event	Bar Date
I, III, IV	April 1, 2013	Transfer of assets from HERA to Highland	April 30, 2016 (III & IV) April 30, 2017 (I)
III, IV, V	Feb. 1, 2013	HERA Third LLC Agreement	Feb. 1, 2016
III, IV, V	Feb. 1, 2013	Expense Allocation Agreement	Feb. 1, 2016
I, III, IV, V	April 1, 2013	Assignment Agreement	April 30, 2016 (III, IV, V) April 30, 2017 (I)
VI	Jan. 14, 2014	Non-suit of Highland Employment Claims	Jan. 14, 2017

Second, the ultimate question posed in Daugherty's Complaint—whether it was unlawful for Defendants to amend the HERA limited liability company agreement and execute certain corporate documents that resulted in a transfer of all of HERA's assets—has already been decided by the Texas Court. As a result, the claims are barred by the doctrines of res judicata and/or collateral estoppel. Any reconsideration of these issues would waste the parties' time and this Court's resources. The Texas Court considered and dismissed as meritless the majority of Daugherty's claims. This Court should do the same.

Each of the claims fails on its merits as well, Count I fails because the Complaint fails to plead particular facts sufficient to support a claim for fraudulent transfer, or a finding of alter ego against Dondero. Count II, which seeks

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dissolution of HERA, fails because the current operating agreement of HERA provides that the purpose of the company is “to do all such things for which limited liability companies may be formed” and Daugherty fails to allege facts showing that HERA cannot achieve this purpose. Counts III and IV fail because the fiduciary duties in question were disclaimed under the applicable limited liability company agreement and Daugherty has not identified any fiduciary duties owed by Dondero, who was neither a manager nor a member of HERA. Count V asserts a claim of breach of the implied covenant of good faith and fair dealing for the same conduct underlying Count III. This claim fails because (a) Daugherty never identifies the contract at issue, (b) he never identifies a specific implied term to be added to any contract, and (c) it is barred by the statute of limitations applicable to contract claims under 10 *Del. C.* § 8106(a). Finally, Count VI, Daugherty’s claim for indemnification for fees incurred in defending claims that were non-suited, must be dismissed as the claims were based on his personal obligations, as must Count VII, a claim for fees on fees arising from the same underlying conduct.

#### **PROCEDURAL HISTORY**

Daugherty commenced this action by filing his Verified Complaint (the “**Complaint**” or “**Compl.**”) on July 5, 2017 [Tr. Id. No. 60811368].

On August 23, 2017, Defendants filed the Motion.

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On September 7, 2017, this Court entered an order approving a Stipulation and Order Governing Briefing on Defendants' Motion to Dismiss [Tr. Id. No. 61083215], pursuant to which Defendants timely submit their brief (this "**Brief**") in support of the Motion.

### **FACTUAL BACKGROUND**

#### **A. Background of the Parties' Relationship.**

Daugherty was a partner and senior executive at Highland until he resigned in September 2011. Compl. ¶¶ 10, 21. Through his employment, Daugherty received an interest in HERA. Compl. ¶¶ 18-20.

#### **B. The Formation of HERA and Its Purpose.**

HERA is an employee retention assets fund, available to Highland's current and former employees who hold vested Series A Preferred Units. HERA's original purpose was "to receive and hold assets" contributed by Highland "and to distribute the proceeds of such assets from time to time to certain [Highland] employees...as the Board may from time to time determine in order to create a retention incentive for such employees..." Compl. Exs. A at 1, C § 2.1.

Under the Limited Liability Company Agreement of HERA (the "**HERA Agreement**") dated October 26, 2009, HERA was managed by a Board of Directors, which was charged with receiving, holding, and distributing the assets

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contributed by Highland. Compl. Ex. A § 4.1, § 2.1. The Board enjoyed broad power and discretion in overseeing HERA. Section 5.4 of the HERA Agreement sets forth the powers of the Board:

The Board shall have the sole right, power and authority, in the management of the business and affairs of the Company, to do or cause to be done any and all acts deemed by the Board to be necessary or appropriate to effectuate the business, purposes and objections of the Company at the expense of the Company, including but not limited to the execution of all documents or instruments in all matters necessary, desirable, convenient or incidental to the purpose of the Company or the making of investments of Company funds.

Section 5.2 of the HERA Agreement addresses the powers delegated to the Board, and provides, in relevant part, as follows:

[T]he Board shall have the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in the Board's sole and absolute discretion, to operate the Company and its business and to make all determinations or elections or to consent to any matter otherwise described in this Agreement. (emphasis added)

Section 5.2(b) limits the power of the Board by requiring "the prior affirmative vote or written consent of at least 75% of the members of the Board" to "amend, alter, change or repeal any of the provisions of this Agreement. *Id.*

C. **The HERA Board Unanimously Approves the Second Amended and Restated LLC Agreement of HERA.**

On February 16, 2012, HERA's Board *unanimously* passed a *Written Consent of Board of Directors* which removed Daugherty from the Board in

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accordance with the HERA Agreement, the Written Consent, and Section 18-402 of the Delaware Limited Liability Company Act (the “LLC Act”), 6 *Del. C.* § 18-402. *See* Compl., Ex. B.

That same day, the Board *unanimously* approved and enacted the Second Amended and Restated Limited Liability Company Agreement of HERA (the “Second Amended LLC Agreement”). *See id.*, Ex. C. The Second Amended LLC Agreement added a Dispute Resolution provision (Section 12.1) and a Confidentiality provision (Section 12.2). Compl., at ¶ 24. The Dispute Resolution provision provides, in relevant part:

In the event any Member or holder of units...commences litigation or...otherwise initiates any dispute or makes any claim...related to the [HERA], or the management or operation thereof *or the assets held thereby*...against [HERA], any Member thereof, any officer or director or other agent or representative...or that in any way does or could adversely impact any of the assets held by [HERA], then with the consent of 75% of the Board, all pending and future distributions to the Disputing Party shall be immediately suspended and held in escrow by the [HERA]...until the final, non-appealable resolution of the Dispute, *it being understood that the expiration of any applicable statute of limitations...shall constitute such a resolution.*

Compl, Ex. C at § 12.1 (emphasis added). As Daugherty acknowledges, it further provides that:

If the litigating member does not prevail, the full costs of the litigation, including attorneys’ fees, are deducted from the escrow account and the balance will be distributed to the litigating member.

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However, *even if the litigating member prevails, the Board has sole discretion to withhold the escrowed funds to cover any diminution in value to HERA “resulting from or in connection with” the litigation, as determined by the Board in its sole discretion.* Any withheld funds are to be reallocated to the other Preferred Unit holds on a pro-rate basis.

Compl. ¶ 24 (emphasis added).

**D. The Initiation of the Texas Action.**

On April 1, 2012, Highland initiated a lawsuit (the “Texas Action”) in Texas state court (the “Texas Court”) against Daugherty based on, among other things, his misappropriation, misuse, and disclosure of Highland’s confidential and proprietary information in violation of his fiduciary duties. Compl., Ex. L.

On May 22, 2012, Daugherty filed a Counterclaim and Third-Party Petition. *See Exhibit A.*<sup>2</sup> Daugherty included causes of action based on the amendments to the HERA operating documents, claiming they “would allow the entity to terminate the payments and ownership interests if the board, in its sole discretion, determined that a former employee violated the terms of the confidentiality provisions in [Highland’s] employment agreement” and “cause any former employee to forfeit his interest if he or she ever brought suit against [Highland],”

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<sup>2</sup> Exhibits not attached to the Complaint referenced herein are attached to the *Transmittal Affidavit of Nicholas J. Brannick in Support of Opening Brief in Support of Motion to Dismiss Verified Complaint* filed with this Brief.

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and “effectively made it impossible for anyone to enforce collection under the rewards program.” *Id.* ¶ 106.

**E. The HERA Board Unanimously Approves the Third Amendment to the Second Amended LLC Agreement, and Highland Purchases a Majority-in-Interest of the Company’s Series A Preferred Units.**

In January 2013, Highland issued Offers to Purchase to HERA’s Series A Preferred Unit holders, including Daugherty. *See* Compl. at ¶ 29; *see also* Exhibit B (“Summary Judgment Response”), at 13-16.<sup>3</sup>

On January 18, 2013, HERA’s Board *unanimously* approved and enacted the Third Amendment to the Second Amended LLC Agreement, which confirmed that the holders of a majority-in-interest of the Company’s Series A Preferred Units had accepted Highland’s January 18, 2013 Offer to Purchase, and clarified:

from and after the date of this Agreement and until the date on which all assets of [HERA] have been distributed in full, [HERA] may amend, alter, change, or repeal any of the provisions of this Agreement...only upon either the prior affirmative vote or written consent of at least 75% of the members of the Board or as determined by the Member(s) holding a majority-in-interest of the Series A Preferred Units.

Exhibit C § 5.2(c). As a result, Highland became the sole Member on the HERA Board. Compl., Ex. C § 5.1.

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<sup>3</sup> Exhibit B is a true and correct copy of the Summary Judgment Response. Only certain exhibits are being attached due to the volume of exhibits attached to the Summary Judgment Response.

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**F. The HERA Members Holding a Majority-in-Interest Adopt the Third Amended and Restated LLC Agreement of HERA.**

On February 1, 2013, HERA and Highland, as the Initial Member and holder of at least a majority-in-interest of the Series A Preferred Units, adopted the Third Amended and Restated Limited Liability Company Agreement of HERA (the “**Third Amended LLC Agreement**”). *See* Compl. Ex. D. The Third Amended LLC Agreement named HERA Management the sole Manager of HERA (*id.*, § 5.1), and vested it with “the exclusive and complete authority, acting without the consent or approval of, or notice to, the Member and in the Manager’s sole and absolute discretion, at the Company’s expense, to operate the Company and its business and to make all determinations or elections” in carrying out the powers of the Company.” *Id.* §§ 5.1, 5.2.

Additionally, the Third Amended LLC Agreement amended section 2.1 of the Second Amended LLC Agreement to provide that “the purpose of [HERA] shall be to do all such things for which limited liability companies may be formed under the [LLC] Act.” *Id.* at § 2.1.

Later, on February 1, 2013 and April 30, 2013, HERA Management executed the other two agreements that serve as the basis of the Complaint, namely the Expense Allocation Agreement and Assignment Agreement.

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**G. Daugherty's Counterclaim and Third-Party Petition.**

On May 7, 2013, Daugherty filed his Third Amended Counterclaim and Third-Party Petition in the Texas Action, asserting claims against Highland, HERA, and Dondero, which mirror those set forth in the Complaint. Specifically, Daugherty alleged defendants “deprived Daugherty of his valuable ownership interest in HERA by improperly zeroing out the value of Daugherty’s units in HERA.” See Exhibit D (“**Third Amended Counterclaim**”) at ¶ 121.

In connection with the alleged deprivation of his HERA interest, Daugherty asserted, *inter alia*, claims for: (i) breach of the LLC Agreement against HERA and Highland based on “[t]he unilateral decision of [Highland] and HERA to amend the Agreement to divest Daugherty of his valuable ownership interest...;” (ii) Shareholder oppression and breach of fiduciary duty (asserted derivatively) against Dondero for allegedly “zeroing out the value of Daugherty’s interests in HERA, and amending the HERA LLC Agreement; (iii) conversion against HERA, Highland, and Dondero for wrongfully exercising dominion and control over his interests in HERA; and (iv) breach of covenant of good faith and fair dealing against Dondero for amending the HERA LLC Agreement, and “zeroing out the value of Daugherty’s interests in HERA...” *Id.* at ¶¶ 159-176.

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On August 15, 2013, Highland and Dondero moved for summary judgment on Daugherty's claims involving his HERA interest for breach of fiduciary duty, minority shareholder oppression, breach of implied covenant of good faith and fair dealing, and conversion, amongst others. See Exhibit E ("**Motion for Summary Judgment**").

In his October 21, 2013 Summary Judgment Response, Daugherty expounded upon his causes of action, clarifying the claims are, in fact, the same as those he is now attempting to assert in this lawsuit, including as follows:

[O]n February 1, 2013, [HERA Management] as the majority-holder of units in HERA, adopted the Third Amended and Restated HERA Agreement, which did away with HERA's Board and gave sole power and authority over HERA's affairs to Dondero, as the president of [HERA Management]...changed the purpose of HERA from being a retention incentive vehicle for Highland employees, and reiterated that Dondero had the power to operate the company, dissolve the company, or sell or *transfer the assets of the company without approval of or notice to any member of HERA*...[and] allowed Dondero, as HERA's Manager, to deduct from all pending and future distributions to Daugherty all of the costs, losses and expenses incurred in...litigation, *regardless of whether Daugherty succeeded at trial*. (See Exhibit B, at pp.16-17).

[On February 1, 2013], Dondero as Manager of HERA, executed [the Expense Allocation Agreement] that allocated...93.4% of Highland's attorneys' fees...against the value of Daugherty's units. (*Id.* at p.17).

[T]he Third Amended Agreement was used to take the value of Daugherty's units to zero... (*Id.* at p.18)

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HERA was entirely divested of all assets, both in cash and in equities...*it is undisputed at this time that HERA...no longer contains any assets.* (*Id.* at p.18) (emphasis added).

On October 28, 2013, the Texas Court granted summary judgment in favor of Highland and Dondero with respect to each of the aforementioned claims asserted in connection with Daugherty's HERA interest. *See Exhibit F.*

On November 13, 2013, Daugherty filed a Motion for Leave to File a Fourth Amended Counterclaim and Third-Party Petition, requesting permission to file a late amendment, through which he admitted the Third Amended LLC Agreement and Expense Allocation Agreement—documents Daugherty had already cited in his previous briefing, including his October 21, 2013 Summary Judgment Response—were produced to him *on July 25, 2013*. *See Exhibit G* (“**Fourth Amended Counterclaim**”) at ¶ 4; *see also Exhibit B* (Summary Judgment Response) at pp.16-17. On December 9, 2013, the Texas Court denied Daugherty's motion. *See Exhibit H.*

On January 13, 2014, a three-week jury trial commenced in the Texas Action. All three agreements underlying this action, namely the Third Amended LLC Agreement, Expense Allocation Agreement, and Assignment Agreement, were included in Daugherty's trial exhibits. *See Exhibit I* (Jan. 6, 2014 Daugherty's Trial Ex. List) at Nos. 73, 75, and 79. The jury ultimately found

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Daugherty had violated fiduciary duties owed to Highland, and was responsible for \$2.8 million in attorneys' fees incurred by Highland. Compl., Ex. H, Ex. 1. On July 14, 2014, the Texas Court entered its Final Judgment, based on the jury's findings, awarding Highland \$2.8 million and permanently enjoining Daugherty from using or otherwise disclosing confidential information belonging to Highland or its affiliates. *Id.* The Final Judgment was affirmed by the appellate court. *Id.* ¶ 49.

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**QUESTIONS PRESENTED**

- 1) Are Counts I, III and IV barred by the doctrines of res judicata and collateral estoppel?
- 2) Should Count I be dismissed because Daugherty failed to (a) timely bring this claim, (b) plead fraud with particularity, or (c) identify grounds for piercing the corporate veil?
- 3) Should Count II be dismissed because HERA can continue to carry on its business in conformity with the Third Amended LLC Agreement?
- 4) Should Count III be dismissed because Daugherty failed to (a) timely bring this claim or (b) identify an obligation breached?
- 5) Should Count IV be dismissed because Daugherty failed to (a) timely bring this claim or (b) identify an underlying breach?
- 6) Should count V be dismissed because Daugherty failed to (a) identify the contract he claims was breached (b) identify a specific contractual obligation breached or (c) timely bring this claim.
- 7) Should Count VI be dismissed because Daugherty failed to (a) timely bring this claim or (b) identify claims directed at Daugherty's official capacity that are subject to contractual indemnification?
- 8) Should Count VII be dismissed because Daugherty failed to identify any right to fees on fees?

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## **LEGAL STANDARD**

### **I. Standard Under Rule 12(b)(6).**

“The standard of review for a motion to dismiss pursuant to a Court of Chancery Rule 12(b)(6) motion is well settled: ‘(i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are well-pleaded if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the nonmoving party; and (iv) dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.’” *Beach to Bay Real Estate Ctr. LLC v. Beach to Bay Realtors Inc.*, 2017 WL 2928033, at \*5 (Del. Ch. Jul. 10, 2017) (quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).

Delaware’s “reasonably conceivable set of circumstances” standard for determining a motion to dismiss is, by our courts’ own admission, unusually generous to the poorly pled complaint. *See, e.g., Winshall v. Viacom Int’l, Inc.*, 55 A.3d 629, 636 n.23 (Del. Ch. 2011) (noting that Delaware’s standard is less stringent than federal standard); *Doppelt v. Windstream Holdings, Inc.*, 2016 WL 612929, at \*4 (Del. Ch. Feb. 5, 2016) (describing Delaware standard as “lenient”); *Beach to Bay Real Estate Ctr. LLC*, 2017 WL 2928033, at \*5 (same). Nevertheless, “a claim may be dismissed if allegations in the complaint or in the

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exhibits incorporated into the complaint effectively negate the claim as a matter of law.” *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001). Additionally, “the Court need not ‘accept conclusory allegations unsupported by specific facts ... or draw unreasonable inferences in favor of the non-moving party.’” *Thermopylae Capital Partners, L.P. v. Simbol, Inc.*, 2016 WL 368170, at \*9 (Del. Ch. Jan. 29, 2016) (quoting *Price v. E.I. duPont de Nemours & Co., Inc.*, 26 A.3d 162, 166 (Del. 2011)); *see also Beach to Bay*, 2017 WL 2928033, at \*5.

Moreover, this lenient standard will not save from dismissal a claim that is deficient as a matter of law, such as claims that are barred by the applicable statute of limitations or laches or claims barred by issue or claim preclusion. *See, e.g., In re Tyson Foods, Inc. Consolidated S’Holder Litig.*, 919 A.2d 563, 586-87 (Del. Ch. 2007) (dismissing contract claims on motion to dismiss on statute of limitations grounds); *Gallagher v. Long*, 2013 WL 718773, at \*3 (Del. Ch. Feb. 28, 2013) (dismissing fiduciary duty claim) *aff’d* 65 A.3d 616 (Table), 2013 WL 1857552, at \*2 (Del. Apr. 30, 2013) (on motion to affirm), *cert. denied*, 134 S. Ct. 232 (2013); *In re Sirius XM S’holder Litig.*, 2013 WL 5411268, at \*4-6 (Del. Ch. Sep. 27, 2013) (dismissing fiduciary duty claims based on laches); *Asbestos Workers Local 42 Pension Fund v. Bammann*, 2015 WL 2455469, at \*14-20 (Del. Ch. May 21, 2015), *aff’d* 132 A.3d 749 (Del. 2016) (claims dismissed based on collateral

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estoppel applying New York law); *City of Providence v. Dimon*, 2015 WL 4594150, at \*6-10 (Del. Ch. July 29, 2015), *aff'd* 134 A.3d 758 (Del. 2016) (claims dismissed based on *res judicata* applying New York law).

## II. Reliance on Materials from Texas Action

In ruling on a motion to dismiss, the Court may consider (1) documents that are integral to a plaintiffs claim and are thereby incorporated into the complaint; or (2) documents that are not being relied upon to prove the truth of their contents. *In re Santa Fe Pac. Corp. S'Holder Litig.*, 669 A.2d 59, 69-70 (Del. 1995); *see also In re Morton's Rest. Group, Inc. S'holders Litig.*, 74 A.3d 656, 659 n. 3 (Del. Ch. 2013). Delaware courts have also considered additional materials from related litigation that were not attached to the complaint if the plaintiff relied on those materials in casting his complaint, as Daugherty has done with regard to the Texas Action. *See, e.g.*, Compl. ¶ 43 (citing Texas Action trial testimony) and Exs. A-G, K, L, M (documents produced in Texas Action); Exs. H, I (pleadings from Texas Action); *see also In re Morton's*, 74 A.3d at 659 n. 3; *In re Synthes, Inc. S'holder Litig.*, 50 A.3d 1022, 1026 (Del. Ch. 2012) ("Having premised their recitation of the facts squarely on [the Proxy Statement] and incorporated it, the plaintiffs cannot fairly, even at the pleading stage, try to have the court draw inferences in

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their favor that contradict that document, unless they plead non-conclusory facts contradicting it.” (citation omitted).

Furthermore, a claim may be dismissed if judicially noticeable facts effectively negate the claim as a matter of law. *See Malpiede*, 780 A. 2d at 1083. To the extent the Court finds that the Texas Action materials are not already subject to consideration based on Daugherty’s extensive reliance on them, Defendants respectfully request that the Court take judicial notice of the documents under Delaware Rule of Evidence 202(d)(2). *See Veney v. United Bank*, 2017 WL 3822657, at \*3 (Del. Super. Ct. Aug. 31, 2017) (granting motion to dismiss and taking judicial notice of pleadings from Virginia state court action).

### **ARGUMENT IN SUPPORT OF MOTION**

#### **I. Counts I, III, and IV Are Barred by Res Judicata or Collateral Estoppel**

Counts I, III, and IV of Daugherty’s claims are barred by res judicata and collateral estoppel, as those claims spring from disputes that have already been resolved in Texas. Those claims must be dismissed

##### ***A. Delaware Courts Provide Foreign Orders the Same Preclusive Effect as the Rendering Forum***

“Parties are not free to relitigate against the same party until they get the result they desire. The Federal Constitution expressly requires that every state give the judgments of its sister states full faith and credit.” *In re Wickes Trust*, 2008

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WL 4698477, at \*5 (Del. Ch. Oct. 16, 2008); U.S. Const. art. IV, § 1. This Court must therefore afford the Texas Court's orders the same preclusive effect that Texas courts provide. *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1217 (Del. 1991) (“[A] Delaware court must give the judgments of another state court the same preclusive effect as would a court in that state.”); *In re Wal-Mart Stores, Inc.*, 2016 WL 2908344, at \*1 (Del. Ch. May 13, 2016) (same; applying Arkansas law); *Pyott v. La. Mun. Police Emps.’ Ret. Sys.*, 74 A.3d 612, 616–17 (Del. 2013) (same; applying California law).

**B. *Res Judicata Bars Consideration of Daugherty’s Claims***

Res judicata, or claim preclusion, exists to bring an end to litigation, prevent vexatious litigation, maintain stability of court decisions, promote judicial economy and prevent double recovery. *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 449 (Tex. 2007); *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 191–92 (Del. 2009). For res judicata to apply, there must be (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims that were raised or could have been raised in the first action. *Daccach*, 217 S.W.3d at 449.

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Res judicata bars more than matters actually litigated; it also bars causes of action which arise out of the same subject matter and “which, through the exercise of diligence, *could have been* litigated in a prior suit.” *Hallco Tex., Inc. v. McMullen Cnty.*, 221 S.W.3d 50, 58 (Tex. 2007) (citing *Barr v. Resolution Tr. Corp.*, 837 S.W.2d 627, 628 (Tex. 1992)) (emphasis added); *see also LaPoint*, 970 A.2d at 192.

There is no dispute that the Texas Court had jurisdiction and that the Texas Action is final, satisfying the first element. The second and third elements are likewise satisfied, as discussed below.

1. The Parties are the Same As, or in Privity With, Those in the Texas Action

With respect to the second element, the parties to the present action—Dondero, Highland, HERA, and Daugherty—are the same as in the Texas Action. While not a named defendant, HERA Management is in privity with Dondero, Highland and HERA, and, therefore, protected under the doctrine of res judicata. *See, e.g., McDonald v. Houston Brokerage, Inc.*, 928 S.W.2d 633, 636 (Tex. Ct. App. 1996) (“A non-party defendant can assert res judicata so long as it is in privity with the named defendants.”).

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The purpose of the “privity exception” is to “ensure that a defendant is not twice vexed for the same acts.” *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 653 (Tex. 1996). Parties are in privity if they share an identity of interest in the basic legal right that is subject of the litigation. *Caprock Inv. Corp. v. Montgomery*, 321 S.W.3d 91, 96 (Tex. Ct. App. 2010, pet. denied). This may include persons who exert control over the action, persons whose interests are represented by the party, or successors in interest to the party. *Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 800-01 (Tex. 1992).

The allegations against HERA Management arise out of actions taken as Manager of HERA, and the claims in the Texas Action were based, in part, on actions taken by HERA, Highland, and Dondero while HERA Management was acting as HERA’s Manager. Texas and Delaware courts have found that principal-agent relationships may be sufficient to establish privity for claim preclusion, regardless which party to the relationship was first sued. *See, e.g., Better Bus. Bureau of Metro. Houston, Inc. v. John Moore Servs, Inc.*, 500 S.W.3d 26, 41 (Tex. Ct. App. 2016). Further, non-party defendants are entitled to take advantage of res judicata benefits that inured to the defendant from the prior action when the claims in the prior action necessarily implicated the same conduct of the non-party defendant. *Jeanes v. Henderson*, 688 S.W.2d 100 (Tex. 1985). The policy

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considerations underlying res judicata—promoting judicial economy, preventing vexatious litigation and avoiding inconsistent results—would be frustrated by allowing Daugherty to proceed against HERA Management. *Id.* at 105.

2. This Action Arises Out Of the Same Subject Matter as, and the Claims Could Have Been Brought in, the Texas Action

Texas, like Delaware and New York, applies the “transactional” approach to determine whether there is identity between the causes of action, under which, the nucleus of operative fact—rather than the type of relief requested, substantive theories advanced, or types of rights asserted—defines the claim. *Barr*, 837 S.W.2d 627, 631 (Tex. 1992). Under that approach, the subject matter of a suit is based on the factual matters that make up the gist of the complaint. *Id.* at 630. Any claim that arises out of those facts should be litigated in the same lawsuit. *Id.*

Under this rubric, the third element for res judicata is easily satisfied. All of Daugherty’s claims in both the Texas Action and this lawsuit arise out of the relationship between Defendants and Daugherty as a HERA unitholder. “When, as here, there is a legal relationship, such as under a...contract [like the HERA LLC agreements], all claims arising from that relationship arise from the same subject matter and are subject to res judicata.” *Springs v. Chase Auto Fin. Corp.*, 2007 WL 2410907 (Tex. Ct. App. Aug. 27, 2007) (citing *Genecov Group, Inc. v. Addicks—*

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*Fairbanks Road Sand Co.*, 144 S.W.3d 546, 553 (Tex. Ct. App. 2003, pet. denied); *Weiman v. Addicks–Faribanks Road Sand Co.*, 846 S.W.2d 414, 419 (Tex. Ct. App. 1992, writ denied). Daugherty’s claims in both lawsuits arise out of the amendments to the HERA LLC Agreement and actions taken to “zero[] out the value of Daugherty’s interests in HERA.” See Exhibit D (Third Amended Counterclaim) at ¶¶ 161-170, 173-176. Such claims should be combined since they involve common core facts. *Genecov*, 144 S.W.3d at 553 (when the same facts are involved, two trials should be avoided by combining the claims between the parties in one suit.); see also *Strange v. Estate of Lindemann*, 408 S.W.3d 658, 660-62 (Tex. Ct. App. 2013, no pet.).

Daugherty cannot avoid the application of res judicata by recasting his claims for transferring all assets out of HERA as a different cause of action. Res judicata bars a second suit even if the plaintiff does not allege the same causes of action asserted in the first proceeding. *Amstadt*, 919 S.W.2d at 654; see also *Barr*, 837 S.W.2d at 631 (second lawsuit alleging partner’s personal liability on partnership note due to his status as a partner was foreclosed by its prior lawsuit on partner’s personal guarantee); accord *Trans World Airlines, Inc. v. Hughes*, 317 A.2d 114, 119 (Del. Ch. Feb. 19, 1974) (“a plaintiff will not be permitted, after losing a case on one theory, to pursue a different theory based on the same proof

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which has been rejected in the first action.”). Barred “from litigating that [his] rights were breached based on “[t]he unilateral decision of [Highland] and HERA to amend the Agreement to divest Daugherty of his valuable ownership interest” HERA], [Daugherty] cannot seek to escape that bar by bringing a different claim.” *Levinhar v. MDG Medical, Inc.*, 2009 WL 4263211, at \*12, n. 55 (Del. Ch. Nov. 24, 2009) (shareholder’s tortious interference claim barred by res judicata, even though it was not a party to the prior action and the prior action involved a claim for breach of contract only).

Daugherty could have asserted the claims in Counts I, III and IV in the Texas Action. The focal point of both the Texas Action and this lawsuit is the amendments to the HERA operating documents that allowed all of the assets to be transferred at HERA Management’s discretion. The Court of Chancery’s holding in *Dimon* is instructive. *See*, 2015 WL 4594150, \*6. There, the Court dismissed under res judicata a derivative suit, which sought to hold the company’s board and officers liable for over \$2 billion lost through a series of settlements and consent orders because an agreement that was the focal point of a prior New York action was the centerpiece of the settlements and consent orders challenged in the Delaware lawsuit. The Court rejected plaintiff’s argument that, for res judicata to

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bar subsequent litigation, the “same evidence” must be needed to “support both claims,” and the “facts essential to the second” must be “present in the first.” *Id.*

Daugherty will no doubt argue that his fraudulent transfer claim is not subject to res judicata because he was not permitted to file his untimely Fourth Amended Counterclaim in the Texas Action. However, those pleadings (and his Summary Judgment Response) demonstrate that Daugherty could have brought the claims in the Texas Action. *John Moore Servs., Inc.*, 500 S.W.3d at 42 (amended petition in prior action that named parties sued and claims brought in second suit presumptively established plaintiff *could have* added the parties and claims, despite the fact the untimely petition was struck). Daugherty requested leave to amend based on the fact he had allegedly learned about the Expense Allocation Agreement and the Third Amended LLC Agreement in *July of 2013*, including its “new capital account provisions” adopted by HERA Management. See Exhibit G at ¶¶ 4-5. Daugherty alleged the adoption of the agreements “had the effect of zeroing out any economic interest held by Daugherty in HERA,” and “that his interest in HERA had been...economically eliminated and...could not be restored even if he were to prevail in this lawsuit.” *Id.* As in *Moore*, Daugherty’s decision to forego amendment of his pleadings until the eve of trial was within his control,

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and cannot defeat the application of res judicata. *John Moore Servs., Inc.*, 500 S.W.3d at 42.

3. Res Judicata Should Bar Daugherty's Claim as a Matter of Public Policy

Res judicata also applies, for reasons of “public policy.” See *Orloff v. Schulman*, 2005 WL 3272355, at \*9 (Del. Ch. Nov. 23, 2005). “Courts need not spare plaintiffs from the bar of res judicata if the important purposes of judicial efficiency and finality that the doctrine serves would be foiled.” *Id.* Analogous to the case at bar, the *Orloff* court found the complaint in the prior New York action alleged “substantially identical breaches of fiduciary duty as those raised in the current case,” noting “[a]lthough the Delaware claims were “superficially different,” with different reasons why the actions constituted breach, “such claims are plainly of the same kind and about the same transaction advanced in the New York action.” *Id.* Just as in *Orloff*, “to allow [Daugherty] to proceed with a derivative suit would be to cut the heart out of the previous adjudication, conducted at great length and expense in [Texas].” *Id.*

C. *Counts I, III, and IV Are Likewise Barred by Collateral Estoppel*

Issue preclusion, or collateral estoppel, prevents re-litigation of particular issues of fact or law already resolved in a prior suit. *Barr*, 837 S.W.2d at 628-29.

To establish collateral estoppel, a party must demonstrate that: (1) the facts sought

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to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *John G. & Marie Stella Kenedy Mem'l Found. v. Dewhurst*, 90 S.W.3d 268, 288 (Tex. 2002); *Bonniwell v. Beech Aircraft Corp.*, 663 S.W.2d 816, 818 (Tex. 1984) (holding collateral estoppel bars re-litigation of any ultimate issue of fact actually litigated and essential to judgment, regardless of whether second suit is based on same cause of action).

Like Delaware, Texas has rejected the mutuality requirement to apply collateral estoppel, meaning a defendant may invoke the doctrine even if it did not participate in the first suit: it is only necessary that the party against whom the plea of collateral estoppel is asserted be a party or in privity with a party in the prior litigation. *John Moore Servs., Inc.*, 500 S.W.3d at 44; *see also Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1217 (Del. 1991).

Here, because each of the four requirements is met, and because Daugherty was the Counter/Cross-Plaintiff in the Texas Action, he is estopped from asserting Counts I, III, and IV. While Daugherty has repackaged his allegations in new causes of action, the underlying factual assertions were fully litigated and determined in the Texas Action. Daugherty alleges HERA Management and Dondero breached their fiduciary duties, and Highland aided in such breach, by:

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- (i) adopting the February 1, 2013 Third HERA LLC Agreement, which “eliminated the purpose for which [HERA] was created; the requirement of [HERA] to make cash distributions to unit holders to cover pass-through tax obligations attributable to [HERA]; and members’ rights to indemnification.” Compl. ¶¶ 33, 93
- (ii) executing the February 1, 2013 Expense Allocation Agreement, “under which the parties reallocated 93.4 percent of Highland Capital’s purported legal expenses related to the Texas Action to [HERA].” Compl. ¶¶ 34, 94
- (iii) executing the April 30, 2013 Assignment Agreement, and simultaneously transferring HERA assets to Highland. Compl. ¶¶ 79, 93-95, 101-102.

The Texas Court considered each of these issues in, among other things, granting summary judgment in favor of Dondero and Highland and dismissing Daugherty’s claims for breach of fiduciary duty, shareholder oppression, conversion, breach of the covenant of good faith and fair dealing (with respect to Dondero only), and breach of the HERA Agreement. *See Exhibit F*. This is confirmed by Daugherty’s Summary Judgment Response, filed in the Texas Action. *See Exhibit B; see also Exhibit G* (Fourth Amended Counterclaim), at Ex. B ¶ 134 (“[A]t some indeterminate point in 2013, HERA transferred all of its assets to [Highland] or an affiliate of [Highland], leaving no assets to HERA to satisfy claims against HERA or its liabilities, or to satisfy Daugherty’s 19.097% vested interest in HERA’s Series A Preferred Units.”); ¶ 174 (“The unilateral decisions of [Highland] and HERA to amend the Agreement, on each of the several occasions

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in February 2012, January 2013 and February 2013...divested Daugherty of his valuable, vested ownership interest in HERA...”). A final judgment is conclusive of all issues that are raised in the pleadings. *See Samedan Oil Corp. v. Louis Dreyfus Nat. Gas Corp.*, 52 S.W.3d 788, 794 (Tex. Ct. App. 2001, pet. denied).

While Daugherty failed to assert fraudulent transfer in the Texas Action, this suit indisputably arises from the same nucleus of facts, and the facts were essential to the judgment therein. In his Complaint, Daugherty states that it was the 2012 amendment to the HERA Agreement that granted HERA’s Board sole discretion to withhold escrowed funds from a prevailing litigating member, which was the primary basis of his claims in the Texas Action. Compl. ¶ 24(b). Daugherty further admits that the funds in question were transferred out of HERA as of February 1, 2013 and April 30, 2013—allegations that were likewise asserted in the Texas Action. Compl. ¶¶ 34, 37.

Daugherty cannot use these same rejected factual allegations to seek new remedies in this Court, even if he has provided more detail in his Complaint than that provided in the Texas Action. “[T]he underlying conduct is what is at issue, not whether the [c]omplaint raises additional facts, or a more compelling characterization of those facts, regarding the same conduct previously at large.” *Asbestos Workers Local 42 Pension*, 2015 WL 2455469, at \*15 (dismissing claims

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based on collateral estoppel upon finding issues were previously litigated in New York action and rejecting plaintiffs' argument that controlling facts were more developed and pled more compellingly in the Delaware action than in prior action).

**II. Count I Must be Dismissed: Daugherty's Fraudulent Transfer Claim is Time Barred and Insufficiently Pled**

**A. *The Four-Year Statute of Limitations on Fraudulent Transfer Should be Applied to Count I***

The Court of Chancery generally analyzes questions of time bars under the equitable doctrine of laches. *TrustCo Bank v. Mathews*, 2015 WL 295373, at \*5 (Del. Ch. Jan. 22, 2015). "Laches will prevent someone who slumbers on [his] rights and delays unreasonably in filing suit from being permitted to prosecute [his] claims." *Id.* Though statutes of limitations are not automatically controlling, "[a]bsent a tolling of the limitations period, a party's failure to file within the analogous period of limitations will be given great weight in deciding whether the claims are barred by laches." *K&K Screw Products, L.L.C. v. Emerick Capital Inv., Inc.*, 2011 WL 3505354, at \*14 (Del. Ch. Aug. 9, 2011). Indeed, "filing after the expiration of the analogous limitations period is presumptively an unreasonable delay for purposes of laches." *Mathews*, 2015 WL 295373, at \*5.

A cause of action generally accrues at the time of the alleged harmful act. *K&K Screw Products*, 2011 WL 3505354, at \*17. Claims for fraudulent transfer

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must be brought no later than four years after accrual. *Id.*; *see also* 6 *Del. C.* § 1309. Daugherty fully acknowledges in his Complaint that his fraudulent transfer claim accrued more than four years before the filing of this action, stating “[d]uring 2013 and 2014...Dondero, [HERA] Management, and Highland Capital caused [HERA] to *fraudulently or otherwise wrongfully transfer its assets* to Highland Capital, which purportedly left [HERA] insolvent.” Compl. at ¶ 5 (emphasis added). However, he then transparently attempts to sidestep the limitations period with accusations the transfer of funds held in escrow by Abrams & Bayliss to Highland in 2016 constitutes the fraudulent transfer (*see* Compl. at ¶ 79). Daugherty’s failure is that his claim is predicated on the final transfer (which, not surprisingly is the only transfer that is within the limitations period), rather than when the allegedly harmful act occurred.

The trail purportedly begins on December 26, 2012, when Dondero “schemed” to buy out all HERA unit holders in an attempt to gain control of HERA. *Id.* at ¶¶ 27–29. An Offer to Purchase was allegedly made to all unit holders, except Daugherty, on January 31, 2013. *Id.* at ¶ 32. All unit holders sold their units to Highland on or before February 15, 2013, when the Offers to Purchase were set to expire. *Id.* at ¶¶ 32, 37. Daugherty claims Highland used

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HERA funds to purchase the units, thus any fraudulent transfer claims based on these allegations are untimely as they were brought *after* February 15, 2017.

To the extent Daugherty claims that payment of money by HERA to Highland pursuant to the Expense Allocation Agreement constitutes a fraudulent transfer, such claims are also time barred as the alleged transfer occurred on February 1, 2013 and this action was not initiated until July 6, 2017. *Id.* at ¶ 34–35 and Ex. E at ¶ 3 (“In light of the foregoing reallocation, HERA shall immediately pay to HCMLP the amount of \$1,056.727 to property [sic] effect such pro rata allocation.”).

Daugherty further claims that on April 30, 2013, Dondero executed an Assignment Agreement on behalf of Highland and HERA, giving Highland “sole economic interest in HERA” and transferring and registering certain assets to Highland. *Id.* at ¶ 38 and Ex. F § 1.1. These assets included HERA’s limited partner interest in Highland Restoration Capital Partners, L.P. and over 5,000 shares of NexPoint Credit Strategies Fund. *See id.* at Ex. A. Any claim for fraudulent transfer arising from the transfer of such assets pursuant to the Assignment Agreement should have been brought on or before April 30, 2017.<sup>4</sup>

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<sup>4</sup> A portion of these assets was deposited with Abrams & Bayliss as Deposit Assets, on which Daugherty’s claim for fraudulent transfer is founded.

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Notably, the “Escrow assets” that Daugherty claims were fraudulently transferred to Highland by Abrams & Bayliss were, in fact, a portion of the assets transferred to Highland pursuant to the April 30, 2013 Assignment Agreement. Pursuant to the Escrow Agreement, Highland agreed to deposit with Abrams & Bayliss, as Escrow Agent, over \$1.2 million in cash, \$1.8 million representing Highland Restoration Capital Partners limited partner interest, and the cash equivalent of 1088.42 shares of NexPoint Credit Strategies Deposit Assets. *See* Compl., Ex. G, Sch. 1. Thus, any claim that the Escrow assets were fraudulently transferred should have been brought by April 30, 2017, since the allegedly harmful act occurred on April 30, 2013, when the assets were originally transferred from HERA to Highland.

Furthermore, and despite Daugherty’s unsupported claims to the contrary, there was nothing nefarious about the December 2016 transfer. Pursuant to the Escrow Agreement, if Abrams & Bayliss resigned as Escrow Agent, they were required to deliver the Deposit Assets (aka Escrow assets) to any appointed successor escrow agent, or to the Depositor (Highland). *See* Compl., Ex. G, ¶ 5. Only then would Abrams & Bayliss be relieved of any obligations owed to Highland under the agreement. *Id.* Since Daugherty waited until February 16,

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2017 to request the Deposit Assets from Abrams & Bayliss, they rightly returned the Deposit Assets to Highland.

**B. *Daugherty's has not Pled His Fraudulent Transfer Claim with Sufficient Particularity***

To maintain a cause of action for fraudulent transfer, Daugherty must show the transfer was made: “(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation,” and HERA either (a) was insolvent or became insolvent as a result of the transfer, (b) was about to engage in a transaction for which its remaining assets were unreasonably small, or (c) intended to or reasonably should have believed it would incur debts beyond its ability to pay. 6 Del. Code § 1304(a). Any claim of fraud must be pled with particularity. Del. Ch. Ct. R. 9(b).

The Complaint alleges no specific facts that the transfer of Escrow assets, let alone any of HERA's assets, was made “with the actual intent to hinder, delay, or defraud” Daugherty. It is likewise devoid of allegations of an inadequate exchange. Instead, the claim seems to be founded on HERA's admission that it is insolvent. See Compl. ¶¶ 73–81. However, it was not the transfer of Escrow assets that allegedly left HERA insolvent, as Daugherty contends. Rather, HERA had a

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“negative net worth” as of September 19, 2014, more than two years prior to the transfer of Escrow assets. *See* Compl. at Ex. I. Thus, if one follows the trail laid out in Daugherty’s Complaint, HERA became insolvent because (1) its funds were used to buy out unit holders in February 2013; (2) its funds were used to pay for Highland’s attorneys’ fees pursuant to the Expense Allocation Agreement dated February 1, 2013; and (3) its assets were transferred and registered to Highland on April 30, 2013, in exchange for sole economic interest in HERA. Because of the lack of factual allegations supporting a reasonably conceivable finding of unequal exchange and insolvency, or particular facts suggesting fraud, Daugherty’s claims for fraudulent transfer should be dismissed. *See Renco Group, Inc. v. MacAndrews AMG Holdings LLC*, 2015 WL 394011, at \*10-11 (Del. Ch. Jan. 29, 2015).

***C. Daugherty Fails to Plead Allegations Sufficient to Support a Finding of Alter Ego as to Dondero***

Delaware courts are loathe to disregard the existence of a corporate entity. *Yu v. GSM Nation, LLC*, 2017 WL 2889515, at \*3 (Del. Ch. Jul. 7, 2017) (quoting *Wallace ex rel. Cencom Cable Income P’rs II, Inc., L.P. v. Wood*, 752 A.2d 1175, 1183 (Del. Ch. 1999)). Until sufficient reason exists, the legal entity of a corporation “will not be disturbed.” *Mason v. Network of Wilmington, Inc.*, 2005 WL 1653954, at \* 2 (Del. Ch. Jul. 1, 2005). Only “in the interest of justice, when

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such matters as fraud, contravention of law or contract, public wrong, or where equitable consideration among members of the corporation require it” will corporate form be disregarded and individuals held personally liable. *Id.* (quoting *Pauley Petroleum Inc. v. Cont’l Oil Co.*, 239 A.2d 629, 633 (Del. 1968)).

A decision to disregard the corporate entity generally results not from a single factor, but rather some combination of them, and “an overall element of injustice or unfairness must always be present, as well.” *EBG Hldgs. LLC v. Vredezicht’s Gravenhage 109 B. V.*, 2008 WL 4057745, at \*12 (Del. Ch. Sep. 2, 2008). Daugherty “must prove that some ‘fraud or injustice’ would be perpetrated through misuse of the corporate form.” *MicroStrategy Inc. v. Acacia Research Corp.*, 2010 WL 5550455, at \*11 (Del. Ch. Dec. 30, 2010). “[T]he fraud or injustice must consist of something more than the alleged wrong in the complaint and relate to a misuse of the corporate structure.” *Id.* “Effectively, the corporation must be a sham and exist for no other purpose than as a vehicle for fraud.” *Yu*, 2017 WL 2889515, at \*3 (citing *Wood*, at 1184).

For these reasons Delaware courts are not hesitant to dismiss alter ego/corporate veil piercing claims. *See, e.g., Maloney-Refaie v. Bridge at Sch., Inc.*, 958 A.2d 871, 881 (Del. Ch. 2008) (dismissing alter ego claim of personal jurisdiction where “nothing suggests that the [alter ego defendant] used [the

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primary defendant's corporate form] to perpetrate a fraud”); *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical*, 2004 WL 415251, at \*4 (Del. Ch. Mar. 4, 2004) (dismissing “MediTec’s alter ego argument ... because it has not alleged that the corporate form in and of itself operates to serve some fraud or injustice”).

Here, Daugherty does not allege that HERA is “a sham and exist[s] for no other purpose than as a vehicle for fraud.” Indeed, the Complaint lacks any allegation that HERA Management was created solely to commit a fraud. Instead, Daugherty includes various allegations that Dondero, as President of HERA Management, took various actions. Compl. ¶¶ 30, 33, 34, 38, 40. Then Daugherty makes a conclusory allegation that HERA Management is Dondero’s alter ego. *Id.* ¶ 92. Such conclusory allegations are insufficient to survive this Motion. *See MicroStrategy*, at \*12 (dismissing alter ego claim and stating “[h]ere, the Complaint merely pleads in a conclusory fashion that DAS is the alter ego of ARC...it merely pleads that the two corporations took actions that allegedly constitute breaches of contract and fraud without asserting any facts suggesting that such wrongs arose out of a ‘misuse of the corporate structure’”).

Even if Daugherty had pled sufficient facts to establish that Dondero was the alter ego of HERA Management, the Complaint lacks any allegations of fraud or inequity. Delaware law requires that a plaintiff demonstrate the presence of fraud

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 16**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

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**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit



Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

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and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

or injustice in the “use of the corporate form.” *Quantum Loyalty Sys., Inc. v. TPG Rewards, Inc.*, 2009 WL 5184350, at \*7 (D. Del. Dec. 23, 2009), *report and recommendation adopted as modified*, 2010 WL 1337621 (D. Del. Mar. 31, 2010). The Complaint fails to demonstrate disregard of the corporate structure that would justify holding Dondero responsible for the acts of HERA Management. *Id.* (allegations that individual is the President and CEO, has caused corporation to pay taxes to Delaware, and has “taken steps” to secure and enforce the intellectual property rights in the patent application, insufficient to establish alter ego).

Attempts to persuade this court to disregard the corporate entity and allow Daugherty to “collect his judgment from [ ] Dondero” because HERA has failed to satisfy its judgment and allegedly lacks the funds to do so are likewise unavailing. *See Compl.* ¶ 81. A showing of mere insolvency is not sufficient to allow piercing of the corporate veil. *Mason*, 2005 WL 1653954, at \* 3. “If creditors could enter judgments against shareholders every time that a corporation becomes unable to pay its debts as they become due, the limited liability characteristic of the corporate form would be meaningless.” *Id.* Thus, insolvency is just one factor to be considered, rather than a dispositive factor as Daugherty suggests. *See id.* at \*4 (“insolvency by itself does not warrant piercing the corporate veil”).

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**III. Count II Must be Dismissed: Daugherty Fails to Plead that HERA Cannot Fulfill its Purpose and Any Claim Regarding the 2013 Amendment to HERA's Operating Agreement is Time Barred**

Count II seeks judicial dissolution of HERA under 6 *Del. C.* § 18-802 but proceeds from allegations that are not true, adopts a reading of the LLC Act that is incorrect and depends upon Daugherty sidestepping the statute of limitations applicable to any claims arising from the adoption of the Third Amended LLC Agreement.

Daugherty claims that he is the “sole remaining unit holder of” HERA. *See* Compl. at ¶ 85. Daugherty knows that is not true; in fact, he alleges as much elsewhere in the Complaint. *See id.* at ¶ 37. Indeed, the allegation makes no sense: If Daugherty were the sole remaining unit holder of HERA, he would have the power to control and dissolve the entity himself. Instead, he improperly asks this Court to grant him that power. Daugherty claims that the purchase of the other units of HERA by Highland was invalid. *See id.* at ¶ 85. Yet he presents no basis upon which those transfers were invalid under any of the operating agreements of HERA, the LLC Act or any upon other basis. This is the epitome of the conclusory allegation (or conclusion of law) this Court is not required to accept at the motion to dismiss stage. *See Thermopylae*, 2016 WL 368170, at \*9.

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**A. *Daugherty Fails to Allege that HERA Cannot Carry on with Business in Conformity with the Third Amended LLC Agreement***

Section 18-802 of the LLC Act provides that this Court “may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business *in conformity with a limited liability company agreement*.” 6 Del. C. § 18-802 (emphasis supplied). The LLC Act *does not* say that dissolution is proper when the entity cannot carry on the business for which it was *originally* established. Rather, it refers to the *current* operating agreement of the entity.

“[I]n determining whether it is reasonably practicable to carry on the business of the LLC, the Court must look to the purpose clause set forth in the governing agreements...” *In re Seneca Inv. LLC*, 970 A.2d 259, 262 (Del. Ch. 2008) (citations omitted). As this Court has recognized, “a corporation may be formed and maintained as a passive instrumentality—for example, an entity that does no more than take and hold title to tangible investments is a commonly encountered phenomenon.” *Id.* (quoting *Giancarlo v. OG Corp.*, 1989 WL 72022, at \*4 (Del. Ch. June 23, 1989)).

Here, the controlling operating agreement—the Third Amended LLC Agreement—provides that the purpose of HERA is “to do all such things for which

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limited liability companies may be formed under the [LLC] Act.” *See* Compl., Ex. D at § 2.1. Daugherty does not allege that HERA cannot fulfill this purpose. Rather, he alleges that HERA cannot fulfill the purpose set forth in previous iterations of HERA’s operating agreement. *See id.* at ¶ 86. Daugherty improperly relies on agreements that are no longer the governing agreement of HERA in order to seek the extreme remedy of non-consensual judicial dissolution. *See Wiggs v. Summit Midstream Partners, LLC*, 2013 WL 1286180, at \*13 (Del. Ch. Mar. 28, 2013) (“Dissolution is an extreme remedy to be applied only when it is no longer reasonably practicable for the company to operate in accordance with its founding documents.”) quoting *In re Arrow Inv. Advisors, LLC*, 2009 WL 1101682, at \*1 (Del. Ch. Apr. 23, 2009)). Moreover, Daugherty’s own allegations establish that HERA was established to passively hold assets. Compl. at ¶¶ 15-16. There is no allegation in the Complaint that HERA cannot perform that same function now or in the future.

**B. *The Court Cannot Disregard Section 2.1 of the Third Amended LLC Agreement on the Basis of Time Barred Allegations***

Recognizing that Section 2.1 of the Third Amended LLC Agreement disposes of Count II of the Complaint, Daugherty argues that the adoption of that provision *four years and five months* before the filing of the Complaint breached

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either a fiduciary duty owed to Daugherty by Dondero (the source of which goes unmentioned) or the implied covenant of good faith and fair dealing (the last refuge for every poorly pled claim). *See* Compl. at ¶ 88. As to either assertion, however, any claim premised upon the amendment of Section 2.1 of the Second Amended LLC Agreement through adoption of the Third Amended LLC Agreement is barred by the doctrine of laches and the applicable statute of limitations.

With regard to the assertion that Dondero breached a fiduciary duty owed to Daugherty, any such claim is barred by the doctrine of laches. A claim of breach of fiduciary duty arising from a contract accrues when that contract is adopted. *See Sutherland v. Sutherland*, 2010 WL 1838968, at \*8 (Del. Ch. May 3, 2010) (“A claim for breach of fiduciary duty accrues at the time of the wrongful act. When the wrongful act involves a contractual obligation, the claim accrues at the time when ‘enforceable rights are created.’” citing *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004) and quoting *Kahn v. Seaboard Corp.*, 625 A.2d 269, 271 (Del. Ch. 1993)); *In re Mobilactive Media, LLC*, 2013 WL 297950, at \*10 (Del. Ch. Jan. 25, 2013) (same). Here, the Third Amended LLC Agreement was adopted on February 1, 2013 and, therefore, any fiduciary duty claim arose on that date.

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Similarly, a claim for breach of the implied covenant of good faith and fair dealing accrues at the time of the alleged wrong, even if plaintiff is ignorant of the wrong. *See In re Dean Witter P'ship Litig.*, 1998 WL 442456, at \*4 (Del. Ch. Jul. 17, 1998); *Lavender v. Koenig*, 2017 WL 443696, at \*3-4 (Del. Super. Ct. Feb. 1, 2017) (claim of breach of implied covenant arose when contract was breached, not when damages were incurred).<sup>5</sup> Here, the alleged wrong was the adoption of the Third Amended LLC Agreement on February 1, 2013.

The statute of limitations for both breach of fiduciary duty and breach of contract claims is three years. *See 10 Del. C. § 8106(a)*.<sup>6</sup> Although the doctrine of laches does not directly apply the applicable statute of limitations, equity follows the law and in all but the most extraordinary circumstances will apply a statute of limitations by analogy. *See, e.g., In re Dean Witter P'ship Litig.*, 1998 WL

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<sup>5</sup> As set forth below, according to the exhibits to Daugherty's own Complaint, he knew of the adoption of the Third Amended LLC Agreement by, at least, July 25, 2013; long before three years prior to the filing of the Complaint. *See infra* Part IV.A.

<sup>6</sup> Because claims of breach of the implied covenant are breach of contract claims, they are subject to the same statute of limitations as breach of contract claims. *See Connelly v. State Farm Mut. Auto. Ins. Co.*, 135 A.3d 1271, 1274-75 (Del. 2016) (because duty of good faith and fair dealing is "grounded in [the] contractual relationship ... a claim that the [defendant] breached the duty is subject to the three-year statute of limitations under 10 Del. C. § 8106")

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442456, at \*3; *In re Sirius XM S'holder Litig.*, 2013 WL 5411268, at \*4-6 (dismissing fiduciary duty claims based on laches).

Laches will bar a claim where (1) the plaintiff knows of the existence of the claim; (2) the plaintiff unreasonably delays in bringing that claim and (3) the plaintiff causes prejudice to the defendant. *Gallagher*, 2013 WL 1857552, at \*2. Here, there is no doubt that Daugherty knew about the adoption of the Third Amended LLC Agreement at least three years prior to the filing of the Complaint. At a minimum, he obtained the agreement through discovery in the Texas Action in July of 2013. Exhibit B (Summary Judgment Response), ¶¶ 4-5. Second, Daugherty waited for over *four years* to allege that the adoption of the Third Amended LLC Agreement was in some way improper in this litigation. Third, Highland and HERA have spent \$2.8 million fighting with Daugherty in the Texas Action over issues that are essentially the same as those raised in the Complaint. If Daugherty wanted to bring a claim based on the adoption of the Third Amended LLC Agreement, he should have done so in the Texas Action rather than sitting on his hands only to raise the issue now. The doctrine of laches would bar any claim Daugherty may have arising from the adoption of the Third Amended LLC Agreement and, therefore, he should not be permitted to use vague allegations of

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breach of fiduciary duty or breach of the implied covenant to salvage his dissolution claim. Count II of the Complaint must be dismissed.

**IV. Count III Must be Dismissed Because Daugherty's Breach of Fiduciary Claim Arising from Actions Taken in February and April of 2013 is Time Barred, is Barred under the Third Amended LLC Agreement, and Fails to Identify a Fiduciary Duty Owed by Dondero**

**A. *The Three-Year Statute of Limitations on Breach of Fiduciary Duty Should be Applied to Count III of the Complaint***

Count III of the Complaint is a claim for breach of fiduciary duty based on three specific acts: (i) the adoption of the *February 1, 2013* Third Amended HERA LLC Agreement, (ii) the execution of the *February 1, 2013* Expense Allocation Agreement, and (iii) the execution of the *April 30, 2013* Assignment Agreement. Compl. ¶¶ 93-95. These acts inarguably took place more than three years prior to Daugherty filing his July 11, 2017 Complaint. As a result, the claims are barred by the doctrine of laches and must be dismissed. *See supra* Part III.B.

Any argument that the limitations period has been tolled because Daugherty did not discover these acts fail under the plain terms of the Complaint. Copies of each of the agreements underlying Daugherty's claim are included as Exhibits D, E, and F to the Complaint. Each agreement includes a sticker stating "Defendant's Exhibit" and an assigned number. That sticker indicates that Daugherty utilized those documents (*i.e.* he was fully apprised of the acts underlying his claims) in the

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Texas Action in 2013. *See* Exhibit I (Trial Ex. List) at Nos. 73, 75, and 79; Exhibit B (Summary Judgment Response) at Exs. B-16, B-17. Further, Daugherty admits he received these documents through discovery in the Texas Action on July 25, 2013. Exhibit G, at ¶¶ 4-5. Given Daugherty’s knowledge of the agreements, he is charged with notice of any impropriety of the actions contemplated thereby. *See In re Tyson Foods*, 919 A.2d at 585 (finding claims time-barred where plaintiff was aware of the contract, thus put on inquiry notice of the risks thereunder); *Jepsco LTD. v. B.F. Rich Co., Inc.*, 2013 WL 593664, at \*11 (Del. Ch. Feb. 14, 2013) (“The public filings ... provided Jepsco ample notice that the Underlying Action had been resolved in a way that materially could affect its rights as a shareholder of RRI.”); *see also AM Gen. Holdings LLC v. The Renco Grp., Inc.*, 2016 WL 4440476, at \*14 (Del. Ch. Aug. 22, 2016) (plaintiff must have been “demonstrably unaware” of injury for doctrine of inherently unknowable injuries to apply).

As set forth in his Complaint, Daugherty was also fully apprised of the fact that the adoption of the Second Amended LLC Agreement on February 16, 2012 opened the door for precisely the actions that Daugherty now complains of. Compl. ¶ 24 (Describing the new Article 12 and stating “even if the litigating member prevails, the Board has sole discretion to withhold the escrowed funds to cover any diminution in value to HERA ‘resulting from or in connection with’ the

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litigation, *as determined by the Board in its sole discretion.*” emphasis supplied). That was the entire basis of Daugherty’s counterclaims and third-party claims in the Texas Action. Daugherty provides no valid reason why he could not have brought suit concerning these 2013 agreements in a timely fashion, thus Count III of the Complaint is time-barred.

**B. *HERA Management Does Not Owe Fiduciary Duties to HERA or its Members Under the Third Amended LLC Agreement***

Under Delaware law, a claim for breach of fiduciary duty requires proof of two elements: (1) that a fiduciary duty existed and (2) that the defendant breached that duty. *Beard Research, Inc. v. Kates*, 8 A.3d 573, 601 (Del. Ch. 2010). Delaware courts have held that managers of a Delaware LLC owe traditional fiduciary duties of loyalty and care to the members of the LLC, unless the parties expressly modify or eliminate those duties in the LLC’s operating agreement. *William Penn P’ship v. Saliba*, 13 A.3d 749, 757 (Del. 2011). However, the LLC Act provides that a “limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company....” 6 *Del. C.* § 18-1101(e).

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Taking advantage of the contractual freedom provided by the LLC Act, the Third Amended LLC Agreement provides:

To the maximum extent permitted by applicable law, **no current or future officer of the Company nor the Initial Member or the Manager (“each an “Indemnitee”)** shall be liable to the Company or any other third party (i) for mistakes of judgment, (ii) for any act or omission suffered or taken by it, **(iii) for breach of fiduciary duty owed to the Company and/or its members** or (iv) for losses due to any such mistakes, action, or inaction, or breach of fiduciary duty.

Compl., Ex. D § 8.1(a) (emphasis supplied).

The Third Amended LLC Agreement properly absolves members and managers of HERA, including HERA Management, from liability for any act or omission to the maximum extent permitted by the law, defeating Daugherty’s claim.

***C. Daugherty’s Allegations are Insufficient to Establish Dondero Owed any Fiduciary Duty to Daugherty***

Even absent the disclaimer, Daugherty’s claim for breach of fiduciary duty against Dondero fails because Daugherty does not identify any source of fiduciary duty that Dondero owed him. Daugherty does not contend Dondero was a manager or even a member of HERA. Instead, Daugherty relies on allegations that “[H]ERA Management was nothing more than a mere instrumentality or alter ego of Dondero. Thus bound by the same duties and liable for the same acts as his alter ego.” Compl. ¶ 92. As set forth above, Daugherty’s Complaint fails to allege

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sufficient facts for the Court to disregard HERA Management's corporate form.

*See supra* Part II.C. Therefore, this claim must be dismissed.

**V. Count IV Must be Dismissed: Daugherty's Aiding and Abetting Claim Fails for the Same Reasons Count III Fails**

Daugherty's claim for aiding and abetting breach of fiduciary duty asserted against Highland stems from the same conduct underlying his breach of fiduciary duty claim in Count III, namely the execution of the February 1, 2013 Third Amended LLC Agreement and the transfer made pursuant to the April 30, 2013 Assignment Agreement. Compl. ¶¶ 101, 102. Claims for aiding and abetting are subject to the same three year limitation period as fiduciary duty claims. *Shandler v. DLJ Merch. Banking, Inc.*, 2010 WL 2929654, at \*9, n. 88 (Del. Ch. July 26, 2010); *see* 10 Del. C. § 8106. It is immaterial that the alleged misconduct was the "receipt" of the assets distributed as a result of the execution of the Assignment Agreement, as Daugherty was put on notice of the transfer. *See Seiden v. Kaneko*, 2015 WL 7289338, at 9 (Del. Ch. Nov. 3, 2015) (claims time-barred when Lockup Agreement was publically disclosed prior to the limitations period, thereby putting plaintiff on notice of the transfer contemplated thereby and its impropriety); *see also In re Tyson Foods, Inc.*, 919 A.2d at 585; *Jepsco*, 2013 WL 593664, at \*11. Accordingly, this claim is likewise time-barred for the reasons set forth above.

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**VI. Count V Must be Dismissed: Daugherty Failed to Identify the Contract Allegedly Breached, Failed to Identify a Specific Contractual Obligation That Was Breached and Failed to Timely Assert this Claim**

Count V fails for the following reasons: (1) it fails to identify the contract allegedly breached; (2) it fails to identify a specific obligation of the unspecified contract that was breached and (3) it is barred by the statute of limitations.

**A. *Count V Fails to Identify the Contract Allegedly Breached***

A covenant of good faith and fair dealing is implied in every contract under Delaware law, but the party asserting a breach of an implied covenant needs to at least identify the contract that has been breached.

In Paragraph 111 of the Complaint, Daugherty alleges that “[t]he adoption by Highland ERA Management, *on the date of its formation*, and Dondero of the Third Amended and Restated Agreement of [HERA] was a breach of the implied covenant of good faith and fair dealing.” Compl. at ¶ 111 (emphasis supplied). In Paragraph 112, Daugherty alleges that “[t]he execution of the Expense Allocation Agreement by Highland ERA Management, *on the date of its formation*, and Dondero” breached the implied covenant of good faith and fair dealing. *Id.* at ¶ 112 (emphasis supplied). And in Paragraph 113, Daugherty alleges that “[t]he execution by Highland ERA Management and Dondero of the April 30, 2013

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Assignment Agreement” was breach of the implied covenant of good faith and fair dealing. *Id.* at ¶ 113.

Each of these allegations fails to answer an obvious question: ***What contract was allegedly breached?*** Perhaps the HERA Agreement or Second Amended LLC Agreement? That cannot be, as neither HERA Management nor Dondero were parties to those agreements. *See* Compl., Exs. A and C.<sup>7</sup> In fact, as Daugherty emphasizes, HERA Management ***did not even exist*** when the HERA Agreement and Second Amended LLC Agreement were executed. *See* Compl. at ¶¶ 33, 111 and 112. Or perhaps Daugherty is referring to the Third Amended LLC Agreement, Expense Allocation Agreement and Assignment Agreement themselves? That makes little sense. It cannot be the case that the act of adopting a contract breaches the implied covenant of good faith and fair dealing inherent ***in that same contract.*** Because Daugherty never identifies the contract that has allegedly been breached, Count V must be dismissed.

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<sup>7</sup> Similarly, Daugherty cannot assert that HERA Management is an alter ego of Dondero in order to hold Dondero personally liable for breach of an implied covenant allegedly hiding in a contract to which HERA Management was not itself a party.

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**B. *Daugherty Fails to Identify a Specific Implied Provision in Whatever Contract He is Claiming Was Breached***

The party asserting a claim of breach of the implied covenant of good faith and fair dealing must identify a specific implied contractual obligation that has been breached. *See, e.g., Fortis Advisors, LLC v. Dialog Semiconductor PLC*, 2015 WL 401371, at \*4-5 (Del. Ch. Jan. 30, 2015) (dismissing claim where compliant “failed to identify any implied contract term that [the party] would have this Court read into the” contract); *Narrowstep, Inc. v. Onstream Media, Inc.*, 2010 WL 5422405, at \*11 (Del. Ch. Dec. 22, 2010) (implied covenant claim must identify “a specific *implied* contractual obligation” that was breached). Daugherty will tell this Court that he has identified such a term: a duty on the party of HERA Management and Dondero “to refrain from arbitrary or unreasonable conduct that benefitted themselves at the expense of [HERA] and its unit holders.” Compl. at ¶ 110. This argument fails for at least two reasons.

*First*, the only way this duty exists at all is if it exists in the Third Amended LLC Agreement because, as discussed above, neither HERA Management nor Dondero are party to HERA’s previous operating agreements. But that agreement expressly disavows any fiduciary duties on the part of the manager of HERA to its unitholders. *See* Compl., Ex. D at § 8.1(a)(iii). Daugherty is effectively alleging

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that HERA Management and Dondero owed him a duty of loyalty. But the implied covenant cannot be used to add back into a contract what the contract itself expressly excludes. *See Nemec v. Shrader*, 991 A.2d 1120, 1127 (Del. 2010) (“The implied covenant will not infer language that contradicts a clear exercise of an express contractual right.”); *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 888 (Del. Ch. 2009) (implied covenant “cannot be invoked to override the express terms of the contract”).

*Second*, this allegation conflates the oft-stated purpose of the implied covenant doctrine with the formulation of an implied contractual term. *See Nemec*, 991 A.2d at 1127 (implied covenant “doctrine ‘requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain’” (quoting *Nemec v. Shrader*, 2009 WL 1204346, at \*5 (Del. Ch. Apr. 30, 2009))). This allegation is not the statement of an implied contractual provision and, therefore, Count V must be dismissed.

***C. Count V is Barred by the Statute of Limitations***

All of the acts on which Count V is based occurred either on February 1, 2013 or April 30, 2013. *See* Compl. at ¶¶ 33, 34, 38, 111, 112 and 113. The Complaint was not filed until July 6, 2017; *over four years after the last act*

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*alleged*. As discussed above, contract claims accrue on the date of the alleged breach. *See supra* Part III.B (and cases cited therein).

As discussed above, a claim of breach of the implied covenant of good faith and fair dealing is subject to the three-year statute of limitations on contract claims under 10 *Del. C.* § 8106(a). *See supra* Part III.B. Also, as discussed above, the Chancery Court typically applies the doctrine of laches rather than the statute of limitations. *See supra* Parts II.A and III.B. However, when a plaintiff asserts a purely legal claim and seeks purely legal relief, this Court will apply the statute of limitations to that claim, absent extraordinary circumstances. *See Kraft v. WisdomTree Invs., Inc.*, 145 A.3d 969, 977-78 (Del. Ch. 2016) (“There is, in my view, logical force for strictly applying statutes of limitations in this situation because a plaintiff pressing a purely legal claim in the Court of Chancery should not be able to avoid the statute of limitations by invoking the doctrine of laches when the limitations period would have conclusively barred the same claim had it been brought in a court of law.”); *CMS Inv. Holdings, LLC v. Castle*, 2016 WL 4411328, at \*2 (Del. Ch. Aug. 19, 2016) (“[W]here, as here, a plaintiff brings equitable and legal claims seeking only legal relief, the Court ‘will bar claims outside the limitations period absent tolling or extraordinary circumstances,’ even in the absence of demonstrable prejudice.” quoting *Kraft*, 145 A.3d at 983). A

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claim of breach of the implied covenant is a legal claim, not an equitable claim. *See Kraft*, 145 A.3d at 975; *Testa v. Nixon Uniform Service, Inc.*, 2008 WL 4958861, at \*3, n. 23 (Del Ch. Nov. 21, 2008) (“Estoppel, breach of contract and negligence are all legal claims”). Thus, if Daugherty is seeking a purely legal remedy, this Court should apply the three-year statute of limitations, without regard to laches, and dismiss Count V.

Daugherty never clearly identifies what remedy he is seeking on Count V. The claim itself contains no request for relief. The only related request for relief in the *ad damnum* clause is that this Court “declare that Highland ERA Management and Dondero breached the implied covenant of good faith and air dealing.” *See* Compl. p. 37 (item “i”). If all Daugherty is seeking is declaratory judgment, that is a legal remedy. *See* 10 Del. C. § 6501; Del. R. Super. Ct. 57; *Traveler Cas. & Sur. Co. of Am. v. Colonial Sch. Dist.*, 2001 WL 287482, at \*3 (Del. Ch. Mar. 16, 2001) (“both the Superior Court and this Court have jurisdiction over declaratory judgment actions”). Consequently, this Court should apply the three year statute of limitations and dismiss Count V with prejudice.

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**VII. Count VI Must be Dismissed: Daugherty’s Claim for Indemnification for Fees Incurred in Defending Claims that Were Non-Suited in 2014 Are Time Barred and Relate to Personal Obligations Not Performed in His Scope as a Highland Employee**

**A. *The Three Year Statute of Limitations on Contractual Indemnification Should be Applied to Count III of the Complaint***

Contractual indemnification claims are subject to a three-year statute of limitations, which typically begins to run only after the party “entitled to indemnification can be confident any claim against him ... has been resolved with certainty.” *Scharf v. Edgcomb Corp.*, 864 A.2d 909, 919 (Del. 2004) (internal quotation marks omitted). While “the question of when a claim for contractual indemnification accrues depends on the contractual language,” the law and policy developed in the 8 *Del. C.* § 145 context is instructive.

Generally, the matter on which the claim for indemnification is premised may be said to have been resolved with certainty only when the underlying investigation or litigation is definitely resolved. “The implicit rationale for this conclusion is that the person seeking indemnity should not have to rush in at the first possible moment but rather should be able to wait until the outcome of the underlying matter is certain.” A successful result on a claim for indemnification in the trial court, for example, does not cause the statute of limitations to begin running if an appeal is taken. Until the final judgment of the trial court withstands appellate review, the outcome of the underlying matter is not certain.

*Branin v. Stein Roe Inv. Counsel, LLC*, 2015 WL 4710321, at \*4 (Del. Ch. July 31, 2015) (internal citations omitted). “The single, well-defined moment in time when

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the statute of limitations begins to run on claims for indemnification is when the outcome of the underlying matter is certain. This involves a two-part analysis. First, the underlying matter must be identified. Second, the date when the outcome of that underlying matter was resolved with certainty must be determined.” *Scharf*, 864 A.2d at 920.

The claims giving rise to Daugherty’s demand for contractual indemnification, and thus the underlying matter, were non-suited on January 14, 2014. Compl. ¶ 71 and Ex. M. Daugherty could be certain that the outcome of those claims was resolved on January 14, 2014, when the Texas Court entered an order granting Highland’s notice of non-suit. *Id.*; *see also* Exhibit J (Jan. 14, 2014 Order of Nonsuit and Dismissal Without Prejudice). As a result, the indemnification claims are time-barred, as they were brought three years and six months after resolution of the underlying claims. *See supra* Part III.B; *see also* *O’Brien v. IAC/Interactive Corp.*, 2009 WL 2490845, at \*7 (Del. Ch. Aug. 14, 2009) (applying 3-year statute of limitations to former corporate officer’s indemnification and advancement claims). There are no “unusual or extraordinary circumstances” warranting an extension of the three-year statute of limitations in this case.

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**B. *Contractual Indemnification is Inapplicable Because the Alleged Claims Relate to Daugherty's Personal, Contractual Obligations***

Daugherty's claim for expenses must also be dismissed because the underlying claims he seeks indemnification for implicate Daugherty's personal obligations under his employment agreement rather than his legal obligations as a former corporate officer of Highland's General Partner.

The Second Amended and Restated Agreement of Limited Partnership of Highland explicitly limits indemnification rights to situations where an employee/officer/director is compelled to defend an "official capacity" claim. *See* Compl., Ex. K §§ 4.1(h). As such, disputes involving Daugherty's and Highland's employee-employer relationship, including issues regarding Daugherty's poor performance, violation of company policies or breach of employment contract, that are "characterized as personal" and not directed at Daugherty's "'official capacity' as an officer and director are not subject to...indemnification." *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 562 (Del. 2002).

When a corporate officer signs an employment contract committing to fill an office, he is acting in a personal capacity in an adversarial, arms-length transaction. To the extent that he binds himself to certain obligations under that contract, he owes a personal obligation to the corporation. When the corporation brings a claim and proves its entitlement to relief because the officer has breached his individual obligations, it is problematic to conclude that the suit has been rendered an "official capacity" suit subject to indemnification...Such a

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conclusion would render the officer's duty to perform his side of the contract in many respects illusory.

*Id.*; see also *Weaver v. ZeniMax Media, Inc.*, 2004 WL 243163, at \*3-4 (Del. Ch. Jan. 30, 2004) (dismissing advancement claim, finding claims alleged against former officer, including “*fail[ure] to devote his full time and efforts to the business of the Company,*” were “in the nature of an employment dispute, based on a personal obligation” and the underlying conduct did not require use of “entrusted corporate powers”) (emphasis added); *Charney v. Am. Apparel, Inc.*, 2015 WL 5313769, at \*16 (Del. Ch. Sep. 11, 2015) (no corporate power was used or abused, thus indemnity provision was not triggered, by employee trying to influence stockholders, disparaging the company, and seeking to replace directors).

Here, the non-suited breach of contract claims that Highland asserted against Daugherty in the Texas Action were personal and not based on conduct that required use of corporate power as an officer—unlike the breach of fiduciary duty claims, which Highland prevailed on. See *Mooney v. Echo Therapeutics, Inc.*, 2015 WL 3413272, at \*8 (Del. Ch. May 28, 2015) (noting *Weaver* involved two discrete categories: (i) breach of fiduciary duty claims relating to mismanagement of the officer's department, for were subject to indemnification, and (ii) breach of contract claims relating to excessive vacation time and improper expense

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reimbursements, which were not subject to indemnification). Specifically, the claims at issue related “to Daugherty’s agreement to devote all of his time, energy, skill and best effort to the performance of his duties and to the business of Highland and to perform his duties in a diligent, trustworthy, and business-like manner for the purpose of advancing the business of Highland.” Compl., Ex. M. Thus, the claims are “in the nature of an employment dispute, based on a personal obligation [Daugherty] owed to the corporation” and it “did not give rise to claims ‘by reason of the fact’ that [Daugherty] was an officer and director” of Highland. *Weaver*, 2004 WL 243163, at \*3 and \*5. Accordingly, Daugherty’s claim for indemnification of relating to non-suited claims in the Texas Action should be dismissed as a matter of law.

**VIII. Count VII, Which Arises From the Same Conduct Underlying Count VI, Must be Dismissed for the Same Reasons Count VI Fails**

While less than articulate, through Count VII, Daugherty seeks recovery of fees incurred in prosecuting Count VI. Because Daugherty is not entitled to fees under Count VI based on the fatal flaws set forth above, he is not entitled to recovery of fees incurred in his unsuccessful pursuit of same. Such an award is only warranted “to the extent [Daugherty] prevail[s] in [his] claim to enforce a contractual right to advancement.” *Imbert v. LCM Interest Holding LLC*, 2013 WL

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1934563, at \*11 (Del. Ch. May 7, 2013). If the Court dismisses Daugherty’s claim for advancement or a portion thereof, then Daugherty cannot seek “fees on fees” for the pursuit of such infirm claims. *See Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 178, 179 (Del. Ch. 2003) (an award of fees on fees are limited to reasonable expenses actually incurred and “those expenses reasonably proportionate to the level of success he achieved” in the underlying official capacity claims).

### **CONCLUSION**

Defendants respectfully request that the Court grant their Motion to Dismiss and enter an order dismissing all claims or causes of action that Daugherty (either for himself or in the name of HERA) has asserted in this suit.

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Dated: September 22, 2017

[Words: 13,885]

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## **EXHIBIT 61**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY,

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC, HIGHLAND  
ERA MANAGEMENT LLC, and JAMES  
DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE RETENTION  
ASSETS LLC,

Nominal Defendant.

C.A. No. 2017-0488-SG

**PATRICK DAUGHERTY'S ANSWERING BRIEF IN  
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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**A public version of this document will be filed on or before Nov. 6, 2017.**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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ERA MANAGEMENT LLC, and JAMES  
DONDERO,

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and

HIGHLAND EMPLOYEE RETENTION  
ASSETS LLC,

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Dated: October 30, 2017



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*Welsh v. Fort Bend Indep. Sch. Dist.*, 860 F.3d 762 (5th Cir. 2017)..... 29, 30

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**Other Authorities**

*Black’s Law Dictionary* (5th ed. 1979) .....51

Bryan A. Garner, *Garner’s Modern American Usage* (3d ed. 2009).....51

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## INTRODUCTION

On December 1, 2016, a Texas appellate court affirmed a judgment in favor of Patrick Daugherty against Highland Employee Retention Assets LLC (“Highland Employee Retention Assets” or “HERA”) in the amount of \$2.6 million plus interest in the action captioned *Highland Capital Management, L.P. v. Daugherty*, 12-04005, District Court of Dallas County, Texas, 68th Judicial District (Dallas) (the “Texas Action”).

The next day, December 2, 2016, unknown to Daugherty, the defendants, Highland Employee Retention Assets, Highland Capital Management, L.P. (“Highland Capital”), Highland ERA Management LLC (“Highland ERA Management”), and James Dondero (collectively, “Defendants”), fraudulently transferred to Highland Capital assets of Highland Employee Retention Assets that were reserved to satisfy Daugherty’s judgment.

The fraudulent transfer was accomplished when non-party Abrams & Bayliss, LLP (“Abrams & Bayliss”), the agent of the escrow in which the assets were held, resigned the day after Daugherty’s judgment was affirmed. The surreptitious resignation diverted the assets to Highland Capital instead of Highland Employee Retention Assets. With the assets now in Highland

Capital's possession, Highland Employee Retention Assets claims to be insolvent and unable to satisfy Daugherty's judgment. Through this action, Daugherty seeks to collect his judgment.

Daugherty also seeks redress, on behalf of himself and nominal defendant Highland Employee Retention Assets, against Highland ERA Management, Dondero, and Highland Capital for transactions that occurred during the Texas Action by which Highland ERA Management, Dondero, and Highland Capital purported to strip all the value of Highland Employee Retention Assets and its sole remaining member, Daugherty, for themselves. With the Texas Action resolved, and Defendants' argument that Daugherty is no longer a member of Highland Employee Retention Assets rejected by the Texas courts, Daugherty is in a position to pursue these claims.

Finally, Daugherty seeks indemnification and fees on fees under the partnership agreement of Highland Capital for attorneys' fees and expenses he incurred in the Texas Action in successfully defending accusations concerning his tenure as a partner and senior executive of Highland Capital.

Defendants moved to dismiss Daugherty's complaint. For the reasons discussed below, it is reasonably conceivable that Daugherty will prevail on each of his claims. Defendants' motion should be denied.

## NATURE AND STAGE OF PROCEEDINGS

Daugherty filed his complaint (“Compl.”) on July 6, 2017. Defendants moved to dismiss the complaint on August 23, 2017, and filed their opening brief (“OB”) on September 22, 2017.

## COUNTERSTATEMENT OF FACTS

These facts are from the complaint and documents incorporated in the complaint or publicly available. *See In re Wheelabrator Tech. Inc. S’holders Litig.*, 1992 WL 212595, at \*12 (Del. Ch. Sept. 1, 1992).

### A. The Parties

Daugherty resides in Dallas, Texas. He was a partner and senior executive of Highland Capital and certain of its affiliates from 1998 until 2011, when he resigned. Compl. ¶ 10.

Highland Capital is a Delaware limited partnership with its principal place of business in Dallas, Texas. Dondero is a co-founder of Highland Capital and controls Highland Capital. *Id.* ¶ 11.

Highland Employee Retention Assets is a Delaware limited liability company that was formed on June 23, 2009. *Id.* ¶ 12.

Highland ERA Management, a Delaware limited liability company, was formed on February 1, 2013. *Id.* ¶ 13. Dondero is the president and sole member of Highland ERA Management. *Id.*

**B. History of Highland Employee Retention Assets**

Highland Capital performed poorly during the 2008-2009 financial crisis. *Id.* ¶ 14. It had very little cash and available assets for incentive-compensation purposes. *Id.* Highland Employee Retention Assets was created by Highland Capital to curb employee resignations by offering employees a replacement of their deferred compensation that was awarded on February 27, 2009. *Id.*

Highland Employee Retention Assets was intended to be an independent (from Highland Capital) standalone entity to retain, reward, and incentivize Highland Capital's employees (excluding Dondero and co-founder Mark Okada) by granting them equity-like awards in funds and then distributing the proceeds of those interests to the employees in their capacity as unit holders of Highland Employee Retention Assets. *Id.* ¶ 15.

Under the Limited Liability Company Agreement of Highland Employee Retention Assets LLC dated October 26, 2009, the purpose of Highland Employee Retention Assets

shall be to receive and hold assets to be contributed by [Highland Capital] and to distribute the proceeds of such assets from time to time to certain employees of [Highland Capital] (or of affiliates of [Highland Capital], as applicable) as the Board may from time to time determine in order to create a retention initiative for such employees and to engage in such



other lawful purposes and activities in connection with the foregoing.

Compl. Ex. A, § 2.1.

Daugherty became a member of Highland Employee Retention Assets on October 26, 2009. Compl. ¶ 18. He was awarded 1,571.86 preferred units and was the largest holder in Highland Employee Retention Assets. *Id.* ¶ 19. His ownership percentage increased as other employees resigned from Highland Capital prior to vesting. *Id.* ¶ 20. He remains a member and holds 1,909.69 vested preferred units. *Id.*

**C. Daugherty's Resignation and the Subsequent Texas Action**

Daugherty resigned from Highland Capital on September 28, 2011. *Id.* ¶ 21. At the time of his resignation, Daugherty was a director of Highland Employee Retention Assets. *Id.*

On February 16, 2012, all the directors of Highland Employee Retention Assets except Daugherty removed Daugherty as a director. Compl. Ex. B; Compl. ¶ 22. Immediately thereafter, the newly composed board executed a Second Amended and Restated Agreement (drafted by Thomas Surgent, Highland Capital's assistant general counsel and chief compliance officer) (the "2012 Agreement"). Compl. Ex. C; Compl. ¶ 22.

On April 11, 2012, Highland Capital commenced the Texas Action against Daugherty. Compl. ¶ 25. Daugherty responded with counterclaims against Highland Capital, Highland Employee Retention Assets, and others, alleging breach of contract and breach of the covenant of good faith and fair dealing against Highland Employee Retention Assets and Highland Capital based on the 2012 Amendment.<sup>1</sup> *Id.* ¶ 26.

**D. During the Texas Action, Dondero Purportedly Seized Control of Highland Employee Retention Assets**

During the Texas Action, Dondero sought to gain control of Highland Employee Retention Assets by having Highland Capital buy preferred units of Highland Employee Retention Assets held by current and former employees of Highland Capital. *Id.* ¶ 27.

On December 26, 2012, Dondero schemed with Ted Dameris, then a board member of Highland Employee Retention Assets and an employee of Highland Capital, to “offer everyone except 1 a buyout offer at 100% cash and 40% discount on” non-cash assets. *Id.* ¶ 28.

On January 18 and 31, 2013, Highland Capital offered all Highland Employee Retention Assets preferred unit holders except 1—Daugherty—to

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<sup>1</sup> Daugherty challenged Section 12.1 of the 2012 Agreement, which imposed confidentiality and dispute-resolution obligations. Compl. ¶ 24.

purchase their preferred units for 100 percent of the value of their cash interests and 60 percent of the value of their non-cash interests. *Id.* ¶ 29.

On January 17 and 18, 2013, the board of Highland Employee Retention Assets collaborated with Dondero to transfer the powers of the board to Highland ERA Management. *Id.* ¶ 30.

On January 19, 2013, the board members of Highland Employee Retention Assets resigned after each received a buyout offer from Highland Capital, and Highland ERA Management purportedly became the sole manager of Highland Employee Retention Assets. *Id.* ¶ 31.

Highland ERA Management was formed on February 1, 2013. *Id.* ¶ 33. It purportedly engaged in three transactions that Daugherty challenges in this action. At the time of the challenged transactions, all Highland Employee Retention Assets preferred unit holders except Daugherty purportedly had sold their preferred units to Highland Capital. *Id.* ¶ 37. Upon information and belief, Highland Capital used Highland Employee Retention Assets' funds, not solely its own funds, to purchase the preferred units. *Id.*

First, on February 1, 2013, the date that Highland ERA Management was formed under Delaware law, Highland ERA Management purportedly

executed the Third Amended and Restated Agreement of Highland Employee Retention Assets (the “2013 Agreement”), without the consent of Daugherty, which eliminated (1) the purpose for which Highland Employee Retention Assets was created, (2) the requirement of Highland Employee Retention Assets to make cash distributions to preferred unit holders to cover pass-through tax obligations attributable to Highland Employee Retention Assets, and (3) members’ rights to indemnification. Compl. Ex. D; Compl. ¶ 33.

Second, on February 1, 2013, Highland ERA Management purportedly executed an Expense Allocation Agreement on behalf of Highland Capital and Highland Employee Retention Assets, without the consent of Daugherty, under which the parties reallocated 93.4 percent of Highland Capital’s purported legal expenses related to the Texas Action to Highland Employee Retention Assets. Compl. ¶ 34; Compl. Ex. E. Highland Capital supposedly incurred \$1,142,284 in legal expenses in the Texas Action as of December 31, 2012, compared to \$154,029 incurred by Highland Employee Retention Assets over the same period. Compl. ¶ 35.

Third, on April 30, 2013, Highland ERA Management purportedly executed an Assignment Agreement, without the consent of Daugherty,

declaring that Highland Capital held the “sole economic interest in [Highland Employee Retention Assets].” Compl. ¶ 38; Compl. Ex. F. The Assignment Agreement further resolved that “[Highland Capital] and [Highland Employee Retention Assets] have each determined that it is in their respective best interest” to transfer substantially all the assets of Highland Employee Retention Assets as “in-kind distribution[s]” to Highland Capital (then valued at approximately \$9,700,000). *Id.* ¶ 39.

**E. Daugherty’s Texas Judgment and the Disappearing Assets of Highland Employee Retention Assets**

In December 2013, approximately one month before trial in the Texas Action, Daugherty’s Highland Employee Retention Assets interests, valued at the time at approximately \$3.1 million, were placed into escrow with Abrams & Bayliss as agent (the “Escrow”). Compl. ¶ 41; Compl. Ex. G. If Daugherty prevailed in the Texas Action, escrowed funds in the amount of the judgment—or the entire amount if the judgment exceeded the balance—“*shall*” be transferred to Highland Employee Retention Assets and then to Daugherty. Compl. ¶ 42; Compl. Ex. G, § 3(b)(i) (emphasis added).

During the Texas Action on January 23, 2014, Dondero testified as follows regarding the Escrow:



Q. Okay. So -- so if, if Mr. Daugherty somehow prevails in his lawsuit against Patrick Boyce and Lane Britain and [Highland Employee Retention Assets], **what happens to Mr. Daugherty's interest that's being escrowed right now with a third-party escrow agent?**

A. **They go to him.**

Q. I'm sorry?

A. They go **to him** via to [Highland Employee Retention Assets] and then **to him**. (Emphasis added.)

Compl. ¶ 43.

After a three-week trial in the Texas Action, the jury found that Highland Employee Retention Assets breached the implied covenant of good faith and fair dealing by adopting Section 12.1 of the 2012 Agreement. The jury awarded Daugherty damages of \$2.6 million plus interest. *Id.* ¶ 45; Compl. Ex. H. The jury also found that Daugherty retained Highland Capital information after his employment, but awarded zero damages. Highland Capital would, however, recover its attorneys' fees in the amount of \$2.8 million plus interest. All parties appealed. Compl. ¶ 46.

In September 2014, Highland Employee Retention Assets represented to the Texas court as follows regarding the Escrow:

A contingent interest in assets held in escrow pursuant to an Escrow Agreement, a true and correct copy of which is attached hereto as Exhibit 2 (the "Deposit Assets"). The Deposit Assets are not presently controlled by or available to [Highland Employee Retention Assets]. **Per the Escrow Agreement, if a final, non-appealable judgment against [Highland**

**Employee Retention Assets] is reached, Abrams & Bayliss, LLP, as Escrow Agent, will transfer the Deposit Assets to [Highland Employee Retention Assets].**

Compl. Ex. I, Aff. ¶ 7 (emphasis added); Compl. ¶ 47.

Highland Employee Retention Assets also filed an affidavit with the Texas court stating that it was insolvent and liable to Highland Capital for legal expenses funded on its behalf in the amount of \$7,459,568 and that only \$2,555,071 was included in the net worth computation because Highland Capital had written off \$4,904,497 of the liability as of December 31, 2013, because of “lack of collectability.” Compl. ¶ 48.

**On December 1, 2016**, Daugherty’s judgment against Highland Employee Retention Assets was affirmed. *Id.* ¶ 49.

**On December 2, 2016**—unknown to Daugherty—Abrams & Bayliss, which has served and currently serves as counsel for Highland Capital and its affiliates, resigned as Escrow agent. *Id.* ¶ 51. On December 5, 2016—unknown to Daugherty—Abrams & Bayliss delivered over \$3.1 million in Escrow assets to Highland Capital. *Id.* ¶ 52.

On February 16, 2017, following Daugherty’s inquiry regarding the Escrow, Abrams & Bayliss unveiled the scheme by which Highland Capital received the Escrow assets held for Daugherty:

By letter dated December 2, 2016, Abrams & Bayliss notified Highland that it was resigning as Escrow Agent pursuant to Paragraph 5 of the Escrow Agreement. By letter dated December 2, 2016, Highland informed Abrams & Bayliss that it was (i) accepting Abrams & Bayliss' resignation as Escrow Agent, (ii) waiving the ten-day notice period under Paragraph 5 of the Escrow Agreement, and (iii) directing Abrams & Bayliss to return the Deposit Assets to Highland in accordance with the instructions provided in the letter.

On December 3, 2016, Abrams & Bayliss informed Highland in writing that it agreed to the waiver of the notice period, such that Abrams & Bayliss' resignation was effective immediately. On December 5, 2016, Abrams & Bayliss returned the Deposit Assets to Highland in accordance with the December 2, 2016 instructions. Accordingly, Abrams & Bayliss no longer serves as Escrow Agent or holds Deposit Assets.

Compl. Ex. J.

That is, at the same time Highland Capital placed a judgment lien on Daugherty's family home and was sending a constable to Daugherty's doorstep to seize his assets,<sup>2</sup> Highland Capital and its agents were secretly

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<sup>2</sup> On December 2, 2016, Highland Capital requested a Writ of Execution against Daugherty. Compl. ¶ 50. On December 5, 2016, the day Highland Capital secretly received the Escrow funds, Highland Capital filed a judgment lien on Daugherty's home, which remained as of the filing of this action. *Id.* ¶ 53. On December 8, 2016, Highland Capital requested a Writ of Garnishment to seize Highland Employee Retention Assets' assets owed to Daugherty under the judgment. *Id.* ¶ 55. On December 8, 2016, the constable returned the first Writ of Execution unexercised. *Id.* ¶ 56. On December 9, 2016, four days after Abrams & Bayliss diverted the Escrow assets to Highland Capital, Highland Capital was granted a second Writ of

diverting Highland Employee Retention Assets' funds reserved for Daugherty to Highland Capital. Compl. ¶ 61.

Highland Employee Retention Assets claims to be insolvent and unable to satisfy Daugherty's judgment. *Id.* ¶ 63.

## ARGUMENT

Daugherty's claims fall into three categories: fraudulent transfer (Count One), governance of Highland Employee Retention Assets (Counts Two, Three, Four, and Five), and indemnification (Counts Six and Seven).

### **I. Daugherty Stated a Fraudulent Transfer Claim**

Count One states a fraudulent transfer claim against all Defendants, summarized as follows: "The transfer of Highland Employee Retention Assets' funds reserved for Daugherty in the Escrow to Highland Capital, achieved through the resignation of Abrams & Bayliss, constitutes a fraudulent transfer under Delaware law." *Id.* ¶ 79.

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Execution. *Id.* ¶ 57. Also on December 9, 2016, Highland Capital filed an Application for Turnover directing that Daugherty's interest in Highland Capital affiliates NexBank Capital, Inc., and Trussway Holdings, Inc., be turned over to Highland Capital. *Id.* ¶ 58. On December 14, 2016, without knowing that Highland Capital had secretly obtained the Escrow assets, Daugherty wired approximately \$3.2 million in cash to Highland Capital in satisfaction of its fee award in the Texas Action. *Id.* ¶ 59.

Defendants assert five defenses, including laches, insufficient pleading under Rule 9(b), res judicata, collateral estoppel, and insufficient pleading that Highland ERA Management is Dondero's alter ego. None of the defenses defeat Count One.

**A. Count One Is Not Time Barred**

Defendants acknowledge that Count One is based on "the transfer of funds held in escrow by Abrams & Bayliss to Highland in 2016," OB at 31,<sup>3</sup> but they nevertheless argue that Count One is time barred. They argue that, because certain acts from 2013 ultimately enabled the fraudulent transfer in 2016, Daugherty's claim is time barred. *See* OB at 30-34.

Time bar defenses are not well suited for motions to dismiss. *See, e.g., Reid v. Spazio*, 970 A.2d 176, 183-84 (Del. 2009) ("[A]ffirmative defenses, such as laches, are not ordinarily well-suited for treatment on such a motion. Unless it is clear from the face of the complaint that an affirmative defense exists and that the plaintiff can prove no set of facts to avoid it, dismissal of the complaint based upon an affirmative defense is inappropriate." (footnote omitted)).

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<sup>3</sup> *See also* OB at 32 n.4 ("A portion of these assets was deposited with Abrams & Bayliss as Deposit Assets, on which Daugherty's claim for fraudulent transfer is founded.").



Fraudulent transfer claims are generally subject to a four-year limitations period. 6 *Del. C.* § 1309. The fraudulent transfer in this case was the December 2016 transfer of Escrow assets from Abrams & Bayliss to Highland Capital, which Daugherty learned of in February 2017. Despite efforts by Defendants to confuse the issue by reference to acts years earlier, the fact remains that the assets were transferred in December 2016, and the complaint was filed well within the limitations period.

**B. Count One Was Sufficiently Pled**

“When considering a defendant’s motion to dismiss, a trial court should accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as ‘well-pleaded’ if they provide the defendant notice of the claim, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof.” *Cent. Mort. Co. v. Morgan Stanley Mort. Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011).

There are various alternative grounds on which Defendants can be liable for fraudulent transfer, including:

- A transfer made with actual intent to hinder, delay, or defraud Daugherty; *or*

- A transfer made without receiving reasonably equivalent value in exchange for the transfer and Highland Employee Retention Assets was engaged in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; *or*
- A transfer made without receiving reasonably equivalent value in exchange for the transfer and Highland Employee Retention Assets intended to incur, or believed or reasonably should have believed it would incur debts beyond its ability to pay as they became due; *or*
- If Highland Employee Retention Assets made the transfer without receiving a reasonably equivalent value in exchange for the transfer and it was insolvent at the time *or* became insolvent as a result of the transfer; *or*
- If the transfer was made to an insider for an antecedent debt, Highland Employee Retention Assets was insolvent at the time, and the insider had reasonable cause to believe that the debtor was insolvent. *See 6 Del. C. §§ 1304, 1305.*<sup>4</sup>

Defendants argue that, “[b]ecause of the lack of factual allegations supporting a reasonably conceivable finding of unequal exchange and insolvency, or particular facts suggesting fraud, Daugherty’s claims for fraudulent transfer should be dismissed.” OB at 35. The three issues raised by Defendants are (1) insolvency, (2) unequal exchange, and (3) particular facts suggesting fraud.

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<sup>4</sup> Defendants cited Section 1304 but not Section 1305. Both sections apply because Daugherty was a creditor before the fraudulent transfer.

With respect to insolvency, Defendants argue that “it was not the transfer of Escrow assets that allegedly left HERA insolvent, as Daugherty contends.” OB at 34. Defendants misstate the standard. Under Section 1305(a), it is sufficient that Highland Employee Retention Assets was insolvent at the time of the transfer. *See 6 Del. C. § 1305(a)*. Daugherty need not allege or prove that Highland Employee Retention Assets *became* insolvent *as a result of* the fraudulent transfer. There is no dispute that Highland Employee Retention Assets was insolvent at the time of the fraudulent transfer.<sup>5</sup> Further, insolvency is not a necessary element of each ground for fraudulent transfer. *See, e.g., id.*, § 1304(a)(1).

With respect to unequal exchange, Defendants argue that the complaint “is likewise devoid of allegations of an inadequate exchange.” OB at 34. Daugherty could not have alleged an unequal exchange because there was *no* exchange. Defendants siphoned assets of Highland Employee Retention Assets (for Daugherty’s benefit) to an insider (i.e., Highland

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<sup>5</sup> *See, e.g.*, OB at 34-35 (“Rather, HERA had a ‘negative net worth’ as of September 19, 2014, more than two years prior to the transfer of Escrow assets.” (citing Compl. Ex. I)).

Capital) for *nothing*.<sup>6</sup> Further, unequal exchange is not a necessary element of each ground for fraudulent transfer. *See, e.g., 6 Del. C. § 1304(a)(1)*.

With respect to Defendants' intent to hinder, delay, or defraud Daugherty, Count One includes sufficient allegations. "Intent is a question of fact. The Complaint must plead facts from which it is reasonably conceivable that the defendants acted with the requisite intent. Section 1304(b) provides a non-exclusive list of indicia that can be considered for that purpose." *Quadrant Structured Prod. Co. v. Vertin*, 102 A.3d 155, 198 (Del. Ch. 2014) (internal citations omitted).<sup>7</sup>

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<sup>6</sup> The transferred Escrow assets were assets of Highland Employee Retention Assets, the debtor, as Highland Employee Retention Assets stated under oath in 2014: "**Per the Escrow Agreement, if a final, non-appealable judgment against [Highland Employee Retention Assets] is reached, Abrams & Bayliss, LLP, as Escrow Agent, will transfer the Deposit Assets to [Highland Employee Retention Assets].**" Compl. Ex. I, Aff. ¶ 7 (emphasis added). Dondero confirmed that fact under oath. Compl. ¶ 43. Judicial estoppel precludes Defendants from arguing otherwise. *See Motorola Inc. v. Amkor Tech., Inc.*, 958 A.2d 852, 859-860 (Del. 2008). Apart from Defendants' admissions, the Escrow assets could be considered a contingent interest of Highland Employee Retention Assets that vested on December 1, 2016, when the Texas appellate court affirmed Daugherty's judgment. *See* Compl. Ex. G, § 3(b)(i).

<sup>7</sup> The non-exclusive factors are:

(1) The transfer or obligation was to an insider; (2) The debtor retained possession or control of the property transferred after the transfer; (3) The transfer or obligation was disclosed or concealed; (4) Before the transfer was made or obligation was

“Rule 9(b) does not require an exhaustive cataloguing of facts but only sufficient factual specificity to provide assurance that the plaintiff has investigated ... the alleged fraud and reasonably believes that a wrong has occurred.” “The actual intent of the parties to the conveyance is of no consequence since [6 *Del. C.* § 1304] establishes an external test of constructive or legal fraud....” In order to state a fraudulent transfer claim, [a plaintiff] must generally plead facts showing intent to defraud with specific supporting facts describing the circumstances of the transfer.

*Id.* (internal citations omitted).

Daugherty pled facts showing Defendants’ intent to defraud him. He alleged that, *after* Defendants represented under oath to the Texas court that the Escrow assets were being held for Highland Employee Retention Assets if Daugherty won a judgment and *after* Daugherty won a judgment, Defendants *secretly* caused the Escrow assets to be transferred to an *insider*

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incurred, the debtor had been sued or threatened with suit; (5) The transfer was of substantially all the debtor’s assets; (6) The debtor absconded; (7) The debtor removed or concealed assets; (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

6 *Del. C.* § 1304(b).



(i.e., Highland Capital, a “person in control of the debtor,” 6 *Del. C.* § 1301(7)(b)(3)), leaving him unable to collect his judgment. Compl. ¶¶ 41-63, 74. The Abrams & Bayliss letter dated February 16, 2017, details how the fraudulent transfer was completed. *See* Compl. Ex. J.<sup>8</sup>

These allegations make a fraudulent transfer claim reasonably conceivable. Further, intent to hinder, delay, or defraud is not a necessary element of each ground for fraudulent transfer. *See, e.g.,* 6 *Del. C.* §§ 1304(a)(2), 1305; *China Res. Prods. (U.S.A.) Ltd. v. Fayda Int’l, Inc.*, 788 F. Supp. 815, 819 (D. Del. 1992) (“Because the plaintiff need not prove actual or constructive fraud ... Rule 9(b) does not apply to pleadings made pursuant to [6 *Del. C.* §§ 1304(a)(2), 1305].”).<sup>9</sup>

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<sup>8</sup> Defendants claim that “there was nothing nefarious about the December 2016 transfer.” OB at 33. Defendants are not entitled to that counterfactual and self-serving inference on this motion. Nor are Defendants entitled to an inference that Abrams & Bayliss “rightly returned” the Escrow assets. Nor are Defendants entitled to blame Daugherty for not chasing down the escrow agent fast enough. *Id.* at 33-34 (“Since Daugherty waited until February 16, 2017 to request the Deposit Assets from Abrams & Bayliss, they rightly returned the Deposit Assets to Highland.”).

<sup>9</sup> To the extent particularity is required under Section 1304(a)(1), “courts have recognized in similar contexts that the particularity requirement must be applied in light of the facts of the case, and less particularity is required when the facts lie more in the knowledge of the opposing party than of the pleading party.” *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 146 (Del. Ch. 2003).

**C. Highland ERA Management Is Dondero's Alter Ego**

Daugherty alleges that Highland ERA Management “is a mere instrumentality and Dondero’s alter ego.” Compl. ¶ 13. Highland ERA Management is not a real company with a legitimate purpose. It is a sham for Dondero—who considers himself “the man behind the curtain solving financial puzzles” and “the wizard,” Compl. ¶ 40—to exercise control over Highland Employee Retention Assets under cover of a corporate form.

Defendants argue that Daugherty did not sufficiently plead alter ego. OB at 35-38. They argue that (1) “Daugherty does not allege that HERA is ‘a sham and exist[s] for no other purpose than as a vehicle for fraud’”; (2) “the Complaint lacks any allegation that HERA Management was created solely to commit a fraud”; and (3) “Daugherty makes a conclusory allegation that HERA Management is Dondero’s alter ego.” *Id.* at 37.

Daugherty does not allege that Highland Employee Retention Assets is a sham, as Defendants suggest. As a matter of fact, before Daugherty resigned from Highland Capital in 2011, Highland Employee Retention Assets was a legitimate company fulfilling a limited purpose. Daugherty is asserting claims on behalf of Highland Employee Retention Assets to undo improper acts of Highland ERA Management (i.e., Dondero) that harmed

Highland Employee Retention Assets and its member, Daugherty. In any event, the legitimacy of Highland Employee Retention Assets is unrelated to whether Highland ERA Management is Dondero's alter ego.

The "court can pierce the corporate veil of an entity where there is fraud or where a subsidiary is in fact a mere instrumentality or alter ego of its owner." *Geyer v. Ingersoll Publ'ns Co.*, 621 A.2d 784, 793 (Del. Ch. 1992). The Court considers a number of factors, including "(1) whether the company was adequately capitalized for the undertaking; (2) whether the company was solvent; (3) whether corporate formalities were observed; (4) whether the dominant shareholder siphoned company funds; and (5) whether, in general, the company simply functioned as a facade for the dominant shareholder." *MicroStrategy Inc. v. Acacia Research Corp.*, 2010 WL 5550455, at \*11 (Del. Ch. Dec. 30, 2010). No one factor is dispositive. There must be an "overall element of injustice or unfairness." *Id.*<sup>10</sup>

It is reasonably conceivable that Highland ERA Management is Dondero's alter ego. ***On the same day that Highland ERA Management was formed***, it (i.e., Dondero) purportedly executed the 2013 Agreement and

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<sup>10</sup> "Injustice" includes the "contravention of law or contract." *Nufarm v. RAM Research*, 1998 WL 668648, at \*4 (Del. Ch. Sept. 15, 1998).

the Expense Allocation Agreement, under which 93.4 percent of the Texas Action legal expenses of Highland Capital were reallocated to Highland Employee Retention Assets. Compl. ¶¶ 33-35. The fact that Highland ERA Management was formed the day it purportedly acted to benefit Dondero should itself defeat Defendants’ motion. If “[Highland ERA Management] is in privity with Dondero,” OB at 20, it is even more conceivable that they are alter egos. *See Dudley v. Smith*, 504 F.2d 979, 982 (5th Cir. 1974).

Finally, Count One should survive against Dondero whether or not he is Highland ERA Management’s alter ego. Dondero participated in or benefited from the fraudulent transfer to Highland Capital, which he controls. Tellingly, the Abrams & Bayliss letter copied Highland Capital’s in-house counsel and Highland Capital and Dondero’s outside counsel, Mark Katz. Compl. Ex. J.

#### **D. Res Judicata Is Inapplicable**

Defendants assert that Count One is barred by res judicata. They argue, “The focal point of both the Texas Action and this lawsuit is the amendments to the HERA operating documents that allowed all of the assets to be transferred at HERA Management’s discretion.” OB at 24. For res judicata to apply, Defendants must prove: “(1) a prior final determination on

the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action.” *Hill v. Tx-An Anesthesia Mgmt., LLP*, 443 S.W.3d 416, 424 (Tex. App. 2014).<sup>11</sup>

Defendants’ res judicata defense to Count One fails because a final, non-appealable judgment was rendered in the Texas Action *before* the acts occurred that gave rise to Count One. That is, the Texas appellate court issued its decision on December 1, 2016, and Defendants’ fraudulent transfer occurred the next day. Count One could not have been brought in the Texas Action. Res judicata is inapplicable.<sup>12</sup>

#### **E. Collateral Estoppel Is Inapplicable**

Defendants assert that Daugherty is “estopped from asserting Counts I, III, and IV” under the doctrine of collateral estoppel. OB at 27.

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<sup>11</sup> Texas law applies to the issues of res judicata and collateral estoppel. *See, e.g., Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1217 (Del. 1991) (stating that in *Bata v. Bata*, 163 A.2d 493, 504 (Del. 1960), “this Court noted with approval ‘the established rule’ that the preclusive effect of a foreign judgment is measured by standards of the rendering forum”).

<sup>12</sup> “Efforts to enforce a judgment do not equate to collateral attacks against a judgment. Applying the doctrine of res judicata in a suit to enforce a judgment would ‘pervert the sanctity of judgments, not preserve them’ which is a goal of the doctrine.” *In re Estate of Lynch*, 395 S.W.3d 215, 227 (Tex. App. 2012) (internal citation omitted).



Defendants argue, “While Daugherty failed to assert fraudulent transfer in the Texas Action, this suit indisputably arises from the same nucleus of facts, and the facts were essential to the judgment therein.” OB at 29.

To the contrary, the factual assertions underlying Count One could not have been litigated in the Texas Action because Defendants’ fraudulent acts occurred *after* the Texas Action. Defendants’ fraudulent acts occurred *because of* the Texas Action; that is, they occurred to deprive Daugherty of his judgment. Collateral estoppel is inapplicable.

## **II. Daugherty Stated Claims Relating to the Governance of Highland Employee Retention Assets**

Counts Two, Three, Four, and Five relate to the governance of Highland Employee Retention Assets, including the purported adoption of the 2013 Agreement, Expense Allocation Agreement, and Assignment Agreement. Count Two seeks dissolution of Highland Employee Retention Assets, Count Three asserts a fiduciary duty claim against Highland ERA Management and Dondero, Count Four asserts an aiding and abetting claim against Highland Capital, and Count Five asserts an implied covenant claim

against Highland ERA Management and Dondero. The challenged acts occurred during the Texas Action.<sup>13</sup>

Defendants move to dismiss Counts Three (breach of fiduciary duty) and Four (aiding and abetting) on the grounds of res judicata, collateral estoppel, laches, and failure to state a claim. Defendants move to dismiss Count Two (dissolution) on the ground of failure to state a claim. And Defendants move to dismiss Count Five (breach of the implied covenant) on the grounds of laches and failure to state a claim. Each of Defendants' grounds should be rejected, as discussed below.

**A. Res Judicata Is Inapplicable to Counts Three and Four**

Defendants argue that Counts Three and Four “spring from disputes that have already been resolved in Texas.” OB at 18. Defendants argue, “The allegations against [Highland ERA Management] arise out of actions

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<sup>13</sup> The challenged acts, such as the transfer of approximately \$9.7 million in value from Highland Employee Retention Assets to Highland Capital under the Assignment Agreement, may also qualify as fraudulent transfers. Compl. ¶ 5. Relevant documents and information, including when Highland Employee Retention Assets became insolvent, are in Defendants' control. For purposes of this motion, Daugherty has sufficiently pled fiduciary duty, aiding and abetting, and implied covenant claims regarding those acts. What happened with the remaining assets of Highland Employee Retention Assets is also a mystery, although Daugherty contends that they were wrongfully used by Highland Capital to purchase preferred units of Highland Employee Retention Assets. Compl. ¶ 37.

taken as Manager of [Highland Employee Retention Assets], and the claims in the Texas Action were based, in part, on actions taken by [Highland Employee Retention Assets], Highland [Capital], and Dondero while [Highland ERA Management] was acting as [Highland Employee Retention Assets'] Manager.” OB at 21.

For res judicata to apply, Defendants must prove: “(1) a prior final determination on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action.”

*Hill*, 443 S.W.3d at 424.

Assuming for the sake of argument that Defendants correctly contend that Highland ERA Management, which was not a party to the Texas Action and did not exist when the Texas Action was filed, is in privity with all the other defendants,<sup>14</sup> res judicata is inapplicable because Counts Three and Four could not have been raised in the Texas Action.

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<sup>14</sup> Discovery is needed to determine the nature of the Defendants’ interests and the extent of privity between Highland ERA Management and the remaining defendants. For example, Highland ERA Management may not be in privity with Highland Employee Retention Assets, as Daugherty alleges that Highland ERA Management (i.e., Dondero) took actions to harm Highland Employee Retention Assets for the benefit of Highland Capital. Compl. ¶¶ 8, 33-39, 93-95, 101-03, 110. It is too early to conclude that

“The definition of res judicata ... is substantially similar to the rule of compulsory counterclaims ... [where a] party defending a claim must bring as a counterclaim any claim that ‘arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim ....’” *Barr v. Resolution Tr. Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 630 (Tex. 1992) (citing Tex. R. Civ. P. 97).

Whether the subject matter of Counts Three and Four arise from the subject matter of the Texas Action “necessarily requires an examination of the factual basis of the claim or claims in the prior litigation ... [and] an analysis of the factual matters that make up the gist of the complaint, without regard to the form of action.” *Id.* “Legal theories do not arise out of the same nucleus of operative facts when those facts have not occurred by the time the first suit was initiated.” *Smallwood v. Willow Way, LLC*, 2017 WL 3172795, at \*6 (N.D. Tex. June 29, 2017), *adopted*, 2017 WL 3158875 (N.D. Tex. July 25, 2017).

Defendants argue that Daugherty could have brought Counts Three and Four in the Texas Action on the ground that “[a]ll of Daugherty’s claims

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Highland ERA Management is in privity with all the other defendants, as Defendants argue. OB at 20.

in both the Texas Action and this lawsuit arise out of the relationship between Defendants and Daugherty as a [Highland Employee Retention Assets] unitholder.” OB at 22. Defendants effectively argue that members of Delaware LLCs are prohibited from bringing multiple lawsuits concerning the same LLC, even if claims in a second action had not even occurred at the time of the first action. Defendants’ position is meritless.

Highland Capital filed the Texas Action on April 11, 2012. Compl. Ex. L. The three transactions underlying Counts Three and Four in this action—i.e., the 2013 Agreement, Expense Allocation Agreement, and Assignment Agreement—occurred *after* the Texas Action was filed. Highland ERA Management (i.e., Dondero) purportedly executed two on February 1, 2013, and one on April 30, 2013 (the deadline to amend pleadings in the Texas Action).

Applying Texas law, the court in *Welsh v. Fort Bend Indep. Sch. Dist.*, 860 F.3d 762 (5th Cir. 2017), addressed whether the “could have been raised” requirement was met “where some of the events underlying the claims asserted in the second action had not yet occurred at the time of filing the first action.” *Id.* at 765. The court “specifically reject[ed] the idea that



every time something happens after a lawsuit is filed the plaintiff must immediately amend or risk losing that claim forever.” *Id.* at 767.

The court noted, “[t]he Texas Supreme Court has determined that claims could not have been litigated in a prior suit ... where there existed some legal hurdle to asserting them in that prior suit” and that “Texas courts have refused to apply res judicata to claims that were not yet mature at the time of the first lawsuit.” *Id.* at 765. The Texas Supreme Court has also held that “a claim for breach of a continuing contract is not barred by a previous suit on the same contract where the causes of action in the second suit accrued *after* the filing of the first suit.” *Id.* at 766 (emphasis in original).

Daugherty filed his Original Answer, Counterclaim and Third-Party Petition on May 22, 2012, OB Ex. A; his Second Amended Answer, Counterclaim and Third-Party Petition on April 30, 2013; and his Third Amended Answer, Counterclaim and Third-Party Petition on May 7, 2013. OB Ex. D. *After the deadline to amend pleadings in the Texas Action, Highland Capital produced over 1,000,000 pages of documents to Daugherty.* OB Ex. G, ¶ 4. Included in those productions were the 2013 Agreement, Expense Allocation Agreement, and Assignment Agreement. *Id.*

On November 13, 2013, Daugherty filed a motion for leave to file a fourth amended counterclaim. OB Ex. G. Daugherty sought to add claims based on the 1,000,000 pages recently produced and depositions taken in September and October 2013. OB Ex. G, ¶¶ 4-6; OB Ex. B to Ex. G, ¶¶ 123-136, 186-191. Those claims were (1) breach of fiduciary duty against Dondero and others and (2) aiding and abetting breach of fiduciary duty against Highland Capital and Dondero. OB Ex. B to Ex. G, ¶¶ 186-191.

Highland Capital opposed Daugherty's motion to amend on the ground that Daugherty missed the deadline to amend pleadings. Ex. A, ¶¶ 8, 11. Highland Capital also argued that "Daugherty should not be granted leave to amend because his Fourth Amended Pleading asserts at least two ['entirely'] new causes of action, and therefore is prejudicial on its face." *Id.*, ¶ 13, 15(iii). Highland Capital claimed that it would not be "prepared to go to trial on the newly asserted causes of action and theories ...." *Id.*, ¶ 15(v). Highland Capital argued, "if the Motion for Leave is granted, the Highland Defendants would be prejudicially forced into the untenable position of having to defend against new facts, claims, and theories with

virtually no meaningful time before trial to develop their defenses through discovery or legally.” *Id.*, ¶ 33.<sup>15</sup>

Daugherty’s motion to amend was denied. OB Ex. H; Ex. C at 4:17-20. His motion for reconsideration, opposed by Highland Capital, was also denied. Ex. D at 4:6-11.

Defendants ignored this procedural history in their opening brief and argued, “Daugherty’s decision to forego amendment of his pleadings until the eve of trial was within his control, and cannot defeat the application of res judicata.” OB at 25-26. Daugherty does not seek to relitigate in this Court the denial of his motion to amend, but it is untrue that the timing of his motion was within his control. Highland Capital kept key documents from Daugherty until just before trial and after the deadline to amend pleadings. Daugherty made more than reasonable efforts to pursue claims similar to Counts Three and Four in the Texas Action but he could not do so.

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<sup>15</sup> Highland Capital also argued that “the late amendment prevents the Highland Defendants from challenging two of the new causes of action through summary judgment... forcing them to incur the expenses of a trial before the legal sufficiency of the claims can be tested by the Court at a directed verdict stage.” Ex. B at 6.

**B. Collateral Estoppel Is Inapplicable to Counts Three and Four**

Defendants argue that Counts Three and Four are barred by collateral estoppel because Daugherty's "underlying factual assertions were fully litigated and determined in the Texas Action." OB at 27. Defendants must prove that "(1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action." *John G. & Marie Stella Kenedy Mem'l Found. v. Dewhurst*, 90 S.W.3d 268, 288 (Tex. 2002).

An issue was litigated if it "was raised by the pleadings or otherwise submitted for determination and was determined by the fact finder." *Tenet Health Sys. Hosps. Dallas, Inc. v. N. Tex. Hosp. Physicians Grp., P.A.*, 438 S.W.3d 190, 203 (Tex. App. 2014). "The issue decided in the prior action must be identical to the issue in the pending action." *Id.* "Where the first fact finder did not determine the ultimate fact question at issue in the second proceeding, but merely denied the requested relief, collateral estoppel does not apply." *Id.* at 204. "'Ultimate issue' does not refer to a claim or cause of action. Ultimate issues are those factual determinations submitted to a jury

that are necessary to form the basis of a judgment.” *Dent v. Fed. Sign & Signal Corp.*, 773 S.W.2d 599, 601 (Tex. App. 1989).

Defendants argue that the Texas court considered and determined issues concerning the 2013 Agreement, Expense Allocation Agreement, and Assignment Agreement “in, among other things, granting summary judgment in favor of Dondero and Highland and dismissing Daugherty’s claims...” OB at 28. In support, Defendants cite Daugherty’s proposed fourth amended counterclaim, which came after summary judgment. *Id.* (citing OB Ex. B to Ex. G, ¶¶ 134, 174).<sup>16</sup> Defendants also cite Exhibits B and F to their opening brief, *id.*, which do not support their argument.

Daugherty referenced in his summary judgment papers the 2013 Agreement, Expense Allocation Agreement, and Assignment Agreement, OB at 11-12, but he did not assert claims based on those documents and the Texas court did not adjudicate any issues with respect to those documents. Neither the summary judgment argument transcript nor the summary judgment order references those documents. *See* Ex. E; OB Ex. F.

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<sup>16</sup> In later denying Daugherty’s motion to amend, the Texas court did not adjudicate the merits of the proposed amended allegations. *See, e.g., Apogee Invs., Inc. v. Summit Equities LLC*, 2017 WL 4269013, at \*2 (Del. Ch. Sept. 22, 2017) (“[C]ourts generally will not test the sufficiency of the pleadings in a ruling on a motion to amend.”).



When the 2013 Agreement was introduced at trial in Texas, the judge gave a limiting instruction, Ex. F at 13:2-19, and Highland Capital objected on relevance grounds. *Id.* at 14:2-4. The final jury instructions stated, “***Do not consider any actions taken by HERA after February 16, 2012***, when the [2012 Agreement] was adopted when determining if HERA failed to comply with the HERA Agreement.” Compl. Ex. H at 20 (emphasis added); *see also* Ex. G at 109:10-20 (“We believe the jury should be instructed they only can find failure to comply [with the HERA Agreement] based on the adoption of the amendment to add Section 12.1 to the HERA Agreement.”).

The issues underlying Counts Three and Four were not considered, determined, or adjudicated in the Texas Action. Defendants’ collateral estoppel argument should be rejected.

### **C. Count Three States a Fiduciary Duty Claim**

Defendants argue that Count Three fails to state a claim because the 2013 Agreement—the document that Daugherty alleges breached Highland ERA Management’s fiduciary duties—eliminated Highland ERA Management’s fiduciary duties. OB at 47-48; *see also* OB at 52 (arguing that the “agreement expressly disavows any fiduciary duties on the part of the manager of HERA”).

There are at least two problems with Defendants' argument. First, Defendants cannot rely on an agreement that was improperly adopted to absolve them from claims concerning the agreement's adoption. Second, the language of the 2013 Agreement (i.e., "[t]o the maximum extent permitted by applicable law, no [covered person] shall be liable to the Company or any other third party ... for breach of fiduciary duty owed to the Company and/or its members," Compl. Ex. D, § 8.1(a)) is an exculpation provision, not an elimination of fiduciary duties.

The difference is as follows:

Section 1101(c) of the LLC Act ... empowers the drafters of a limited liability company to expand, restrict, or eliminate a member or manager's duties, including fiduciary duties. Section 1101(e) of the LLC Act authorizes something different: the drafters of a limited liability company can leave the default duties in place, but limit or eliminate monetary liability for breach of duty:

A limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member, manager or other person to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith

violation of the implied contractual covenant of good faith and fair dealing.

6 *Del. C.* § 18-1101(e). By limiting or eliminating the prospect of liability but leaving in place the duty itself, a provision adopted pursuant to Section 1101(e) restricts the remedies that a party to the LLC agreement can seek. Monetary liability may be out, but injunctive relief, a decree of specific performance, rescission, the imposition of a constructive trust, and a myriad of other non-liability-based remedies remain in play. A provision exculpating a member from liability for breach of fiduciary duty in accordance with Section 1101(e) of the LLC Act accomplishes a different result than a provision that modifies, restricts, or eliminates the underlying fiduciary duty itself, as contemplated by Section 1101(c) of the LLC Act.

*Feeley v. NHAOCG, LLC*, 62 A.3d 649, 663-64 (Del. Ch. 2012) (internal citations omitted). The manager of Highland Employee Retention Assets is bound by fiduciary duties under Delaware law.

Defendants argue that Daugherty “does not identify any source of fiduciary duty that Dondero owed to him.” OB at 48. If Highland ERA Management owed fiduciary duties, then the same fiduciary duties apply to Dondero, its alter ego. *See Dudley*, 504 F.2d at 982 (“The effect of applying the alter ego doctrine ... is that the corporation and the person who dominates it are treated as one person, so that any act committed by one is attributed to both, and if either is bound, by contract, judgment, or otherwise, both are equally bound.”).

**D. Counts Three, Four, and Five Are Not Time Barred**

Defendants argue that Counts Three, Four, and Five are time barred. OB at 41-47, 49, 53-55. They argue, for example, that claims challenging the 2013 Agreement accrued on February 1, 2013, when the agreement was purportedly adopted by Highland ERA Management (i.e., Dondero) and “[i]f Daugherty wanted to bring a claim based on the adoption of the Third Amended LLC Agreement, he should have done so in the Texas Action rather than sitting on his hands only to raise the issue now.” OB at 44.

Laches is an affirmative defense that consists of two elements: “(i) unreasonable delay in bringing a claim by a plaintiff with knowledge thereof, and (ii) resulting prejudice to the defendant.” *Levey v. Brownstone Asset Mgmt., LP*, 76 A.3d 764, 769 (Del. 2013).

“The period of time that constitutes an ‘unreasonable delay’ can range from one month to many years. The length of the delay is less important than the reasons for it.” *IAC/InterActiveCorp v. O’Brien*, 26 A.3d 174, 177 (Del. 2011). If the reasons for the delay are due to “unusual conditions or extraordinary circumstances,” this Court has the discretion to “ignore the analogous statute of limitations in deciding whether [the plaintiff’s] claim was barred by laches.” *Id.* at 178-79.

In exercising its discretion, the Court considers all relevant facts, including the following factors:

1) whether the plaintiff had been pursuing his claim, through litigation or otherwise, before the statute of limitations expired; 2) whether the delay in filing suit was attributable to a material and unforeseeable change in the parties' personal or financial circumstances; 3) whether the delay in filing suit was attributable to a legal determination in another jurisdiction; 4) the extent to which the defendant was aware of, or participated in, any prior proceedings; and 5) whether, at the time this litigation was filed, there was a bona fide dispute as to the validity of the claim.

*Id.* at 178.

Daugherty explained in his complaint why his claims were on hold until the Texas Action was resolved: "Given Highland Employee Retention Assets' and Highland Capital's arguments in the Texas Action that Daugherty's interest in Highland Employee Retention Assets was extinguished, it was not until the Texas Action became final and non-appealable in December 2016 that it was clear Daugherty remained a member of Highland Employee Retention Assets and had standing to pursue this claim." Compl. ¶¶ 99, 107.<sup>17</sup>

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<sup>17</sup> Daugherty must be a member to pursue derivative claims. *See, e.g., Zimmerman v. Crothall*, 2013 WL 5630992, at \*5 & n.22 (Del. Ch. Oct. 14, 2013), *rev'd in part*, 94 A.3d 733 (Del. 2014) ("the standing statute in the Limited Liability Company Act, 6 *Del. C.* § 18-101, sufficiently tracks its



Until the Texas Action was resolved, Daugherty's status as a member of Highland Employee Retention Assets was unknown. Through the conclusion of the Texas Action, Defendants argued that Daugherty was not a member. *See* Compl. Ex. L, ¶¶ 22-23; OB Ex. E at 29 (arguing in summary judgment briefing that "Daugherty cannot bring derivative claims on behalf of HERA..."). In their proposed final order they attempted to extinguish Daugherty's preferred units but the judge struck the language. Compl. ¶ 2.

On appeal they argued, "Daugherty also should be barred from asserting any future interest in HERA ...." Ex. H at 41. The court held:

the question of ownership of the units was not resolved by the jury. Whether HERA's conduct constituted a breach of the agreement is not the same question as whether or not Daugherty owns HERA units. Judgment was rendered only on the jury's "Yes" answer to the "implied covenant" portion of Question 17, that HERA did breach the agreement by failing to comply with the implied covenant of good faith and fair dealing. The judgment compensates Daugherty only once for his damages from that breach, in the amount the jury found in response to Question 18. The trial court therefore rendered judgment in accordance with the jury's verdict. We decide HERA's third, fourth, and fifth issues against it.

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sister statute in the DGCL, as to suggest that the General Assembly intended that the 'continuous ownership' rule also would apply in the LLC context"). Defendants do not challenge that Daugherty's claims, at least in part, are derivative or his standing to pursue them.

*Daugherty v. Highland Capital Mgmt., L.P.*, 2016 WL 4446158, at \*18 (Tex. App. Aug. 22, 2016).

After the Texas appellate court ruled that Daugherty had not been divested of his interest, Daugherty was finally in a position to pursue his claims in this action. If Daugherty had filed earlier, Defendants surely would have argued that the Texas courts must first determine his membership status and standing to bring the claims.

There are “unusual conditions or extraordinary circumstances” here because Daugherty unsuccessfully attempted to pursue his claims in the Texas Action during the limitations period, the delay in filing this action was attributable to a legal determination in another jurisdiction, Defendants were aware of and participated in the Texas Action, and there is a dispute as to the validity of the claims. It is reasonably conceivable that the Court will “ignore the analogous statute of limitations in deciding whether [Daugherty’s] claim was barred by laches.” *IAC*, 26 A.3d at 178-79.

Further, under *Levey*, the limitations period for Daugherty’s claims was equitably tolled during the Texas Action. In *Levey*, the plaintiff unsuccessfully attempted to pursue substantially identical claims in an earlier-filed action. 76 A.3d at 772. The Delaware Supreme Court found

that the plaintiff “timely and consistently asserted his claim in two, non-Delaware, fora within the analogous limitations period, and that his delay in filing suit in Delaware was attributable partially—but not entirely—to extraneous factors other than his own inaction.” *Id.* at 772-73. The same reasoning applies here. Daugherty unsuccessfully attempted to bring substantially identical claims in the Texas Action through his proposed fourth amended counterclaim. His claims were equitably tolled.

Finally, Defendants’ laches argument fails because they did not demonstrate prejudice, a key element of the defense. By failing to address prejudice, they waived the argument. *Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) (“issues not briefed are deemed waived”); *In re IBP, Inc. S’holders Litig.*, 789 A.2d 14, 62 (Del. Ch. 2001).<sup>18</sup>

#### **E. Count Two States a Dissolution Claim**

In Count Two, Daugherty requests that Highland Employee Retention Assets be dissolved because “it is not reasonably practicable to carry on the

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<sup>18</sup> Defendants argue that the Court “should apply the three year statute of limitations” to Count Five because it is a legal claim. OB at 53-55. No matter the degree of deference that the Court gives to the statute of limitations in its laches analysis with respect to Count Five, there remain “unusual conditions or extraordinary circumstances” under which it is reasonably conceivable that Count Five is not time barred. The analysis for Count Five is no different from the analysis for Counts Three and Four.

business in conformity with the limited liability company agreement.”

Compl. ¶ 87 (citing 6 *Del. C.* § 18-802).

“In determining whether it is reasonably practicable to carry on the business of the LLC, the Court must look to the purpose clause set forth in the governing agreements.” *In re Seneca Inv. LLC*, 970 A.2d 259, 263 (Del. Ch. 2008). The Court has dissolved an entity where its purpose was fulfilled or impossible to carry out. *See, e.g., PC Tower Ctr., Inc. v. Tower Ctr. Dev. Assocs. Ltd. P’ship*, 1989 WL 63901, at \*6 (Del. Ch. June 8, 1989) (ordering dissolution of limited partnership where purpose of partnership was to acquire and operate certain real property and purpose was frustrated because sole lessee of property became insolvent and market conditions made finding a new tenant “practically impossible”).<sup>19</sup>

Defendants assert that Count Two should be dismissed because Daugherty did not allege that Highland Employee Retention Assets cannot carry on with business in conformity with the 2013 Agreement. *See* OB at 15 (arguing that Count Two fails “because the current operating agreement

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<sup>19</sup> “In the absence of extensive case law interpreting § 18-802, the courts look to the analogous limited partnership dissolution statute.” *Seneca*, 970 A.2d at 262.

of HERA provides that the purpose of the company is ‘to do all such things for which limited liability companies may be formed’”); *id.* at 40-41.<sup>20</sup>

Defendants’ argument is based on a false premise, which is that the 2013 Agreement is a valid and binding agreement. It is not. It was wrongfully adopted by Highland ERA Management (i.e., Dondero), Compl. ¶ 88, if Highland ERA Management (i.e., Dondero) was even authorized to execute it.<sup>21</sup> The 2013 Agreement should be ignored and invalidated.

The purpose of Highland Employee Retention Assets

shall be to receive and hold assets to be contributed by [Highland Capital] and to distribute the proceeds of such assets from time to time to certain employees of [Highland Capital] (or of affiliates of [Highland Capital], as applicable) as the

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<sup>20</sup> Defendants also claim Count Two is time barred because Daugherty’s claims challenging the 2013 Agreement, which expanded the purpose of the company, are time barred. OB at 41-45. As discussed above, those claims are not time barred. *See supra* Section II(D).

<sup>21</sup> Highland ERA Management purported to execute the 2013 Agreement on behalf of Highland Employee Retention Assets, but there is no evidence that it was previously authorized to do so. Daugherty disputes that Highland Capital is a valid member of Highland Employee Retention Assets with authority to appoint a manager. Compl. ¶ 85. Daugherty contends that he is the sole member of Highland Employee Retention Assets. *Id.* Whether or not Highland ERA Management was validly appointed manager, it remains liable for the challenged acts. *See, e.g., In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 48 (Del. 2006) (“A *de facto* officer is one who actually assumes possession of an office under the claim and color of an election or appointment and who is actually discharging the duties of that office, but for some legal reason lacks *de jure* legal title to that office.”).



Board may from time to time determine in order to create a retention initiative for such employees and to engage in such other lawful purposes and activities in connection with the foregoing.

Compl. Ex. A, § 2.1; Compl. Ex. C, § 2.1; Compl. ¶¶ 16-17.

Once the 2013 Agreement is set aside, the following question remains:

Is it reasonably practicable to carry on the business of Highland Employee Retention Assets, whose purpose is to “create a retention initiative for [Highland Capital] employees”? Dondero testified in the Texas Action that Highland Capital’s buyout of the unit holders in January and February 2013 extinguished that purpose:

Q. So -- why did the escrow agreement not get signed until December of 2013?

A. My recollection is as follows: After [Highland Employee Retention Asset] went from being an employee retention program with 30-odd participants clamoring for their money but it all mucked up in litigation, Highland [Capital] wrote a check for \$10 million to give those people, in all fairness, liquidity and what they deserved for staying around at Highland [Capital]. Once Highland [Capital] bought out all their units, there were only two unit holders, Highland [Capital] and Pat Daugherty, and **there was no retention purpose left in the vehicle.** (Emphasis added.)

Compl. ¶ 44.

There are no Highland Capital employees left to retain. Only Daugherty remains a member of Highland Employee Retention Assets and

he resigned from Highland Capital in 2011. It is reasonably conceivable that Highland Employee Retention Assets should be dissolved because its purpose is fulfilled or impossible to carry out.

**F. Count Five States an Implied Covenant Claim**

Defendants argue that Count Five should be dismissed because the applicable contract and implied obligation are unidentified. OB at 50-53. The claim is similar to the claim in Texas where the jury awarded Daugherty \$2.6 million plus interest based on the adoption of the 2012 Agreement. *See* Compl. Ex. H. As before, the applicable contract is the limited liability company agreement of Highland Employee Retention Assets.<sup>22</sup>

The implied covenant required Highland ERA Management (i.e., Dondero), as manager, to refrain from arbitrary or unreasonable conduct that benefitted itself and deprived Highland Employee Retention Assets and its members of the fruits of the bargain. Compl. ¶¶ 109-110; *see also, e.g., Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 888 (Del. Ch. 2009).

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<sup>22</sup> To the extent Defendants need further clarification in the pleadings, Daugherty respectfully requests leave to amend paragraph 110 of the complaint to include the words “limited liability company agreement of Highland Employee Retention Assets.”

The purported adoption of the 2013 Agreement, Expense Allocation Agreement, and Assignment Agreement arbitrarily and unreasonably stripped the value of Highland Employee Retention Assets for the benefit of Highland Capital and Dondero. Compl. ¶¶ 111-13.

Defendants argue that Highland ERA Management was not a party to the 2012 Agreement and therefore not bound by the implied covenant. OB at 51. But “[o]n January 19, 2013, the board members of Highland Employee Retention Assets resigned after each received a buyout offer from Highland Capital, and Highland ERA Management (i.e., Dondero) became the sole manager of Highland Employee Retention Assets.” Compl. ¶ 31.

Highland ERA Management (i.e., Dondero) purportedly executed the challenged documents on behalf of Highland Employee Retention Assets, as “its Manager,” on February 1, 2013, and April 30, 2013. When it executed those documents, it was bound by the then-applicable limited liability company agreement and the non-waivable implied covenant of good faith and fair dealing. *See 6 Del. C. § 18-1101(c)*.<sup>23</sup> A purported LLC manager cannot be immune from the company’s governing instrument.

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<sup>23</sup> Highland ERA Management (i.e., Dondero) was bound by the implied covenant on April 30, 2013, when it purportedly executed the Assignment Agreement. Even if the 2013 Agreement was validly adopted,

Sufficient facts have been alleged for the Court to conclude that it is reasonably conceivable that Highland ERA Management (i.e., Dondero) breached the implied covenant of good faith and fair dealing and its obligation not to arbitrarily and unreasonably benefit itself, and that such breaches were in bad faith.

### **III. Daugherty Stated Claims for Indemnification and Fees on Fees**

In Count Six, Daugherty seeks “indemnification from Highland Capital for his defense costs, including attorneys’ fees, in the Texas Action to the extent that such costs were incurred in defending claims against him ‘by reason of any act performed or omitted to be performed in the name of or on behalf of [Highland Capital], or in connection with [Highland Capital’s] business.’” Compl. ¶¶ 9, 114-17.

Section 4.1(h) of the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 31, 2004 (the “Highland Partnership Agreement”), states:

Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer,

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which Daugherty disputes, the implied covenant attached to that agreement just as it did to earlier versions. *See 6 Del. C. § 18-1101(c)*. Defendants’ argument that the agreement “disavows any fiduciary duties on the part of the manager of HERA,” OB at 52, is factually incorrect and ignores that the implied covenant cannot be eliminated.

employee, agent, or representative of the General Partner (collectively, the “**GP Party**”), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership’s business, including, without limitation, attorneys’ fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however*, the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct.

Compl. Ex. K, § 4.1(h).<sup>24</sup>

In the Texas Action, Highland Capital alleged:

- “Daugherty’s *tenure at Highland* had been characterized by extreme behavior, and his performance and ability to function in his job diminished over the years. Daugherty became increasingly unmanageable, erratic, and insubordinate, as well as hostile and belligerent to peers and subordinates at Highland. Recently, Daugherty admitted to Highland that two strokes he suffered years earlier had left him with dead spots in his brain that impacted his mental competence and conduct.” Compl. Ex. L, ¶ 8 (emphasis added).
- “*During his last year of employment*, a number of employees made complaints regarding Daugherty’s actions. Management discussed these complaints with Daugherty, but his behavior persisted. Specifically, these complaints centered on Daugherty’s abusive tirades. Daugherty frequently

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<sup>24</sup> The General Partner under the Highland Partnership Agreement is Strand Advisors, Inc., a Delaware corporation (“Strand”). Compl. ¶ 65. From 2004, if not earlier, until he resigned from Highland Capital in 2011, Daugherty was an officer and agent of Strand. Daugherty, therefore, is a GP Party for purposes of the Highland Partnership Agreement. *Id.* ¶ 66.



dehumanized employees, publicly berating them .... A number of these employees subsequently resigned from Highland or requested to be reassigned to departments in which they would not have to interact with Daugherty. Further, when complaints were brought to Daugherty's attention, he refused to acknowledge any problems with what he had done and said that he had a right to insult any man or woman at Highland in any way he saw fit, regardless of the purpose or content." *Id.*, ¶ 9 (emphasis added).

- "Daugherty's work effort and performance also significantly declined *over the last year of his employment* as he devoted less time to his duties and spent large amounts of time out of the office tending to non-business matters." *Id.*, ¶ 10 (emphasis added).

Highland Capital asserted that the conduct described in the above-referenced allegations "violated [Daugherty's] common law duties to Highland, as well as several agreements between him and Highland." *Id.*, ¶ 12. Highland Capital further asserted that Daugherty "breached a number of common law obligations related to his employment relationship." *Id.*, ¶ 21.

Despite Highland Capital's numerous allegations arising from Daugherty's employment, Daugherty was not liable for his employment conduct. Instead, Daugherty was liable based on the retention of confidential information *after his employment*. Compl. ¶ 71. Daugherty successfully defended all claims and allegations arising from his

employment conduct. On the eve of trial, Highland Capital “non-suited” allegations concerning Daugherty’s employment conduct. Compl. Ex. M.

Highland Capital moves to dismiss Counts Six and Seven, for fees on fees, on the following grounds: (1) Count Six is time barred; (2) Highland Capital’s allegations against Daugherty were based on his “personal, contractual” obligations; and (3) Daugherty is not entitled to fees on fees because he is not entitled to indemnification.

**A. Daugherty’s Indemnification Claim Is Not Time Barred**

“A cause of action for indemnification accrues when the officer or director entitled to indemnification can ‘be confident any claim against him ... has been resolved with certainty.’”<sup>25</sup> *Scharf v. Edgcomb Corp.*, 864 A.2d 909, 919 (Del. 2004). “Until the final judgment of the trial court withstands appellate review, the outcome of the underlying matter is not certain.” *Id.* at 920. “The implicit rationale for this conclusion is that *the person seeking indemnity should not have to rush in at the first possible moment but rather should be able to wait until the outcome of the underlying matter is certain.*”

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<sup>25</sup> “[C]ertainty requires an [a]bsence of doubt.” *Scharf v. Edgcomb Corp.*, 864 A.2d 909, 919 (Del. 2004) (citing *Black’s Law Dictionary* at 205 (5th ed. 1979)) (internal quotations omitted); *see also* Bryan A. Garner, *Garner’s Modern American Usage* at 142 (3d ed. 2009) (“*Certainty* = (1) an undoubted fact; or (2) absolute conviction”).

*LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 198 (Del. 2009)

(emphasis added) (quoting *Scharf*, 864 A.2d at 919). “The adjudication of [indemnification claims] on a stage-by-stage basis would be astoundingly wasteful and a clear signal of design failure.” *Sun-Times Media Grp., Inc.*, 954 A.2d 380, 403 (Del. Ch. 2008).<sup>26</sup>

The trial-court judgment in the Texas Action was issued on July 14, 2014. Highland Capital appealed and the judgment was affirmed on December 1, 2016. Thus, it was not until December 1, 2016, that Daugherty had certainty that Highland Capital could not prove its allegations or prevail on claims arising from Daugherty’s employment conduct. This action was filed well within the limitations period.

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<sup>26</sup> See also *Simon v. Navellier Series Fund*, 2000 WL 1597890, at \*9 (Del. Ch. Oct. 19, 2000) (“As a matter of litigative efficiency, it makes little sense for this court to decide claims for indemnification—as opposed to claims for advancement of litigation expenses—in advance of a non-appealable final judgment. There is simply too great a risk that the appellate courts will take a different view than the trial court for it to make much sense to grapple with indemnification claims until the underlying litigation is concluded with finality.... In the absence of a showing of undue hardship, [waiting to adjudicate an indemnification claim until a definitive outcome is reached in the underlying matter] will reduce the chance that the court will engage in a wasteful exercise in predictive justice, only to see its work undone by a reversal of the trial court’s judgment in the underlying matter.”).

Highland Capital argues that the “claims giving rise to Daugherty’s demand for contractual indemnification, and thus the underlying matter, were non-suited on January 14, 2014,” and that “Daugherty could be certain that the outcome of those claims was resolved on January 14, 2014, when the Texas Court entered an order granting Highland’s notice of non-suit.” OB at 57. Highland Capital’s argument fails for several reasons.

Highland Capital nonsuited “its cause of action for breach of contract, **only** as such claim relates to the breach of Article II of the Amended Employment Agreement of [Daugherty], relating to Daugherty’s agreement to devote all of his time, energy, skill and best effort to the performance of his duties and to the business of Highland and to perform his duties in a diligent, trustworthy, and business-like manner for the purpose of advancing the business of Highland.” Compl. Ex. M (emphasis in original). The nonsuit was limited to **only** a contract claim and did not cover the alleged breach of “a number of *common law obligations* related to his employment relationship.” Compl. Ex. L, ¶ 21 (emphasis added).

Further, the nonsuited claims were dismissed without prejudice and could have been reasserted. Texas courts “recognize that procedural devices are available to reverse a prior decision to nonsuit and resurrect the original

claim, so long as the trial court has plenary power over the case.” *Braglia v. Middleton*, 2012 WL 664947, at \*2 (Tex. App. Mar. 1, 2012). “When a cause of action is dismissed and later refiled, limitations are calculated to run from the time the cause of action accrued until the date that the claim is refiled.” *Delhomme v. Comm’n for Lawyer Discipline*, 113 S.W.3d 616, 621 (Tex. App. 2003).

Daugherty had no certainty on January 14, 2014, that the nonsuited claims were finally resolved in his favor. Highland Capital could have reasserted its allegations and claims. In its brief, Highland Capital ignores this possibility. Had Daugherty immediately sought indemnification for the nonsuited claims and Highland Capital later reasserted its claims, the piecemeal litigation would be “astoundingly wasteful and a clear signal of design failure.” *Sun-Times Media*, 954 A.2d at 403.

Daugherty’s employment with Highland Capital ended in September 2011, so employment-related claims could have been reasserted until at least September 2014 (assuming, for example, a three-year limitations period for fiduciary duty claims).<sup>27</sup> Even under Highland Capital’s best-case scenario,

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<sup>27</sup> The statute of limitations for breach of contract in Texas is four years. *See Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002).



Daugherty's indemnification claim accrued in September 2014, giving him until September 2017 to file his indemnification claim (he filed in July 2017). (The claim actually accrued on December 1, 2016, when the appellate court affirmed the trial court judgment.)

At this stage it is not clear from the facts alleged and documents in the record that Count Six is time barred. Rather, it is reasonably conceivable that Daugherty's indemnification claim was timely asserted.<sup>28</sup> Highland Capital's time-bar defense should be rejected.

**B. Highland Capital Cannot Evade Its Indemnification Obligations to Daugherty Because of Daugherty's Employment Agreement**

Under the Highland Partnership Agreement, Daugherty is entitled to be indemnified "against all liabilities, losses, and damages incurred ... by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business ...." Compl. Ex. K, § 4.1(h).

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<sup>28</sup> The reasoning of *Levey*, discussed above, is instructive here. *See Levey*, 76 A.3d at 772-73 ("[A]llowing a plaintiff to bring his case to a full resolution in one forum before starting the clock on his time to file in this State will discourage placeholder suits, thereby furthering judicial economy.") (quoting *Reid*, 970 A.2d at 181-82).

Highland Capital argues that Daugherty's indemnification claim "must also be dismissed because the underlying claims he seeks indemnification for implicate Daugherty's personal obligations under his employment agreement rather than his legal obligations as a former corporate officer of Highland's General Partner." OB at 58.

Highland Capital's claims went beyond Daugherty's employment agreement. Daugherty was accused of violating "*common law duties to Highland, as well as several agreements between him and Highland.*" Compl. Ex. L, ¶ 12 (emphasis added). Highland Capital further asserted that Daugherty "*breached a number of common law obligations* related to his employment relationship." *Id.*, ¶ 21 (emphasis added).

More important, the fact that an employment agreement existed between Highland Capital and Daugherty does not convert all allegations and claims against Daugherty to non-indemnifiable allegations and claims, as Highland Capital suggests. *See, e.g.*, OB at 58-60.

Highland Capital's argument was rejected in *Paolino v. Mace Sec. Int'l, Inc.*, 985 A.2d 392 (Del. Ch. 2009). Vice Chancellor Laster stated:

Last, I consider Mace's assertion that the Counterclaims do not arise "by reason of the fact" that Paolino was CEO and Chairman of Mace, but rather out of his Employment Agreement. Given the allegations of the Counterclaims, this is

a surprising argument. Mace's Counterclaims assert broadly that "Paolino breached his contractual, statutory and common law duties owed to Mace," including his "fiduciary" obligations. They recite a list of actions that Paolino allegedly took or failed to take in his capacity as Chairman and Chief Executive Officer of Mace, including the "willful refusal to manage Mace" and the "abandonment of his oversight and supervisory responsibilities as Mace's CEO." They facially implicate Paolino's duties as an officer and director and fall within the scope of Section 6.01.

As legal authority for its counterfactual position, Mace relies on *Cochran* and *Weaver v. ZeniMax Media, Inc.*, 2004 WL 243163 (Del. Ch. Jan. 30, 2004). Neither case supports the idea that when an employment agreement is at issue, Section 145 goes out the window. The cases instead show that Section 145 will not apply when the parties are litigating a specific and personal contractual obligation that does not involve the exercise of judgment, discretion, or decision-making authority on behalf of the corporation.

*Paolino*, 985 A.2d at 403.<sup>29</sup>

As in *Paolino*, Highland Capital's allegations concerning Daugherty's

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<sup>29</sup> Vice Chancellor Laster continued, "As this case and others like *Reddy*, *Zaman* and *Weaver* demonstrate, corporations bent on limiting their exposure to mandatory indemnification and advancement provisions sought to read *Cochran* broadly as saying that if an individual agrees to serve in a covered capacity pursuant to an employment agreement, then his duties become a personal contractual obligation. This in turn allowed the corporations to argue that if the individual was sued for wrongdoing or misconduct in his official capacity, then the suit arose out of his personal contractual obligation and was not 'by reason of' an official capacity for purposes of Section 145." *Paolino*, 985 A.2d at 404. Highland Capital perpetuates the misreading of *Cochran* in this case.

employment conduct were not based on “a specific and personal contractual obligation that does not involve the exercise of judgment, discretion, or decision-making authority on behalf of the corporation.” *Id.* They were based on general references to “a number of common law obligations” and duties and that Daugherty’s “performance and ability to function in his job diminished over the years.” Compl. Ex. L, ¶ 8, 21. Those general allegations are different from the specific formula-based compensation and wholly contractual note claims at issue in *Cochran*. See *Cochran v. Stifel Fin. Corp.*, 2000 WL 1847676, at \*7-8 (Del. Ch. Dec. 13, 2000), *rev’d in part*, 809 A.2d 555 (Del. 2002).

After analyzing *Cochran* and cases that clarified its holding, Vice Chancellor Laster held in *Paolino*:

In this case, the Counterclaims have been asserted by reason of Paolino’s service as CEO and Chairman of Mace. They directly challenge Paolino’s conduct generally and his alleged failings in his official capacity. The fact that Paolino and Mace were parties to the Employment Agreement does not convert Paolino’s duties as CEO into a personal contractual obligation like the loan repayment or formula-based compensation reimbursement in *Cochran*. Nor can the Counterclaims credibly be portrayed as the type of limited, garden variety dispute between an employer and employee at issue in *Weaver*.<sup>30</sup> The Employment Agreement does not alter

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<sup>30</sup> *Weaver* is distinguishable based on the breadth of Daugherty’s indemnification rights under the Highland Partnership Agreement. *Weaver*

the fact that the Counterclaims arise were asserted by reason of the fact that Paolino was an officer and director of Mace.

*Paolino*, 985 A.2d at 407. Highland Capital’s reliance on Daugherty’s employment agreement as a basis to dismiss Count Six should be rejected for the reasons stated in *Paolino*.

Highland Capital’s argument also fails because it did not prevail on its nonsuited allegations and claim. *Cochran* stated, “When the corporation brings a claim *and proves its entitlement to relief* because the officer has breached his individual obligations, it is problematic to conclude that the suit has been rendered an ‘official capacity’ suit subject to indemnification under § 145 and implementing bylaws.” *Stifel Fin. Corp. v. Cochran*, 809 A.2d 555, 562 (Del. 2002) (emphasis added). *Cochran* is inapposite.

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was a corporate case under Section 145 where advancement was not available for employment-related claims because “the bylaws require[d] advancement only when requested by officers or directors *but not employees.*” 2004 WL 243163, at \*2 (emphasis added). In contrast, the Highland Partnership Agreement indemnifies “any director, officer, employee, agent, or representative of the General Partner ... against all liabilities, losses, or damages incurred by any of them *by reason of any act performed or omitted to be performed in the name of or on behalf of [Highland Capital], or in connection with [Highland Capital’s] business ....*” Compl. Ex. K, § 4.1(h) (emphasis added). Highland Capital’s allegations against Daugherty concerning his tenure at Highland Capital fall within this broad standard.



Highland Capital made numerous serious allegations and claims against Daugherty in the Texas Action concerning his employment conduct and it did not prevail on any of them. It is reasonably conceivable that Daugherty is entitled to indemnification for successfully defending those allegations and claims.

**C. Daugherty Is Entitled to Fees on Fees**

Because Daugherty stated a claim for indemnification, it is also reasonably conceivable that he stated a claim for fees on fees under Count Seven. Unless fees on fees are expressly excluded from a partnership agreement, they apply by default. For example, in an LLC advancement case, this Court explained:

Under Delaware law as articulated in *Stifel*, DeLucca is entitled to an award of litigation expenses for bringing this advancement action. The only way out of the *Stifel* “fees on fees” award was for the KKAT Companies “to tailor their indemnification ... to exclude ‘fees on fees,’ if that [was] a desirable goal.” The Operating Agreements clearly did not limit indemnification in the manner required by *Stifel*; in fact, § 4.4 uses precisely the expansive language used in *Stifel*—“The Company shall, to the full extent permitted by applicable laws, indemnify and hold harmless.”

*DeLucca v. KKAT Mgmt., L.L.C.*, 2006 WL 224058, at \*15 (Del. Ch. Jan. 23, 2006) (footnotes omitted). The Highland Partnership Agreement contains the same broad language: “to the fullest extent permitted by the Delaware

Act.” Compl. Ex. K, § 4.1(h). It is reasonably conceivable that Daugherty is entitled to fees on fees.

### CONCLUSION

Based on the allegations in Daugherty’s complaint and the reasons discussed above, Defendants’ motion to dismiss should be denied.

/s/ Thomas A. Uebler  
Thomas A. Uebler (#5074)  
Kerry M. Porter (#6067)  
Cooch and Taylor, P.A.  
3711 Kennett Pike, Suite 100  
Greenville, DE 19807  
(302) 984-3800  
Words: 13,380

*Attorneys for Patrick Daugherty*

Dated: October 30, 2017

## **EXHIBIT 62**



**GRANTED**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

PATRICK DAUGHERTY

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,  
HIGHLAND ERA MANAGEMENT LLC,  
and JAMES DONDERO,

Defendants,

and

HIGHLAND EMPLOYEE  
RETENTION ASSETS LLC,

Nominal Defendant.

C.A. No.: 2017-0488-SG

**[PROPOSED] ORDER GRANTING, IN PART,  
AND DENYING, IN PART, DEFENDANTS' MOTION TO DISMISS**

For the reasons set forth in this Court's January 16, 2018 Letter Opinion [Tr. Id. No. 61581721] and June 29, 2018 Memorandum Opinion [Tr. Id. No. 62192260], IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is GRANTED, in part, and DENIED, in part, as follows:

1. Defendants' Motion to Dismiss Count One of the Verified Complaint is GRANTED with respect to Defendant James Dondero, and DENIED with respect to all other Defendants.

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2. Defendants' Motion to Dismiss Counts Two, Three, Four, and Five of the Verified Complaint is GRANTED.

3. Defendants' Motion to Dismiss Counts Six and Seven of the Verified Complaint is DENIED.

SO ORDERED this \_\_\_\_ day of July, 2018.

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Vice Chancellor



This document constitutes a ruling of the court and should be treated as such.

**Court:** DE Court of Chancery Civil Action

**Judge:** Sam Glasscock

**File & Serve**

**Transaction ID:** 62224754

**Current Date:** Jul 11, 2018

**Case Number:** 2017-0488-SG

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/s/ Judge Glasscock, Sam

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## **EXHIBIT 73**

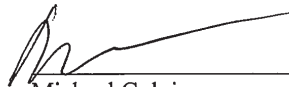
SECRETARY'S CERTIFICATE

This certificate (the "*Certificate*") is delivered on behalf of Strand Advisors, Inc., a Delaware corporation (the "*Company*"), the general partner of Highland Capital Management, L.P., a Delaware limited partnership ("*Highland*"). For the Company, in its capacity as general partner of Highland, the undersigned certifies as follows:

1. Resolutions. The resolutions attached hereto as Exhibit A have been duly adopted by the Company's sole director, have not been amended or repealed, and are in full force and effect.

2. Incumbency. The individuals on the incumbency certificate attached hereto as Exhibit B are the duly elected, qualified and acting officers of the Company, the general partner of Highland, in the respective positions set forth opposite such person's name. The signature beside each respective name is such person's true signature. In that capacity, each officer of the Company is duly authorized to execute any and all agreements on behalf of the Company as the general partner of Highland.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of August 4, 2009.

  
\_\_\_\_\_  
Michael Colvin  
Secretary

I, James D. Dondero, hereby certify that I am the duly elected, qualified and acting President of the Company, that the person executing and delivering the foregoing Certificate is the duly elected, qualified and acting officer of the Company as indicated in such Certificate, and the signature set forth above such person's name is such person's correct signature, and that the certifications set forth above are true and correct as of the date hereof.


  
\_\_\_\_\_  
James D. Dondero  
President

EXHIBIT A

RESOLUTIONS

**CONSENT OF THE SOLE DIRECTOR  
OF  
STRAND ADVISORS, INC.,  
a Delaware corporation**

**As of May 29, 2009**

The undersigned, the sole director of Strand Advisors, Inc., a Delaware corporation (the "**Company**") and the general partner of Highland Capital Management, L.P., a Delaware limited partnership ("**Highland**"), acting pursuant to Section 141 of the Delaware General Corporation Law, does hereby consent and agree to take the following actions and adopt the following resolutions in lieu of a meeting:

**OFFICERS**

RESOLVED, that each of the persons listed below are hereby designated and affirmed as officers of the Company, to serve in such capacity or capacities until such person's successor(s) shall have been duly elected and qualified:

James Dondero	President
Mark Okada	Executive Vice President
Michael Colvin	Secretary
Patrick Boyce	Treasurer
Michael Pusateri	Chief Operating Officer

FURTHER RESOLVED, that this authorization shall remain in effect until further written notice from the Company;

FURTHER RESOLVED, that each and all of the past acts of the above individuals on behalf of the Company are hereby ratified, adopted and confirmed;

FURTHER RESOVLED, that any persons elected to the office in the past but not designated above are hereby removed from the office and their authority hereby revoked;

**FURTHER INSTRUCTIONS**

FURTHER RESOLVED, that the officers of the Company and Highland be, and the same hereby are, authorized, empowered and directed to execute and deliver all documents, instruments and other agreements, to waive any and all conditions and to do all things necessary and helpful to carry out the purposes of the foregoing resolutions; and all acts and deeds of such appropriate officers and agents of the Company and Highland that are consistent with the purpose and intent of the above resolutions be, and the same hereby are, in all respects, ratified, approved, and adopted as the acts and deeds of the Company, as general partner of Highland.

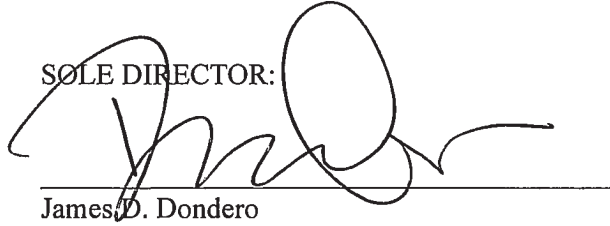
\* \* \* \* \*

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IN WITNESS WHEREOF, the undersigned has duly executed this Consent to be effective as of the date first written above.

SOLE DIRECTOR:



James D. Dondero

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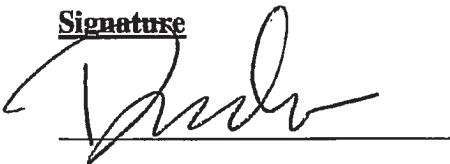



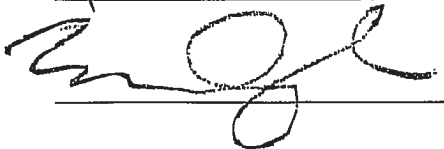
EXHIBIT B

INCUMBENCY CERTIFICATE

003795

**Annex A**

I am the sole shareholder of **Strand Advisors, Inc.** (the "General Partner"), the General Partner of **Highland Capital Management, L.P.** In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

<b><u>Printed Name of Officer</u></b>	<b><u>Title</u></b>	<b><u>Signature</u></b>
James Dondero	President	
Mark Okada	Executive Vice President	
Michael Colvin	Secretary	
Patrick Boyce	Treasurer	
Michael Pusateri	Chief Operating Officer	

WITNESS my hand as of this 29<sup>th</sup> day of May, 2009.

HIGHLAND CAPITAL MANAGEMENT, L.P.

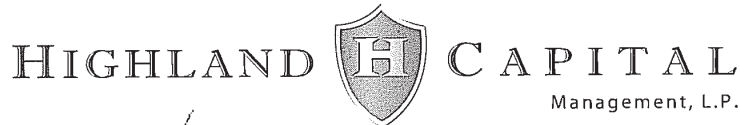
By: Strand Advisors, Inc., its general partner

By:

  
James Dondero, Sole Shareholder

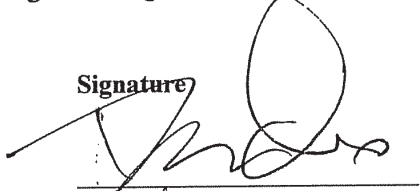
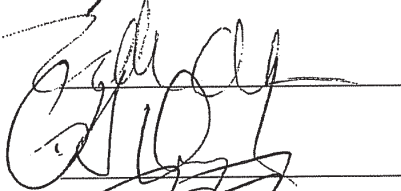
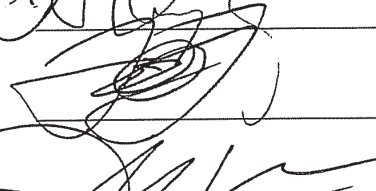
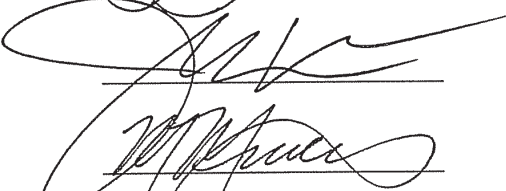
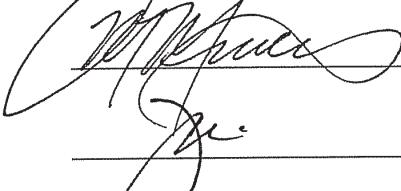
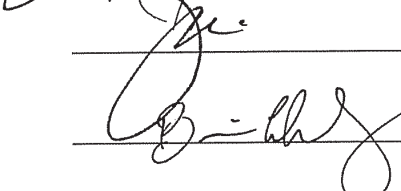
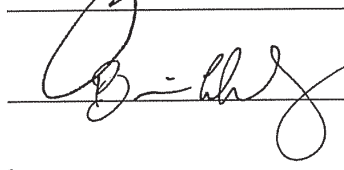
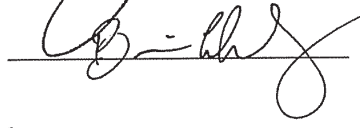
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## **EXHIBIT 64**



**Annex A**

I am President of Strand Advisors Inc. (the "General Partner"), the General Partner of Highland Capital Management, L.P. (the "Partnership"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner of the Partnership, and that the signatures attached are the genuine signatures of the persons indicated.

Printed Name of Officer	Title	Signature
James Dondero	President	
Mark Okada	Executive Vice President	
Patrick Daugherty	Secretary	
Todd Travers	Assistant Secretary	
Kevin Ciavarra	Assistant Secretary	
Michael Mincez	Assistant Secretary	
James Plohg	Assistant Secretary	
Brian Lohrding	Treasurer	

WITNESS my hand as of this 31<sup>st</sup> day of August, 2006.

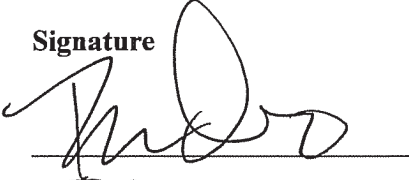
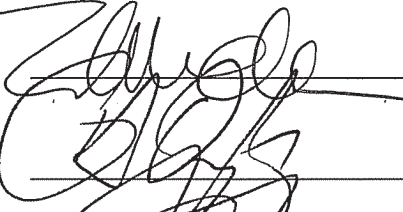
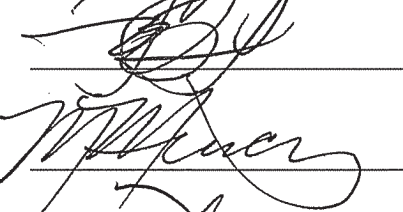
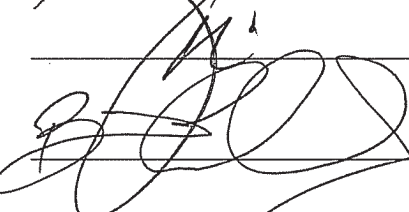
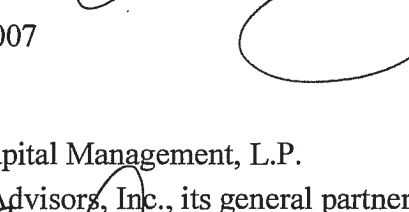
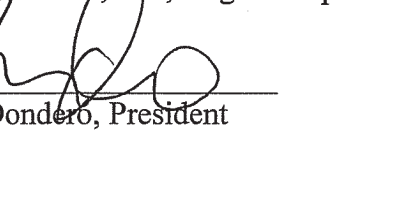

Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general partner

By:   
James Dondero, President



**Annex A**

I am President of Strand Advisors Inc. (the "General Partner"), the General Partner of Highland Capital Management, L.P. (the "Partnership"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner of the Partnership, and that the signatures attached are the genuine signatures of the persons indicated.

Printed Name of Officer	Title	Signature
James Dondero	President	
Mark Okada	Executive Vice President	
Patrick Daugherty	Secretary	
Todd Travers	Assistant Secretary	
Michael Mince	Assistant Secretary	
James Ploh	Assistant Secretary	
Brian Lohrding	Treasurer	

WITNESS my hand as of this 27<sup>th</sup> day of February, 2007








Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general partner

By:   
James Dondero, President

003799

**Annex A**

I am the sole shareholder of Strand Advisors, Inc. (the "General Partner"), the General Partner of Highland Capital Management, L.P. (the "Partnership"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that in their capacity as officers of the General Partner of the Partnership, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner of the Partnership, and that the signatures attached are the genuine signatures of the persons indicated.

<b>Printed Name of Officer</b>	<b>Title</b>	<b>Signature</b>
James Dondero	President	
Mark Okada	Executive Vice President	
Michael Colvin	Secretary	
Todd Travers	Assistant Secretary	
Patrick Daugherty	Assistant Secretary	
Appu Mundassery	Assistant Secretary	
Kenneth McGovern	Treasurer	
Patrick Boyce	Chief Administrative Officer	

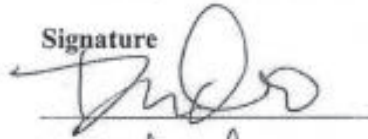

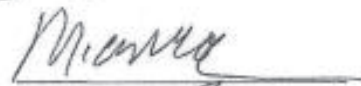


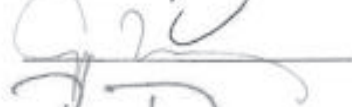


WITNESS my hand as of this 13 day of January, 2008

Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general partner

By:   
James Dondero, Sole Shareholder

Annex A

I am the sole shareholder of Strand Advisors, Inc. (the "General Partner"), the General Partner of Highland Capital Management, L.P. (the "Partnership"). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that in their capacity as officers of the General Partner of the Partnership, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner of the Partnership, and that the signatures attached are the genuine signatures of the persons indicated.

Printed Name of Officer	Title	Signature
James Dondero	President	
Mark Okada	Executive Vice President	
Michael Colvin	Secretary	
Todd Travers	Assistant Secretary	
Patrick Daugherty	Assistant Secretary	
Appu Mundassery	Assistant Secretary	
Patrick Boyce	Treasurer	
Michael Pusateri	Chief Operating Officer	

WITNESS my hand as of this 9<sup>th</sup> day of May, 2008

Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general partner

By:   
James Dondero, Sole Shareholder

**Annex A**

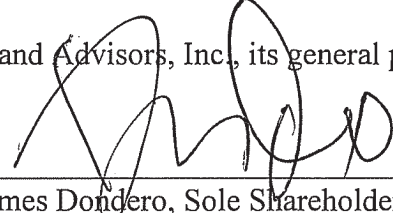
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<b>Printed Name of Officer</b>	<b>Title</b>	<b>Signature</b>
James Dondero	President	
Mark Okada	Executive Vice President	
Michael Colvin	Secretary	
Todd Travers	Assistant Secretary	
Patrick Daugherty	Assistant Secretary	
Patrick Boyce	Treasurer	
Michael Pusateri	Chief Operating Officer	

WITNESS my hand as of this 1<sup>st</sup> day of March, 2009

HIGHLAND CAPITAL MANAGEMENT, L.P.

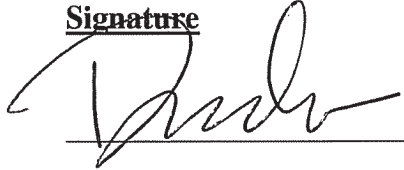



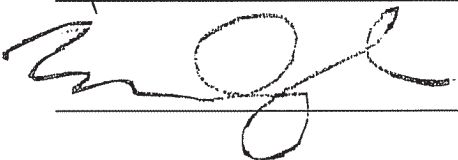
By: Strand Advisors, Inc., its general partner

By:   
James Dondero, Sole Shareholder

003802

**Annex A**

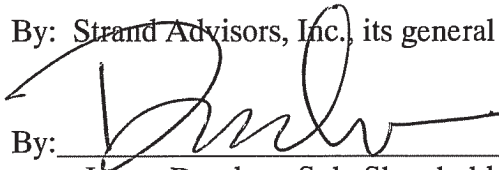
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<b><u>Printed Name of Officer</u></b>	<b><u>Title</u></b>	<b><u>Signature</u></b>
James Dondero	President	
Mark Okada	Executive Vice President	
Michael Colvin	Secretary	
Patrick Boyce	Treasurer	
Michael Pusateri	Chief Operating Officer	

WITNESS my hand as of this 29<sup>th</sup> day of May, 2009.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

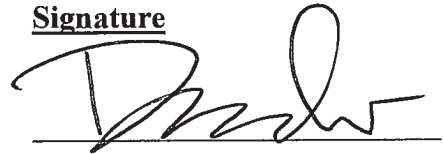
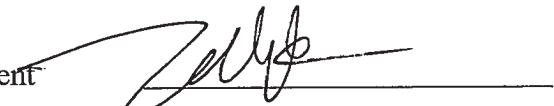


By:   
James Dondero, Sole Shareholder

003803



**Annex A**


I am the sole shareholder of **Strand Advisors, Inc.** (the "*General Partner*"), the General Partner of **Highland Capital Management, L.P.** In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

<u><b>Printed Name of Officer</b></u>	<u><b>Title</b></u>	<u><b>Signature</b></u>
James Dondero	President	
Mark Okada	Executive Vice President	
Michael Colvin	Secretary	
Patrick Boyce	Treasurer	

WITNESS my hand as of this 8th day of January, 2010.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By:   
James Dondero, Sole Shareholder

003804

**Annex A**

I am the sole shareholder of **Strand Advisors, Inc.** (the "*General Partner*"), the General Partner of **Highland Capital Management, L.P.** In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

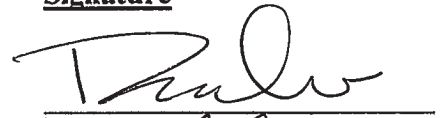
**Printed Name of Officer**

**Title**

**Signature**

James Dondero

President



Mark Okada

Executive Vice President



R. Joseph Dougherty

Vice President



Michael Colvin

Secretary



Paul Kauffman

Assistant Secretary



Patrick Boyce

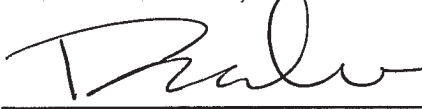
Treasurer



WITNESS my hand as of this 1st day of July, 2010.

STRAND ADVISORS, INC.

By:






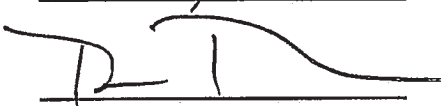


James Dondero, Sole Shareholder

003805

**Annex A**

I am the sole shareholder of **Strand Advisors, Inc.** (the "**General Partner**"), the General Partner of **Highland Capital Management, L.P.** In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

<b><u>Printed Name of Officer</u></b>	<b><u>Title</u></b>	<b><u>Signature</u></b>
James Dondero	President	
Mark Okada	Executive Vice President	
R. Joseph Dougherty	Vice President	
Michael Colvin	Secretary	
Paul Kauffman	Assistant Secretary	
Patrick Boyce	Treasurer	

WITNESS my hand as of this 1st day of February, 2011.

STRAND ADVISORS, INC.

By:


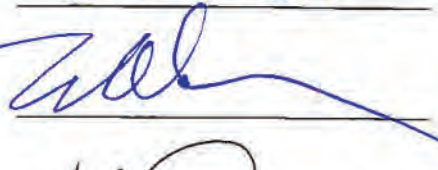




James Dondero, Sole Shareholder

003806


Annex A

I am the sole shareholder of **Strand Advisors, Inc.** (the "*General Partner*"), the General Partner of **Highland Capital Management, L.P.**, a Delaware limited partnership. In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

<u>Printed Name of Officer</u>	<u>Title</u>	<u>Signature</u>
James Dondero	President	
Mark Okada	Executive Vice President	
R. Joseph Dougherty	Executive Vice President	
Scott Ellington	Secretary	
Paul Kauffman	Assistant Secretary	
Patrick Boyce	Treasurer	

WITNESS my hand as of this 1st day of March 2011.

STRAND ADVISORS, INC.

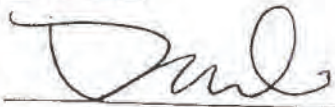

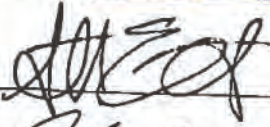


By:   
James Dondero, Sole Shareholder

003807



**Annex A**

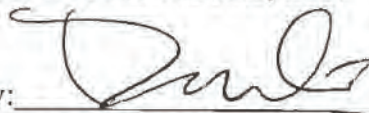
I am the sole shareholder of **Strand Advisors, Inc.**, a Delaware corporation (the "**General Partner**"), the general partner of **Highland Capital Management, L.P.**, a Delaware limited partnership. In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

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James Dondero	President	
Mark Okada	Executive Vice President	
Scott Ellington	Secretary	
Josh Terry	Assistant Secretary	
Patrick Boyce	Treasurer	

WITNESS my hand as of this 8th day of September, 2011.

STRAND ADVISORS, INC.

By:




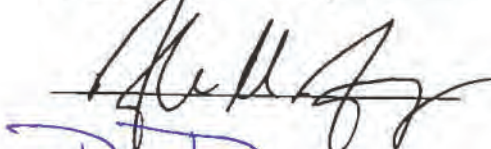
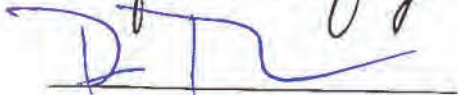
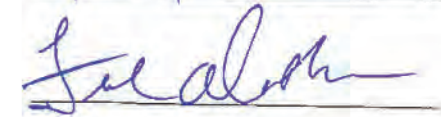


James Dondero, Sole Shareholder



**Annex A**

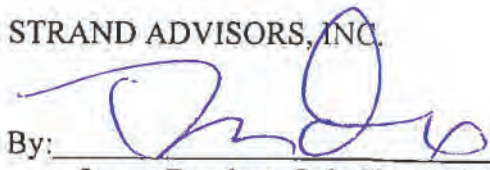
I am the sole shareholder of **Strand Advisors, Inc.**, a Delaware corporation (the "**General Partner**"), the general partner of **Highland Capital Management, L.P.**, a Delaware limited partnership. In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

<u><b>Printed Name of Officer</b></u>	<u><b>Title</b></u>	<u><b>Signature</b></u>
James Dondero	President	
Mark Okada	Executive Vice President	
Scott Ellington	Secretary	
Josh Terry	Assistant Secretary	
Patrick Boyce	Treasurer	
Frank Waterhouse	Assistant Treasurer	

WITNESS my hand as of this 1<sup>st</sup> day of November, 2011.

STRAND ADVISORS, INC.

By:

  
James Dondero, Sole Shareholder

## **EXHIBIT 65**

Memorandum Number \_\_\_\_\_

## **Confidential Private Placement Memorandum**

*Series B, Series C and Series D Limited Partner Interests in*

### **Highland Multi Strategy Credit Fund, L.P.**

*General Partner*

Highland Multi Strategy Credit Fund GP, L.P.

*Investment Manager*

Highland Capital Management, L.P.

**November 2014**

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## NOTICE

This Confidential Private Placement Memorandum (this “**Memorandum**”) is being furnished on a confidential basis solely to selected qualified investors (or their respective authorized representatives) considering the purchase of limited partner interests (the “**Interests**”) in Highland Multi Strategy Credit Fund, L.P. (the “**Fund**”). This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of Highland Multi Strategy Credit Fund GP, L.P. (the “**General Partner**”) (other than to professional advisors and employees of the prospective investor receiving this Memorandum from the General Partner or its authorized representative or such prospective investor).

Each recipient agrees to keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment in the Fund. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Interests other than the information contained in this Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund or the General Partner. Prospective investors should not construe the contents of this Memorandum as legal, tax or financial advice. Each prospective investor should consult its own professional advisors as to the legal, financial, tax, ERISA (as defined herein) or other related matters relevant to the suitability of an investment in the Fund for such investor. In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering contemplated by this Memorandum. The Interests have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

This Memorandum does not constitute an offer to sell, or the solicitation of an offer to buy, any Interests in any state or other jurisdiction where, or to or from any person to or from whom, such offer or solicitation is unlawful or not authorized. The Interests have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), or the securities laws of any of the states of the United States. The offering and any potential sale contemplated by this Memorandum will be made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering and analogous exemptions under state securities laws. There will be no public market for the Interests, and there is no obligation on the part of any person to register the Interests under the Securities Act or any state securities laws. The Fund has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended. Interests are suitable only for sophisticated investors who do not require immediate liquidity for their investments, for whom an investment in the Fund does not constitute a complete investment program and who fully understand and are willing to assume the risks involved in the Fund’s investment program. The Fund’s investment practices, by their nature, may be considered to involve a



substantial degree of risk. See “*Risk Factors and Potential Conflicts of Interest*” beginning at page 25. No assurance can be given that the Fund’s investment objectives will be achieved or that investors will receive a return of their capital.

The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and any applicable state or other securities laws, pursuant to registration or an exemption therefrom. The transferability of the Interests will be further restricted by the terms of the limited partnership agreement of the Fund. Investors should be aware that they will be required to bear the financial risks of an investment in the Interests for an extended period of time.

This Memorandum does not purport to be, and should not be construed as, a complete description of the limited partnership agreement of the Fund or the investment management agreement by and among the Fund’s investment manager, the General Partner and the Fund. Each prospective investor in the Fund is encouraged to review the Fund’s limited partnership agreement carefully, in addition to consulting appropriate legal and tax advisors. To the extent of any inconsistency between this Memorandum and the Fund’s limited partnership agreement, the terms of the Fund’s limited partnership agreement control.

Certain information contained in this Memorandum constitutes “forward-looking statements,” which can be identified by the use of forward-looking terminology such as “may,” “will,” “should,” “expect,” “anticipate,” “project,” “estimate,” “intend,” or “believe” or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in “Risk Factors and Potential Conflicts of Interest,” actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward-looking statements.

Pursuant to an exemption from the Commodity Futures Trading Commission, neither the General Partner nor the Investment Manager is registered with as a commodity pool operator and therefore, unlike a registered commodity pool operator, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund’s portfolio; or (b) the aggregate net notional value of the Fund’s commodity interest positions does not exceed 100% of the liquidation value of the Fund’s portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors.

All references herein to “\$” refer to U.S. dollars.

This Memorandum is accurate as of its date, and no representation or warranty is made as to its continued accuracy after such date.

## DIRECTORY

<b>General Partner</b>	<b>Highland Multi Strategy Credit Fund GP, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Investment Manager</b>	<b>Highland Capital Management, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Prime Broker</b>	<b>BNY Mellon Trust Company N.A.</b> 601 Travis Street, 16th FL (775-1700) Houston, Texas 77002
<b>Administrator</b>	<b>SEI Global Services, Inc.</b> One Freedom Valley Drive Oaks, Pennsylvania 19456
<b>Auditors</b>	<b>PricewaterhouseCoopers LLP</b> 2001 Ross Avenue, Suite 1800 Dallas, Texas 75201
<b>Legal Counsel</b>	<b>Akin Gump Strauss Hauer &amp; Feld LLP</b> 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201

\* \* \* \* \*

*This Memorandum does not purport to be and should not be construed as a complete description of the Fund's limited partnership agreement, a copy of which is attached hereto as Appendix A. Any potential investor in the Fund is encouraged to review the Fund's limited partnership agreement carefully, in addition to consulting appropriate legal and tax counselors.*

## EXECUTIVE SUMMARY OF PRINCIPAL TERMS

<b>The Fund</b>	Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “ <i>Fund</i> ”).
<b>General Partner</b>	Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “ <i>General Partner</i> ”).
<b>Investment Manager</b>	Highland Capital Management, L.P., a Delaware limited partnership (the “ <i>Investment Manager</i> ”).
<b>Investor Eligibility</b>	Investors must be both “accredited investors” and “qualified purchasers.”
<b>Offshore Feeder Fund</b>	In order to facilitate investments by non-U.S. and other tax-exempt investors, the Investment Manager has sponsored the formation of Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “ <i>Offshore Fund</i> ”). The Offshore Fund places all of its assets in and conducts all of its investment and trading activities through the Fund as a limited partner of the Fund.
<b>Investment Objective</b>	The Fund seeks attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.
<b>Series of Interests</b>	The Fund has four series of Interests and is offering Series B Interests, Series C Interests and Series D Interests pursuant to this Memorandum.
<b>Minimum Investment</b>	The initial minimum investment is \$1,000,000.00, although the General Partner has the right to accept lesser amounts.
<b>Management Fee</b>	Annual rate of 1.5% for Series B Interests, 1.0% for Series C Interests, and 2.0% for Series D Interests, calculated and payable quarterly in advance.
<b>Performance Allocation</b>	Highland Capital Management, L.P., as a special limited partner of the Fund, is entitled to receive an annual performance-based profit allocation at the end of each year equal to 20% of the Fund’s net profits, subject to a “high water mark.”
<b>Withdrawals</b>	Withdrawal rights vary by Series and are subject to timing restrictions, reserves for contingencies, partial hold-back pending completion of an annual audit and suspension restrictions as further described in “ <i>Summary of Terms</i> .”
<b>Variation of Terms</b>	The General Partner and/or the Investment Manager (as applicable) may agree with certain limited partners to a variation of the terms set forth in this Memorandum or establish additional classes or series of limited partner interests that have terms that differ from those described herein, including different management fees, performance allocations and withdrawal rights.

## INVESTMENT PROGRAM

### Investment Objective

The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management. No assurance can be given, however that the Fund will achieve this objective.

### Investment Strategy

#### *Investment Asset Classes*

The following is a description of the principal types of securities in which the Fund may invest and certain trading techniques the Fund may employ. The following description is merely a summary and the Investment Manager has discretion to cause the Fund to invest in other types of securities and to follow other investment criteria and guidelines. However, consistent with the investment strategy of the Fund, all new investments made by the Fund must, at the time of purchase, (i) trade over-the-counter or on an exchange, (ii) have a third-party quote or valuation available, and (iii) be considered a marketable investment in the reasonable opinion of the Investment Manager. An investment is a marketable investment if in the reasonable opinion of the Investment Manager it can be sold at the mark within 30 calendar days. Notwithstanding the foregoing, the Fund may invest up to 20% of its net asset value in non-marketable investments if and when the Fund's net asset value reaches \$1 billion.

*Debt and Debt-Like Securities.* The Investment Manager intends for debt securities to be the Fund's primary focus, with a target allocation of 40-60% of net asset value of the Fund, although this may vary depending on market conditions. The Fund may invest (both long and short) in debt securities of any kind, including debt securities of varying maturities, debt securities paying a fixed or fluctuating rate of interest, inflation-indexed bonds, structured notes, loan assignments, loan participations, asset-backed securities, collateralized loan obligation ("**CLO**") securities (including, rated and unrated, debt, equity and preference share instruments relating to collateralized loan obligations ("**CLO Securities**")), debt securities convertible into equity securities, and securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, by foreign governments or international agencies or supranational entities or by domestic or private issuers.

The Fund may invest in debt securities of any credit quality, including below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("**NRSRO**") or are unrated but deemed by the Investment Manager to be of comparable quality. The Fund may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

*Equity and Equity-Like Securities.* The Fund may invest (both long and short) in common stock, preferred stock, securities convertible into common stock, rights and warrants or securities or other instruments whose price is linked to the value of common stock. Although the equity securities in which the Fund invests may have any capitalization, may be dominated in any currency, and may be located in emerging markets without limit, the Fund will primarily invest in equity securities of large capitalization companies that are located in developed markets. Additionally, the Fund may invest in equity or subordinated tranches of asset-backed securities, including CLOs, and may also invest in life settlement

policies and other instruments that have equity-like characteristics that meet the investment objective of the Fund.

*Investment Themes*

The Investment Manager's investment philosophy is based on the belief that thorough, fundamental research and a disciplined research methodology increase the likelihood of producing attractive long-term results. The Investment Manager uses this research in an attempt to anticipate long-term secular trends and identify those investments that have the highest relative value characteristics across four primary investment themes.

- 1) Convergence – Investments in market sectors in which the Investment Manager believes are mispriced and will converge to historic norms over time.
- 2) Deep Value – Investments in companies that the Investment Manager believes the market has undervalued. Through thorough research the Investment Manager believes the current market value does not correspond with the company's long-term fundamentals.
- 3) Event Driven – The Investment Manager will generally focus on equity and debt investments with catalysts that could include, but are not limited to, asset sales, covenant violations, liability management, amend/extend, refinancing, tenders and mergers/acquisitions.
- 4) Activism – Material holdings or controlling interests in companies, including the potential to obtain representation on the company's board, with the goal of affecting a change in the company in order to drive future profitability and value realization.

The Investment Manager may also manage interest rate, default, currency and other risks through a variety of trading methods and market tools, including security shorting and derivative hedging instruments, as it deems appropriate.

Although the Investment Manager expects to maintain a diversified portfolio of investments, it does not intend to limit itself to any one particular investment theme or asset class. Rather, the Investment Manager intends to follow a flexible approach in order to place itself in the best position to capitalize on opportunities in the financial markets.

*The investment objectives and methods summarized above represent the General Partner's and Investment Manager's current intentions. Depending on conditions and trends in the securities markets and the economy in general, the General Partner and the Investment Manager may pursue any objectives, employ any investment techniques or purchase any type of security that they consider appropriate and in the best interests of the Fund whether or not described in this section. The foregoing discussion includes and is based upon numerous assumptions and opinions of the General Partner and Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. **There can be no assurance that the Fund's investment strategy will achieve profitable results.***



## MANAGEMENT

### The General Partner and the Investment Manager

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “**General Partner**”), serves as the general partner of the Fund. Highland Capital Management, L.P., a Delaware partnership (the “**Investment Manager**” or “**Highland**”), serves as the investment manager of the Fund and has responsibility for the Fund’s investment program. James D. Dondero ultimately controls the General Partner and the Investment Manager.

The General Partner has the full authority of a general partner under Delaware law. The powers of the General Partner described in this Memorandum and the Partnership Agreement are not exhaustive and are not limited to the specific authorities described therein. Thus, subject to applicable law, the General Partner may make certain decisions or take certain actions even where those decisions or actions are not expressly granted in the Partnership Agreement or described in this Memorandum.

### The Investment Management Agreement

The Investment Manager serves pursuant to an investment management agreement with the Fund, the Offshore Fund and the General Partner (the “**Investment Management Agreement**”). Under the Investment Management Agreement, the Investment Manager has full discretion to invest the assets of the Fund in pursuit of the investment objective and strategy described in this Memorandum.

The Investment Management Agreement provides that, in the absence of willful misconduct, fraud or gross negligence, each of the Investment Manager, its principals, shareholders, managers, employees and affiliates will be indemnified by the Fund and/or the Offshore Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement. For its services the Investment Manager is entitled to the Management Fee and reimbursement of any expenses incurred on behalf of the Fund or the Offshore Fund.

### Investment Personnel

The key investment professionals of the Investment Manager who will be responsible for the Fund’s investments are described below.

#### James Dondero, CFA, Co-Founder, President

James Dondero is Co-founder and President of Highland Capital Management, L.P. (an alternative asset manager specializing in high-yield fixed income investments). Jim has over 30 years of experience in the credit markets. Prior to founding Highland in 1993, Jim served as Chief Investment Officer of Protective Life’s GIC subsidiary and helped grow the business from concept to over \$2 billion between 1989 and 1993. His portfolio management experience includes mortgage-backed securities, investment grade corporates, leveraged bank loans, high-yield bonds, emerging market debt, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately \$1 billion in fixed income funds for American Express. Prior to American Express, he completed the financial training program at JP Morgan. Jim received a BS in Commerce (Accounting and Finance) from the University of Virginia. Jim is a Certified Public Accountant, a Certified Managerial Accountant, and a Chartered Financial Analyst. He currently serves as Chairman for CCS Medical and NexBank and serves on the

Board of Directors of American Banknote Corporation, Cornerstone Healthcare Group and Metro-Goldwyn-Mayer.

**Mark Okada, CFA, Co-Founder, Chief Investment Officer**

Mr. Okada is Chief Investment Officer of Highland Capital Management, L.P. and is responsible for overseeing Highland's investment activities for its various strategies. Mr. Okada is a pioneer in the development of the bank loan market and has over 30 years of credit experience. He is responsible for structuring one of the industry's first arbitrage CLOs and was actively involved in the development of Highland's bank loan separate account and mutual fund platforms. Mr. Okada received a BA in Economics and a BA in Psychology, cum laude, from the University of California, Los Angeles. He has earned the right to use the Chartered Financial Analyst designation. Mr. Okada is a Director of NexBank, Chairman of the Board of Directors of Common Grace Ministries, Inc., is on the Board of Directors for Education is Freedom, and also serves on the GrowSouth Fund Advisory board.

**Josh Terry, CFA, Head of Structured Products and Trading**

Mr. Terry is Head of Structured Products and Trading at Highland Capital Management, L.P. He leads the trading desk, structured products and CLO fund management teams. Since joining Highland in July 2005, Mr. Terry has served in various roles, including Senior Portfolio Analyst on the Distressed & Special Situations investment team, trading loans, bonds and equities on Highland's trading desk, and leading the sector rotation and fund management process for Highland's par credit funds. Prior to joining Highland in July 2005, Mr. Terry worked as an Investment Banking Analyst at Stephens Inc., where he focused on M&A transactions and equity financings for public and private middle-market companies. Mr. Terry serves as Chairman of the Finance Committee on the Board of Governors of Uplift Education, a network of charter schools in the Dallas-Fort Worth area. He received a BBA in Finance and Economics, summa cum laude, from Baylor University. Mr. Terry has earned the right to use the Chartered Financial Analyst designation.

**Trey Parker, Managing Director**

Mr. Parker is Managing Director and Head of Credit Research at Highland Capital Management, L.P. Mr. Parker is responsible for managing the Credit Research Team/Platform. Prior to his current role, Mr. Parker was a Portfolio Manager covering a number of the industrial verticals, as well as parts of Tech, Media and Telecom; he also worked as a Senior Portfolio Analyst on the Distressed & Special Situations investment team. Prior to joining Highland in March 2007, Mr. Parker was a Senior Associate at Hunt Special Situations Group, L.P., a Private Equity group focused on distressed and special situation investing. Mr. Parker was responsible for sourcing, executing and monitoring control Private Equity investments across a variety of industries. Prior to joining Hunt in 2004, Mr. Parker was an analyst at BMO Merchant Banking, a Private Equity group affiliated with the Bank of Montreal. While at BMO, Mr. Parker completed a number of LBO and mezzanine investment transactions. Prior to joining BMO, Mr. Parker worked in sales and trading for First Union Securities and Morgan Stanley. Mr. Parker received an MBA with concentrations in Finance, Strategy and Entrepreneurship from the University of Chicago Booth School of Business and a BA in Economics and Business from the Virginia Military Institute. Mr. Parker serves on the Board of Directors of Euramax Holdings, Inc., TerreStar Corporation, JHT Holdings, Inc., and a non-profit organization, the Juvenile Diabetes Research Foundation (Dallas chapter).

## **Advisory Committee**

The General Partner and/or the Investment Manager may appoint, or cause to be appointed, a committee (the “**Advisory Committee**”) consisting of one or more individuals selected by the General Partner and/or the Investment Manager, none of whom is affiliated with the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in the Fund or an affiliate thereof). If established, the Advisory Committee will have the authority, at the request of the General Partner and/or the Investment Manager, to consult with the General Partner and/or the Investment Manager on any matters that may involve a conflict of interest between the General Partner and/or the Investment Manager (or their affiliates) on the one hand and the Limited Partners (or shareholders of the Offshore Fund) and the Fund on the other. Any consent given by a majority of the Advisory Committee on behalf of the Fund in good faith after consultation with the General Partner and/or the Investment Manager is binding on the Fund and the Limited Partners or shareholders of the Offshore Fund (so long as such majority consists of persons independent of the General Partner and/or the Investment Manager and their affiliates). The Fund will have the authority to agree to reimburse members of the Advisory Committee for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

## **Administrator**

SEI Investments is a leading global provider of investment processing, investment management and investment operations solutions for institutional and personal wealth management. For more than 40 years, SEI has helped corporations, financial institutions, financial advisors and ultra-high-net-worth families create and manage wealth by providing comprehensive, innovative, investment and investment-business solutions. SEI manages or administers \$601.9 billion in funds and separately managed assets. SEI is a public company and is listed on the NASDAQ exchange under the symbol SEIC. SEI has been retained to perform certain administrative, accounting and investor services for the Fund and the Offshore Fund (in such capacity, the “**Administrator**”). In its capacity as Administrator, it will receive customary fees that will be paid out of the assets of the Fund. The Administrator will also be reimbursed for all reasonable out-of-pocket expenses.

The Fund will enter into an administration agreement (the “**Administration Agreement**”) with the Administrator. The Administrator will be under no duty to take any action on behalf of the Fund except as specifically set forth in the Administration Agreement or as may be specifically agreed to by the Administrator and the Fund in a written amendment thereto.

The Administrator will act as liaison with the Fund’s accountants and auditors and will provide account analyses, fiscal year summaries, and other audit-related schedules with respect to the Fund. The Administrator will take all reasonable action in the performance of its duties under the Administration Agreement to assure that the necessary information is made available to such accountants and auditors for the expression of their opinion, as required by the Fund.

The Administrator will enter into and will maintain in effect with appropriate parties one or more agreements making reasonable provisions for emergency use of electronic data processing equipment to the extent appropriate equipment is available. In the event of equipment failures, the Administrator will, at no additional expense to the Fund, take reasonable steps to minimize service interruptions. The Administrator will have no liability with respect to the loss of data or service interruptions caused by equipment failure, provided such loss or interruption is not caused by the Administrator’s own willful misfeasance, bad faith, gross negligence or reckless disregard of its duties or obligations under the Administration Agreement.

Subject to the terms of the Administration Agreement, the Administrator will be liable to the Fund (or any person or entity claiming through the Fund) for damages only to the extent caused by the Administrator's own fraud or willful misconduct under the Administration Agreement ("***Standard of Care***"). The Administrator will not be liable for damages (including, without limitation, damages caused by delays, failure, errors, interruption or loss of data) occurring directly or indirectly by reason of circumstances beyond its reasonable control. The Administrator will not be under any duty or obligation to inquire into and will not be liable for the validity or invalidity, authority or lack thereof, or truthfulness or accuracy or lack thereof, of any instruction, direction, notice, instrument or other information which the Administrator reasonably believes to be genuine. The Administrator will not be liable for any damages that are caused by actions or omissions taken by the Administrator in accordance with written instructions by authorized persons of the Fund or advice of counsel. The Administrator will not be liable for any damages arising out of any action or omission to act by any prior service provider of the Fund or for any failure to discover any such error or omission. Neither the Administrator nor its affiliates will be liable for any consequential, incidental, exemplary, punitive, special or indirect damages, whether or not the likelihood of such damages was known by the Administrator or its affiliates. Both the Fund and the Administrator will have a duty to mitigate damages for which the other party may become responsible.

Absent the Administrator's failure to meet its Standard of Care, the Fund agrees to indemnify, defend and hold harmless the Administrator and its affiliates and their respective directors, trustees, officers, agents and employees from certain claims, suits, actions, damages, losses, liabilities, obligations, costs and reasonable expenses (including attorneys' fees and court costs, travel costs and other reasonable out-of-pocket costs related to dispute resolution) arising directly or indirectly from any actions taken or omitted to be taken by the Administrator in connection with the provision of services to the Fund.

The Offshore Fund will also enter into an administration agreement with the Administrator, under which the terms will be substantially as above.

## SUMMARY OF TERMS

*The following Summary of Terms summarizes the principal terms of an investment in the Fund, and is subject, and qualified in its entirety by reference, to the limited partnership agreement of the Fund, as amended (the “**Partnership Agreement**”) and the subscription documents (the “**Subscription Documents**”). This summary is intended to be brief and does not purport to provide a comprehensive explanation of the Partnership Agreement and the Subscription Documents. Accordingly, statements made in this Memorandum are subject to the detailed provisions of those agreements. Prospective investors are urged to review those agreements in their entirety prior to determining whether to invest in the Fund.*

### **The Fund**

The Fund is a limited partnership formed on December 1, 2005 under the laws of the State of Delaware with the name “Highland Credit Opportunities CDO, L.P.” The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”

### **Recent Amendments; Series of Interests**

The General Partner and the existing Limited Partners of the Fund adopted the Fourth Amended and Restated Limited Partnership Agreement of the Fund, effective November 1, 2014 (the “**Effective Date**”), whereby all existing limited partner interests were re-designated as “Series A Interests” and three new series of limited partner interests were created – “Series B Interests,” “Series C Interests” and “Series D Interests” (the “**Amendments**”).

As of the Effective Date, all existing Limited Partners will hold Series A Interests, the terms of which are set forth in a supplement to this Memorandum. The Fund is currently offering for subscription Series B Interests, Series C Interests and Series D Interests pursuant to this Memorandum.

The Fund may issue additional series of Interests over time (each, a “**Series**”). Not all Series of Interests will be available for subscription at the same time and the terms among the Series of Interests will vary. New Series of Interests may be established by the General Partner without notice to or approval of the Limited Partners.

Except with respect to management fees, performance-based profit allocations and withdrawal rights (each as discussed below), the rights and privileges attributable to Series A Interests, Series B Interests, Series C Interests and Series D Interests are identical.

References herein to “Interests” or “Limited Partners” shall include all Series of Interests and Limited Partners unless otherwise specified or context so requires.



**General Partner**

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership. The general partner of the General Partner is Highland Multi Strategy Credit GP, LLC, a Delaware limited liability company of which the Investment Manager is currently the sole member.

**Investment Manager**

Highland Capital Management, L.P., a Delaware limited partnership.

**Eligible Investors**

Limited partner interests (“**Interests**”) may be purchased by investors who are “accredited investors” and “qualified purchasers,” as defined in the Fund’s Subscription Documents. Subscribers will be required to complete the Fund’s Subscription Documents consisting of the subscription agreement and the subscriber information form to determine their eligibility. The General Partner reserves the right to reject any investor for any reason or for no reason in its sole discretion.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

**Subscriptions**

Subscriptions for Interests may be accepted as of the first Business Day of each calendar month and/or such other days as the General Partner may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. The initial minimum investment is \$1,000,000, although the General Partner may accept investments in a lesser amount. Capital contributions may be made in cash or, with the consent of the General Partner, in securities or partly in cash and partly in securities.

“**Business Day**” means any day other than Saturdays, Sundays or any other day banks located in New York, New York are required or authorized to be closed.

A subscriber admitted to the Fund (a “**Limited Partner**”) receives, in exchange for its initial capital contribution and any subsequent capital contribution, an Interest representing a proportionate share of the net assets of the Fund at that time.

There is no minimum aggregate amount of subscriptions that is required for the initial acceptance of subscriptions, nor has the General Partner established any maximum aggregate amount of subscriptions that may be accepted.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and

Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56) and other applicable anti-money laundering regulations as further described in the Subscription Documents.

#### **Offshore Feeder Fund**

In order to facilitate investments by non-U.S. and other tax-exempt investors, the Investment Manager has sponsored the formation of Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “*Offshore Fund*”). The Offshore Fund places all of its assets in and conducts all of its investment and trading activities through the Fund as a limited partner of the Fund.

Investors in the Offshore Fund will be issued participating non-voting shares of the Offshore Fund; provided that in the event that the Fund seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a limited partner of the Fund under the Partnership Agreement, the Offshore Fund: (i) shall submit such matter for the consent of the holders of shares in the Offshore Fund and (ii) shall cause the Offshore Fund to vote its Interest proportionally for and against such matter in the same proportion that the shareholders in the Offshore Fund voted for and against such matter.

The Investment Manager may establish one or more additional feeder vehicles to invest in the Fund.

#### **Capital Accounts**

The Fund will maintain a book capital account (a “*Capital Account*”) for the General Partner and each Limited Partner (each, a “*Partner*” and collectively, the “*Partners*”) to reflect contributions, withdrawals, distributions and allocations of net profit and net loss. The initial balance of each Partner’s Capital Account will be equal to the amount of cash or net value of any property contributed to the Fund by such Partner.

If a Partner invests in more than one Series of Interests, the Fund will maintain a separate Capital Account on behalf of such Partner with respect to each such Series and each Capital Account will be treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights applicable to each Series Capital Account.

If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights applicable to each capital sub-account. References herein to a Partner’s “Capital Account” include any such separately maintained capital sub-accounts.

The Fund will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares (as defined in the Partnership Agreement) and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

**Alternative Investment Vehicles**

The General Partner will have the right, in connection with any investment, to direct the capital contributions of some or all of the subscribers to be made through one or more alternative investment vehicles (each an “*Alternative Investment Vehicle*”), and, in the case of an existing investment, transfer all or a portion of such investment to an Alternative Investment Vehicle, if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Fund to overcome legal or regulatory constraints, invest in a more tax-efficient manner or would facilitate participation in certain types of investments. Any Alternative Investment Vehicle will be subject to terms and conditions substantially similar to those of the Fund (including Management Fees and the Performance Allocation defined below) and will be managed by the Investment Manager or an affiliate thereof.

**Affiliated Investors**

Interests in the Fund held by the Investment Manager or its affiliates (collectively, “*Affiliated Investors*”) may not be assessed the management fees or the performance allocations that are applicable to other investors in the Fund, but share pro rata in other applicable expenses of the Fund (as more fully described in the Partnership Agreement).

**Borrowing and Leverage**

The Fund may buy securities on margin and arrange with banks, brokers and others to borrow money against a pledge of securities in order to employ leverage when the Investment Manager deems such action appropriate.

**Management Fee**

For its services to the Fund, the Investment Manager is entitled to a management fee (the “*Management Fee*”), calculated and payable quarterly in advance, equal to: (i) 1.5% (per annum) of each Capital Account attributable to a Series B Interest, (ii) 1.0% (per annum) of each Capital Account attributable to a Series C Interest and (iii) 2.0% (per annum) of each Capital Account attributable to a Series D Interest.

Management Fees will be appropriately adjusted for any partial quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Limited Partner (or Capital Account) in its sole discretion.

**Other Fees and Expenses**

The Fund bears the reasonable, out-of-pocket expenses of the offering of the Interests contemplated hereunder and the recent Amendments, described above, including expenses associated with obtaining any requisite investor consent to such Amendments. To the extent the General Partner deems appropriate, expenses related to the

Amendments may be capitalized and amortized by the Fund over a 36-month period from the Effective Date, even though such capitalization and amortization may be a divergence from U.S. generally accepted accounting principles (“GAAP”). Amortization of such expenses over a 36-month period may, in certain circumstances, result in a qualification of the Fund’s annual audited financial statements. In such instances, the General Partner may decide to (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP conforming changes for financial reporting purposes, but amortize expenses for purposes of calculating the Fund’s net asset value. There will be a divergence in the Fund’s fiscal year-end net asset value and in the net asset value reported in the Fund’s financial statements in any year where, pursuant to clause (ii), GAAP conforming changes are made only to the Fund’s financial statements for financial reporting purposes.

If the Fund is terminated within 36 months of the Effective Date, any unamortized expenses will be recognized.

Investment and Operational Expenses. The Fund bears all reasonable costs and expenses directly related to its investment program, including expenses related to research, due diligence, proxies, underwriting and private placements, brokerage commissions, interest on debt balances or borrowings, custody fees, travel fees and expenses related to the Fund’s offering and any withholding or transfer taxes imposed on the Fund. The Fund also bears all reasonable, out-of-pocket costs of the administration of the Fund, including (i) accounting, audit and legal expenses (including those incurred for the Fund, the General Partner or the Investment Manager to comply with applicable law, rule or regulation), (ii) costs of any litigation or investigation involving the Fund’s activities, (iii) the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Fund’s investments and (iv) costs associated with reporting and providing information to existing and prospective Limited Partners. However, the General Partner or the Investment Manager may, in its sole discretion, choose to absorb any such expenses incurred on behalf of the Fund.

The Fund does not have its own separate employees or office. Except as described above and provided for in the Partnership Agreement, the Fund generally does not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment Manager. However, a portion of the commissions generated on the Fund’s brokerage transactions may generate “soft dollar” credits that the General Partner and the Investment Manager are authorized to use to pay for research and research-related services and products used by the General Partner or the Investment Manager. In the event that the Investment Manager elects to use soft dollars, it intends to limit such use to services that fall

within the safe harbor afforded by Section 28(e) of the United States Securities Exchange Act of 1934, as amended. See “*Brokerage and Custody*.”

#### **Allocation of Net Profit and Loss**

Net profit or net loss of the Fund (including unrealized gains or losses and Fund expenses) is allocated among the Capital Accounts of the General Partner and the Limited Partners (collectively, the “*Partners*”) as of the close of each calendar month, at such times as the Fund receives an additional capital contribution or effects a withdrawal or distribution, or at such other times as the General Partner may determine.

Profit and loss attributable and any Restricted New Issues (as described below) and are determined and allocated among the Partners separately and are not reflected in the determinations and allocations of net profit or net loss attributable to the remainder of the Fund’s net assets.

As of the close of each accounting period, the net profit or net loss (other than any profit or loss attributable to Restricted New Issues, which are allocated as per below) will be allocated *pro rata* among the Capital Accounts of the Partners in proportion to their percentage interests in the Fund as of the commencement of the period. Each Partner’s percentage interest in the Fund as of the commencement of any period is based on the value of the Partner’s Capital Account at such time (excluding any amount attributable to such Partner’s share of Restricted New Issues), in relation to the total value of the Fund’s net assets at such time (excluding the aggregate amount of net assets attributable to Restricted New Issues).

If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Limited Partner may agree such Limited Partner should not participate (or should receive a reduced participation) in the net profit or net loss with respect to any investment, the General Partner may allocate net profit or net loss, if any, with respect to the investment to Limited Partners to the extent to which the above restrictions do not apply.

The Management Fee is calculated based on the Capital Account balance of each Limited Partner and is debited from each Limited Partner’s Capital Account. Allocations to each Partner of net profit or net loss of the Fund will be subject to periodic adjustment to give effect to the Performance Allocation, as described below.

#### **Restricted New Issues**

The Fund may from time to time purchase securities in public offerings made through member firms of the Financial Industry Regulatory Authority, Inc. (“*FINRA*”). FINRA member firms are not permitted to sell certain new issues (“*Restricted New Issues*”) to accounts in which certain persons have a significant beneficial interest that are involved in the securities industry or to executive officers or directors



of companies that are current, recent, or prospective investment banking clients of the relevant underwriters (“**Restricted Persons**”). In order to enable the Fund to participate in Restricted New Issues, the Fund will require each Limited Partner to provide information to enable the Fund to determine whether the Limited Partner is a Restricted Person. When the Fund invests in a Restricted New Issue, the profits and losses associated with the investment will specifically be allocated to those Partners who are permitted by the FINRA rules to have a beneficial interest therein.

The FINRA rules permit Restricted Persons that are involved in the securities industry to have in the aggregate up to a 10% participation in Restricted New Issues and Restricted Persons affiliated with a FINRA member’s investment banking clients to have up to 25% participation in Restricted New Issues. If the ownership of the Fund by Restricted Persons exceeds the maximum percentage, the General Partner will allocate such excess amount *pro rata* among the Capital Accounts of Partners who are not Restricted Persons or on such other basis that the General Partner reasonably determines ensures compliance with the FINRA Rules.

If a Restricted New Issue in which participation by Restricted Persons has been capped is not promptly sold, the investment may be reallocated among all Partners on a *pro rata* basis (including all Restricted Persons) after a secondary market develops at such secondary market price.

#### **Performance Allocation**

The Investment Manager, in its capacity as a special limited partner in the Fund, is entitled to a performance allocation at the end of each calendar year (the “**Performance Allocation**”), which is calculated and charged separately with respect to each Capital Account of each Limited Partner, equal to 20% of the amount by which the Capital Account’s “Performance Change Amount” (if positive) for the current calendar year exceeds the Capital Account’s “Loss Carryforward Amount.”

A Capital Account’s “**Performance Change Amount**” for any calendar year equals such Capital Account’s *pro rata* allocation of net profit or net loss (including Management Fees, Restricted New Issues and/or other items of income or expense specially allocable to the Capital Account).

The “**Loss Carryforward Amount**” for any calendar year equals the aggregate Performance Change Amounts, if negative, allocated to a Capital Account during any preceding calendar year, minus any subsequent positive Performance Change Amounts on which no Performance Allocation was charged. If a Limited Partner makes a withdrawal from its Capital Account at a time when there is a Loss Carryforward Amount, such Loss Carryforward Amount will be reduced in the same proportion that the withdrawal amount bears to the

Limited Partner's total Capital Account balance immediately prior to the withdrawal.

The Performance Allocation is calculated and charged to each Capital Account as of the last day of each calendar year. The Performance Allocation is also calculated and charged with respect to any Capital Account from which there is a permitted or required withdrawal as of any time other than the last day of a calendar year on the basis of net profits allocated to such Capital Account through the applicable date of withdrawal. In the case of a partial withdrawal, the Performance Allocation is calculated and charged only with respect to the portion of the Capital Account being withdrawn.

The Performance Allocation and Loss Carryforward Amount will be computed separately for each Capital Account (and each separately maintained capital sub-account reflecting additional contributions by a Limited Partner). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Allocation and Loss Carryforward will be computed separately for each Capital Account, and the Capital Accounts will not be netted against one another for purposes of calculating the Performance Allocation. Accordingly, Limited Partners with multiple Capital Accounts may be charged a Performance Allocation in respect of one or more Capital Accounts for a year in which the aggregate net profits allocated to all of such Limited Partner's Capital Accounts do not exceed the aggregate Loss Carryforward Amount allocated to all of such Limited Partner's Capital Accounts.

The Performance Allocation with respect to any Limited Partner may be waived or altered by the Investment Manager in its sole discretion.

**Distributions**

Subject to the withdrawal privilege described below, all earnings of the Fund are ordinarily retained for investment. Other than distributions made pursuant to a withdrawal described below, Limited Partners should not expect the Fund to make any distributions.

**Withdrawals Generally**

Withdrawal rights vary by Series. For the purposes of establishing the withdrawal privileges below, withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable) of a Limited Partner.

**Series Withdrawal Dates**

Subject to certain withdrawal restrictions described below, Limited Partners have the following withdrawal rights:

Series B Interests: Annual Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series B Interests upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The "***Series B Withdrawal Date***" means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of

the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (i.e., if capital was contributed to the Fund on November 1, 2014, such capital would be eligible for withdrawal on October 31, 2015 and every year thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series C Interests: Two Year Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series C Interests upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “*Series C Withdrawal Date*” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (i.e., if capital was contributed to the Fund on November 1, 2014, such capital would be eligible for withdrawal on October 31, 2016 and every two years thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series D Interests: One Year Hard Lock-Up; Quarterly Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series D Interest as of the last Business Day of each calendar quarter (and/or such other days as the General Partner may determine in its sole discretion) (each, a “*Series D Withdrawal Date*”) following the one-year anniversary of the contribution of the capital to be withdrawn. Notice of any withdrawal of Series D Interests must be provided in writing to the General Partner at least 90 calendar days prior to the requested Series D Withdrawal Date.

The General Partner may, at any time and in its sole discretion, waive or modify the foregoing withdrawal and distribution restrictions with respect to any Limited Partner.

**Settlement of Withdrawal Proceeds**

With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Fund or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable date of withdrawal, and withdrawn amounts will be fixed as of the effective date of withdrawal, except as otherwise provided in the Partnership Agreement with respect to reserves for contingencies.

At least 90% of the estimated amount due with respect to the Fund’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Fund, within 30 Business Days after the date of withdrawal, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Fund or the remaining Capital Accounts. The General Partner is entitled to deduct from such

settlement an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Fund's financial statements for such fiscal year, or sooner in the General Partner's discretion.

In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner's interest in the Fund's marketable investments, no settlements occur with respect to any of such Limited Partner's interest in the Fund's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, in its sole discretion, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Fund. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

The General Partner may withhold for the benefit of the Fund from any distribution to a withdrawing Limited Partner an amount representing the actual or estimated costs incurred by the Fund with respect to such withdrawal.

#### **Withdrawal Conditions**

The General Partner may refuse to accept a withdrawal request if it is not accompanied by such additional information as the General Partner or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where withdrawal proceeds are requested to be remitted to an account which is not in the name of the investor, the General Partner and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the withdrawal proceeds will be paid. The withdrawal proceeds will not

be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

**Compulsory Withdrawals** The General Partner reserves the right, in its sole discretion, to compel the withdrawal of any Limited Partner's Interest, in part or in its entirety, on not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Fund may cause the Fund, the Investment Manager or the General Partner to violate any applicable law). Settlements are made in the same manner as voluntary withdrawals.

**Suspension of Valuations, Withdrawals and Withdrawal Payments** The General Partner may suspend the issuance of Interests, the Partners' withdrawal privileges, the payment of withdrawal proceeds and the valuation of the Fund's net assets:

- (i) during any period when any stock exchange or over-the-counter market on which the Fund's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;
- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of investments by the Fund, or the determination of the value of the assets of the Fund, would not be reasonably practicable;
- (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Fund's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Fund cannot reasonably be accurately ascertained within a reasonable time frame;
- (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
- (v) in other circumstances where the General Partner is unable to fairly value the Fund's assets due to extreme market conditions; or
- (vi) automatically upon liquidation of the Fund.

Upon the reasonable determination by the General Partner that conditions leading to suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be



honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.

### **Soft Wind Down**

It is anticipated that any suspension in the circumstances described above in “Suspension of Valuations, Withdrawals and Withdrawal Payments” (each, a “*Suspension*”) would ordinarily be temporary (other than in connection with a decision to proceed with the liquidation of the Fund). However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the General Partner, in consultation with the Investment Manager, considers it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the General Partner to cause the Fund to return the Fund’s assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Fund) (an “*Orderly Realization*”). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Fund as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund’s portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the Limited Partners. The General Partner will notify Limited Partners of any decision to proceed with an Orderly Realization of the Fund. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Fund as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the “*Realization Period*”). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime. The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. Management Fees shall be payable and Performance Allocations shall

be made during an Orderly Realization on the same basis as described herein.

**Transfers**

Interests are not transferable except with the prior written consent of the General Partner, which consent may be withheld in the General Partner's sole discretion. The General Partner in its sole discretion may require any transferee or assignee of any Limited Partner to agree in writing to be bound by the Partnership Agreement. Interests of any Affiliated Investors may be transferred to other affiliates thereof without restriction.

**Duty of Care;  
Indemnification**

The Partnership Agreement provides that the General Partner, the Investment Manager and each of their affiliates are not liable to the Fund or the Limited Partners for any loss or damage arising by reason of being or having been the General Partner or the Investment Manager or from any acts or omissions in the performance of its services as General Partner or Investment Manager, as applicable, in the absence of willful misconduct, fraud or gross negligence or as otherwise required by law, and contains provisions for the indemnification of the General Partner, the Investment Manager and each of their affiliates by the Fund (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been the General Partner or the Investment Manager or in connection with the Partnership Agreement or the Fund's business or affairs to the fullest extent permitted by law. The General Partner is not personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the federal or state income tax laws applicable to the Fund or its investors.

**Valuations**

In general, the Fund's financial statements will be prepared in accordance with GAAP. The General Partner has delegated the valuation of the Fund's assets to the Investment Manager who values the Fund's assets as of the close of each accounting period in accordance with its valuation policies and procedures. Valuations may be suspended as set forth above in "Suspension of Valuations, Withdrawals and Withdrawal Payments."

**Reserves**

Appropriate reserves may be accrued and charged against net assets and proportionately against the Capital Accounts of the Partners for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the General Partner in its sole discretion deems necessary or appropriate. In the sole discretion of the General Partner, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Capital Accounts of those investors who are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were

Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were Partners during any such prior period.

**Fiscal Year**

The Fund has a fiscal year ending on December 31 of each calendar year.

**Reports to Partners**

The Fund furnishes to its Partners as soon as practicable after the end of each taxable year (or as otherwise required by law) annual reports containing financial statements examined by the Fund's independent auditors as well as such tax information as is necessary for each Partner to complete federal and state income tax or information returns, along with any other tax information required by law. The Fund also furnishes monthly reports reviewing the Fund's performance for such calendar month. The General Partner selects the Fund's independent accountants in its sole discretion.

**Advisory Committee**

The General Partner and/or the Investment Manager may appoint, or cause to be appointed, a committee (the "**Advisory Committee**") consisting of one or more individuals selected by the General Partner and/or the Investment Manager, none of whom is affiliated with the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in the Fund or an affiliate thereof). If established, the Advisory Committee will have the authority, at the request of the General Partner and/or the Investment Manager, to consult with the General Partner and/or the Investment Manager on any matters that may involve a conflict of interest between the General Partner and/or the Investment Manager (or their affiliates) on the one hand and the Limited Partners (or shareholders of the Offshore Fund) and the Fund on the other. Any consent given by a majority of the Advisory Committee on behalf of the Fund in good faith after consultation with the General Partner and/or the Investment Manager is binding on the Fund and the Limited Partners or shareholders of the Offshore Fund (so long as such majority consists of persons independent of the General Partner and/or the Investment Manager and their affiliates). The Fund will have the authority to agree to reimburse members of the Advisory Committee for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

## **Dissolution and Liquidation**

In the event an Orderly Realization lasts longer than three years, Limited Partners with a combined percentage interest in the Fund of at least 75% may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Fund. The Limited Partners will not have any other right to bring an action in court to dissolve the Fund.

Dissolution of the Fund may also occur upon the General Partner's election, in its sole discretion, to dissolve the Fund or upon the occurrence of any event which results in the General Partner (or a successor to its business) ceasing to be the general partner of the Fund. Upon the occurrence of any such event, the General Partner (or a liquidator elected by a majority in interest of the Limited Partners, if the General Partner is unable to perform this function) is charged with winding up the affairs of the Fund, liquidating its assets to the extent feasible and making liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with each Partner's Capital Account balance.

## **Placement Agents**

The Investment Manager may engage third parties to solicit investors and act as placement agents for the Fund. Placement agents may charge a placement fee directly to investors solicited by any such placement agent, but such fees will not affect the subscription amount and will not be collected by or from the Fund. The placement agent may be reimbursed for its expenses and indemnified by the Fund.

Furthermore, placement agents may be paid a portion of the Management Fee or Performance Allocation attributable to such investors solicited by them, thereby reducing the Management Fee or Performance Allocation received by the Investment Manager. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent must comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

## **Tax Status**

The General Partner believes that the Fund should be treated as a partnership for U.S. federal income tax purposes and that it should not itself be subject to U.S. federal income taxation. Each Limited Partner otherwise subject to U.S. federal income tax is required to include in such Limited Partner's taxable income such Limited Partner's share of the Fund's income and gains, when realized by the Fund (regardless of cash distributions from the Fund to such investor), and may claim, to the extent allowable, such Limited Partner's share of the Fund's losses and deductions. Due to the nature of the Fund's activities, the Fund's income or loss for U.S. federal income tax purposes for a particular taxable period may differ from its financial or economic results. The

deductibility of a Limited Partner's share of any Fund losses or deductions may be limited. See "*Tax Considerations*."

#### **ERISA**

The General Partner intends to limit investment in the Fund by "benefit plan investors" so that the assets of the Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"). See "*ERISA and Other Regulatory Considerations*."

#### **Amendment of the Limited Partnership Agreement**

The Partnership Agreement may be amended by the General Partner with the consent of a majority in interest of the Limited Partners, which consent may be obtained through negative consent. However, the Fund may not: (a) increase the obligation of a Limited Partner to make any contribution to the capital of the Fund; (b) reduce the Capital Account of any Limited Partner other than as contemplated by the Partnership Agreement; or (c) reduce any Limited Partner's right to share in net profits or assets of the Fund without the consent of each Limited Partner adversely affected thereby. The above consent may be obtained by negative consent (affording the Limited Partners notice and opportunity to object).

Notwithstanding the foregoing, the General Partner may amend the Partnership Agreement at any time without the consent of any Limited Partner: (a) to comply with applicable laws and regulations; (b) to make changes that do not adversely affect the rights or obligations of any Limited Partner; (c) to cure any ambiguity or correct or supplement any conflicting provisions of the Partnership Agreement; or (d) with respect to any other amendment, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Fund as of a date that is not less than 30 days after the General Partner has furnished written notice of such amendment to each Limited Partner and that is prior to the effective date of the amendment.

#### **Variation of Terms**

The General Partner, in its sole discretion, may enter into a side letter or similar agreement to or with one or more Limited Partners that has the effect of establishing rights under, or altering or supplementing the terms of the Partnership Agreement or the Subscription Documents (including those relating to Management Fees, the Performance Allocation, transparency, and withdrawals) with respect to such Limited Partner. The General Partner generally grants waivers of the Management Fees, Performance Allocation and withdrawal restrictions to principals and employees of the Investment Manager and its affiliates, as well as their related family members and affiliates.

#### **Dispute Resolution**

Any controversy or claim ("**Dispute**") out of or relating to or in connection with the Partnership Agreement or otherwise involving the Fund, its Partners and/or any Indemnified Party (as defined in the Partnership Agreement) shall be submitted to mediation in accordance



with the Partnership Agreement and if such dispute has not been resolved within 90 days, will be resolved by binding arbitration in accordance with the Partnership Agreement. Mediation and arbitration shall be held in Dallas, Texas and Delaware law shall apply to any dispute, except as otherwise provided in the Partnership Agreement.

## RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

*Investment in the Fund is speculative and involves certain risks. Certain of these risks are summarized below. The Fund may not be suitable for all investors and is intended for sophisticated investors who can accept the risks associated with its investments. An investment in the Fund does not constitute a complete investment program. Investors will not have recourse except with respect to the assets of the Fund. Prospective investors should consider, among others, the risk factors and potential conflicts of interest described in this section. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.*

### Fund Risks

*Investment Judgment; Market Risk.* The profitability of a significant portion of the Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Fund, there is always some, and occasionally a significant, degree of market risk.

*Reliance on Key Persons.* The Fund will be substantially dependent on the services of James Dondero, Mark Okada and Joshua Terry (the "**Key Man Group**"). In the event of the death, disability, departure or insolvency of a member of the Key Man Group, or the complete transfer of a member's interest in the Investment Manager, the business of the Fund may be adversely affected. Each member of the Key Man Group will devote such time and effort as he deems necessary for the management and administration of the Fund's business. However, the members of the Key Man Group may engage in various other business activities in addition to managing the Fund, and consequently may not devote all time to Fund business.

*Investment Authority.* Substantially all decisions with respect to the management of the Fund are made by the General Partner and the Investment Manager. Limited Partners have no right or power to take part in the management of the Fund. The Investment Manager also makes all of the trading and investment decisions of the Fund. In the event of the withdrawal or bankruptcy of the General Partner, generally the Fund will be liquidated.

*Performance Allocation.* The Performance Allocation made to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

*Withdrawal Restrictions.* There are severe restrictions on withdrawals from the Fund (which may be settled in securities rather than cash) and on transfers of Interests. The prior written consent of the General Partner is required for a transfer of the Interest of any Limited Partner and the General Partner, in its sole discretion, may require any transferee or assignee of any Limited Partner to agree in writing to be bound by the Partnership Agreement. Because of the restrictions on withdrawals and transfers, an investment in the Fund is a relatively illiquid investment and involves a high degree of risk. There is no independent market for the purchase or sale of Interests and none is expected to develop. Limited Partners must represent that they are purchasing Interests for investment. A subscription for Interests should be considered only by persons financially able to maintain their investment and who can accept a loss of all of their investment.

*No Distributions.* Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current distributions of income. Moreover, an investor is required to report and pay taxes on its allocable share of income from the Fund, even though no cash is distributed by the Fund.

*In-Kind Distributions.* The Partnership Agreement authorizes the General Partner to make distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Diversification.* Since the Fund's portfolio will not necessarily be widely diversified, the investment portfolio of the Fund may be subject to more rapid changes in value than would be the case if the Fund were required to maintain a wide diversification among companies, securities and types of securities.

*Valuations.* From time to time, certain situations affecting the valuation of the Fund's investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Fund) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or withdrawal transactions or Management Fees or Performance Allocations based on subsequent valuation data.

*Non-Public Information.* From time to time, the Investment Manager may come into possession of non-public information concerning specific companies. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

*Soft Dollars.* The Investment Manager may enter into "soft dollar" arrangements with one or more broker-dealers whereby the Investment Manager will direct securities transactions to the broker-dealer in return for research products and services from the broker-dealer. Although the Investment Manager will use the research and services in making investment decisions for the Fund, the Investment Manager may use such research or services for other accounts and the Fund will generally pay more than the lowest available commissions for execution of these transactions. The Investment Manager may also enter into "soft dollar" arrangements to cover Fund expenses or costs and expenses of the Investment Manager to the extent such arrangements are permitted by law and described in this Memorandum. See "*Brokerage and Custody.*"

*Absence of Registration.* The Fund has not and will not register under the Investment Company Act. Accordingly, the provisions of the Investment Company Act which, among other things, require that a fund's board of directors, including a majority of disinterested directors, approve certain of the fund's activities and contractual relationships, prohibit certain trading and investment activities and prohibit the fund from engaging in certain transactions with its affiliates, will not be applicable. Neither the General Partner nor the Investment Manager is registered as a CPO or a CTA with the NFA in reliance on an exemption from registration pursuant to CFTC Regulation 4.13(a)(3). Accordingly, the provisions of the Commodity Exchange Act and the regulations promulgated thereunder applicable to registered persons will not be applicable to the General Partner or the Investment Manager.

*Recent Developments in the Financial Services Industry.* Recent developments in the U.S. financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty for the financial services industry. In July of 2010, the Dodd-Frank Financial Reform Act was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. The implications of the passage of the Dodd-Frank Financial Reform Act for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Fund's business, operations and performance.

## **Investment Strategy Risks**

### Risks Associated With Investing in CLOs

*Risks of Investment Focus.* The Fund's portfolio may consist of CLO Securities. A cash flow CLO is generally analogous to a special purpose finance company. The CLO owns a portfolio consisting of corporate loans and other investments typically from which it receives interest income, together with capital gains and losses. The CLO is often financed with equity, which may be in the form of preference shares or income notes ("**CLO Equity**") and several levels of long-term debt ("**CLO Debt**"). CLO Debt is typically rated by the rating agencies based on the deal structure as well as outstanding principal amount of portfolio securities and, in most cases, is not contingent on the market value of the underlying portfolio. CLO Equity is almost always unrated.

CLO Securities are subject to, among other risks, credit, liquidity and interest rate risks. The CLO Equity that the Fund may purchase may be unrated or non-investment grade. In addition, as a holder of CLO Equity, the Fund may have limited remedies available upon the default of the CLO.

The value of the CLO Securities that the Fund may own generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the CLO Securities' underlying portfolio of assets ("**CLO Collateral**"), general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. CLO Securities are issued on a non-recourse basis and holders of CLO Securities must rely solely on distributions on the CLO Collateral or proceeds thereof for payment in respect thereof. If distributions on the CLO Collateral are insufficient to make payments on the CLO Securities, no other assets will be available for payment of the deficiency and following realization of the CLO Securities, the obligations of such issuer to pay such deficiency generally will be extinguished.

Issuers of CLO Securities may acquire interests in loans and other debt obligations by way of sale, assignment or participation. The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the loan or debt obligation; however, its rights can be more restricted than those of the assigning institution.

CLO Collateral may consist of corporate loans, leveraged loans and other instruments, which often are rated below investment grade (or of equivalent credit quality). Loans may be unsecured and may be subordinated to certain other obligations of the issuer thereof. The lower ratings of below

investment grade loans reflect a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the related issuer or obligor to make payments of principal or interest. Such investments may be speculative.

*Dependence Upon Other Unrelated Managers.* The success of a CLO may depend on the management talents and efforts of one person or a small group of persons whose management could adversely affect the CLO and, accordingly, the Fund as an investor in such CLO. Given that the Investment Manager will not have an active role in the management of these CLOs, the return on the Fund's investments in such CLOs will depend on the performance of unrelated managers.

*Investments in CLOs Managed by the Investment Manager or its Affiliates.* The Fund may invest a significant portion of its capital in structured investments, including CLO tranches originated and managed by third parties and CLO tranches managed by the Investment Manager or its affiliates (the "*Affiliated CLOs*"). If the Fund invests in Affiliated CLOs, the Limited Partners will indirectly pay the fees (senior and subordinated) (but only if such investment is in the equity tranche of such Affiliated CLO), expenses and any carried interest at primary issuance. The Investment Manager or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Affiliated CLOs. If the Fund provides all of the equity for an Affiliated CLO, there may be no third party with whom the amount of such fees, expenses and carried interest can be negotiated on an arm's-length basis. The Investment Manager will have conflicting division of loyalties and responsibilities regarding the Fund and an Affiliated CLO, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Fund would not be subordinated to those of an Affiliated CLO or to other interests of the Investment Manager.

*Multiple Levels of Fees.* The Fund and the CLOs (including Affiliated CLOs) are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if Limited Partners were able to invest directly in the CLOs or underlying investments. Limited Partners should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a CLO (including a member of the Highland Group (defined below)) may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (*e.g.*, break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees). Additionally, some of the CLOs may invest themselves in underlying hedge funds or CLOs. In such case, additional management costs and other administrative expenses may be incurred.

*Limited Diversification.* CLOs may invest in concentrated portfolios of assets. The concentration of an underlying portfolio in any one obligor would subject the related CLO Securities (the related CLO Equity in particular) to a greater degree of risk with respect to defaults by such obligor and the concentration of a portfolio in any one industry would subject the related CLOs (the related CLO Equity in particular) to a greater degree of risk with respect to economic downturns relating to such industry. The Fund may have a concentrated exposure to CLOs of a particular type of CLO.

*CLO Embedded Leverage Risk.* The Fund's participation in CLOs involves varying amounts of leverage. Leverage is embedded in all classes of a CLO other than the most senior tranche. If the Fund retains either the most or one of the most subordinate tranches of the CLO's securities, it will hold the most leveraged investment in the CLO. While leverage presents opportunities for increasing the Fund's total return, it has the effect of potentially increasing losses as well. Accordingly, any event which



adversely affects the value of an investment in a CLO would be magnified to the extent such CLO is leveraged. The cumulative effect of the use of leverage by a CLO in a market that moves adversely to the CLO's investments could result in a substantial loss to the CLO which would be greater than if the CLO were not leveraged. The borrowing arrangements of CLOs will contain events of default that, under certain circumstances, could result in early amortization or in the acceleration of the maturities of these obligations. In the event of acceleration of the borrowing arrangements of a CLO, in whole or in part, it may be required to dispose of all or a significant portion of its investments. Such a forced disposal of securities could result in realization of value of such investments significantly below the anticipated market values for such securities. When the Fund invests in derivative transactions, it may also gain leverage through such derivative transactions, which will expose the Fund to a greater risk of loss.

*Interest Rate Mismatch.* CLOs may be subject to interest rate risk. The CLO Collateral of an issuer of a CLO may bear interest at a fixed or floating rate, while the CLO Debt may bear interest at a floating or fixed rate. As a result, there could be a floating/fixed rate or basis mismatch between such CLO Debt and the CLO Collateral which bears interest at a fixed rate ("**Fixed Rate Assets**"), and there may be a timing mismatch between such CLO Debt and the assets that are not Fixed Rate Assets ("**Floating Rate Assets**"). In addition, the interest rate on Floating Rate Assets may adjust more frequently or less frequently, on different dates and based on different indices than the interest rates on the CLO Debt. As a result of such mismatches, an increase or decrease in the level of the floating rate indices could adversely impact the ability to make payments on such CLO Debt or Equity. Although many CLOs attempt to hedge this interest rate risk, the hedges may not eliminate this risk and payments by the CLO under the hedges may significantly reduce the distributions on the CLO securities. In addition, these hedges may have additional risks, such as counterparty risk, that are not present without these hedges.

*Lower Credit Quality Securities.* There are no restrictions on the credit quality of the investments of the Fund. CLO Securities in which the Fund will invest may have no ratings or may be deemed by rating agencies to have substantial vulnerability to default in payment of interest and/or principal and have the lowest quality ratings. The Fund may purchase CLO Securities which have ratings that have been downgraded or placed on "credit watch" for future downgrading. Lower rated and unrated securities in which the Fund may invest have large uncertainties or major risk exposures to adverse conditions and are considered to be predominantly speculative and may become a defaulted asset for a variety of reasons. Generally, such securities offer a higher return potential than higher rated securities, but involve greater volatility of price and greater risk of loss of income and principal.

The market values of certain of these securities (such as subordinated securities) also tend to be more sensitive to changes in economic conditions than higher rated securities. The value of leveraged loans and other assets underlying a CLO may also be affected by changes in the market's perception of the entity issuing or guaranteeing them, or by changes in government regulations and tax policies. Additionally, loans and interests in loans have significant liquidity and market value risks since they are not generally traded in organized exchange markets but are traded by banks and other institutional investors engaged in loan syndications. Because loans are privately syndicated and loan agreements are privately negotiated and customized, loans are not purchased or sold as easily as publicly traded securities. In addition, historically the trading volume in the loan market has been small relative to the high-yield debt securities market, and such illiquidity has been exacerbated during the current liquidity crisis.

Leveraged loans have historically experienced greater default rates than has been the case for investment grade securities. There can be no assurance as to the levels of defaults and/or recoveries that may be experienced on the assets underlying CLO Securities.

In general, the ratings of nationally recognized rating organizations represent the opinions of such agencies as to the quality of securities that they rate. Such ratings may be used by the Investment Manager as an initial basis for the selection of portfolio securities. Such ratings, however, are relative and subjective; they are not absolute standards of quality and do not evaluate the market value risk of the securities. Such ratings also do not reflect macroeconomic or systematic risk, including the risk of increased illiquidity in the credit markets. It is also possible that a rating agency might not change its rating of a particular issue on a timely basis to reflect subsequent events.

*Defaulted Assets Underlying CLO Securities.* If the assets underlying a CLO Security become defaulted assets, such defaulted assets may become subject to either substantial workout negotiations or restructuring, which may entail, among other things, a substantial reduction in the interest rate, a substantial write-down of principal, and a substantial change in the terms, conditions and covenants with respect to such defaulted asset. In addition, such negotiations or restructuring may be quite extensive and protracted over time, and therefore may result in substantial uncertainty with respect to the ultimate recovery on such defaulted asset. The liquidity for defaulted assets may be limited, and to the extent that defaulted assets are sold, it is highly unlikely that the proceeds from such sale will be equal to the amount of unpaid principal and interest thereon. Furthermore, there can be no assurance that the ultimate recovery on any defaulted assets will be at least equal to either the minimum recovery rate assumed by any rating agency that rates the notes of the CLO security. Therefore, if any CLO security has defaulted assets which correspond to the exposure of the Fund's interest in the CLO security, the Fund may be adversely affected.

There exist significant additional risks for CLO Securities and investors in such securities as a result of the current liquidity crisis. Those risks include, among others, (i) the likelihood that the issuer of the CLO Security will find it harder to sell any of its assets in the secondary market, thus rendering it more difficult to dispose of assets which it has the discretion to manage, including credit risk obligations, credit improved obligations or defaulted obligations, (ii) the possibility that the price at which assets can be sold by the issuer of the CLO Security will have deteriorated from their effective purchase price and (iii) the increased illiquidity of the notes issued by the CLO Security. These additional risks may affect the returns on the investments in the Fund's portfolio.

*Subordination of CLO Debt and CLO Equity.* The Fund's portfolio may consist of CLO Equity and subordinate CLO Debt. Subordinate CLO Debt generally is fully subordinated to the related CLO senior tranches. CLO Equity generally is fully subordinated to any related CLO Debt. Thus, some of the investments of the Fund in a CLO may rank behind other creditors of the CLO and an investment by the Fund in the equity tranche of a CLO may rank behind all creditors of the CLO. To the extent that any losses are incurred by a CLO in respect of its related CLO Collateral, such losses are likely to be borne first by the holders of the related CLO Equity, next by the holders of any related subordinated CLO debt and finally by the holders of the related CLO senior tranches. In addition, if an event of default occurs under the governing instrument or underlying investment, as long as any CLO senior tranches are outstanding, the holders thereof generally are likely to be entitled to determine the remedies to be exercised under the instrument governing the CLO. Remedies pursued by such holders could be adverse to the interests of the holders of any related subordinated CLO Debt and/or the holders of the related CLO Equity, as applicable. Investments of the Fund may be the first to absorb any losses by the

CLO on its underlying portfolio. This may result in losses on the invested proceeds of the Fund and could result in the complete loss of invested proceeds.

*Mandatory Redemption of CLO Senior Tranches and CLO Debt.* Under certain circumstances, cash flows from CLO Collateral that otherwise would have been paid to the holders of any related CLO Debt and the related CLO Equity will be used to redeem the related CLO senior tranches. This could result in an elimination, deferral or reduction in the interest payments, principal repayments or other payments made to the holders of such CLO Debt or such CLO Equity, which could adversely impact the returns to the holders of such CLO Debt or such CLO Equity.

*Optional Redemption of CLO Senior Tranches and CLO Debt.* An optional redemption by a CLO of its securities and, in particular, the exercise of rights by the holders of one or more classes of its securities (or the requisite percentages thereof) so as to effect any such optional redemption, could require the collateral or portfolio manager of the related CLO to liquidate positions more rapidly than would otherwise be desirable, which is likely to materially and adversely affect the realized value of the items of CLO Collateral sold (and which in turn is likely to materially and adversely impact the holders of any related CLO securities, including the Fund). As a result of any such rapid liquidation of a CLO, a holder of the related CLO securities (including the Fund) could lose all or a substantial portion of its investment in such CLO securities.

*Insolvency Risks.* Various laws enacted for the protection of creditors may apply to the issuers of the CLO Collateral (solely for purposes of this risk factor, an “*Insolvent Company*”). The information in this paragraph and the following paragraph is applicable with respect to U.S. issuers of CLO Collateral. Insolvency considerations may differ with respect to non-U.S. issuers of CLO Collateral. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an Insolvent Company, such as a trustee in bankruptcy, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the CLO or CLO Collateral (as applicable) and, after giving effect to such indebtedness, the Insolvent Company (i) was insolvent, (ii) was engaged in a business for which the remaining assets of the Insolvent Company constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the Insolvent Company or to recover amounts previously paid by such issuer in satisfaction of such indebtedness. The measure of insolvency for purposes of the foregoing will vary. Generally, an Insolvent Company would be considered insolvent at a particular time if the sum of its debts were then greater than all of its property at a fair valuation or if the present fair saleable value of its assets were then less than the amount that would be required to pay its probable liabilities on its existing debts as they became absolute and matured. There can be no assurance as to what standard a court would apply in order to determine whether the Insolvent Company was “insolvent” after giving effect to the incurrence of the indebtedness constituting the CLO or CLO Collateral (as applicable) or that, regardless of the method of valuation, a court would not determine that the Insolvent Company was “insolvent” upon giving effect to such incurrence. In addition, in the event of the insolvency of an Insolvent Company, payments made on such CLO or CLO Collateral (as applicable) could be subject to avoidance as a “preference” if made within a certain period of time (which may be as long as one year) before insolvency.

In general, if payments on a CLO or CLO Collateral (as applicable) are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Fund) or from subsequent transferees of such payments (such as the Limited Partners).

However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from a Limited Partner only to the extent that such court has jurisdiction over such holder or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from a holder that has given value in exchange for its interest, in good faith and without knowledge that the payments were avoidable. Nevertheless, there can be no assurance that a Limited Partner will be able to avoid recapture on this or any other basis.

The preceding discussion is based upon principles of United States Federal and state laws. Insofar as the Fund's portfolio consists of the obligations of non-United States obligors, the laws of certain foreign jurisdictions may provide for avoidance remedies under factual circumstances similar to those described above or under different circumstances, with consequences that may or may not be analogous to those described above under United States Federal and state laws.

*"Widening" Risk.* For reasons not necessarily attributable to any of the risks set forth herein (for example, supply/demand imbalances or other market forces), the prices of the CLO Securities in which the Fund invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even lower levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

*There Is Limited Disclosure About the CLO Securities and the Underlying CLO Collateral in this Memorandum.* The Investment Manager will not be required to provide the investors in the Fund with financial or other information (which may include material non-public information) it receives related to the CLO Securities. The Investment Manager also may not disclose to investors notices the Investment Manager receives and it will not have any obligation to keep investors informed as to defaults in the CLO Securities, failure by the Fund to receive any payment of principal, interest, or other amounts or to disclose the portfolio or the decisions of which CLO Securities were not purchased in general to any investor. In addition, the investors will not have any right to inspect any records relating to the CLO Securities, and the Investment Manager will not be obligated to disclose any further information or evidence regarding the existence or terms of, or the identity of any obligor on, any CLO Securities.

*Impact of the Volcker Rule on the Liquidity of the Notes.* Section 619 of the Dodd-Frank Act added a provision, commonly referred to (together with the final regulations with respect thereto adopted on December 10, 2013) as the Volcker Rule, to federal banking laws to generally prohibit various covered banking entities from engaging in proprietary trading or acquiring or retaining an ownership interest in "covered funds" which generally include, sponsoring or having certain relationships with a hedge fund or private equity fund (defined in final regulations adopted on December 10, 2013 as any entity relying on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act to be exempt from registration under the Investment Company Act), subject to certain exemptions. The Volcker Rule also provides for certain supervised nonbank financial companies that engage in such activities or have such interests or relationships to be subject to additional capital requirements, quantitative limits or other restrictions. The conformance period for the Volcker Rule has been extended to July 21, 2015, and to July 21, 2017 for CLOs. Certain CLOs may be considered "covered funds" under the Volcker rule and therefore the most senior tranche of the CLO may be a restricted security for various banking and nonbanking entities. This may restrict the liquidity of certain non-Volcker compliant CLOs in the future and may affect the Fund's ability to liquidate these positions on a timely basis.



## Investment Strategy and Investment Risks

*General Economic and Market Conditions.* The success of the Fund's activities will be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of the Fund's investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of the Fund's investments. Volatility or illiquidity could impair the Fund's profitability or result in losses. The Fund may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets; the larger the positions, the greater the potential for loss.

Unpredictable or unstable market conditions may result in reduced opportunities to find suitable investments to deploy capital or make it more difficult to exit and realize value (or avoid significant losses) from the Fund's existing investments. It is important to understand that the Fund can incur material losses even if it reacts quickly to difficult market conditions and there can be no assurance that the Fund will not suffer material adverse effects from broad and rapid changes in market conditions.

*Recent Developments in Global Credit Markets.* Recently, declines in the market value of asset-backed securities, especially securities backed by subprime mortgages, have been concomitant with significant market events. Increasing credit and valuation problems in the subprime mortgage market have generated extreme volatility and illiquidity in the markets for securities directly or indirectly exposed to subprime mortgage loans. This volatility and illiquidity has extended to the global credit and equity markets generally, and, in particular, to the high-yield bond and loan markets, exacerbated by, among other things, growing uncertainty regarding the extent of the problems in the mortgage industry and the degree of exposure of financial institutions and others, decreased risk tolerance by investors and significantly tightened availability of credit. The duration and ultimate effect of current market conditions cannot be predicted, nor is it known whether or the degree to which such conditions may worsen. However, the continuation of current market conditions, uncertainty or further deterioration could result in further declines in the market values of potential Fund investments or declines in the market values of subsequently purchased Fund investments. Such declines could lead to diminished investment opportunities for the Fund, prevent the Fund from successfully executing its investment strategies or require the Fund to dispose of investments at a loss while such adverse market conditions prevail.

*Illiquidity.* The investments made by the Fund may be or become very illiquid, and consequently the Fund may not be able to sell such investments at prices that reflect the Investment Manager's assessment of their value or the amount paid for such investments by the Fund. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale by the Fund and other factors. Furthermore, the nature of the Fund's investments, especially those in financially distressed companies, may require a long holding period prior to profitability. The Partnership Agreement authorizes the General Partner to make distributions in kind (including interests in affiliated liquidating vehicles) of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Short Sales.* The Fund may enter into transactions, known as "short sales," in which it sells a security it does not own in anticipation of a decline in the market value of the security. Short sales by the Fund that are not made "against the box" theoretically involve unlimited loss potential since the



market price of securities sold short may continuously increase. The Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Fund might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales.

*Derivatives.* Derivative instruments, or “derivatives,” include futures, options, swaps, structured securities and other instruments and contracts that are derived from, or the value of which is related to, one or more underlying securities, financial benchmarks, currencies or indices. Derivatives allow an investor to hedge or speculate upon the price movements of a particular security, financial benchmark currency or index at a fraction of the cost of investing in the underlying asset. The value of a derivative depends largely upon price movements in the underlying asset. Therefore, many of the risks applicable to trading the underlying asset are also applicable to derivatives of such asset. However, there are a number of other risks associated with derivatives trading. For example, because many derivatives are “leveraged,” and thus provide significantly more market exposure than the money paid or deposited when the transaction is entered into, a relatively small adverse market movement can not only result in the loss of the entire investment, but may also expose the Fund to the possibility of a loss exceeding the original amount invested. Derivatives may also expose investors to liquidity risk, as there may not be a liquid market within which to close or dispose of outstanding derivatives contracts, and to counterparty risk. The counterparty risk lies with each party with whom the Fund contracts for the purpose of making derivative investments (the “*Counterparty*”). In the event of the Counterparty’s default, the Fund will only rank as an unsecured creditor and risks the loss of all or a portion of the amounts it is contractually entitled to receive.

*Life Settlement Investments.* The Fund may invest in life settlements or own companies that may invest in life settlements, which are the transfers of the beneficial interest in a life insurance policy by the underlying insured person to a third party. The Fund will generally purchase the beneficial interest in a life insurance policy for more than its cash surrender value but at a discount to its face value (i.e., the payment amount set forth in the life insurance policy that is payable on the death of the insured or upon maturity of the life insurance policy). After purchase the Fund will be responsible for premiums payable on the life insurance policy and will be entitled to receive the full face value from the insurance company upon maturation (i.e., upon the death of the insured). Accordingly, if the Fund is unable to make premium payments on a purchased life insurance policy due to liquidity issues or for any other reason, the policy will lapse, and the Fund will lose its ownership interest in the policy. In addition, the Fund’s investments in life settlement policies involve certain additional risks, including inaccurate estimations of life expectancy of the insured individuals, liquidity risk, credit risk of the insurance company, risks of any policies purchased being unenforceable and risks of adverse regulatory and legal changes.

The actual rate of return on a life settlement policy cannot be calculated before the insured dies and the longer the insured lives, the lower the rate of return on the related life settlement policy will be. Current privacy laws may limit the information available to the Fund about insureds and may cause the Fund to inaccurately estimate the value of particular policies. The Fund’s inability to predict with certainty the life expectancies of the pool of underlying insured persons tied to purchased life settlement policies may cause unanticipated delays in the collection of a substantial number of life settlement policies. Life settlements are also generally considered illiquid because there is a limited secondary market for such policies to be bought and sold. Accordingly, the Fund may be limited in its ability to sell policies in its portfolio in a timely fashion and/or at a favorable price. In addition, if a life insurance company declares bankruptcy or otherwise is insolvent, there may not be sufficient funds for it to pay

its liability, and while many states have an insurance guarantee fund to provide payments to beneficiaries of insurance companies that declare bankruptcy, the collection process can be prolonged and complicated, and collection may not be possible in all circumstances.

Life settlement policies may also be subject to contest by the issuing life insurance company. If the insurance company successfully contests a policy, the policy will be rescinded and declared void. For example, insurers may refuse to pay benefits on certain life insurance policies on the basis that there was no “insurable interest” on the part of the purchaser of a life insurance policy at the time such policy was issued. Recently the issue of a lack of insurable interest has been raised by insurers and beneficiaries of irrevocable life insurance trusts, in the context of so-called “stranger originated life insurance” policies. It is possible that courts may void certain life settlement policies for these or other reasons. The market for life settlement policies may also be subject to new government regulation that may impact the ability of the Fund to obtain life settlement policies. Insurance companies may seek regulation or changes of law restricting or otherwise encumbering the transfer of life insurance policies in life settlement policy transactions. No assurance can be made that insurance companies will not be successful in limiting the supply of life insurance policies available for purchase in life settlement policy transactions.

Any or all of the risks described above could have a material adverse effect on the Fund’s investment returns and, therefore, on its ability to make distributions to its shareholders. In addition, it is unclear under a variety of federal income tax principles whether the income from life settlements or the Fund’s ownership in a non-U.S. company that makes distributions resulting from such life settlement investments is qualifying income for purposes of the IRS 90% gross income test the Fund must satisfy each year to qualify as a regulated investment company (“**RIC**”). Further, the Fund’s ownership in a non-U.S. company that invests in life settlements, it is unclear whether the U.S. will respect the non-U.S. company reliance on the applicable U.S. tax treaty for purposes of the avoidance of certain withholding tax or whether the non-U.S. company is deemed to be engaged in a U.S. trade or business within the U.S. If any such was the case, the Fund could be materially adversely effected by such determination on the non-U.S. company with respect to the Fund’s investments returns and its ability to make distributions to its shareholders. The Fund intends to monitor its investments to ensure that the Fund remains qualified as a RIC.

*Foreign Securities.* Investments in foreign securities involve certain factors not typically associated with investing in U.S. securities, such as risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar (the currency in which the books of the Fund are maintained) and the various foreign currencies in which the Fund’s portfolio securities will be denominated and costs associated with conversion of investment principal and income from one currency into another; (ii) differences between the U.S. and foreign securities markets, including the absence of uniform accounting, auditing and financial reporting standards and practices and disclosure requirements, and less government supervision and regulation; (iii) political, social or economic instability; (iv) imposition of foreign income, withholding or other taxes; and (v) the extension of credit, especially in the case of sovereign debt.

*Commodities and Futures.* The Fund may trade on a limited basis in commodities and futures. Such trading activity is regulated by the Commodity Futures Trading Commission (the “**CFTC**”). Pursuant to an exemption from registration under CFTC regulations, neither the General Partner nor the Investment Manager is required to register, and neither is registered, with the CFTC or the National Futures Association (“**NFA**”) as a commodity pool operator (a “**CPO**”) or as a commodity trading advisor (“**CTA**”). To comply with the exemption, the Investment Manager is subject to specific

limitations on the amount of commodities and futures that it can trade on behalf of the Fund. Should the Fund's investments in commodities or futures instruments exceed the limits provided by the applicable exemption from registration, the Investment Manager will either have to register with the NFA or cease providing commodity interest trading advice to the Fund and liquidate the Fund's holdings of commodities and futures which could result in losses and additional costs to the Fund.

*Leverage.* Subject to applicable margin and other limitations, the Fund may borrow funds in order to make additional investments and thereby increase both the possibility of gain and risk of loss. Consequently, the effect of fluctuations in the market value of the Fund's portfolio would be amplified. Interest on borrowings will be a portfolio expense of the Fund and will affect the operating results of the Fund. Also, the Fund could potentially create leverage via the use of instruments such as options and other derivative instruments.

*Options.* Investing in options can provide a greater potential for profit or loss than an equivalent investment in the underlying asset. The value of an option may decline because of a change in the value of the underlying asset relative to the strike price, the passage of time, changes in the market's perception as to the future price behavior of the underlying asset, or any combination thereof. In the case of the purchase of an option, the risk of loss of an investor's entire investment (*i.e.*, the premium paid plus transaction charges) reflects the nature of an option as a wasting asset that may become worthless when the option expires. Where an option is written or granted (*i.e.*, sold) uncovered, the seller may be liable to pay substantial additional margin, and the risk of loss is unlimited, as the seller will be obligated to deliver, or take delivery of, an asset at a predetermined price which may, upon exercise of the option, be significantly different from the market value.

*Currency Exposure.* The Interests will be issued and generally withdrawal proceeds will be paid in U.S. Dollars. A limited amount of the assets of the Fund may, however, be invested in securities and other investments which are denominated in currencies other than U.S. Dollars. Accordingly, the value of such assets may be affected favorably or unfavorably by fluctuations in currency rates. The Investment Manager may hedge the non-U.S. currency exposure of the Fund using Currency Hedging Instruments, as described in "Investment Program" above. However, the assets of the Fund will necessarily be subject to foreign exchange risks. In addition, prospective investors whose assets and liabilities are predominately in other currencies should take into account the potential risk of loss arising from fluctuations in value between the U.S. Dollar and other currencies.

To the extent unhedged, the value of the Fund's positions in non-U.S. investments will fluctuate with U.S. Dollar exchange rates as well as with the price changes of the investments in the various local markets and currencies. In such cases, an increase in the value of the U.S. Dollar compared to the other currencies in which the Fund makes investments will reduce the effect of any increases and magnify the effect of any decreases in the prices of the Fund's financial instruments in their local markets and may result in a loss to the Fund. Conversely, a decrease in the value of the U.S. Dollar will have the opposite effect on the Fund's non-U.S. Dollar investments.

*Concentration of the Fund's Portfolio.* The Fund may be highly concentrated in CLO Securities. The concentration of the Fund's portfolio in CLO Securities subjects the Fund to a greater degree of risk than if the Fund's portfolio was diversified with respect to several investment strategies. Also, the concentration of the Fund's portfolio in any one obligor would subject the Fund to a greater degree of risk with respect to defaults by such obligor.

*Volatility Risk.* The Fund's investment program may involve the purchase and sale of relatively volatile instruments such as derivatives, which are frequently valued based on implied volatilities of such derivatives compared to the historical volatility of underlying financial instruments. Fluctuations or prolonged changes in the volatility of such instruments, therefore, can adversely affect the value of investments held by the Fund. In addition, many non-U.S. financial markets are not as developed or as efficient as those in the U.S., and as a result, price volatility may be higher for the Fund's investments.

*Long-Biased Investment Program.* The Fund expects that its strategy will have a long bias. Therefore, any decline in the overall market may result in a decline in the value of the Fund's assets.

*Leverage.* Leverage may take a variety of forms, including but not limited to the following: long-term loans, convertible notes and repurchase arrangements. Leverage arrangements used by the Fund when financing is contingent on the market value of the financed assets may include those which may be subject to mark to market collateral or margin calls.

While leverage presents the opportunity for increasing the total return on investments, it has the effect of potentially increasing losses as well. Accordingly, any event that adversely affects the value of an investment could be magnified to the extent leverage is utilized. The cumulative effect of the use of leverage with respect to investments in a market that moves adversely to such investments could result in a substantial loss, which would be greater than if the investments were not leveraged.

In the futures markets, margin deposits are typically low relative to the value of the futures contracts purchased or sold. Such low margin deposits are indicative of the fact that any commodity futures contract trading is typically accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a futures contract may result in immediate and substantial losses to the investor. For example, if at the time of purchase 10 percent of the price of a futures contract is deposited as margin, a 10 percent decrease in the price of the futures contract would, if the contract is then closed out, result in a total loss of the margin deposit before any deduction for the brokerage commission. Thus, like other leveraged investments, any purchase or sale of a commodity contract may result in losses in excess of the amount invested.

The use of short-term margin borrowings results in certain additional risks to the Fund. For example, should the securities pledged to brokers to secure the Fund's margin accounts decline in value, the Fund could be subject to a "margin call," pursuant to which the Fund must either deposit additional funds or securities with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden drop in the value of the Fund's assets, the Fund might not be able to liquidate assets quickly enough to satisfy its margin requirements.

The Fund may borrow by entering into reverse repurchase agreements. Under a reverse repurchase agreement, the Fund sells securities and agrees to repurchase them at a mutually agreed date and price. Reverse repurchase agreements may involve the risk that the market value of the securities retained in lieu of sale by the Fund may decline below the price of the securities the Fund has sold but is obligated to repurchase. In the event the buyer of securities under a reverse repurchase agreement files for bankruptcy or becomes insolvent, such buyer or its trustee or receiver may receive an extension of time to determine whether to enforce the Fund's obligation to repurchase the securities and the Fund's use of the proceeds of the reverse repurchase agreement may effectively be restricted pending such decision. To the extent that, in the meantime, the value of the securities that the Fund has purchased has decreased, the Fund could experience a loss.



The financing used by the Fund to leverage its portfolio include those extended by securities brokers and dealers in the marketplace in which the Fund will invest. While the Fund attempts to negotiate the terms of these financing arrangements with such brokers and dealers, its ability to do so is limited. The Fund is therefore subject to changes in the value that the broker-dealer ascribes to a given security or position, the amount of margin required to support such security or position, the borrowing rate to finance such security or position and/or such broker-dealer's willingness to continue to provide any such credit to the Fund. In addition, the Fund could be forced to liquidate its portfolio on short notice to meet its financing obligations. The forced liquidation of all or a portion of the Fund's portfolio at distressed prices could result in significant losses to the Fund.

*Market Liquidity and Leverage.* The Fund may be adversely affected by a decrease in market liquidity for the instruments in which it invests which may impair the Fund's ability to adjust its positions. The size of the Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by the prime brokers and custodians, or other counterparties with which the Fund enters into repurchase/reverse repurchase agreements or derivative transactions, to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Fund's portfolio.

*Risks Associated with Bankruptcies.* Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Fund. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Fund; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. Although the Fund intends to invest primarily in debt, the debt of companies in financial reorganization will, in most cases, not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental value. Such investments can result in a total loss of principal.

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that the Fund's influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where the Fund, by virtue of such action, is found to exercise "domination and control" of a debtor, the Fund may lose its priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by the Fund.



The Fund may invest in companies based outside the United States. Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain.

The General Partner, on behalf of the Fund, may elect to serve on creditors' committees, equity holders' committees or other groups to ensure preservation or enhancement of the Fund position as a creditor or equity holder. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If the General Partner concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Fund, it will resign from that committee or group, and the Fund may not realize the benefits, if any, of participation on the committee or group. In addition, and also as discussed above, if the Fund is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of or increasing its investments in such company while it continues to be represented on such committee or group.

The Fund may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

*Equitable Subordination.* Under common law principles that in some cases form the basis for lender liability claims, if a lender (a) intentionally takes an action that results in the undercapitalization of a borrower or issuer to the detriment of other creditors of such borrower or issuer, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower or issuer to the detriment of other creditors of such borrower or issuer, a court may elect to subordinate the claim of the offending lender or bondholder to the claims of the disadvantaged creditor or creditors (a remedy called "*equitable subordination*"). The Fund does not intend to engage in conduct that would form the basis for a successful cause of action based upon the equitable subordination doctrine; however, because of the nature of the debt obligations, the Fund may be subject to claims from creditors of an obligor that debt obligations of such obligor which are held by the issuer should be equitably subordinated.

*Fraud.* Of paramount concern in lending is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Fund to perfect or effectuate a lien on the collateral securing the loan. The Fund will rely upon the accuracy and completeness of representations made by borrowers to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to the Fund may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

*Interest Rate Risk.* The value of the fixed rate securities in which the Fund may invest generally will have an inverse relationship with interest rates. Accordingly, if interest rates rise the value of such securities may decline. In addition, to the extent that the receivables or loans underlying specific

securities are prepayable without penalty or premium, the value of such securities may be negatively affected by increasing prepayments, which generally occur when interest rates decline.

*Reinvestment Risk.* The Fund reinvests the cash flows received from a security. The additional income from such reinvestment, sometimes called interest-on-interest, is reliant on the prevailing interest rate levels at the time of reinvestment. There is a risk that the interest rate at which interim cash flows can be reinvested will fall. Reinvestment risk is greater for longer holding periods and for securities with large, early cash flows such as high-coupon bonds. Reinvestment risk also applies generally to the reinvestment of the proceeds the Fund receives upon the maturity or sale of a portfolio security.

The amount and timing of the addition of investments will affect the cash flows available to make payments on the Interests. Reduced liquidity and lower volumes of trading in certain investments, in addition to restrictions on investment represented by the Fund's investment criteria, could result in periods of time during which the Fund has not been able to maximize its exposure to investments. The longer the period before reinvestment of cash in investments, the greater the adverse impact may be on aggregate interest collected and distributed by the Fund, thereby resulting in lower yield than could have been obtained if the net proceeds associated with the offering of the Interests were immediately reinvested. In addition, the timing of the addition of investments, the scheduled interest payment dates of the investments and the amount of the net proceeds associated with the offering of the Interests invested in lower-yielding alternate short-term investments until applied to the addition of investments, may have a material impact on the amount of interest payments collected during any accrual period, which could affect payments on the Interests.

Further, obligors of investments may be more likely to exercise any rights they may have to prepay such obligations when interest rates or credit spreads are declining. Any decrease in the yield on the investments will have the effect of reducing the amounts available to make payments on the Interests.

*Timing Risk.* Many agency, corporate and municipal bonds, and all mortgage-backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Fund is exposed to reinvestment rate risk, *i.e.*, the Fund will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

*Maturity Risk.* In certain situations, the Fund may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these circumstances, the Fund will make an adjustment to account for the differential interest rate risks in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield-curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

*Inflation Risk.* Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Fund purchases a five

(5) year bond in which it can realize a coupon rate of five percent (5%), but the rate of inflation is six percent (6%), then the purchasing power of the cash flow has declined. For all but adjustable bonds or floating rate bonds, the Fund is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk.

*Over-the-Counter-Trading.* Financial instruments that may be purchased or sold by the Fund may include instruments not traded on an exchange, including, but not limited to, swap transactions, and forward foreign currency transactions. Over-the-counter options, unlike exchange-traded options, are two-party contracts with price and other terms negotiated by the buyer and seller. The risk of nonperformance by the obligor on such an instrument may be greater and the ease with which the Fund can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between “bid” and “asked” prices for financial instruments that are not traded on an exchange. Financial instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

To the extent that the Fund engages in these transactions, the Fund must rely on the creditworthiness of its counterparty. In certain instances, counterparty or credit risk is affected by the lack of a central clearinghouse for foreign exchange trades. To reduce their credit risk exposure, the Fund may trade in the forward foreign currency market through money center banks and leading brokerage firms.

*Position Limits.* “Position limits” imposed by various regulators or regulations may also limit the Fund’s ability to effect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular financial instrument. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Fund does not intend to exceed applicable position limits, it is possible that different accounts managed by the General Partner or its affiliates may be aggregated. If at any time positions managed by the General Partner were to exceed applicable position limits, the General Partner would be required to liquidate positions, which might include positions of the Fund, to the extent necessary to come within those limits. Further, to avoid exceeding the position limits, the Fund might have to forego or modify certain of its contemplated trades.

*Material, Nonpublic Information.* From time to time, certain personnel of the Investment Manager may come into possession of material, nonpublic information (including in connection with other investments or proposed investments not intended to benefit the Fund) that would limit the Investment Manager’s ability to buy and sell investments. The Fund’s investment flexibility may be constrained as a consequence of the Investment Manager’s inability to take certain actions because of such information. The Fund may experience losses if it is unable to sell an investment that it holds because certain personnel of the Investment Manager have obtained material, nonpublic information about such investment.

*Co-Investments with Third Parties.* The Fund may co-invest with third parties through joint ventures or other entities. Such investments may involve risks in connection with such third-party involvement, including the possibility that a third-party co-venturer may have financial difficulties resulting in a negative impact on such investment, economic or business interests or goals that are

inconsistent with those of the Fund or be in a position to take (or block) action in a manner contrary to the Fund's investment objectives. In those circumstances where such third parties involve a management group, such third parties may enter into compensation arrangements relating to such investments, including incentive compensation arrangements. Such compensation arrangements will reduce the returns to participants in the investments.

*Other Investment Vehicles.* The Investment Manager may allocate a portion of the Fund's assets to pooled investment vehicles that may be managed by the Investment Manager or its affiliates or unaffiliated managers. Since the Fund may not have full transparency with respect to the trading activities of such investment vehicles, it may be limited in its ability to hedge its exposure or to prevent concentration of its assets within the same issuer, asset or asset class, industry, section, strategy, currency, country or geographic region. Further, the Investment Manager may be limited with respect to its ability to monitor unaffiliated managers, including their adherence to their respective trading and risk guidelines (if such guidelines exist). Even in the event that such information may be available to the Fund, the Fund's investment in such investment vehicles may be "locked up" and subject to limitations on withdrawals, and in light of the broad exculpation and indemnification provisions typically contained in the governing documents of such investment vehicles, may have limited recourse against the managers of such investment vehicles.

The managers of pooled investment vehicles with which the Fund may invest may be subject to asset-based fees and performance-based compensation. Such fees or compensation may be higher than the fees or compensation of comparable investment vehicles.

Performance-based compensation is typically paid or allocated at the investment vehicle level on the basis of the performance of each individual investment vehicle, not on the basis of the overall performance of the Fund. Consequently, performance-based compensation could be payable to a particular investment vehicle in respect of its performance during periods when the Fund as a whole incurs losses. The existence of performance-based compensation also could cause the manager of such investment vehicle to trade in a more aggressive manner than it otherwise might.

*Futures Contracts.* The value of futures depends upon the price of the financial instruments, such as commodities, underlying them. The prices of futures are highly volatile, and price movements of futures contracts can be influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, investments in futures are also subject to the risk of the failure of any of the exchanges on which the Fund's positions trade or of its clearing houses or counterparties.

Futures positions may be illiquid because certain commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as "daily price fluctuation limits" or "daily limits." Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a particular futures contract has increased or decreased by an amount equal to the daily limit, positions in that contract can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. This could prevent the Fund from promptly liquidating unfavorable positions and subject the Fund to substantial losses or prevent it from entering into desired trades. In extraordinary circumstances, a futures exchange or the Commodities Futures Trading Commission could suspend trading in a particular futures contract, or order liquidation or settlement of all open positions in such contract.



*Forward Trading.* Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and “cash” trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by the Fund due to unusual trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward trading to less than that which the General Partner would otherwise recommend, to the possible detriment of the Fund. Market illiquidity or disruption could result in major losses to the Fund.

*Hedging Transactions.* The Fund may (but is not required to) utilize financial instruments both for investment purposes and for risk management purposes in order to (i) protect against possible changes in the market value of the Fund’s investment portfolios resulting from fluctuations in the markets and changes in interest rates; (ii) protect the Fund’s unrealized gains in the value of its investment portfolio; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in the Fund’s portfolios; (v) hedge against a directional trade; (vi) hedge the interest rate, credit or currency exchange rate on any of the Fund’s financial instruments; (vii) protect against any increase in the price of any financial instruments the Fund anticipates purchasing at a later date; or (viii) act for any other reason that the Investment Manager deems appropriate. The Fund will not be required to hedge any particular risk in connection with a particular transaction or its portfolios generally.

The success of the Fund’s hedging strategy will be subject to the Investment Manager’s ability to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the investments in the portfolio being hedged. Since the characteristics of many securities change as markets change or time passes, the success of the Fund’s hedging strategy will also be subject to the Investment Manager’s ability to continually recalculate, readjust, and execute hedges in an efficient and timely manner. While the Fund may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Fund than if it had not engaged in any such hedging transactions. For a variety of reasons, the Investment Manager may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent the Fund from achieving the intended hedge or expose the Fund to risk of loss. The successful utilization of hedging and risk management transactions requires skills complementary to those needed in the selection of the Fund’s portfolio holdings. Moreover, it should be noted that the portfolio will always be exposed to certain risks that cannot be hedged.

*Use of Derivatives and Other Specialized Techniques.* The Fund may engage in a variety of swaps and related derivative transactions including, but not limited to, total return swaps, interest rate swaps, credit derivative swaps, the use of forward contracts, put and call options, floors, collars or other similar arrangements and derivative transactions. While some swaps will be required to be cleared and entered into through exchanges once the U.S. Commodity Futures Trading Commission (the “*CFTC*”) makes its final clearing determination, swap contracts excluded from the clearing determination will not be traded on exchanges and will not be subject to margin and clearing requirements or the same type of



government regulation as exchange markets. As a result, many of the protections afforded to participants on organized exchanges and in a regulated environment are not available in connection with these transactions. The swap markets with respect to noncleared swaps are “principals’ markets”, in which performance with respect to a swap contract is the responsibility only of the counterparty to the contract, and not of any exchange or clearinghouse. As a result, the Fund will be subject to the risk of the inability or refusal to perform with respect to non-cleared swap contracts on the part of the counterparties with whom the Fund will trade.

There are no limitations on daily price movements in swap transactions. Speculative position limits are not currently applicable to swap transactions, although the Fund’s swap counterparties may limit the size or duration of positions available to the Fund as a consequence of credit considerations. In addition, the CFTC has sought to impose federal speculative position limits on futures, swaps that reference those futures and contracts on non-U.S. boards of trade that settle against those contracts. While the CFTC adopted final position limits, the rulemaking was vacated due to the CFTC’s failure to perform proper cost benefit analysis. If the CFTC re-adopts rules or the above referenced discussion is overturned on appeal, the Fund may be limited in its ability to concentrate its positions in certain swaps. Furthermore, the Fund may also be subject to position limits pursuant to current or pending non-U.S. regulations.

Participants in the swap markets are not required to make continuous markets in the swap contracts in which they trade. Participants could refuse to quote prices for swap contracts or quote prices with an unusually wide spread between the price at which they are prepared to buy and the price at which they are prepared to sell. If an event of default or an additional termination event were to occur with respect to the Fund under an ISDA master agreement governing the Fund’s swap transactions, the relevant swap counterparty and other swap counterparties may terminate all transactions with the Fund at significant losses to the Fund.

In addition to the foregoing, the investment techniques related to derivative instruments are highly specialized and may be considered speculative. Such techniques often involve forecasts and complex judgments regarding relative price movements and other economic developments. The success or failure of these investment techniques may turn on small changes in exogenous factors not within the control of any of the Investment Manager. For all the foregoing reasons, the use of derivatives and related techniques can expose the Fund to significant risk of loss.

Moreover, trading in swaps and other derivative instruments offers scope for a high degree of synthetic leverage. Accordingly, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by the Fund. Thus, like other leveraged investments, a derivatives trade may result in losses in excess of the amount invested. Any increase in the amount of leverage applied will increase the risk of loss due to the amount of additional leverage applied. Also, swap agreements tend to shift the investment exposure from one type of investment to another. Depending on how they are used, swap agreements may increase or decrease the overall volatility of the Fund. The most significant factor in the performance of swap agreements is the change in the specific factors that determine the amounts of payments due to and from the Fund. If a swap agreement calls for payments by the Fund, the Fund must be prepared to make such payments when due. In addition, if a counterparty’s creditworthiness declines, the value of swap agreements with such counterparty can be expected to decline, potentially resulting in losses to the Fund.

Finally, counterparties to the Fund may be subject to capital and other requirements as a “swap dealer” or “major swap participant” which may increase their costs of doing of business, a portion of which increase may be passed on to the Fund. If a person is deemed to (i) enter into swaps as its ordinary course of business, (ii) be a market maker for any type of swaps, (iii) maintain a “substantial position” in any type of swap for speculative purposes, (iv) otherwise create counterparty risk that could have serious adverse consequences on the financial stability of the United States, or (v) be a financial entity that is highly leveraged relevant to its capital, the person may be deemed to be a swap dealer (in the case of (i) or (ii)) or a major swap participant (in the case of (iii), (iv) or (v)). Persons deemed to be swap dealers or major swap participants are required to register with the CFTC as such and would be subject to a number of regulatory requirements, such as specific recordkeeping, back-office and reporting requirements, margin collection requirements for swaps that are not cleared, capital requirements, disclosure obligations, specific compliance obligations and special obligations to governmental entities. While it is unlikely that the Fund would be subject to these requirements, the requirements will likely apply to many of the Fund’s counterparties which may increase the cost of trading swaps through increased fees to offset the counterparties’ trading and compliance costs.

*Counterparty Insolvency.* The Fund’s assets may be held in one or more accounts maintained for the Fund by counterparties, including its prime brokers. There is a risk that any of such counterparties could become insolvent. In September 2008, Lehman Brothers Holdings Inc., a major investment bank based in the United States, filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. While none of its U.S. broker-dealer subsidiaries was included in the Chapter 11 filing and all of its U.S. registered broker-dealer subsidiaries currently continue to operate, certain of Lehman Brothers subsidiaries, including Lehman Brothers International (Europe) (“**LBIE**”) have been placed under the administration chartered to wind down their respective business. To date, it is uncertain what percentage of the assets custodied with LBIE by its trading counterparties (including hedge funds) will ultimately be recovered and when. The insolvency of the Fund’s counterparties is likely to impair the operational capabilities or the assets of the Fund. Although the Investment Manager regularly monitors the financial condition of the counterparties it uses, if one or more of the Fund’s counterparties were to become insolvent or the subject of liquidation proceedings in the United States (either under the Securities Investor Protection Act or the United States Bankruptcy Code), there exists the risk that the recovery of the Fund’s securities and other assets from such prime broker or broker-dealer will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer.

In addition, the Fund may use counterparties located in various jurisdictions outside the United States like LBIE. Such local counterparties are subject to various laws and regulations in various jurisdictions that are designed to protect their customers in the event of their insolvency. However, the practical effect of these laws and their application to the Fund’s assets are subject to substantial limitations and uncertainties. Because of the large number of entities and jurisdictions involved and the range of possible factual scenarios involving the insolvency of a counterparty, it is impossible to generalize about the effect of their insolvency on the Fund and its assets. Investors should assume that the insolvency of any counterparty would result in a loss to the Fund and the Fund, which could be material.

*Counterparty Risk.* Some of the markets in which the Fund may effect transactions are “over-the-counter” or “interdealer” markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as are members of “exchange-based” markets. This exposes the Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not *bona fide*) or because of a

credit or liquidity problem, thus causing the Fund to suffer a loss. Such “counterparty risk” is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Fund has concentrated its transactions with a single or small group of counterparties. The Fund is not restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty. Moreover, the Fund’s internal credit function which evaluates the creditworthiness of its counterparties may prove insufficient. The lack of a complete and “foolproof” evaluation of the financial capabilities of the Fund’s counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Fund.

*Exchange-Traded Funds.* The Fund may invest in exchange-traded funds (“ETFs”), which are shares of publicly-traded unit investment trusts, open-end funds, or depository receipts that seek to track the performance and dividend yield of specific indices or companies in related industries. These indices may be either broad-based, sector, or international. ETF shareholders are generally subject to the same risk as holders of the underlying securities they are designed to track. ETFs are also subject to certain additional risks, including, without limitation, the risk that their prices may not correlate perfectly with changes in the prices of the underlying securities they are designed to track, and the risk of trading in an ETF halting due to market conditions or other reasons, based on the policies of the exchange upon which the ETF trades. In addition, the Fund may bear, along with other shareholders of an ETF, its *pro rata* portion of the ETF’s expenses, including management fees. Accordingly, in addition to bearing their proportionate share of the Fund’s expenses (e.g., Management Fees and operating expenses), Partners may also indirectly bear similar expenses of an ETF, which may have a material adverse effect on the performance of the Fund.

*Non-U.S. Investments and Emerging Markets.* Investing in the securities of companies located outside the U.S. (including, western countries, “emerging market” countries and underdeveloped countries) involves certain considerations not usually associated with investing in securities of U.S. companies, including political and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments; the possibility of imposition of withholding or other taxes on dividends, interest, capital gain or other income; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict the Fund’s investment opportunities.

In addition, accounting and financial reporting standards that prevail in non-U.S. countries generally are not equivalent to U.S. standards and, consequently, less information is available to shareholders of companies located in such countries than is available to shareholders of companies located in the U.S. Moreover, an issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associate risks, are not expected to be highly correlated with each other and may behave in unpredictable ways. There is also less regulation, generally, of the securities markets in non-U.S. countries.

The Fund may be subject to additional risks which include possible adverse political and economic developments, possible seizure or nationalization of non-U.S. deposits and possible adoption of governmental restrictions which might adversely affect the payment of principal and interest to investors located outside the country of the issuer, whether from currency blockage or otherwise. Furthermore, some of the securities may be subject to brokerage, stamp or other taxes levied by

governments, which has the effect of increasing the cost of such investment and reducing the realized gain or increasing the realized loss on such securities at the time of sale. Furthermore, a non-U.S. issuer of debt or the non-U.S. governmental authorities that control the repayment of the debt may be unable or unwilling to repay principal or interest when due, and the Fund may have limited recourse in the event of a default. Some of these risks do not apply equally to issuers in larger, more developed countries. These risks are more pronounced in investments in issuers in countries with emerging markets or if the Fund invests significantly in a particular country.

Investment in emerging market securities and underdeveloped markets involves a greater degree of risk than an investment in securities of issuers based in developed countries. Among other things, emerging market securities investments may carry the risks of less publicly available information, more volatile markets, less strict securities market regulation, less favorable tax provisions and a greater likelihood of severe inflation, unstable currency, war and expropriation of personal property than investments in securities of issuers based in developed countries. In addition, the Fund's investment opportunities in certain emerging markets may be restricted by legal limits on foreign investment in local securities.

Emerging markets generally are not as efficient as those in developed countries. In some cases, a market for the security may not exist locally, and transactions will need to be made on a neighboring exchange. Volume and liquidity levels in emerging markets are lower than in developed countries. When seeking to sell emerging market securities, little or no market may exist for the securities. In addition, issuers based in emerging markets are not generally subject to uniform accounting and financial reporting standards, practices and requirements comparable to those applicable to issuers based in developed countries, thereby potentially increasing the risk of fraud or other deceptive practices. Furthermore, the quality and reliability of official data published by the government or securities exchanges in emerging markets may not accurately reflect the actual circumstances being reported.

The issuers of some non-U.S. securities, such as banks and other financial institutions, may be subject to less stringent regulations in emerging markets than would be the case for issuers in developed countries and therefore potentially carry greater risk. Custodial expenses for a portfolio of emerging markets securities generally are higher than for a portfolio of securities of issuers based in developed countries.

While the General Partner will take these factors into consideration in making investment decisions for the Fund, no assurance can be given that they will be able to fully avoid these risks.

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

### **Tax Related Risks**

*Tax Uncertainty.* The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

*Uncertainty and Complexity of Tax Treatment.* The tax aspects of an investment in a partnership are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative



regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles.

*Risk of Adverse Determination.* There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the Internal Revenue Service (the "**Service**"), or significantly modified by new legislation, changes in the Service's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the General Partner with respect to the federal income tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

*Risk of Tax Audit.* An audit of the Fund by the Service or another taxing authority could result in adjustments to the tax consequences initially reported by the Fund and may result in an audit of the returns of some or all of the Limited Partners, which examination could affect items not related to a Limited Partner's investment in the Fund. If audit adjustments result in an increase in a Limited Partner's income tax liability for any year, such Limited Partner may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund. The cost of any audit of a Limited Partner's tax return will be borne solely by that Limited Partner.

*Tax Considerations Taken into Account.* The General Partner may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

*Tax Liabilities Without Distributions.* If the Fund has taxable income in a fiscal year, each Limited Partner will be taxed on that income in accordance with its distributive share of the Fund's profits, whether or not such profits have been distributed. Because the General Partner anticipates that there will be no cash distributions to the Limited Partners, an investor may incur tax liability with respect to activities of the Fund without receiving sufficient distributions from the Fund to defray such tax liabilities. In order to satisfy its tax liability in such a case, a Limited Partner would need sufficient funds from sources other than the Fund. Furthermore, the Fund may make investments with respect to which the Fund recognizes income for U.S. federal income tax purposes prior to receiving the cash or realizing the income as an economic matter. In addition, the Fund may recognize income for U.S. federal income tax purposes that does not reflect income as an economic matter. Such recognition of income prior to receipt of an economic benefit, if any, may result in increased tax liability for the Partners.

*Delayed Schedules K-1.* The Fund will provide Schedules K-1 as soon as practical after receipt of all of the necessary information. However, the Fund may be unable to provide final Schedules K-1 to Limited Partners for any given tax year until significantly after April 15 of the following year. The



General Partner will endeavor to provide Limited Partners with estimates of the taxable income or loss allocated to their investment in the Fund on or before such date, but final Schedules K-1 may not be available until completion of the Fund's annual audit. Limited Partners should be prepared to obtain extensions of the filing date for their income tax returns at the federal, state and local levels.

*Unrelated Business Taxable Income.* The Fund may make investments or engage in activities that will give rise to unrelated business taxable income ("**UBTI**"). Thus, an investment in the Fund may not be desirable for certain tax-exempt investors. The Fund may participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the "flow-through" principles applicable to partnerships, if UBTI is earned by the Fund, a tax-exempt investor in the Fund will realize UBTI. Because of the Investment Manager's objective of maximizing the pre-tax returns of all the Limited Partners, the Investment Manager may be required to make certain decisions to maximize pre-tax returns that result in Tax-Exempt U.S. Investors (as defined below) recognizing more UBTI than might otherwise be the case. In some cases, the Investment Manager may forego actions with regard to the acquisition, financing, management and disposition of assets that would reduce UBTI because such actions would reduce the overall pre-tax returns to all the Limited Partners.

*Tax Changes.* Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Internal Revenue Code of 1986, as amended (the "**Code**") may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or the Limited Partners. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

***The foregoing is not intended to be an exhaustive analysis or listing of the tax risks associated with an investment in the Fund. Many of the relevant tax considerations will vary depending on a prospective Limited Partner's individual circumstances. The tax aspects associated with such an investment are complex and complicated and are subject to a variety of interpretations. Prospective investors are strongly urged to review the discussions below under "Tax Considerations" and "ERISA and Other Regulatory Considerations" for a more complete discussion of certain of the tax risks inherent in the acquisition of Interests, and to seek and rely upon the advice of their own tax advisor who is qualified to discuss the foregoing and other possible tax risks.***

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

### **Potential Conflicts of Interest**

The scope of the activities of the Investment Manager, its affiliates, and the funds and clients managed or advised by the Investment Manager or any of its affiliates may give rise to conflicts of interest or other restrictions and/or limitations imposed on the Fund in the future that cannot be foreseen

or mitigated at this time. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the “**Highland Group**”) is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. The Investment Manager is permitted to manage other client accounts, some of which may have objectives similar or identical to those of the Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, “**CDOs**”) and other vehicles managed by members of the Highland Group (“**Highland Accounts**”) in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group’s compensation arrangements) to favor certain Highland Accounts over the Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and its portfolio investments; (vi) Affiliated Investors may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Fund and, therefore, may compete with the Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Fund; (viii) the Fund may invest in CDOs and Highland Accounts managed by members of the Highland Group; and (ix) the Investment Manager will devote to the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Fund’s business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund’s investors.

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) whether the risk-return profile of the proposed investment is consistent with the account’s objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio’s overall holdings; (ii) the potential for the proposed investment to create an imbalance in the account’s portfolio (taking into account expected inflows and outflows of capital); (iii) liquidity requirements of the account; (iv) potentially adverse tax consequences; (v) regulatory and other restrictions that would or could limit an account’s ability to participate in a proposed investment; and (vi) the need to re-size risk in the account’s portfolio. The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may

allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Fund and one or more Highland Accounts on other than a *pari passu* basis.

The General Partner and/or its affiliates may open “average price” accounts with brokers. In an “average price” account, purchase and sale orders placed during a trading day on behalf of the Fund, the Highland Accounts or affiliates of the General Partner are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

As part of their regular business, the members of the Highland Group hold, purchase, sell, trade or take other related actions both for their respective accounts and for the accounts of their respective clients, on a principal or agency basis, with respect to loans, securities and other investments and financial instruments of all types. The members of the Highland Group also provide investment advisory services, among other services, and engage in private equity, real estate and capital markets-oriented investment activities. The members of the Highland Group will not be restricted in their performance of any such services or in the types of debt or equity investments which they may make. The members of the Highland Group may have economic interests in or other relationships with obligors or issuers in whose obligations or securities or credit exposures the Fund may invest. In particular, such persons may make and/or hold an investment in an obligor’s or issuer’s securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor’s or issuer’s securities made and/or held by the Fund or in which partners, security holders, members, officers, directors, agents, personnel or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities by the Fund and otherwise create conflicts of interest for the Fund. In such instances, the members of the Highland Group may in their discretion make investment recommendations and decisions that may be the same as or different from those made with respect to the Fund’s investments. In connection with any such activities described above, the members of the Highland Group may hold, purchase, sell, trade or take other related actions in securities or investments of a type that may be suitable to investments for the Fund. The members of the Highland Group will not be required to offer such securities or investments to the Fund or provide notice of such activities to the Fund. In addition, in managing the Fund’s portfolio, the Investment Manager may take into account its relationship or the relationships of its affiliates with obligors and their respective affiliates, which may create conflicts of interest. Furthermore, in connection with actions taken in the ordinary course of business of the Investment Manager in accordance with its fiduciary duties to its other clients, the Investment Manager may take, or be required to take, actions which adversely affect the interests of the Fund.

In connection with the foregoing activities the Highland Group may from time to time come into possession of material nonpublic information that limits the ability of the Investment Manager to effect a transaction for the Fund, and the Fund’s investments may be constrained as a consequence of the Investment Manager’s inability to use such information for advisory purposes or otherwise to effect transactions that otherwise may have been initiated on behalf of its clients, including the Fund.

Although the professional staff of the Investment Manager will devote as much time to the Fund as the Investment Manager deems appropriate to perform its duties in accordance with the Investment Management Agreement and in accordance with reasonable commercial standards, the staff may have conflicts in allocating its time and services among the Fund and the Investment Manager’s other accounts.

The directors, officers, personnel, employees and agents of the Investment Manager and its affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories, and receive arm's length fees in connection with such service, for the Fund or other entities that operate in the same or a related line of business as the Fund, for other clients managed by the Investment Manager or its affiliates, or for any obligor or issuer in respect of the CLOs, to the extent permitted by their governing instruments, or by any resolutions duly adopted by the Fund, such affiliated entities or any obligor or issuer in respect of any of the CLOs pursuant to their respective governing instruments, and the Fund shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund.

There is no limitation or restriction on the Investment Manager or any of its affiliates with regard to acting as investment adviser or collateral manager (or in a similar role) to other parties or persons. This and other future activities of the Investment Manager and/or its affiliates may give rise to additional conflicts of interest. Such conflicts may relate to obligations that the Investment Manager's investment committee, the Investment Manager or its affiliates have to other clients.

The Investment Manager and/or its affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of CLOs and Highland Accounts purchased by the Fund. Such transactions are on an arm's-length basis and shall be subject to fees that are no greater than arm's-length fees. There is no expectation for preferential access to transactions involving CLOs and Highland Accounts that are underwritten, originated, arranged or placed by the Investment Manager and/or its affiliates and the Fund shall not have any right to any such fees.

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Fund any time that the Investment Manager believes such transaction to be fair to the Fund and such other client. By purchasing an Interest in the Fund, a Limited Partner is deemed to have consented to such client cross-transactions between the Fund and another client of the Investment Manager or one of its affiliates.

As further described below, the Investment Manager may effect principal transactions where the Fund acquires securities from or sells securities to the Investment Manager and/or its affiliates, in each case in accordance with applicable law, which may include the Investment Manager obtaining the consent and approval of the Advisory Committee prior to engaging in any such principal transaction between the Fund and the Investment Manager or its affiliates. By subscribing for Interests, the Limited Partners are deemed to have consented to such procedures relating to principal transactions between the Fund and the Investment Manager or its affiliates.

The Investment Manager may direct the Fund to acquire or dispose of securities in cross trades between the Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the



Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Fund and for the other party to the transaction, to the extent permitted under applicable law. The Investment Manager may obtain the Fund's written consent through the Advisory Committee if any such transaction requires the consent of the Fund under Section 206(3) of the Advisers Act.

There are generally no ethical screens or information barriers among the Investment Manager and certain of its affiliates of the type that many firms implement to separate persons who make investment decisions from others who might possess material, non-public information that could influence such decisions. If the Investment Manager, any of its personnel or its affiliates were to receive material non-public information about a particular obligor, issuer or CLO, or have an interest in causing the Fund to acquire a particular CLO Security, the Investment Manager may be prevented from causing the Fund to purchase or sell such asset due to internal restrictions imposed on the Investment Manager. Notwithstanding the maintenance of certain internal controls relating to the management of material non-public information, it is possible that such controls could fail and result in the Investment Manager, or one of its investment professionals, buying or selling an asset while, at least constructively, in possession of material non-public information. Inadvertent trading on material non-public information could have adverse effects on the Investment Manager's reputation, result in the imposition of regulatory or financial sanctions, and as a consequence, negatively impact the Investment Manager's ability to perform its portfolio management services to the Fund. In addition, while the Investment Manager and certain of its affiliates currently operate without information barriers on an integrated basis, such entities could be required by certain regulations, or decide that it is advisable, to establish information barriers. In such event, the Investment Manager's ability to operate as an integrated platform could also be impaired, which would limit the Investment Manager's access to personnel of its affiliates and potentially impair its ability to manage the Fund's investments.

Akin Gump Strauss Hauer & Feld LLP ("*Akin Gump*") serves as counsel to the Fund, the Investment Manager, the General Partner and certain of their Affiliates (the "*Clients*") in connection with the formation of the Fund and certain other Clients, the offering of Interests as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any Limited Partners nor does it purport to represent their interests. No independent counsel has been retained to represent the Limited Partners. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the principal's biographical data, summaries of market conditions, the planned investment strategy of the Fund and the performance of the Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.



## BROKERAGE AND CUSTODY

### Portfolio Transactions

Substantially all of the Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held at The Bank of New York Mellon ("**BNY Mellon**").

BNY Mellon and other prime brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including the broker-dealer's research capabilities and the success of prior research recommendations, ability to efficiently execute difficult trades (such as those in illiquid markets or trades of substantial size), the broker's risk in positioning a block of securities, commitment of capital, access to new issues, nature and frequency of sales coverage, depth of services provided, including economic or political coverage, arbitrage and option operations, back office and processing capabilities, financial strength, stability and responsibility, efficiency, reputation, access to markets, confidentiality, commission rate, responsiveness to the Investment Manager and the value of research and brokerage and research products and services provided by such brokers.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Fund.

Broker-dealers may provide research that may include written or oral proprietary research. Broker-dealers may also provide research products that include software and related support services for use in research and trading, quotation boards, computer databases and quotation equipment, in each case to access research or which provide research directly. Research services may include, among other things, research concerning market, economic and financial data, statistical information, data on pricing and availability of securities, financial publications, attendance at conferences and meetings, electronic market quotations, performance measurement services, analyses and/or due diligence concerning specific securities, companies or sectors, including due diligence on specific aspects of a company's operations or finances, analyses on issues raised in proxy statements and market, economic and financial studies and forecasts. Research services may be in written or oral form or on-line and may be produced by broker-dealers or third parties such as attorneys, accountants or consultants. Brokerage products and services may include certain order management system components and order routing.

The receipt of brokerage and research products from broker-dealers through client commission payments is commonly referred to as "soft dollars." Broker-dealers may provide products and services paid for through soft dollars either directly or through credits deposited into an account that may be used for research developed by the broker-dealer, third-party research and brokerage services. Section 28(e) of the Exchange Act provides a safe harbor from liability for breach of fiduciary duties relating to the purchase of limited research or brokerage services using soft dollars so long as the products and services received constitute lawful and appropriate assistance and the amount indirectly paid for those products or services is reasonable. If the Investment Manager uses research or

brokerage products or services, it intends to limit research and brokerage to those services included in the safe harbor under Section 28(e) of the Exchange Act.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from brokers will be supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Fund's and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients.

The Investment Manager will be responsible for the placement of the portfolio transactions of the Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion.

### **Custody**

Custody of the Fund's assets is maintained by brokers and banks selected by the Investment Manager in its sole discretion. The custodian or custodians may be changed at any time and from time to time by the Investment Manager without the consent of the Fund. Currently, the custodian is BNY Mellon. The Fund is eligible for insurance coverage against loss with respect to assets held in the custody of BNY Mellon in the event of the bankruptcy or liquidation of BNY Mellon to the same extent BNY Mellon's other customers.

## TAX CONSIDERATIONS

### Introduction

The following is a summary of certain aspects of the taxation of the Fund and its Limited Partners arising from the purchase, ownership and disposition of an Interest that should be considered by a prospective Limited Partner. The Fund has not sought a ruling from the Service or any similar state, local or foreign authority with respect to any of the tax issues affecting Limited Partners or the Fund, nor has it obtained an opinion of counsel with respect to any U.S. federal, state, local or foreign tax issues.

This summary is based on the Code, the Treasury regulations promulgated under the Code (the “*Treasury Regulations*”), judicial decisions, administrative rulings, and state and local tax laws in force on the date of this Memorandum, all of which are subject to change (possibly with retroactive effect). Changes in existing laws or regulations and their interpretation may occur after the date of this Memorandum and could alter the income tax consequences of an investment in the Fund. This discussion does not address all of the tax consequences that may be relevant to a particular investor, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Interests as part of a position in a “straddle” or as part of a “hedging,” “conversion” or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. dollar or (iv) persons that do not hold Interests as capital assets within the meaning of Code section 1221.

Further, this discussion assumes that all non-U.S. persons will invest in the Offshore Fund and will not invest in the Fund and, therefore, does not address the tax considerations relevant to an investment in the Fund by a non-U.S. person.

If a partnership holds an Interest in the Fund, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. Prospective investors who are partners of a partnership should consult their own tax advisors.

Unless otherwise expressly provided herein, this discussion does not address possible state, local or non-U.S. tax consequences of the purchase, ownership or disposition of Interests, some or all of which may be material to particular investors. This discussion also does not address the potential application of the U.S. federal alternative minimum tax (“*AMT*”) to the Limited Partners. There is uncertainty concerning certain tax aspects of the Fund, and there can be no assurance that the Service will not challenge the positions taken by the Fund.

*The tax consequences of an investment in the Fund are particularly complex. Accordingly, prospective investors should not consider this discussion as a substitute for careful tax planning. Prospective investors should consult with their own tax advisors, attorneys or accountants on matters relating to an investment in the Fund with special references to such investor’s particular situation.*

## Certain United States Taxation Matters

### Classification of the Fund

The General Partner believes that, under the provisions of the Code and the Treasury Regulations as currently in effect, the Fund should be treated for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

Certain “publicly traded partnerships” are treated as associations that are taxable as corporations for U.S. federal income tax purposes. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). Interests in the Fund are not and will not be traded on an established securities market. Treasury Regulations concerning the classification of partnerships as publicly traded partnerships provide certain safe harbors under which interests in a partnership will not be considered readily tradable on a secondary market (or the substantial equivalent thereof). Depending on the number of Partners, the Fund may qualify for a safe harbor exemption for partnerships that are offered to investors in a private placement.

The remainder of this discussion assumes that the Fund will be treated, for U.S. federal income tax purposes, as a partnership and not as a publicly traded partnership treated as an association that is taxable as a corporation.

### U.S. Federal Income Taxation of the Fund and Partners Generally

As a partnership, the Fund will not be subject to U.S. federal income tax. Each Limited Partner will be required to report separately on its income tax return its distributive share of the Fund’s net long-term capital gain or loss, net short-term capital gain or loss, and net ordinary income and deductions and credits in accordance with the allocations set forth in the Partnership Agreement. Each Limited Partner will be liable for any taxes owed upon its distributive share of the income or gains realized by the Fund, and may claim deductions for its distributive share of the Fund’s losses and deductions and credits for its distributive share of the Fund’s credits, to the extent allowed under the Code. Each Limited Partner will be taxed on its distributive share of the Fund’s taxable income and gain regardless of whether it has received or will receive a distribution from the Fund. Consequently, a Limited Partner may be subject to tax with respect to its share of the taxable income of the Fund for a taxable year and may not receive a corresponding distribution of cash from the Fund in such year with which to satisfy its tax liability in respect of such taxable income.

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund’s items of income, gain, loss, deduction or credit. The General Partner will have the authority to decide how to report these items on the Fund’s tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. An audit by the Service of the tax treatment of the Fund’s income and deductions generally will be determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. In this regard, the General Partner, as the “***Tax Matters Partner***,” will have the authority to bind certain Limited Partners to settlement agreements and the right on behalf of all Limited Partners to extend the statute of limitations relating to the Limited Partners’ tax liabilities with respect to Fund items.



Under the Partnership Agreement, for U.S. federal income tax purposes, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deduction) to a withdrawing Partner to the extent that the Partner's Capital Account differs either positively or negatively from its U.S. federal income tax basis in its Interest. There can be no assurance that, if the General Partner makes such a special allocation, the Service will accept such allocation. If such allocation is successfully challenged by the Service, the Fund's allocations to the remaining Partners would be affected as well.

The Fund expects to act as a trader or investor, and not as a dealer, with respect to its securities transactions. Generally, the gains and losses realized by a trader or investor on the sale of securities are capital gains and losses. Thus, in general, the Fund expects that its gains and losses from its securities transactions typically will be capital gains and capital losses. These capital gains and losses may be long-term or short-term depending, in general, upon the length of time the Fund maintains a particular investment position and, in some cases, upon the nature of the transaction. Property held for more than 12 months generally will be eligible for long-term capital gain or loss treatment. Long term capital gains may be eligible for favorable tax rates in the hands of non-corporate U.S. Limited Partners. Limited Partners should consult with their own tax advisors to determine the tax rates applicable to them in their particular tax situations.

In addition, individuals who are U.S. persons with "modified adjusted gross income" that exceeds certain thresholds (for example, \$250,000 for married individuals filing jointly, \$200,000 for single individuals) are subject to a Medicare tax of 3.8% on the lesser of (i) their investment income, net of deductions properly allocable to such income, and (ii) the excess of their "modified adjusted gross income" above the applicable threshold. The General Partner expects that most or all of the Fund's income will be treated as investment income for this purpose, and as a result Limited Partners receiving allocations of income from the Fund for these taxable years will be subject to this tax. This tax will be in addition to any U.S. federal income tax imposed on such Limited Partners with respect to their allocable share of income of the Fund. Trusts and estates also may be subject to this additional tax.

The Fund may be involved in a variety of hedging transactions to reduce the risk of changes in value in the Fund's investments. Special rules may apply to determine the tax treatment of such hedging transactions, which may affect the Fund's holding period attributable to such property, the characterization of gain or loss as ordinary or capital and, if capital, as long-term or short-term, and the timing of the realization of gains or losses on the actual or deemed sale of the property, including, in some cases, property owned by a Limited Partner outside of the Fund. For instance, gain or loss from a short sale of property generally will be considered as capital gain or loss to the extent the property used to close the short sale constitutes a capital asset in the Fund's hands. Except with respect to certain situations where the property used by the Fund to close a short sale has a long-term holding period on the date of the short sale, gains on short sales will be treated as short-term capital gains. These rules also may terminate the running of the holding period of "substantially identical property" held by the Fund. Moreover, a loss on a short sale will be treated as a long-term capital loss if, on the date of the short sale, "substantially identical property" has been held by the Fund for more than one year. Certain hedging transactions also may cause a constructive sale of the Fund's long position that is the subject of the hedge.

The Fund may derive ordinary interest income and dividends on securities, and may be required to recognize income in respect of certain securities prior to receipt of any payment in respect of such securities. For instance, the Fund may hold debt obligations with "original issue discount." In such case, the Fund will be required to include a portion of such discount in its taxable income on a current



basis, and the Fund must allocate such income to the Limited Partners, even though receipt of such amounts by the Fund may occur in a subsequent tax year. The Fund also may acquire debt obligations with “market discount.” Upon disposition of such an obligation, which might include the receipt of securities of the issuer in a recapitalization exchange, the Fund generally will be required to treat any gain realized (and required to be recognized) as ordinary interest income to the extent of the market discount that accrued during the period the debt obligation was held by the Fund. Recapitalization exchanges involving securities held by the Fund also may result in the recognition of taxable gains prior to the receipt of cash or readily tradable property.

If the Fund is treated as a trader, it may, in its discretion, make an election under Code section 475(f) to apply a mark to market system of recognizing unrealized gains and losses on securities as if the securities were sold for fair market value at the close of any taxable year of the Fund. The amount recognized when gain or loss is subsequently realized would be adjusted for amounts recognized in marking to market. The election would apply with respect to securities held in connection with the Fund’s trade or business as a trader in securities. The election would not apply to any securities with respect to which the Fund could demonstrate, to the satisfaction of the Service, that they are held for investment. Once a Code section 475(f) election is made, it can be revoked only with the consent of the Service. In the event that the Fund makes such an election, the Fund’s gains and losses from marking securities to market (and gain or loss recognized before the end of the taxable year with respect to any security that would have been marked to market) would be treated as ordinary income and losses. The rules relating to appreciated financial positions under Code section 1259 and wash sales under Code section 1091 would not apply to the securities to which the election applies and the Code section 1092 straddle rules would not have any effect where all the offsetting positions of a straddle are marked to market.

The Fund may be required to purchase foreign currency with which to make its investments and may receive foreign currency when a security is sold or when an interest payment is made on a security. These transactions may give rise to gains and losses because of fluctuations in the value of the foreign currency relative to the U.S. dollar during the Fund’s holding period of an investment. Foreign currency gain or loss in respect of certain types of transactions must be accounted for separately, apart from any gain or loss on the underlying transaction, and the Code contains special rules which treat, in most circumstances, such gains and losses as ordinary income or losses rather than capital gains or losses.

The U.S. federal income tax treatment of the Fund’s investment in swaps or other derivatives is subject to significant uncertainty and depends in large part on the terms of the specific swap or other derivative. In particular, it is possible that the Fund may enter into so-called “bullet swaps” or other swaps that provide for non-periodic payments. In certain circumstances, income from a swap can be treated as ordinary income and not capital gain if the swap is treated as a “constructive ownership transaction” under Code section 1260. The Fund intends to take positions that are reasonable under the law that provide for optimal tax treatment of the Limited Partners. However, there can be no assurance that the Service or a court would agree with the Fund’s position. Moreover, the Service might take the contrary position that the Fund is subject to U.S. federal income tax in respect of some or all of the income earned from the swap investments on the theory that the Fund should be treated as the owner for U.S. federal income tax purposes of the property underlying certain swaps, in which case the after-tax return on the swap investments could be significantly reduced.

Pursuant to various “anti-deferral” provisions of the Code (*e.g.*, the “Subpart F” and “passive foreign investment company” provisions), any investments by the Fund in certain foreign corporations may cause a Limited Partner to (i) recognize taxable income prior to the Fund’s receipt of distributable

proceeds, (ii) pay an interest charge on receipts that are deemed as having been deferred or (iii) recognize ordinary income that, but for the “anti-deferral” provisions, would have been treated as long-term or short-term capital gain.

Under the Partnership Agreement, the General Partner has the authority to elect on behalf of the Fund, under Code section 754, to adjust the tax basis of the Fund’s assets in connection with certain distributions to Limited Partners or certain transfers of Interests. Such an election, if made, could affect the amount of a Limited Partner’s distributive share of the gain or loss recognized by the Fund upon the disposition of its assets. Because of the complexity and additional expense involved in making a section 754 election, the General Partner has no present intention to make such election on behalf of the Fund.

Prospective investors that are subject to the AMT should consider the tax consequences of an investment in the Fund in view of their AMT position, taking into account the special rules that apply in computing the AMT.

#### Taxation of Distributions and Withdrawals

Cash non-liquidating distributions and withdrawals, to the extent they do not exceed a Limited Partner’s basis in its Interest, will not result in taxable income to that Limited Partner, but will reduce its tax basis in its Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the basis of its Interest is generally taxable as capital gain.

Prospective Limited Partners should be aware that a Limited Partner’s share of the taxable income of the Fund for any year may exceed the amount of cash distributed to such Limited Partner for that year, which may require that the Limited Partner make an out-of-pocket expenditure to cover its tax liability. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner’s tax basis of its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner’s investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

The Fund’s ability to make cash distributions to a withdrawing Limited Partner or to the Partners, if applicable, may be limited by, among other things, the terms of the investment leverage entered into by the Fund for the purpose of making portfolio investments on a leveraged basis.

Upon the withdrawal of a Limited Partner receiving a cash liquidating distribution from the Fund, such Limited Partner generally will recognize capital gain or loss to the extent of the difference between the proceeds received by the withdrawing Limited Partner and such Partner’s adjusted tax basis in its Interest. Such capital gain or loss will be short-term or long-term depending upon the Partner’s holding period (or holding periods) for its Interest. However, a withdrawing Limited Partner will recognize ordinary income to the extent such Partner’s allocable share of the Fund’s “unrealized receivables” exceeds the Partner’s basis in such unrealized receivables (as determined pursuant to the Treasury Regulations). For these purposes, accrued but untaxed market discount, if any, on securities held by the Fund will be treated as an unrealized receivable, with respect to which a withdrawing Partner would recognize ordinary income.

Distributions of property other than cash, whether in complete or partial liquidation of a Limited Partner's Interest, generally will not result in the recognition of taxable income or loss to the Limited Partner (except to the extent such distribution is treated as made in exchange for such Limited Partner's share of the Fund's unrealized receivables). However, a distribution of marketable securities will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient Limited Partner), unless the distributing partnership is an "investment partnership" and the recipient is an "eligible partner" as defined in Code section 731(c). Although the General Partner cannot provide any assurances of whether the Fund is an "investment partnership" for these purposes, the General Partner anticipates that the Fund should qualify as an "investment partnership." Thus, if a Limited Partner is an "eligible partner," which term should include a Limited Partner whose sole contributions to the Fund consisted of cash, a distribution of marketable securities to such Limited Partner should not require the recognition of gain by such Limited Partner.

As discussed above, under the Partnership Agreement, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deductions) for U.S. federal income tax purposes to a withdrawing Partner to the extent that the Partner's capital account differs from its U.S. federal income tax basis in its Interest. Such a special allocation may result in the withdrawing Partner recognizing more or less taxable income, which may include short-term gain, in the Partner's last taxable year in the Fund, thereby reducing, or increasing, as applicable, the amount of long-term capital gain recognized during the tax year in which it receives its liquidating distribution upon withdrawal. In certain circumstances, special allocations of net gains (or items of income or gain) to a withdrawing Partner may result in a greater allocation of losses, or a lower allocation of taxable income or gain, to the remaining Partners. Likewise, special allocations of net losses (or items of expense, loss or deduction) to a withdrawing Partner may result in a greater allocation of taxable income or gain, or a lower allocation of losses, to the remaining Partners.

Assuming the Fund has not made an election pursuant to Code section 754 and the General Partner does not exercise its discretion to specially allocate losses to a withdrawing Limited Partner, distributions of property or cash by the Fund to a Limited Partner in redemption of its Interest in certain circumstances where the Fund has a substantial built-in loss may require the Fund to reduce the tax basis of its remaining property.

#### Limitations on Losses and Deductions

Limited Partners that are individuals or certain types of corporations may be limited in their ability to deduct expenses or losses of the Fund. For instance, if or to the extent that the Fund's operations do not constitute a "trade or business" within the meaning of Code section 162 and other provisions of the Code, an individual Limited Partner's distributive share of the Fund's expenses (including any amounts that are treated for tax purposes as expenses of the Fund) would be deductible only as itemized deductions, subject to the limitations of Code sections 67 and 68. In this regard, if all or a portion of the Performance Allocation to the General Partner were re-characterized for tax purposes as an expense of the Fund, each non-corporate Limited Partner's share of such expense could be subject to such limitations. Itemized deductions are non-deductible in computing such Limited Partner's alternative minimum taxable income and alternative minimum tax liability.

Further, income, gains and losses of the Fund generally will not be treated as passive income or losses for purposes of the passive activity loss limitations of Code section 469. Accordingly, individuals, personal service corporations and certain closely-held corporations that have passive activity

losses from other activities are restricted in their ability to use such losses to offset income and gains from the Fund, although losses of the Fund will not be subject to the passive activity loss limitation.

The ability of a non-corporate Limited Partner to deduct its share of the Fund's ordinary losses attributable to interest and certain short sale expenses may be subject to the "investment interest limitation" under Section 163(d) of the Code. In general, a non-corporate taxpayer's investment interest (including interest and certain short sale expenses) in the current year is not deductible to the extent it exceeds its "net investment income," consisting of net gain and ordinary income derived from investments in the current year less certain directly connected expenses (other than interest or short sale expenses). For this purpose, any long-term capital gain and qualified dividend income is excluded from net investment income unless the taxpayer elects to pay tax on such amount at ordinary income tax rates. The Fund's activities are expected to be treated as giving rise to investment income for a Limited Partner, and the investment interest limitation would apply to a non-corporate Limited Partner's share of the interest and short sale expenses attributable to the Fund's operation. Accordingly, a non-corporate Limited Partner would be denied a deduction for all or a part of its distributive share of the Fund's ordinary losses attributable to interest and short sale expenses unless it has sufficient investment income from all sources including the Fund. Any amount not deducted as a result of the application of the investment interest limitation may be carried forward to future years, subject to certain limitations. The Fund may incur certain expenses in connection with its organization and the marketing of its Interests. Amounts paid or incurred to organize a partnership are not deductible, but may, by election of the Fund, be capitalized and amortized over a period of not less than 180 months. Amounts paid or incurred to market interests in the Fund that qualify as "syndication expenses" are not deductible or amortizable.

#### Tax Consequences for Tax-Exempt U.S. Investors

A Limited Partner that is an organization exempt from tax under Code section 501(a) (a "***Tax-Exempt U.S. Investor***") will be subject to tax on its allocable share of the Fund's income that is considered to be "unrelated business taxable income" ("***UBTI***") as defined in Code section 512, and may be subject to the AMT with respect to items of tax preference which enter into the computation of UBTI. Code section 512(b) provides that UBTI generally does not include dividends, interest, and gain or loss from the disposition of property other than stock in trade or property held for sale in the ordinary course of the unrelated trade or business. The Fund may invest in entities that are treated as partnerships or other pass-through entities. UBTI generated by such entities would generally flow up to Tax-Exempt U.S. Investors, causing the realization of UBTI by such investors. Therefore, in light of the Fund's investment program, a Tax-Exempt U.S. Investor should not realize UBTI to the extent that its distributive share of the Fund's income consists of dividends, interest, capital gains and certain other items which are excluded from UBTI under Code section 512(b) (except to the extent any such income constitutes "UDFI," as discussed in the next paragraph).

A Tax-Exempt U.S. Investor is also subject to tax with respect to its, and its allocable share of the Fund's, "unrelated debt-financed income" pursuant to Code section 514 ("***UDFI***"). In general, UDFI consists of (i) income derived by a tax-exempt organization (directly or through a partnership) from income-producing property with respect to which there is "acquisition indebtedness" at any time during the taxable year and (ii) gains derived by a tax-exempt organization (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness." In addition, a tax-exempt organization that borrows money to finance its investment in the Fund would be subject to tax on the portion of its income that is UDFI. Income and gains derived by a tax-exempt organization from the ownership and sale of debt-financed property is taxable in the



proportion to which such property is financed by acquisition indebtedness during the relevant period of time.

The Fund expects to generate income attributable to debt-financed property which will be attributed to the Partners, including any Tax-Exempt U.S. Investors. A Tax-Exempt U.S. Investor's share of the Fund's income that is treated as UBTI will vary depending upon the degree of leverage utilized by the Fund and could be significant. In addition to other relevant considerations, fiduciaries of employee pension trusts and other prospective tax-exempt investors should consider the consequences of realizing UBTI in making a decision whether to invest in the Fund.

***We urge prospective Tax-Exempt U.S. Investors that are sensitive to UBTI or UDFI to consult their tax advisors as to the tax consequences of investing in the Fund and as to the comparative tax treatment of an investment in the Offshore Fund.***

#### Investor Tax Filings and Record Retention.

The U.S. Treasury Department has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, these Treasury Regulations require investors in specified transactions (including partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties (in addition to penalties that generally may be applicable as a result of a failure to comply with the applicable Treasury Regulations) may be imposed for failure to comply with these tax filing and record retention rules.

These Treasury Regulations are broad in scope, and it is conceivable that the Fund may enter into transactions that will subject the Fund and certain investors to the special tax filing and record retention rules. Additionally, under these Treasury Regulations, an investor's recognition of loss upon its disposition of its Interest could cause the investor to become subject to special tax filing and record retention rules. The General Partner intends to use its reasonable efforts to provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Fund.

#### Reporting under FATCA

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("**IGA**") and related statutes, regulations, rules and other guidance thereunder, "**FATCA**") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("**FFI**"), unless such FFI enters into an agreement with the IRS (an "**FFI Agreement**"), and/or complies with an IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources since July 1, 2014, and will apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends after December 31, 2016.



The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. Additional guidance is forthcoming.

It is possible that a lower-tier non-U.S. entity in which the Fund invests may be considered an FFI. The Fund intends to assist lower-tier non-U.S. entities in complying with FATCA, but can give no assurance that it will be able to provide such assistance or that such an entity will be able to avoid the imposition of this withholding tax on it.

Further, the Fund may be required to act as a withholding agent for the Service under FATCA and therefore be required to withhold on income and proceeds paid or allocated to an investor that fails to comply with FATCA, which could occur if an investor that is an FFI does not enter into an FFI Agreement, is not otherwise exempt from such withholding, and/or does not provide the appropriate information and documentation (including the prescribed forms) to the Fund or its agents showing its exemption from such withholding or compliance with FATCA. The General Partner intends to collect the appropriate documentation from all investors in the Fund in order to determine whether it is required to withhold under FATCA with respect to distributions or allocations of income and gains made to investors.

The General Partner and the Fund reserve the right to take any action and/or pursue all remedies at their disposal to avoid withholding requirements or otherwise to mitigate the consequences of an investor's failure to comply with FATCA, including compulsory redemption or withdrawal of the investor concerned. In this regard, the General Partner and the Fund have certain rights to request, and the investors have certain obligations to provide, information and documentation that may be used by the General Partner and the Fund in complying with their obligations under FATCA. In addition, no investor affected by any action or remedy by the Fund shall have any claim against the Fund, the General Partner, and the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

**Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests of the Fund.**

#### State and Local Taxes

In addition to the U.S. federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Fund. State and local laws often differ from U.S. federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Fund generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which it is a resident.

Limited Partners or the Fund may be subject to state and/or local franchise, withholding, income, capital gain or other tax payment obligations and filing requirements in those jurisdictions where the Fund owns real estate assets or is otherwise regarded as doing business or earning income. Credits for these taxes may not be available (or may be subject to limitations) in the jurisdictions in which Limited Partners, or the Fund, as applicable, are residents. Each potential investor is urged to consult with its own tax advisor in this regard.

**Each prospective Limited Partner should consult its own tax advisor with respect to its state and local tax consequences and filing obligations as a result of an investment in the Fund.**

#### Other Taxes

The Fund and its Limited Partners may be subject to other taxes, such as the AMT, and estate, inheritance or intangible property taxes that may be imposed by various domestic jurisdictions, as well as foreign withholding or gains taxes. Each prospective investor should consider the potential consequences of such taxes on an investment in the Fund. It is the responsibility of each prospective investor to satisfy itself as to, among other things, the legal and tax consequences of an investment in the Fund, under the laws of the various jurisdictions of its domicile and its residence, by obtaining advice from its own tax counsel or other advisor, and to file all appropriate tax returns that may be required.

#### Tax Returns; Tax Audits

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund's items of income, gain, loss, deduction or credit. The General Partner has the authority to decide how to report these items on the Fund's tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. If the income tax returns of the Fund are audited by the Service, the tax treatment of the Fund's income and deductions is generally determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. In this regard, the General Partner, as the "Tax Matters Partner," has considerable authority to make decisions affecting the tax treatment and procedural rights of all Limited Partners. In addition, the Tax Matters Partner has the authority to bind certain Limited Partners to settlement agreements and the right on behalf of all Limited Partners to extend the statute of limitations relating to the Limited Partners' tax liabilities with respect to Fund items.

In certain cases, the Fund may be required to file a statement with the Service, disclosing one or more positions taken on its tax return, generally where the tax law is uncertain or a position lacks clear authority. All Partners are required under the Code to treat the partnership items consistently on their own returns, unless they file a statement with the Service disclosing the inconsistency. Given the uncertainty and complexity of the tax laws, it is possible that the Service may not agree with the manner in which the Fund's items have been reported.

#### **Other Income Taxation**

Although there can be no assurance, it is intended that the affairs of the Fund will be conducted such that the Fund will not be subject to regular income taxation in any foreign jurisdiction. However, income and gains from investments held by the Fund may be subject to withholding taxes or taxes in jurisdictions other than those described herein, subject to the possibility of reduction under applicable tax treaties. Limited Partners generally may be entitled, subject to applicable limitations, to a credit against U.S. income tax for creditable foreign income taxes paid on the foreign source income and gains of the Fund (which may not include all of the Fund's gains). The foreign tax credit rules are complex, and may, depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. Prospective investors are advised to consult their own tax advisors regarding the application of the foreign tax credit rules.

### **Future Tax Legislation; Necessity of Obtaining Professional Advice**

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Limited Partners will vary with the particular circumstances of each Limited Partner and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

Accordingly, each prospective investor must consult with and rely solely on its professional tax advisors with respect to the tax results of its investment in the Fund. In no event will the Fund, the General Partner, the Investment Manager, or their Affiliates, counsel or other professional advisors be liable to any Limited Partner for any U.S. federal, state, local or foreign tax consequences of an investment in the Fund, whether or not such consequences are as described above.

*The foregoing is a summary of some of the important tax rules and considerations affecting the Limited Partners, the Fund, and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each Limited Partner, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding an Interest. The foregoing does not address tax considerations affecting investors that are not U.S. persons. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any foreign tax consequences of such an investment in its particular situation.*

## ERISA AND OTHER REGULATORY CONSIDERATIONS

### ERISA Considerations

#### General

Fiduciaries and other persons who are proposing to invest in Interests on behalf of retirement plans, IRAs and other employee benefit plans (“**Plans**”) covered by the U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or the Code must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan’s portfolio, taking into consideration whether the investment is designed to reasonably further the Plan’s purposes, the investment’s risk and return factors, the portfolio’s composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan’s objectives, the limited right of Limited Partners to withdraw all or any part of their capital or to transfer their Interests and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

#### Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor (“**DOL**”) has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as “plan assets” for purposes of Title I of ERISA and Section 4975 of the Code (“**Plan Assets**”). Section 3(42) of ERISA defines the term “Plan Assets” to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by “Benefit Plan Investors” (the “**significant participation test**”). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term “**Benefit Plan Investors**” means any employee benefit plan subject to part 4 of Title I of ERISA (*i.e.*, plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (*e.g.*, IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan’s investment in such entity (a “**Plan Asset Entity**”).

In order to prevent the assets of the Fund from being considered Plan Assets under ERISA, it is the intention of the Fund to monitor the investments in the Fund and prohibit the acquisition, withdrawal or transfer of any Interests by any Limited Partner, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of Interests of any class owned by Benefit Plan Investors would be less than 25% of the aggregate value of the class of Interests (determined, as described above, by excluding certain Interests held by the General Partner, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of Interests by Benefit Plan Investors to less than 25%, the Fund may require the compulsory withdrawal of Interests of any class. Each Limited Partner that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires

Interests the maximum percentage of such general account or Plan Asset Entity that will constitute Plan Assets (the “**Maximum Percentage**”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Interests, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the General Partner of that occurrence and shall, if and as directed by the General Partner, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Interests held in its general account or Plan Asset Entity by the end of the next following calendar month (or such earlier period directed by the General Partner).

If the Fund’s assets were considered Plan Assets, then, under ERISA and the Code, the General Partner would be a fiduciary, and certain employees, partners and officers of the General Partner as well as certain affiliates would become “parties in interest” and “disqualified persons,” with respect to the investing Plans, with the result that the rendering of services to certain related parties, the lending of money or other extensions of credit, the sale, exchange or leasing of property by the Fund or certain related parties or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in Interests by persons who are fiduciaries, and/or parties-in-interest and disqualified persons, to a Plan might be deemed to constitute prohibited transactions under such circumstances.

#### Representation by Plans

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund’s investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

#### Ineligible Purchasers

Interests may not be purchased with Plan Assets if the General Partner, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a “prohibited transaction” under ERISA and the Code.

#### Plans’ Reporting Obligations

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting obligation for “eligible indirect compensation” on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.



*Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.*

## **Other Regulatory Matters**

### Securities Act of 1933

Interests are not registered under the U.S. Securities Act of 1933, as amended, or any other securities law, including state securities or blue sky laws. Interests are offered without registration in reliance upon the exemption contained in Regulation D of this act and/or rules and regulations of the Securities and Exchange Commission applicable to transactions not involving a public offering. Each investor is required, in the Fund's Subscription Documents pursuant to which such investor subscribes for an Interest, to make customary Regulation D representations.

### Investment Company Act of 1940

The Fund is not registered under the U.S. Investment Company Act of 1940, as amended, in reliance upon relief from registration afforded to collective investment vehicles whose outstanding securities are not publicly offered and are beneficially owned exclusively by investors that are considered "qualified purchasers" within the meaning of the Investment Company Act. "Qualified purchasers" generally include individuals and certain family-owned companies owning total investments in excess of \$5 million and entities owning total investments in excess of \$25 million. Each investor will be required to complete the Fund's Subscription Documents to enable the Fund to determine its eligibility.

### Investment Adviser Registration

The Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the "**Advisers Act**"). Each prospective investor will be required to make a representation to indicate that it is a "qualified client" as defined in the Advisers Act.

### Commodity Exchange Act

Neither the General Partner nor the Investment Manager is required to register as a commodity pool operator or commodity trading adviser under the U.S. Commodity Exchange Act because the Fund is limiting participation to certain qualified investors, is restricting the Fund's commodity interest trading, and the Investment Manager only provides commodity trading advice to the Fund (or other pools for which it is an exempt commodity pool operator). Therefore, unlike a registered commodity pool operator, there is no requirement to deliver this Memorandum or other disclosure document or any certified annual report to the Fund's investors.

Anti-Money Laundering Regulations

All subscriptions for Interests will be subject to applicable anti-money laundering regulations. Investors will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56).

As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the General Partner or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

The General Partner reserves the right to request such information as is necessary to verify the identity of a prospective investor. The General Partner also reserves the right to request such identification evidence in respect of a transferee of Interests. In the event of delay or failure by the prospective investor or transferee to produce any information required for verification purposes, the General Partner may refuse to accept the application or (as the case may be) to register the relevant transfer and (in the case of a subscription of Interests) any funds received will be returned without interest to the account from which the monies were originally debited.

The General Partner also reserves the right to refuse to make any withdrawal payment or distribution to a Limited Partner, if the General Partner suspects or is advised that the payment of any withdrawal or distribution moneys to such Limited Partner might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund, the General Partner and the Investment Manager with any such laws or regulations in any relevant jurisdiction.

## **EXHIBIT 66**

Memorandum Number \_\_\_\_\_

## **Confidential Private Offering Memorandum**

*Series B, Series C and Series D Shares of*

### **Highland Multi Strategy Credit Fund, Ltd.**

*A Cayman Islands Exempted Company*

*Investment Manager*

Highland Capital Management, L.P.

**November 2014**

*This Confidential Private Offering Memorandum must be read in conjunction with the Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P.*

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Attachment: Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P.	



## NOTICE

This Private Offering Memorandum (this “**Memorandum**”) is confidential and intended solely for the use of the person to whom it has been delivered by Highland Multi Strategy Credit Fund, Ltd. (the “**Fund**”) for the purpose of enabling the recipient to evaluate an investment in the Fund. The purpose of the Fund is to invest all of its assets in, and carry out its investment program through, Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “**Partnership**”). Accordingly, this Memorandum must be read in conjunction with the Partnership’s Confidential Private Placement Memorandum, as amended and supplemented from time to time (the “**Partnership Memorandum**”).

This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of the Fund (other than to professional advisors and employees of the investor receiving this Memorandum from the Fund or its authorized representative or such investor) and all recipients agree they will keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment and monitoring a subsequent investment in the Fund. Notwithstanding the foregoing, each investor (and each employee, representative or other agent of each investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment or tax structure. Acceptance of this Memorandum and the Partnership Memorandum by a recipient constitutes an agreement to be bound by the foregoing terms. No person is authorized to make any representations concerning the Fund which are inconsistent with those contained in this Memorandum.

Prospective investors are not to construe the contents of this Memorandum or the Partnership Memorandum as legal, tax, investment or other advice. Each prospective investor should consult its own advisors as to legal, financial, tax, ERISA and other related matters concerning an investment in the Fund.

In making an investment decision, investors must review both this Memorandum and the Partnership Memorandum and must rely on their own examination of the Fund and the Partnership and the terms of the offering, including the merits and risks involved. The shares in the Fund (the “**Shares**”) have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

Neither this Memorandum nor the Shares described herein have been qualified for offer, sale or distribution under the laws of any jurisdiction governing the offer or sale of mutual fund shares or other securities, and this Memorandum shall not constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of Shares in any jurisdiction in which such offer, solicitation or sale is not authorized or to any person to whom it is unlawful to make such offer, solicitation or sale.

In each member state of the European Economic Area (each a “**Relevant Member State**”) that has implemented EU Directive 2011/61/EU on Alternative Investment Fund Managers (the “**AIFM Directive**”), the Fund may only be offered to investors in accordance with local measures implementing

the AIFM Directive. Investors in a Relevant Member State where the Fund is not being offered pursuant to private placement rules implementing the AIFM Directive may invest in the Fund, but only in circumstances where they do so at their own initiative.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Shares other than the information contained in the Memorandum and the Partnership Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund.

The Shares have not been, and will not, be registered under the United States Securities Act of 1933, as amended, or the securities laws of any of the states of the United States, and the Fund has not been and will not be registered under the United States Investment Company Act of 1940, as amended. Direct or indirect acquisition or ownership of Shares by “*U.S. Persons*” (as defined herein) without compliance with applicable U.S. securities laws or in contravention of the relevant provisions of the constituent documents of the Fund is prohibited.

The Fund is not a recognized collective investment scheme for the purposes of Section 264 of the Financial Services and Markets Act 2000 of the United Kingdom (the “*Act*”). The promotion of the Fund and the distribution of this Memorandum in the United Kingdom are accordingly restricted by law. This Memorandum is directed at persons to whom it may lawfully be issued or directed at under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, including persons who are authorized under the Act, certain persons having professional experience in matters relating to investments, high net worth companies, high net worth unincorporated associations or partnerships, trustees of high value trusts and persons who qualify as certified sophisticated investors. The Shares are only available to such persons in the United Kingdom and this Memorandum must not be relied or acted upon by any other persons in the United Kingdom. In order to qualify as a certified sophisticated investor a person must (i) have a certificate in writing or other legible form signed by an authorized person to the effect that he or she is sufficiently knowledgeable to understand the risks associated with participating in unrecognized collective investment schemes and (ii) have signed, within the last 12 months, a statement in a prescribed form declaring, amongst other things, that he or she qualifies as a sophisticated investor in relation to such investments. This Memorandum is exempt from the general restriction in Section 21 of the Act on the communication of invitations or inducements to engage in investment activity on the grounds that it is being issued to and/or directed at only the types of persons referred to above. The content of this Memorandum has not been approved by an authorized person and such approval is, save where this Memorandum is directed at or issued to the types of persons referred to above, required by Section 21 of the Act.

The Shares described in this Memorandum are not the subject of a public offering in the Cayman Islands. No offer or invitation to subscribe for Shares may be made to the public in the Cayman Islands.

Any information forwarded to the Fund by any potential shareholder will be treated on a confidential basis except that such information may be passed on to a relevant third party by the Fund where so required by law or regulation and each shareholder upon subscribing for Shares shall be deemed to have consented to such release of such confidential information pursuant to the terms of the Confidential Relationships (Preservation) Law (as amended) of the Cayman Islands (or any amendment thereto).

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 17**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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Thru Vol. 4  
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001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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*Attorneys for The Dugaboy Investment Trust  
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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073



An investment in the Shares involves significant risks. Prospective investors should pay particular attention to the risk factors disclosed in this Memorandum and the Partnership Memorandum. Investment in the Fund is suitable only for sophisticated investors and requires the financial ability and willingness to accept the high risks inherent in an investment in the Fund. No assurance can be given that the Fund's investment objective will be achieved.

Each prospective investor is invited to meet with representatives of the Fund and to discuss with, ask questions of and receive answers from such representatives concerning the terms and conditions of this offering and to obtain any additional information, to the extent that such representatives possess such information or can acquire it without unreasonable effort or expense, necessary to verify the information contained herein.

The Fund is a registered mutual fund for the purposes of the Mutual Funds Law (2013 Revision) of the Cayman Islands. The Fund is registered with the Cayman Islands Monetary Authority pursuant to Section 4(3) of that law and the prescribed details in respect of this Memorandum have been filed with the Cayman Islands Monetary Authority. Such registration does not imply that the Cayman Islands Monetary Authority has approved this Memorandum or the offering of Shares hereunder.

This Memorandum does not purport to be, and should not be construed as, a complete description of the memorandum of association and articles of association of the Fund (the "**Articles**") or the Partnership's limited partnership agreement, as amended and supplemented from time to time (the "**Partnership Agreement**"), copies of which will be provided to each prospective investor upon request. Each prospective investor in the Fund is encouraged to review the Articles and the Partnership Agreement carefully, in addition to consulting appropriate legal and tax counselors. To the extent of any inconsistency between this Memorandum, the Articles and the Partnership Agreement, the terms of the Articles and the Partnership Agreement control.

Pursuant to an exemption from the Commodity Futures Trading Commission (the "**CFTC**"), neither the General Partner nor the Investment Manager (each as defined herein) is registered with the CFTC as a commodity pool operator ("**CPO**") or as a commodity trading advisor and therefore, unlike a registered CPO, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund's portfolio; or (b) the aggregate net notional value of the Fund's commodity interest positions does not exceed 100% of the liquidation value of the Fund's portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors.

The delivery of this Memorandum does not, under any circumstances, create any implication that there has been no change in the circumstances affecting the Fund since the date hereof. An amended or updated Memorandum will be provided to reflect any material changes to the information contained herein.

Except as otherwise noted, all monetary amounts set forth herein are expressed in United States ("**U.S.**") dollars.



## DIRECTORY

<b>Registered Office</b>	<b>Highland Multi Strategy Credit Fund, Ltd.</b> c/o Maples Corporate Services Limited PO Box 309, Ugland House Grand Cayman, KY-1109 Cayman Islands
<b>Investment Manager</b>	<b>Highland Capital Management, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Directors</b>	James D. Dondero Mark K. Okada
<b>Administrator</b>	<b>SEI Global Services, Inc.</b> One Freedom Valley Drive Oaks, Pennsylvania 19456
<b>Auditors</b>	<b>PricewaterhouseCoopers LLP</b> P.O. Box 258 Strathvale House, George Town Grand Cayman KY1-1104 Cayman Islands
<b>Legal Counsel</b>	<i>In the United States</i> <b>Akin Gump Strauss Hauer &amp; Feld LLP</b> 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201  <i>In the Cayman Islands</i> <b>Maples and Calder</b> PO Box 309 Ugland House Grand Cayman, KY-1104 Cayman Islands

## INTRODUCTION

Highland Multi Strategy Credit Fund, Ltd. (the “**Fund**”) is a Cayman Islands exempted company offering participating shares of the Fund (“**Shares**”) for the purpose of enabling qualified non-U.S. investors and U.S. tax-exempt investors to participate in the investment program of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “**Partnership**”), on a more tax efficient basis. The Partnership seeks attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “**General Partner**”), serves as the general partner of the Partnership. Highland Capital Management, L.P., a Delaware partnership (the “**Investment Manager**”), serves as the investment manager of the Partnership and has responsibility for the Partnership’s investment program. James D. Dondero ultimately controls the General Partner and the Investment Manager.

The Fund is a limited partner in the Partnership and invests all of its investible assets in, and conducts all of its operations through, the Partnership. Therefore, to be fully informed about an investment in the Fund, an investor must first understand the terms of an investment in the Partnership. Prospective investors are therefore urged to carefully review the current Confidential Private Placement Memorandum of the Partnership, as amended and supplemented from time to time (the “**Partnership Memorandum**”), the Limited Partnership Agreement of the Partnership, as amended and supplemented from time to time (the “**Partnership Agreement**”) and the Investment Management Agreement by and among the Partnership, the General Partner, the Fund and the Investment Manager, as amended and supplemented from time to time (the “**Investment Management Agreement**”). A copy of the Partnership Memorandum is being provided to investors with this Memorandum. Copies of the Partnership Agreement and the Investment Management Agreement will be provided to investors upon request. The Partnership Memorandum, together with the Partnership Agreement and the Investment Management Agreement, describe the material terms of an investment in the Partnership. Aside from the differences described in this Memorandum, an investment in the Fund will have substantially similar terms and risks to an investment in the Partnership, as described in the Partnership Memorandum.

The Fund is seeking subscriptions from non-U.S. investors and U.S. tax-exempt investors that qualify as “accredited investors” and “qualified purchasers” (as defined in the Fund’s subscription materials), generally in minimum amounts of at least \$1,000,000. The Fund generally accepts subscriptions on the first business day of each calendar month.

Pursuant to recent amendments adopted by the Fund, as further explained in this Memorandum and the Partnership Memorandum, all outstanding Shares held as of the effective date of the amendments were, notwithstanding their designation prior to the amendments, re-designated as “Series A Shares.” Additionally, under these amendments, the Fund created three additional series of Shares – “Series B Shares,” “Series C Shares” and “Series D Shares.” The Fund is offering Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum. The terms applicable to the Series A Shares are set forth in a Supplement to this Memorandum.

This Memorandum describes the principal terms that apply to an investment in the Fund in Series B, Series C and Series D Shares and certain other information that relates specifically to the offering of Shares. **This is not an offering of limited partner interests in the Partnership, although an investor should be fully informed about the Partnership in making an investment decision.**

## MANAGEMENT

### Board of Directors

The Fund's board of directors (the "***Board of Directors***") consists of two (2) directors (collectively, the "***Directors***"). The members of the Board of Directors are James D. Dondero and Mark K. Okada. The biographies of the Directors are set forth in the Partnership Memorandum.

The Fund's Board of Directors does not currently consist of any directors that are not affiliated with the Investment Manager, and thus the Fund's management, as well as investment decisions at the Partnership level, are effectively controlled by the Investment Manager or its affiliates.

The Board of Directors has the full authority of a board under Cayman law. The powers of the Board of Directors described in this Memorandum and the Articles are not exhaustive and are not limited to the specific authorities described therein. Thus, subject to applicable law, the Board of Directors may take certain decisions or actions even where those decisions or actions are not expressly granted in the Articles or described in this Memorandum.

It is anticipated that the Board of Directors will meet, in person or by conference telephone, at least once a year to review the investment and administrative affairs of the Fund. The Directors will delegate investment of the Fund's assets to the Investment Manager, and the Directors are not responsible for the day to day conduct of the Fund's trading program. The Directors will also delegate certain day to day administrative and clerical affairs of the Fund to the Administrator or others.

The Directors each serve in a non-executive capacity. Any Director may hold any other office in connection with the Fund (other than the office of the Fund's independent auditors) in conjunction with his office of Director on such terms as to tenure of office and otherwise as the Directors may determine. Any Director may also act in a professional capacity (other than as the Fund's independent auditors) and he or its firm will be entitled to remuneration for such services as if he were not a Director. A Director may contract with the Fund provided that the Director declares his or its interest or gives notice of his or its interest as soon as practicable after the Director obtains such interest.

Each of the Directors has been duly registered, as applicable, under the Cayman Islands Directors Registration and Licensing Law, 2014.

A Director may vote at, or be counted in the quorum of, any meeting of the Board of Directors to consider any contract in which the Director is interested other than as a shareholder, provided that such Director declares such interest prior to the taking of the vote at such meeting.

Independent, third-party Directors, if any, will be entitled to remuneration for their services at such rate not exceeding the customary rate for the provision of services of a director as may be approved by the Fund. The Directors will be reimbursed for all out of pocket costs and expenses properly incurred by them, including in connection with attending meetings of the Directors or any committee of the Directors or any general meeting or any meeting held in connection with the business of the Fund. The Fund will indemnify the Directors for all liabilities, costs or expenses of

whatsoever kind incurred or suffered by them (other than those arising by reason of fraud, willful neglect or willful default on the part of a Director or servant or agent thereof).

### **Administrator**

SEI Investments is a leading global provider of investment processing, investment management and investment operations solutions for institutional and personal wealth management. For more than 40 years, SEI has helped corporations, financial institutions, financial advisors and ultra-high-net-worth families create and manage wealth by providing comprehensive, innovative, investment and investment-business solutions. SEI manages or administers \$601.9 billion in funds and separately managed assets. SEI is a public company and is listed on the NASDAQ exchange under the symbol SEIC. SEI has been retained to perform certain administrative, accounting and investor services for the Fund and the Partnership (in such capacity, the “**Administrator**”). In its capacity as Administrator, it will receive customary fees that will be paid out of the assets of the Fund. The Administrator will also be reimbursed for all reasonable out-of-pocket expenses.

The Fund will enter into an administration agreement (the “**Administration Agreement**”) with the Administrator. The Administrator will be under no duty to take any action on behalf of the Fund except as specifically set forth in the Administration Agreement or as may be specifically agreed to by the Administrator and the Fund in a written amendment thereto.

The Administrator will act as liaison with the Fund’s accountants and auditors and will provide account analyses, fiscal year summaries, and other audit-related schedules with respect to the Fund. The Administrator will take all reasonable action in the performance of its duties under the Administration Agreement to assure that the necessary information is made available to such accountants and auditors for the expression of their opinion, as required by the Fund.

The Administrator will enter into and will maintain in effect with appropriate parties one or more agreements making reasonable provisions for emergency use of electronic data processing equipment to the extent appropriate equipment is available. In the event of equipment failures, the Administrator will, at no additional expense to the Fund, take reasonable steps to minimize service interruptions. The Administrator will have no liability with respect to the loss of data or service interruptions caused by equipment failure, provided such loss or interruption is not caused by the Administrator’s own willful misfeasance, bad faith, gross negligence or reckless disregard of its duties or obligations under the Administration Agreement.

Subject to the terms of the Administration Agreement, the Administrator will be liable to the Fund (or any person or entity claiming through the Fund) for damages only to the extent caused by the Administrator’s own fraud or willful misconduct under the Administration Agreement (“**Standard of Care**”). The Administrator will not be liable for damages (including, without limitation, damages caused by delays, failure, errors, interruption or loss of data) occurring directly or indirectly by reason of circumstances beyond its reasonable control. The Administrator will not be under any duty or obligation to inquire into and will not be liable for the validity or invalidity, authority or lack thereof, or truthfulness or accuracy or lack thereof, of any instruction, direction, notice, instrument or other information which the Administrator reasonably believes to be genuine. The Administrator will not be liable for any damages that are caused by actions or omissions taken by the Administrator in accordance with written instructions by authorized persons of the Fund or advice of counsel. The Administrator will not be liable for any damages arising out of any action or omission to act by any prior service provider of the Fund or for any failure to discover any such error or omission. Neither the

Administrator nor its affiliates will be liable for any consequential, incidental, exemplary, punitive, special or indirect damages, whether or not the likelihood of such damages was known by the Administrator or its affiliates. Both the Fund and the Administrator will have a duty to mitigate damages for which the other party may become responsible.

Absent the Administrator's failure to meet its Standard of Care, the Fund agrees to indemnify, defend and hold harmless the Administrator and its affiliates and their respective directors, trustees, officers, agents and employees from certain claims, suits, actions, damages, losses, liabilities, obligations, costs and reasonable expenses (including attorneys' fees and court costs, travel costs and other reasonable out-of-pocket costs related to dispute resolution) arising directly or indirectly from any actions taken or omitted to be taken by the Administrator in connection with the provision of services to the Fund.

The Partnership will also enter into an administration agreement with the Administrator, under which the terms will be substantially as above.



## SUMMARY OF TERMS

*To understand this investment opportunity, a prospective investor should read both the Partnership Memorandum and the following summary. The information in the Partnership Memorandum is important to a prospective investor's investment decision because: (i) the purpose of the Fund is to invest in the Partnership and therefore the underlying investment opportunity is in the Partnership; (ii) an investment in the Fund will (aside from the differences described below) have substantially similar terms to those applicable to a direct investment in the Partnership; and (iii) many terms relevant to an investment in the Fund, including the information concerning compensation, expenses, distributions, risk factors and conflicts of interest, are set forth in the Partnership Memorandum and not in this Memorandum.*

*The following summary highlights certain differences from the terms that would apply were the investor to hold a limited partner interest in the Partnership directly, and does not purport to provide a summary of the investment terms or risks of an investment in the Partnership, which is provided in the Partnership Memorandum. The summary of differences does not purport to be, and should not be construed as, a complete description of the Fund's Articles. To the extent of any inconsistency between this Memorandum and the Articles, the terms of the Articles control. Moreover, this summary and the summary set forth in the Partnership Memorandum are subject to the detailed provisions of the Partnership Agreement and are qualified in their entirety by the terms of the Partnership Agreement. Capitalized terms used but not defined herein have the meanings ascribed to them in the Partnership Memorandum.*

<b>The Fund</b>	Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company.
<b>The Partnership</b>	Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership. The Fund is a limited partner in the Partnership and invests all of its investible assets in, and conducts all of its investment activities through, the Partnership. As a limited partner of the Partnership, the Fund is subject to all of the terms and conditions of the Partnership applicable to limited partners of the Partnership. The Partnership will issue to the Fund an Interest in the Partnership and maintain capital sub-accounts that correspond to each Sub-Series of Shares (defined below).
<b>General Partner of the Partnership</b>	Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership. The general partner of the General Partner is Highland Multi Strategy Credit GP, LLC, a Delaware limited liability company of which the Investment Manager is currently the sole member.
<b>Investment Manager</b>	Highland Capital Management, L.P., a Delaware limited partnership.
<b>Recent Amendments; Series of Shares</b>	Effective November 1, 2014, the Board of Directors amended the terms of the Fund, whereby all outstanding Shares in the Fund were re-designated as "Series A Shares" and three new series of Shares were created – "Series B Shares," "Series C Shares" and "Series D Shares" (the " <b>Amendments</b> "). The General Partner and limited partners of the Partnership adopted similar amendments.

As of the effective date of the Amendments (the “*Effective Date*”), all existing shareholders will hold Series A Shares, the terms of which are set forth in a supplement to this Memorandum. The Fund is currently offering for subscription Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum.

The Fund may issue additional series (each, a “*Series*”) of Shares over time. Not all Series of Shares will be available for subscription at the same time and the terms among the Series of Shares will vary. New Series of Shares may be established by the Fund without notice to or approval of the shareholders.

Except with respect to management fees, performance-based profit allocations and redemption rights (each as discussed below), the rights and privileges attributable to Series A Shares, Series B Shares, Series C Shares and Series D Shares are identical.

References herein to “Shares” or “shareholders” shall include all Series of Shares and shareholders unless otherwise specified or context so requires.

#### **Eligible Investors**

Participating, redeemable, non-voting shares of the Fund (the “*Shares*”) are being offered to investors that are not U.S. Persons and to selected U.S. investors that are tax-exempt persons who qualify both as “accredited investors” and as “qualified purchasers,” as defined in the Fund’s subscription application materials. The Fund reserves the right to reject any investor for any reason or for no reason in its discretion.

No Shares may be offered to the public in the Cayman Islands (which shall not include an exempted or ordinary non-resident company incorporated in the Cayman Islands). Shares of the Fund may be purchased only by eligible investors who are sophisticated individual or institutional investors. Each subscriber for Shares of the Fund must certify that the beneficial owner of such Shares will not be a “*U.S. Person*” as defined in Annex A attached to this Memorandum; provided, however, that subscriptions for Shares of the Fund may also be accepted from certain qualified U.S. tax-exempt organizations. The Fund reserves the right to reject subscriptions in its sole discretion.

Shares of the Fund will not be registered under the U.S. Securities Act of 1933, as amended, any state “blue sky” laws, or the securities laws of any other jurisdiction. Shares may be offered privately (i) outside the United States of America, its territories or possessions, or areas subject to its jurisdiction (the “*United States*”), or to or for the benefit of an investor that is not a U.S. Person, only in accordance with relevant laws of the jurisdiction where the offer is made, or (ii) within the United States or to a U.S. Person only in a transaction that does not require the registration of the Shares or the Fund under applicable U.S. federal or state securities laws.

More detailed information concerning the applicable suitability criteria is set forth in the Fund's subscription application materials (the "**Subscription Documents**").

The Fund or the Administrator reserves the right to request such information as is necessary to verify the identity and the source of funds of an applicant. To ensure compliance with statutory and other requirements relating to anti-money laundering, the Fund or the Administrator may require verification of identity and/or source of funds from any person submitting completed Subscription Documents. Pending the provision of evidence satisfactory to the Fund or the Administrator as to identity, the evidence of title in respect of Shares may be retained at the absolute discretion of the Fund or the Administrator. If within a reasonable period of time following a request for verification of identity, the Fund or the Administrator has not received evidence satisfactory to it as aforesaid, it may, in its absolute discretion, refuse to allot the Shares applied for in which event subscription monies will be returned without interest to the account from which such monies were originally debited. Subscription monies may be rejected by the Fund or the Administrator if the remitting bank or financial institution is unknown to the Fund or the Administrator.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum and the Partnership Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

## **Subscriptions**

Subscriptions for Shares are accepted on the first Business Day of each calendar month and/or such other days as the Board of Directors may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. Each investor will be required to invest a minimum of US\$1,000,000 in the Fund, although the Fund may accept investments of a lesser amount in its discretion, subject to compliance with the applicable Cayman Islands Mutual Funds Law (2013 Revision) ("**Mutual Funds Law**"). Subscription payments may be made in cash or, with the consent of the Fund, in securities or partly in cash and partly in securities. The Fund reserves the right to reject subscriptions in its sole discretion.

"**Business Day**" means any day other than Saturdays, Sundays or any other day banks located in New York, New York are required or authorized to be closed.

A subscriber admitted to the Fund (a "**shareholder**") receives, in exchange for the initial capital contribution and any subsequent capital

contribution, Shares representing a proportionate share of the net assets of the Fund at that time.

Where a subscription for Shares is accepted, the Shares will be treated as having been issued with effect from the relevant subscription date notwithstanding that the subscriber for those Shares may not be entered in the Fund's register of members until after the relevant subscription date. The subscription monies paid by a subscriber for Shares will accordingly be subject to investment risk in the Fund from the relevant subscription date.

There is no minimum aggregate amount of subscriptions that is required for the initial acceptance of subscriptions, nor has the Fund established any maximum aggregate amount of subscriptions that may be accepted.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56) and other applicable anti-money laundering regulations as further described in the Subscription Documents.

#### **Share Sub-Series**

The Fund may issue Shares as a separate sub-series of the relevant Series on each subscription date (each, a "**Sub-Series**") at \$1,000 per Share. The Fund may issue Shares as a separate Sub-Series for purposes of, among others, accounting for any profits and losses attributable to each individual shareholder and for the purpose of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received at different times. Each separate Sub-Series will be identified and referable to each shareholder and by its date of issue. In general, each Sub-Series will participate in the Fund's profits and losses in the same manner as all other Sub-Series of Shares, except that the Performance Allocation to be charged to each Sub-Series of Shares will be calculated separately on the basis of the performance of the Sub-Series.

The Partnership maintains capital sub-accounts that correspond to each Sub-Series of Shares issued to shareholders of the Fund and each such capital sub-account is treated separately for purposes of determining Management Fees, Performance Allocations and redemption rights and restrictions (each as described in the Partnership Memorandum).

#### **Alternative Investment Vehicles**

The Directors will have the right, in connection with any investment, to direct the capital contributions of some or all of the subscribers to be made through one or more alternative investment vehicles (each an "**Alternative Investment Vehicle**"), and, in the case of an existing investment, transfer all or a portion of such investment to an Alternative Investment Vehicle, if, in the judgment of the Directors, the use of such vehicle or vehicles would allow the Fund to overcome legal or regulatory

constraints, invest in a more tax-efficient manner or would facilitate participation in certain types of investments. Any Alternative Investment Vehicle will be subject to terms and conditions substantially similar to those of the Fund and will be managed by the Investment Manager or an affiliate thereof.

**Affiliated Investors**

Shares held by the Investment Manager or its affiliates (collectively, “*Affiliated Investors*”) may not be assessed the Management Fee or the Performance Allocations that are applicable to other investors in the Fund, but share pro rata in other applicable expenses of the Fund (as more fully described in the Partnership Agreement).

**Management Fee**

Although the Fund will not pay an asset-based fee directly to the Investment Manager, it will, as a limited partner in the Partnership, bear its pro rata share of the Management Fee paid by the Partnership to the Investment Manager in its capacity as investment manager of the Partnership. Accordingly, the Management Fee will be paid at the Partnership level by assessing such fee to the appropriate capital sub-account. The Management Fee is calculated and payable quarterly in advance at an annual rate of (i) 1.5% of the net asset value of each Series B Share, (ii) 1.0% of the net asset value of each Series C Share and (iii) 2.0% of the net asset value of each Series D Share. The Management Fee may be waived or reduced by the Investment Manager in its sole discretion.

**Other Fees and Expenses**

The Fund bears the reasonable, out-of-pocket expenses of the offering of the Shares contemplated hereunder and the recent Amendments, described above, including expenses associated with obtaining any requisite investor consent to such Amendments. To the extent the Directors deem appropriate, these expenses may be capitalized and amortized by the Fund over a 36-month period from the Effective Date, even though such capitalization and amortization may be a divergence from U.S. generally accepted accounting principles (“*GAAP*”). Amortization of such expenses over a 36-month period may, in certain circumstances, result in a qualification of the Fund’s annual audited financial statements. In such instances, the Directors may decide to (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP conforming changes for financial reporting purposes, but amortize expenses for purposes of calculating the Fund’s net asset value. There will be a divergence in the Fund’s fiscal year-end net asset value and in the net asset value reported in the Fund’s financial statements in any year where, pursuant to clause (ii), GAAP conforming changes are made only to the Fund’s financial statements for financial reporting purposes.

If the Fund is terminated within 36 months of the Effective Date, any unamortized expenses will be recognized.



Investment and Operational Expenses. The Fund bears all reasonable costs and expenses directly related to its operations, including its pro rata share of all Partnership expenses, including the Management Fee paid by the Partnership to the Investment Manager. The Fund also bears all reasonable, out-of-pocket costs of the administration of the Fund, including accounting, audit and legal expenses, costs of any litigation or investigation involving the Fund's activities, and costs associated with reporting and providing information to existing and prospective investors. However, the General Partner or the Investment Manager may, in its sole discretion, choose to absorb any such expenses incurred on behalf of the Fund.

The Fund does not have its own separate employees or office. Except as described above and provided for in the Partnership Agreement, the Fund generally does not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment Manager.

#### **Restricted New Issues**

The Partnership may from time to time purchase securities in public offerings made through member firms of the Financial Industry Regulatory Authority, Inc. ("**FINRA**"). FINRA member firms are not permitted to sell certain new issues ("**Restricted New Issues**") to accounts in which certain persons have a significant beneficial interest that are involved in the securities industry or to executive officers or directors of companies that are current, recent or prospective investment banking client of the relevant underwriters ("**Restricted Persons**"). In order to enable the Partnership to participate in Restricted New Issues, the Fund will require each shareholder to provide information to enable the Fund to determine whether the shareholder is a Restricted Person. When the Partnership invests in a Restricted New Issue, the profits and losses associated with the investment will be specially allocated exclusively to those shareholders who are permitted by the FINRA rules to have a beneficial interest therein.

The FINRA rules permit Restricted Persons that are involved in the securities industry to have in the aggregate up to a 10% participation in Restricted New Issues and Restricted Persons affiliated with a particular investment banking client to have up to 25% participation in Restricted New Issues. If the ownership of the Partnership by Restricted Persons exceeds the maximum percentage, the Investment Manager will allocate such excess amount pro rata among the shareholders and the Partners of the Partnership who are not Restricted Persons or on such other basis that the Investment Manager reasonably determines ensures compliance with the FINRA rules.

If a Restricted New Issue in which participation by Restricted Persons has been capped is not promptly sold, the investment may be reallocated among all shareholders and the Partners of the Partnership on a pro rata

basis (including all Restricted Persons) after a secondary market develops at such secondary market price.

**Performance Allocation**

As further described in the Partnership Agreement, the Investment Manager, in its capacity as a special limited partner of the Partnership, is entitled to receive an annual performance-based profit allocation at the end of each year equal to 20% of the Partnership's net profits attributable to the Limited Partners of the Partnership, subject to a "high water mark" limitation.

The Performance Allocation is made at the Partnership level by deducting the Performance Allocation from the capital sub-account relating to each Sub-Series of Shares. The Performance Change (as defined in the Partnership Agreement) of each Sub-Series will not be netted against one another for purposes of determining the applicability of the "high water mark."

**Distributions**

Subject to the redemption privilege described below, all earnings of the Fund are ordinarily retained for investment. Other than distributions made pursuant to a redemption described below, shareholders should not expect the Fund to make any distributions.

**Redemptions Generally**

Redemptions from the Fund are subject to the withdrawal restrictions contained in the Partnership Agreement, whereby the Series A Interests in the Partnership correspond to the Series A Shares of the Fund, Series B Interests in the Partnership correspond to the Series B Shares of the Fund, the Series C Interests in the Partnership correspond to the Series C Shares of the Fund and the Series D Interests in the Partnership correspond to the Series D Shares of the Fund.

**Series Redemption Dates**

Subject to certain redemption restrictions described below, shareholders have the following redemption rights:

Series B Shares: Annual Liquidity. A shareholder is permitted to make complete or partial redemptions of its Series B Shares upon written notice to the Administrator at least 180 days prior to the applicable Series B Redemption Date. The "***Series B Redemption Date***" means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of date of the issuance of the Shares being redeemed; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Redemption Date (i.e., if Shares were issued on November 1, 2014, such Shares would be eligible for redemption on October 31, 2015 and every one year thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series C Shares: Two Year Liquidity. A shareholder is permitted to make complete or partial redemptions of its Series C Shares upon written notice to the Administrator at least 180 days prior to the applicable Series C Redemption Date. The "***Series C Redemption Date***" means: (i) the end

of the day on the last Business Day of the calendar month that immediately precedes the two-year anniversary of the date of issuance of the Shares being redeemed; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Redemption Date (or the last Business Day of that month) (i.e., if Shares were issued on November 1, 2014, such Shares would be eligible for redemption on October 31, 2016 and every two years thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series D Shares: One Year Hard Lock-Up; Quarterly Liquidity. A shareholder is permitted to make complete or partial redemptions of Series D Shares as of the last Business Day of each calendar quarter (each, a “*Series D Redemption Date*”) following the one-year anniversary of the date of issuance of the Shares being redeemed. Notice of any redemption of Series D Shares must be provided in writing to the Administrator at least 90 calendar days prior to the requested Series D Redemption Date.

The Board of Directors may, at any time and in its sole discretion, waive or modify the foregoing redemption and distribution restrictions with respect to any shareholder.

**Settlement of  
Redemption Proceeds**

Redemption proceeds will be paid promptly following receipt by the Fund of the withdrawal proceeds from the Partnership in accordance with the Partnership Agreement.

**Redemption Conditions**

The Fund may refuse to accept a redemption request if it is not accompanied by such additional information as the Fund or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where redemption proceeds are requested to be remitted to an account which is not in the name of the investor, each of the Fund and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the redemption proceeds will be paid. The redemption proceeds will not be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

**Compulsory  
Redemptions**

The Board of Directors reserves the right, in its sole discretion, to compel the redemption of any shareholder’s Shares for any or no reason, in part or in their entirety, on not less than five days’ prior written notice (or immediately if the Board of Directors determines in its sole discretion that such shareholder’s continued participation in the Fund may cause the Fund, the Partnership, the General Partner or the Investment Manager to violate any applicable law). Settlements are made in the same manner as voluntary redemptions.

**Suspension of Valuations,  
Redemption and  
Redemption Payments**

The Board of Directors may suspend the issuance of Shares, the shareholders' redemption privileges, the payment of redemption proceeds and the valuation of the Fund's net assets in the same circumstances as described in the Partnership Memorandum and set forth in the Partnership Agreement with respect to the suspension of valuations or of withdrawal privileges.

Upon the reasonable determination by the Board of Directors that conditions leading to suspension no longer apply, redemption rights for all shareholders shall be promptly reinstated, and any pending redemption requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which redemptions have recommenced, subject to the application of the redemption limitations described herein.

**Soft Wind Down**

It is anticipated that any suspension in the circumstances described above in "Suspension of Valuations, Redemptions and Redemption Payments" (each, a "***Suspension***") would ordinarily be temporary. However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the Board of Directors, in consultation with the Investment Manager, considers it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the Directors may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the Board of Directors that the Fund be managed with the objective of returning the Fund's assets to shareholders in an orderly manner (an "***Orderly Realisation***"). The Board of Directors may, in such circumstances, resolve to effect an Orderly Realisation should they determine that doing so is in the best interests of the shareholders. Such Orderly Realisation shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the shareholders. The Board of Directors shall promptly communicate to shareholders any resolution to proceed with an Orderly Realisation of the Fund. During an Orderly Realisation, the Investment Manager may, in consultation with the Board of Directors, take such steps as are considered appropriate in the best interests of the Fund's shareholders to effect the Orderly Realisation. The Board of Directors, in consultation with the Investment Manager shall establish what they consider to be a reasonable time by which the Orderly Realisation should be effected (the "***Realisation Period***"). Any resolution to undertake an Orderly Realisation and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under the

Companies Law or any other applicable bankruptcy or insolvency regime. The Board of Directors, in consultation with the Investment Manager, may resolve to cease the Orderly Realisation within the Realisation Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. Management Fees shall be payable and Performance Allocations shall be made during an Orderly Realisation on the same basis as described herein.

**Transfers**

Shares may not be transferred without the prior written consent of the Board of Directors, which consent may be withheld in the sole discretion of the Board of Directors. Any transferee or assignee of any investor will be required to execute a subscription agreement in the same form as required to be completed and executed by a subscriber for Shares in the Fund.

**Duty of Care;  
Indemnification**

The Partnership Agreement provides that the General Partner, the Investment Manager and each of their affiliates are not liable to the Partnership and the Limited Partners (including the Fund) for any loss or damage arising by reason of being or having been the General Partner or the Investment Manager or from any acts or omissions in the performance of its services as General Partner or Investment Manager, as applicable, in the absence of willful misconduct, fraud or gross negligence (as construed in accordance with the laws of the state of Delaware) or as otherwise required by law, and contains provisions for the indemnification of the General Partner, the Investment Manager and each of their affiliates by the Partnership (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been the General Partner or the Investment Manager or in connection with the Partnership Agreement or the Partnership's business or affairs to the fullest extent permitted by law. The General Partner is not personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the federal or state income tax laws applicable to the Fund or its investors.

Neither the Board of Directors of the Fund nor the Administrator shall be liable to the Fund or its shareholders for any loss or damage occasioned by any acts or omissions in the performance of its services on behalf of the Fund, except under certain limited circumstances. In addition, the Board of Directors and the Administrator and their respective affiliates will be indemnified by the Fund (but not by the shareholders individually) against any liabilities arising in connection with the performance of their activities on behalf of the Fund to the extent permitted by the Articles.



**Valuations**

The Fund's assets are valued based on the value of the Partnership's assets as set forth in the Partnership Memorandum.

**Reserves**

Appropriate reserves may be accrued and charged against net assets and proportionately against the Shares of the shareholders for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the Board of Directors in its sole discretion deems necessary or appropriate. At the sole discretion of the Board of Directors, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Shares of those investors who are shareholders at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were shareholders at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the Board of Directors determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were shareholders during any such prior period.

**Fiscal Year**

The Fund has a fiscal year ending on December 31 of each calendar year.

**Reports to Partners**

The Fund furnishes to its shareholders as soon as practicable after the end of each taxable year (or as otherwise required by law) annual reports containing financial statements examined by the Fund's independent auditors as well as such tax information as is necessary for each shareholder to complete federal and state income tax or information returns, along with any other tax information required by law. The Fund also furnishes monthly reports reviewing the Fund's performance for such calendar month. The Board of Directors selects the Fund's independent accountants in its sole discretion.

**Dissolution and  
Liquidation**

In the event an Orderly Realization lasts longer than three years, shareholders holding Shares with a combined net asset value equal to at least 75% of the total net asset value of the Fund may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Fund.

Wind down and liquidation of the Fund shall occur as set forth in the Articles.

**Placement Agents**

The Investment Manager may engage third parties to solicit investors and act as placement agents for the Fund. Placement agents may charge a placement fee directly to investors solicited by any such placement agent, but such fees will not affect the subscription amount and will not

be collected by or from the Fund. The placement agent may be reimbursed for its expenses and indemnified by the Fund.

Furthermore, placement agents may be paid a portion of the Management Fee or Performance Allocation attributable to such investors solicited by them, thereby reducing the Management Fee or Performance Allocation received by the Investment Manager. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent must comply with the legal requirements of the jurisdictions within which it offers and sells Shares.

#### **Certain Tax Considerations**

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or the shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund.

The Fund has applied for and received an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from July 10, 2012 (being the date of the undertaking), no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

The Investment Manager believes that the Fund will be treated as a non-U.S. corporation for U.S. federal income tax purposes. The Fund does not intend to be subject to U.S. federal income tax on its capital gains from securities trading. Dividends and certain interest received by the Fund may be subject to withholding at the source. See "*Tax Considerations*."

#### **ERISA**

The Fund intends to limit investment in the Fund by "benefit plan investors" so that the assets of the Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"). See "*ERISA Considerations*."

**Voting**

Shares in the Fund are participating non-voting shares; provided that in the event the Partnership seeks the approval, vote or consent of the Fund with respect to any matter to which it would be entitled to vote as a Limited Partner of the Partnership under the Partnership Agreement, the Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall cause the Fund to vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

**Variation of Terms**

The Board of Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a shareholder to waive or modify the terms applicable to such shareholder's subscription for Shares (including those relating to Management Fees, the Performance Allocation, transparency and redemptions) without obtaining the consent of any other shareholder; provided that such waiver or modification does not amount to a variation of the rights attaching to the Shares of such other shareholders. The Fund generally grants waivers of the Management Fees and Performance Allocation to the Affiliated Investors.

## RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

*Investment in the Fund, and in turn, the Partnership, is speculative and involves certain risks. There can be no assurance that the Partnership's investment objective will be achieved, or that an investor will receive a return of its Capital. Certain of these risks are summarized below. The Fund may not be suitable for all investors, and is intended for sophisticated investors who can accept the risks associated with its investments. Investors will not have recourse except with respect to the assets of the Fund. Prospective investors should consider, among others, the risk factors described in this section.*

*This discussion must be read in conjunction with the risk factors and potential conflicts of interest of the Partnership set forth in the Partnership Memorandum. The following is not meant to be an exhaustive listing of all potential risks associated with investing in the Fund. Investment-specific risks factors associated with the Partnership's investment strategy should be read in their entirety.*

*Illiquidity of Shares.* Shares are not transferable without the approval of the Board of Directors, and there will be no secondary market for Shares. Consequently, investors may not be able to dispose of their Shares prior to the liquidation of the Fund or as described in this Memorandum and the Partnership Memorandum, and may receive securities rather than cash in exchange for their Shares.

*Side Letters.* The Board of Directors may from time to time, with the consent of the Partnership, enter into letter agreements or other similar agreements (collectively, "**Side Letters**") with one or more investors which provide such investor(s) with additional and/or different rights than such investor(s) have pursuant to this Memorandum or the Partnership Memorandum. As a result of such Side Letters, certain investors may receive additional benefits (including, but not limited to, reduced fee/allocation obligations and/or expanded informational rights) which other investors will not receive. The Fund is not be required to notify any or all of the other investors of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund be required to offer such additional and/or different rights and/or terms to any or all of the other investors. The Fund may enter into such Side Letters with any party as the Board of Directors may determine in its discretion at any time. The other investors will have no recourse against the Fund, the Board of Directors and/or any of their affiliates in the event that certain investors receive additional and/or different rights and/or terms as a result of such Side Letters.

*Authority.* Investors in the Fund have no right or power to take part in the management of the Fund. The Board of Directors control the Fund and the General Partner controls the Partnership. The Investment Manager is responsible for all investment decisions of the Partnership.

*Absence of Regulatory Oversight.* The Fund is not registered under the Cayman Islands Mutual Funds Law (as amended). Neither the Cayman Islands Monetary Authority nor any other governmental authority in the Cayman Islands has commented on or approved the terms or merits of this Memorandum. There is no financial obligation or compensation scheme imposed on or by the government of the Cayman Islands in favor of or available to the investors in the Fund.

*Investment Judgment; Market Risk.* The profitability of a significant portion of the Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Fund, there is always some, and occasionally a significant, degree of market risk.

*Performance Allocation.* The Performance Allocation made to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

*Redemption Restrictions.* There are severe restrictions on redemptions from the Fund (which may be settled in securities rather than cash) and on transfers of Shares. Because of the restrictions on redemptions, an investment in the Fund is a relatively illiquid investment and involves a high degree of risk. There is no independent market for the purchase or sale of Shares and none is expected to develop. Shareholders must represent that they are purchasing Shares for investment. A subscription for Shares should be considered only by persons financially able to maintain their investment and who can accept a loss of all of their investment.

*No Distributions.* Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current distributions of income. Moreover, an investor is required to report and pay taxes on its allocable share of income from the Fund, even though no cash is distributed by the Fund.

*In-Kind Distributions.* The Partnership Agreement authorizes the General Partner to make distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Diversification.* Since the Partnership's portfolio will not necessarily be widely diversified, the investment portfolio of the Partnership (and thus the Fund) may be subject to more rapid changes in value than would be the case if the Partnership were required to maintain a wide diversification among companies, securities and types of securities.

*Valuations.* From time to time, certain situations affecting the valuation of the Partnership's (and thus the Fund's) investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Partnership) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or redemption transactions or Management Fees or Performance Allocations based on subsequent valuation data.

*Contagion.* The Fund has the power to issue Shares in different series. The Articles provide for the manner in which the liabilities are to be attributed across the various series (liabilities are to be attributed to the specific series in respect of which the liability was incurred). However, the Fund is a single legal entity and there is no limited recourse protection for any series. Accordingly, all of the assets of the Fund will be available to meet all of its liabilities regardless of the series to which such assets or liabilities are attributable. In practice, cross-series liability is only expected to arise where liabilities referable to one series are in excess of the assets referable to such series and it is unable to meet all liabilities attributed to it. In such a case, the assets of the Fund attributable to other series may be applied to cover such liability excess and the value of the contributing classes or series will be reduced as a result.

*Handling of mail.* Mail addressed to the Fund and received at its registered office will be forwarded unopened to the Investment Manager to be dealt with. None of the Fund, its Directors,



officers, advisors or service providers (including the organization which provides registered office services in the Cayman Islands) will bear any responsibility for any delay howsoever caused in mail reaching the Investment Manager. In particular the Directors will only receive, open or deal directly with mail addressed to them personally (as opposed to mail which is addressed to just the Fund).

*Recent Developments in the Financial Services Industry.* Recent developments in the U.S. financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty for the financial services industry. In July of 2010, the Dodd-Frank Financial Reform Act was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. The implications of the passage of the Dodd-Frank Financial Reform Act for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Fund's business, operations and performance.

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

## **Tax Related Risks**

*Uncertainty and Complexity of Tax Treatment.* The tax aspects of an investment in the Fund are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Tax Considerations*" and "*ERISA Considerations*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares and to consult their own independent tax advisors.

*Risk of Adverse Determination.* There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the Internal Revenue Service (the "**Service**") or other applicable taxing authority, or significantly modified by new legislation, changes in a taxing authority's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the U.S. federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the Investment Manager with respect to the U.S. federal income tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund.

*Tax Considerations Taken into Account.* The Fund will attempt to minimize the tax burden of the Fund over the long-term. However, the Investment Manager will not overlook short-term trading opportunities. Therefore, shareholders should not expect that the Fund will make tax-efficiency a

priority. However, the Investment Manager may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

*Tax-Exempt Entities.* Certain prospective investors that are tax-exempt for U.S. income tax purposes may be subject to U.S. federal and state laws, rules and regulations that regulate their participation in the Fund, or their engaging directly or indirectly through an investment in the Fund, in certain investment strategies that the Partnership may utilize from time-to-time (e.g., short-sales of securities and the use of leverage, the purchase and sale of options and limited diversification). While the Fund believes its investment program is generally appropriate for U.S. tax-exempt investors for which an investment in the Fund would otherwise be suitable, each type of tax-exempt organization may be subject to different laws, rules and regulations, and prospective investors should consult with their own advisers as to the advisability and tax consequences of an investment in the Fund. Investments in the Fund by entities subject to ERISA, and other tax-exempt entities, require special consideration. Trustees or administrators of such entities are urged to review carefully the matters discussed in this Memorandum.

*Non-U.S. Taxation.* With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

*Tax Changes.* Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Internal Revenue Code of 1986, as amended (the "**Code**"), may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or its shareholders. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

***The foregoing is not intended to be an exhaustive analysis or listing of the tax risks associated with an investment in the Fund. Many of the relevant tax considerations will vary depending on a prospective shareholder's individual circumstances. The tax aspects associated with such an investment are complex and complicated and are subject to a variety of interpretations. Prospective investors are strongly urged to review the discussions below under "Tax Considerations" and "ERISA Considerations" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares, and to seek and rely upon the advice of their own tax advisor who is qualified to discuss the foregoing and other possible tax risks.***

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

## Potential Conflicts of Interest

*No Independent Directors.* The Fund's Board of Directors does not currently consist of any directors that are not affiliated with the Investment Manager, and thus the Fund's management, as well as the investment decisions at the Partnership level, are effectively controlled by the Investment Manager or its affiliates. However, the Fund may establish an Advisory Committee with respect to matters in which it seeks to resolve certain conflicts of interest that may arise. See "*Management—Advisory Committee*" in the Partnership Memorandum.

*No Separate Counsel.* Akin Gump Strauss Hauer & Feld LLP ("***Akin Gump***") serves as counsel to the Fund, the Partnership, the Investment Manager, the General Partner and certain of their affiliates (the "***Clients***") in connection with the operation of the Fund and certain other Clients, the offering of Shares as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any shareholders nor does it purport to represent their interests. No independent counsel has been retained to represent the shareholders. In assisting in the preparation of the Partnership Memorandum and this Memorandum (as well as any supplements thereto), Akin Gump has relied on information provided by the Fund, the Partnership, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the biographical data of key investment personnel, summaries of market conditions, the planned investment strategy of the Fund and the performance of the Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, acts as Cayman Islands legal counsel to the Fund. In connection with the Fund's offering of Shares and subsequent advice to the Fund, Maples and Calder will not be representing shareholders. No independent legal counsel has been retained to represent the shareholders. Maples and Calder's representation of the Fund is limited to specific matters as to which it has been consulted by the Fund. There may exist other matters that could have a bearing on the Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the Investment Manager and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Fund, there are times when the interests of shareholders may differ from those of the Fund. Maples and Calder does not represent the shareholders' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the Fund and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Fund.

***The Partnership Memorandum contains further disclosures concerning potential conflicts of interests. Such disclosures are incorporated herein by reference and should be read in their entirety prior to making a decision to invest in the Fund.***

***In view of the foregoing considerations, an investment in Shares is only suitable for investors who are capable of bearing the relevant risks and who understand the potential conflicts of interest.***

## SHARES OF THE FUND

### The Fund's Share Capital

The Fund has an authorized share capital of U.S.\$50,000 divided into 100 management shares ("**Management Shares**") of a par value of U.S.\$1.00 each and 4,990,000 participating non-voting shares (the "**Shares**") of a par value of U.S.\$0.01. The Directors may by resolution divide the Shares into separate series (each, a "**Series**") which may be subject to different rights, restrictions, preferences, privileges and payment obligations as between the different Series and further into separate sub-series (each, a "**Sub-Series**") within such Series (for example, a Sub-Series of Shares which will participate in Restricted New Issues and a Sub-Series of Shares which will not participate in such Restricted New Issues). The different Series and Sub-Series thereof shall be established and designated, and the variations in the relative rights and preferences as between the different Series and Sub-Series thereof shall be fixed and determined by the Board of Directors. Sub-Series of Shares are issued for the purposes, among others, of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately to reflect different returns achieved as a result of subscriptions received at different times.

The Fund previously issued Series A Shares and currently offers Series B Shares, Series C Shares and Series D Shares, all of which generally have identical rights and privileges except for purposes of calculating Management Fees and redemption rights. The Fund is offering Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum. Certain terms that specifically apply to Series A Shares are set forth in a Supplement to this Memorandum.

Each separate Sub-Series of Shares is identified by the investor to whom it was issued and its date of issue. Shares are issued to shareholders in Sub-Series at \$1,000 per Share. Immediately following the close of any fiscal year in which a Performance Allocation is charged at the Partnership level with respect to a Sub-Series of Shares of a Series, each such Sub-Series of Shares may be compulsorily redeemed and the proceeds immediately applied to the subscription for an earlier Sub-Series of Shares of such Series; provided that such earlier Sub-Series of Shares has also been assessed as having a Performance Allocation payable at the Partnership level.

The Management Shares will carry all the voting rights but will have no right to participate in the assets of the Fund (other than to a return of the par value on a winding up). The Management Shares will be held by the Investment Manager or an affiliate, and will be voted in accordance with the instructions of the Investment Manager.

The Articles provide that, subject to the Companies Law (2013 Revision) of the Cayman Islands and the other provisions of the Articles, all or any of the class rights or other terms of offer, whether set out in this Memorandum, the Subscription Documents or otherwise (including any representations, warranties or other disclosure relating to the offer or holding of Shares) (collectively referred to as "**Share Rights**"), for the time being applicable to any class or Series of Shares in issue (unless otherwise provided by the terms of issue of those Shares) may (whether or not the Fund is being wound up) be varied without the consent of the holders of the issued Shares of that class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation shall be made only with the prior consent in writing of the holders of not less than two-thirds by net asset value of such Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any



such variation might not have a material adverse effect, to obtain consent from the holders of such Shares. Each subscriber for Shares will be required to agree that the terms of offer set out in the Subscription Documents and the rights attaching to the Shares can be varied in accordance with the provisions of the Articles.

The Articles further provide that, in relation to any class or Series consent required pursuant to the “Variation of Share Rights” Article, the Directors in their discretion may invoke the following procedure (the “**Negative Consent Procedure**”). The Directors shall provide written notice in respect of the proposed variation (the “**Proposal**”) to the shareholders of the affected class or Series and shall specify a deadline (the “**Redemption Request Date**”), which shall be no earlier than 30 days after the date of giving such notice, by which date such shareholders may submit a written request for redemption of some or all of their Shares of the affected class and/or Series on the Redemption Date (the “**Specified Redemption Date**”) specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the “**Effective Date**”) shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the “**Affected Shares**”) shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the “**Negative Consent Shares**”). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under the “Variation of Share Rights” Article with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favor of the Proposal on the Effective Date.

The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares, be deemed to be materially adversely varied or abrogated by, inter alia, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them, the redemption or purchase of any Shares or by the passing of any Directors’ resolution to change or vary any investment objective, investment technique and strategy and/or investment policy in relation to the Shares or any modification of the fees payable to any service provider to the Fund.

In general, each Share will participate in the Fund’s profits and losses attributable to the relevant class in the same manner, except that the Performance Allocation to be charged (at the Partnership level) to Shares of a Sub-Series held by each shareholder will be calculated separately on the basis of the performance of such Shares of a Sub-Series. The Performance Allocation is calculated and charged at the Partnership level through the use of separate capital sub-accounts within the Fund’s capital account in the Partnership that correspond to the Shares of a Sub-Series of each shareholder in the Fund. Subject to the foregoing, each of the Shares will participate ratably with all other outstanding Shares in the Fund’s assets and earnings and will have the redemption rights discussed above.

The Directors may impose such restrictions as they think necessary for the purpose of ensuring that no Shares in the Fund are held by (i) any person in breach of the laws or requirements of any country or governmental authority or (ii) any person or persons in circumstances which, in the opinion of the Directors, might result in the Fund incurring any liability of taxation or suffering any other pecuniary disadvantage which the Fund might not otherwise have incurred or suffered. A person who becomes aware that he or she is holding or owning Shares in breach of any restriction mentioned in the Articles shall promptly either deliver to the Fund a written request for redemption of his or her Shares or deliver to the Fund a written request to transfer the same to a person who would not thereby be a non-qualified person.



## **Management Shares**

General meetings of the holders of Management Shares may be held to vote on various matters including to elect the Directors, to select the Fund's auditors and to attend to such other business as may properly be placed before the meeting. At any such general meeting, the favorable vote of a majority of the Management Shares present generally is sufficient for the approval of any action, unless such action is a matter requiring a special resolution, in which case two-thirds of the Management Shares shall be required, in each case as further detailed in the Articles.

## **Registration of Management Shares and Shares and Share Certificates**

Management Shares and Shares of the Fund are issued only in registered form. A current register of the names and addresses of the Fund's shareholders and their shareholdings is maintained at the office of the Administrator. No share certificates have been or will be issued.

## **Other Rights and Liabilities**

Under the terms of the Articles, the liability of the shareholders of the Fund is limited, and shareholders will not be liable for any debt, obligation or default of the Fund in excess of the amounts unpaid on their Shares.

The Fund and the Investment Manager may agree with certain investors to a fee structure, redemption rights or other terms that differ from the fee structure, redemption rights and other terms that are set forth in this Memorandum. Such different rights may, subject to applicable law, be effected by issuance of a separate Series of Shares or any other permissible means. Such rights may not be offered to all investors.

## **Calculation of Fund Net Asset Value**

The Directors have delegated to the Administrator the calculation of the net asset value of the Fund and the net asset value per Share of each Series and, if applicable, Sub-Series, subject to the overall supervision and direction of the Investment Manager and the Board of Directors. Net asset valuations of the Fund and each Series of Shares will be calculated as of the close of business on the last day of each fiscal period and any other date selected by the Board of Directors, in consultation with the Investment Manager, no less than quarterly, which shall, to avoid doubt, include each Redemption Date (each, a "**Valuation Date**").

The Fund's assets are valued based on the value of the Partnership's assets. The net asset value of the Fund is determined by taking the amount of all cash and credit balances plus the market value of all securities, commodities and other assets comprising the Fund's assets (including any interest and dividends receivable, but excluding any subscription amounts committed to the Fund from time to time to the extent such amounts are not held by or on behalf of the Fund), as calculated by the Administrator, minus all debit balances and other liabilities and obligations of the Fund. Net asset value in respect of any Series or Sub-Series of Shares is calculated by dividing the value of the account relating to that Series or Sub-Series of Shares by the number of Shares of that Series in issue. For the sole purpose of determining the number of Shares of a Series in issue, Shares of that Series which are to be redeemed on the relevant Valuation Date shall be deemed to be in issue until and including the close of business on the applicable Valuation Date. The principal amounts of the investments, cash balances and other assets of the Fund, the value of which is expressed in a currency other than that of the United States,

shall be valued after taking into account the market rate or rates of exchange in force on the Valuation Date in question.

## **TAX CONSIDERATIONS**

### **General**

The following is a general discussion of certain of the anticipated U.S. federal and Cayman Islands income tax considerations applicable to the Fund's activities and those relevant to non-U.S. persons (as defined below) and U.S. tax-exempt entities arising from the purchase, ownership and disposition of Shares. Prospective investors should consult their own tax advisors to determine the application and effect of tax laws with respect to their own particular circumstances. This discussion is based on laws and regulations currently in effect, which may change or be subject to differing interpretations (possibly on a retroactive basis). The Fund does not intend to seek a ruling from the Service, or any similar state or local authority, with respect to any of the tax issues affecting the Fund.

In view of the number of different jurisdictions where local laws may apply to shareholders, the discussion below does not address the local tax consequences to prospective investors of the purchase, ownership and disposition of Shares. Prospective investors are urged to consult their own tax advisors in determining the possible tax, exchange control or other consequences to them under the laws of the jurisdictions of which they are citizens, residents or domiciliaries or in which they conduct business.

The summary assumes that no U.S. taxable investors will invest in the Fund and, therefore, does not address the U.S. tax consequences to such investors. Potential U.S. taxable investors should be aware that the Fund does not intend to provide information to any U.S. Person for purposes of such person qualifying to make an election to treat the Fund as a "qualifying electing fund" for U.S. federal income tax purposes. Accordingly, potential U.S. shareholders are urged to consult their tax advisors in this regard.

### **United States Taxation Matters**

The Fund will be treated as a corporation for U.S. federal income tax purposes. For U.S. federal income tax purposes, the Partnership is expected to be treated as a partnership. The Fund and the Partnership will make any necessary entity classification elections for U.S. tax purposes consistent with such respective treatment. Because the Fund is organized under the laws of the Cayman Islands, it will be considered a non-U.S. person for purposes of U.S. tax laws. As such, the U.S. federal income tax treatment of the Fund will vary depending on whether the Fund derives income or gains that are effectively connected with the conduct of a trade or business in the United States. The Fund intends to structure its operations (including those conducted through the Partnership) in order to minimize to the extent consistent with its investment strategy the possibility that the Fund will be treated as being engaged in a U.S. trade or business for U.S. federal income tax purposes, although there can be no certainty that the Fund will be successful minimizing such a possibility. It is also intended that the Fund's affairs will be conducted such that no income realized by the Fund will be effectively connected with the conduct of a U.S. trade or business or otherwise subject to regular U.S. federal income taxation on a net basis.

Pursuant to a safe harbor in the Code, trading in securities or commodities on an organized commodities exchange for the Fund's own account (including through the Partnership) is not considered a U.S. trade or business. It is not certain whether this safe harbor would apply to the trading of physical commodities. Although no assurances can be given that the Service will not successfully assert an

alternative position, the Fund intends to take the position that the Partnership's trading of physical commodities is within the prescribed safe harbor and does not constitute a trade or business and as such the Fund anticipates generally that its income will not be subject to U.S. corporate income tax, except as described below. However, the Fund will be subject to a 30% U.S. withholding tax on its allocable share of certain types of the Partnership's non-effectively connected income. As described below, the types of income (to the extent not constituting effectively connected income) on which a U.S. withholding tax will be imposed generally consist of dividends, interest and certain types of investment income, but not capital gains derived from the sale of stock or other capital assets (unless such capital gains are derived from the sale of stock of a "United States Real Property Holding Company" within the meaning of Section 897 of the Code and certain other interests in real property).

In general, a non-U.S. partner, such as the Fund, that is a partner of a partnership, such as the Partnership, is subject to U.S. federal income taxation on a net basis on its allocable share of the partnership's "effectively connected income." The Fund's allocable share of the Partnership's income will constitute "effectively connected income," and thus will be subject to U.S. federal income taxation, to the extent such income is derived by the Partnership from a trade or business carried on in the United States by the Partnership. Although there can be no assurances, the Partnership does not itself expect to engage directly in activities that would constitute a U.S. trade or business.

If the Fund were treated as being engaged in a U.S. trade or business as a result of activities conducted by the Partnership, then all or a portion of the Fund's allocable share of the Partnership's income would be treated as effectively connected income subject to U.S. federal income tax on a net basis at corporate tax rates. In such a case, the Fund would be required to file a U.S. federal income tax return to report its share of such income and pay U.S. federal income tax at regular U.S. rates on this income. In addition, the Partnership would be required (and would be legally liable) to withhold and pay over to the Service on behalf of the Fund an amount equal to 35% percent of the Fund's share of the Partnership's effectively connected income. Any amount so withheld would be creditable against the Fund's ultimate U.S. federal income tax liability, and the Fund would be entitled to a refund to the extent that the amount withheld exceeded the Fund's U.S. federal income tax liability for the taxable year. Furthermore, in such event, the Fund's allocable share of any effectively connected income of the Partnership would also be subject to a 30% U.S. branch profits tax, and possibly could be subject to state and/or local taxation in the United States. Such taxation of the Fund's activities could have a material adverse effect on the Fund's returns. Prospective investors are advised to consult their tax advisors regarding the risk of the Fund being treated as engaged in a trade or business in the United States.

Because the Fund is organized under the laws of the Cayman Islands, it is considered a non-U.S. person for purposes of the U.S. tax laws. As a result, dividends received by the Fund through the Partnership from U.S. sources will be subjected to U.S. withholding tax at a 30% rate. U.S. source interest income received by the Fund through the Partnership generally will be exempt from U.S. federal income and withholding tax under the exemption for "portfolio interest" or under another statutory exemption. Interest on corporate obligations will not qualify as "portfolio interest" to a non-U.S. person that owns (directly and under certain constructive ownership rules) 10% or more of the total combined voting power of the corporation paying the interest, or, with respect to certain obligations issued after April 7, 1993, if and to the extent the interest is determined by reference to certain economic attributes of the debtor (or a person related thereto) or the underlying obligations are not in "registered form" for U.S. tax purposes. In addition, interest on U.S. bank deposits, certificates of deposit and certain obligations with maturities of 183 days or less (from original issuance) will not be subject to

withholding tax. Interest (including original issue discount) derived by the Fund or the Partnership from U.S. sources not qualifying as “portfolio interest” or not otherwise exempt under U.S. law will be subject to U.S. withholding tax at a rate of 30%. In addition, based on recent legislation, income from certain swaps directly or indirectly over certain stocks (e.g., U.S. stocks) are subject to U.S. withholding tax.

### **Taxation of Non-U.S. shareholders**

For U.S. federal income tax purposes, a shareholder of the Fund who is a non-U.S. person will not be subject to U.S. federal income taxation on amounts paid by the Fund in respect of the Shares or gains recognized on the sale, exchange or redemption of Shares, provided that such income and gains are not considered to be effectively connected with the conduct of a trade or business by the shareholder in the United States. In limited circumstances, an individual shareholder who is present in the United States for 183 days or more during a taxable year may be subject to U.S. income tax at a flat rate of 30% on gains realized on a disposition of Shares in such year. Individual shareholders who at the time of their death are not citizens, former citizens or residents of the United States should not be subject, by reason of the ownership of Shares, to any U.S. federal gift or estate taxes.

For these purposes the term “*non-U.S. person*” means any person that is not a U.S. Person for U.S. federal income tax purposes. A “*U.S. Person*” means a citizen or resident of the United States, a partnership or corporation created or organized in the United States or under the laws of the United States or any state (other than a partnership that is not treated as a U.S. Person under any applicable Treasury Regulations), an estate whose income is includable in gross income for federal income tax purposes regardless of its source or a trust if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have the authority to control all substantial decisions of the trust. In addition, to the extent provided in Treasury Regulations, certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, which elect to continue to be treated as U.S. Persons will also be U.S. Persons for these purposes.

Special rules may apply in the case of non-U.S. persons that (i) conduct a trade or business in the United States or that have an office or fixed place of business in the United States, (ii) have a tax home in the United States, (iii) are former citizens or long-term residents of the United States or (iv) are controlled foreign corporations, passive foreign investment companies, foreign insurance companies that hold Shares in connection with their U.S. business or corporations which accumulate earnings to avoid U.S. federal income tax. Such persons are urged to consult their U.S. tax advisors before investing in the Fund.

In the case of Shares held in the United States by a custodian or nominee for a non-U.S. person, U.S. “backup” withholding taxes may apply to distributions in respect of Shares held by such shareholder unless such shareholder properly certifies as to its non-U.S. status or otherwise establishes an exemption from “backup” withholding. Back-up withholding is not an additional tax. Rather, the U.S. federal income tax liability of non-U.S. persons subject to back-up withholding will be reduced by the amount of tax withheld. If back-up withholding results in an overpayment of U.S. federal income taxes, a refund may be obtained, provided the required documents are filed with the Service.

### **Taxation of U.S. Tax-Exempt shareholders**

In general, U.S. tax-exempt shareholders should not be subject to the tax on “unrelated business taxable income” (“*UBTI*”), as defined in Code section 512, in respect of income and gains from the



Shares. In general, UBTI is the excess of gross income from any unrelated trade or business conducted by a U.S. tax-exempt entity over the deductions attributable to such trade or business, with certain modifications. These modifications provide that UBTI generally does not include interest, dividends or gains from the sale of securities not held as either inventory or primarily for sale to customers in the ordinary course of business, except to the extent that any such item of income is deemed to constitute “unrelated debt-financed income” (“**UDFI**”) within the meaning of Code section 514 and the Treasury Regulations. Income that a U.S. tax-exempt shareholder derives from an investment in Shares should not give rise to UBTI under Code section 511, except to the extent that such entity’s acquisition of Shares is financed with acquisition indebtedness within the meaning of Code section 514. In addition to UBTI that may arise when a tax-exempt investor uses leverage to finance the acquisition of Shares, the United States Congress from time to time has considered legislation that could result in a tax-exempt investor realizing UBTI in respect of an investment in a foreign investment company that leverages its investments.

The Fund is expected to constitute a “passive foreign investment company” (a “**PFIC**”) for U.S. federal income tax purposes. Under the Treasury Regulations, a U.S. tax-exempt shareholder is not considered to be a shareholder in a PFIC, and thus will not be subject to the PFIC tax rules, except to the extent that a “dividend” from the PFIC would be taxable under subchapter F of the Code, for example, as UDFI. Hence, under the Treasury Regulations, a U.S. tax-exempt shareholder would be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realized on the sale of the shares of, a PFIC only under limited circumstances. Moreover, different rules may apply to certain types of tax-exempt entities, such as charitable remainder trusts. Accordingly, potential U.S. tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of an investment in the Fund.

**Prospective U.S. tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of the Shares.**

### **Information Reporting Requirements and FATCA**

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement (“**IGA**”) and related statutes, regulations, rules and other guidance thereunder, “**FATCA**”) impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution (“**FFI**”), unless such FFI enters into an agreement with the Service, and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources since July 1, 2014, and will apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends after December 31, 2016.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the “**Cayman IGA**”), which came into force on April 14, 2014, and has issued the Tax Information Authority

(International Tax Compliance) (United States of America) Regulations 2014, as updated from time to time, and draft guidance notes thereunder. Additional guidance is forthcoming. In addition, the Cayman Islands have signed a similar inter-governmental agreement with the United Kingdom (the “**UK IGA**”). The UK IGA imposes similar requirements to the Cayman IGA, so that the Fund will be required to identify accounts held directly or indirectly by “Specified United Kingdom Persons” and report information on such Specified United Kingdom Persons to the Cayman Islands authorities, which will exchange such information annually with HM Revenue & Customs (“**HMRC**”), the United Kingdom tax authority. It is anticipated that further inter-governmental agreements (“**future IGAs**”) similar to the Cayman IGA and the UK IGA may be entered into with other third countries by the Cayman Islands Government to introduce similar regimes for reporting to such third countries fiscal authorities (“**foreign fiscal authorities**”).

The Fund is likely to be considered an FFI for FATCA purposes. In order to avoid U.S. withholding tax under FATCA on amounts paid to the Fund, the Fund is generally required to register with the Service and to comply with the Cayman IGA and any Cayman Islands legislation or guidance implementing the Cayman IGA. The Fund intends to register with the Service and, therefore, generally does not expect to become subject to U.S. withholding under FATCA. The Fund also expects that it will be required to identify and report on certain direct and indirect U.S. owners or investors in order to comply with the Cayman IGA in the future. An investor will be required to provide to the Fund information which identifies its direct and indirect ownership. Any such information provided to the Fund will ultimately be shared with the Cayman Islands government and transmitted to the Service and, potentially, certain other authorities and withholding agents, as applicable.

Further, it is possible that a lower-tier non-U.S. entity in which the Partnership invests also may be considered an FFI. The Fund intends to assist lower-tier non-U.S. entities in which the Partnership invests in complying with FATCA, but the Fund can give no assurance that it will be able to provide such assistance or that such an entity will be able to avoid the imposition of this withholding tax on it.

By investing (or continuing to invest) in the Fund (and indirectly investing in the Partnership), investors will be deemed to have acknowledged, and to have given their consent to, the following:

- (i) the Fund (or its agent) may be required to disclose to the Cayman Islands authorities and withholding agents certain information (which could otherwise be deemed to be confidential) in relation to the investor or its direct or indirect owners, including the investor’s name, address, tax identification number (if any), social security number (if any) and certain additional information or documentation relating to the investor’s investment or identity, and the investor may be required to provide any such information or documentation;
- (ii) the Cayman Islands authorities may be required to automatically exchange information with, among other authorities, the Service, and to provide additional information to such authorities should they have further inquiries, and the Fund (or its agent) may be required to disclose certain information (including information that could otherwise be deemed to be confidential) when registering with such authorities and in response to a request by any such authority for further information;
- (iii) in the event an investor’s failure to comply with any FATCA related reporting requirements gives rise to any withholding tax, the Fund reserves the right to ensure that any such withholding tax and any related cost, interest, penalties and other losses or

liabilities suffered by the Fund, the Partnership, the General Partner, the Investment Manager, the Administrator or any other investor, or any agent, delegate, employee, director, officer or affiliate of any of the foregoing persons, arising from such investor's failure to provide information to the Fund, is economically borne by such investor;

- (iv) in the event an investor does not provide the information and/or documentation necessary for the Fund's (or the Partnership's) satisfaction of its FATCA related reporting requirements, whether or not that actually leads to compliance failures by the Fund, or a risk of the Fund (or the Partnership) or its investors being subject to withholding tax under the relevant FATCA regime, the Fund reserves the right to take any action and/or pursue all remedies at its disposal to mitigate the consequences of the investor's failure to comply with the requirements described above, including compulsory redemption of such investor; and
- (v) no investor affected by any such action or remedy shall have any claim against the Fund, the Partnership, the General Partner, the Investment Manager, the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

***Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests of the Fund.***

#### **Investor Tax Filings and Record Retention**

The United States Treasury Department has adopted regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, the regulations require investors in specified transactions (including certain shareholders in foreign corporations and partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be imposed (in addition to penalties that generally may be applicable as a result of a failure to comply with applicable Treasury regulations) for failure to comply with these tax filing and record retention rules.

The regulations are broad in scope and it is conceivable that the Fund or the Partnership may enter into transactions that will subject the Fund and certain investors in the Fund to the special tax filing and record retention rules. The Fund and the Investment Manager intend to use reasonable efforts to obtain and provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Fund or the Partnership.

#### **Transfer Reporting Requirements**

A U.S. Person (including in certain circumstances a U.S. tax-exempt entity) that transfers property (including cash) to the Fund in exchange for Shares will be required to file a Form 926 or a similar form with the Service. In the event a U.S. shareholder fails to file any required form, such holder could be subject to a penalty of up to 10% of the value of the property transferred, subject to a \$100,000 limit so long as the failure was not due to intentional disregard.

## **Cayman Islands Taxation**

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or its shareholders. The Cayman Islands are not party to any double taxation treaties.

The Fund has applied for and expects to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the Shares, debentures or other obligations of the Fund or (ii) by way of the withholding, in whole or in part, of a payment of dividend or other distribution of income or capital by the Fund to its shareholders or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

## **European Union Savings Directive**

Dividends and other distributions of income made by the Administrator on behalf of the Fund, together with payment of the proceeds of sale and/or redemption of Shares (“**Payments**”) are not subject to any reporting or withholding requirements that may arise as a result of the applicable legislation which implements the EU Council Directive 2003/48/EC of June 3, 2003 on taxation of savings income in the form of interest payments (the “**EUSD**”) as the Administrator is not located in the European Union (or a country that has implemented measures similar or equivalent to the EUSD).

If an investor in the Fund is based in the European Union or certain states which have similar or equivalent measures to the EUSD (including Switzerland, Channel Islands, Monaco and the Cayman Islands) and is making investments on behalf of other underlying investors who are individuals or certain unincorporated entities resident in the European Union or certain of the states which have similar equivalent measures to the EUSD, then the provisions of the EUSD or similar or equivalent measures may apply. In such circumstances such an investor may become a “paying agent” and may be required to obtain all relevant documentation relating to its underlying investors and make returns to the appropriate tax authorities or withhold tax at applicable rates from any redemption proceeds in accordance with the applicable legislation that implements the EUSD or similar or equivalent measures.

Such investors to whom the EUSD may be relevant should also be aware that on 24 March 2014, the Council of the European Union adopted a directive amending the EUSD to extend its scope to cover additional types of savings income and products that generate interest or equivalent income (including certain types of life insurance contracts) as well as a broader range of investment funds. In addition, a “look through” procedure will be established to limit the opportunities for circumventing the application of the EUSD by the use of certain intermediaries. Member States of the European Union have until 1 January 2016 to adopt domestic legislation to give effect to these changes, which must be applied from 1 January 2017. It is not yet clear as to whether those states which have similar or equivalent measures to the EUSD (including Switzerland, Channel Islands, Monaco and the Cayman Islands) will adopt such changes and if so by what date.



## **Future Changes in Applicable Law**

The foregoing description of United States and Cayman Islands income tax consequences of an investment in, and the operations of, the Fund are based on laws and regulations that are subject to change through legislative, judicial or administrative action. Other legislation could be enacted that would subject the Fund to income taxes or subject shareholders to increased income taxes.

## **Other Taxation**

A portion of the Fund's investments may be made in non-U.S. jurisdictions. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

## **Future Tax Legislation, Necessity of Obtaining Professional Advice**

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Internal Revenue Service or judicial decisions may adversely affect the federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Internal Revenue Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on shareholders will vary with the particular circumstances of each shareholder and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

It is the responsibility of all persons interested in purchasing Shares to inform themselves as to any tax consequences from their investing in the Fund and the Fund's operations or management, as well as any foreign exchange or other fiscal or legal restrictions, which are relevant to their particular circumstances in connection with the acquisition, holding or disposition of Shares. Accordingly, each prospective shareholder should therefore seek their own separate tax advice in relation to their holding of Shares. In no event will the Fund, the Partnership, the Principals or the Investment Manager, or their affiliates, counsel or other professional advisers, be liable to any shareholder for any tax consequences of an investment in the Fund, whether or not such consequences are as described above.

*The foregoing is a summary of the important tax rules and considerations affecting the shareholders, the Fund and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each shareholder, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Shares. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.*



## ERISA CONSIDERATIONS

### CIRCULAR 230 NOTICE

The tax discussion contained in this Memorandum is not in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon the summary contained in this Memorandum for the purpose of avoiding U.S. federal tax penalties. The following summary was written to support the promotion or marketing of the transactions or matters described in this Memorandum. Each prospective investor should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

#### General

Fiduciaries and other persons who are proposing to invest in Shares on behalf of retirement plans, IRAs and other employee benefit plans ("**Plans**") covered by ERISA or the Code must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan's objectives, the limited right of shareholders to redeem all or any part of their capital or to transfer their Shares and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

#### Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor ("**DOL**") has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("**Plan Assets**"). Section 3(42) of ERISA defines the term "Plan Assets" to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than twenty-five percent (25%) of the total value of each class of equity interest in the entity is held by "Benefit Plan Investors" (the "**significant participation test**"). For purposes of this determination, the value of any equity interest held by a person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term "**Benefit Plan Investors**" means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (*i.e.*, plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (*e.g.*, IRAs) and any entity whose underlying assets include Plan Assets by reason of a plan's investment in such entity (a "**Plan Asset Entity**").

In order to prevent the assets of the Partnership from being considered Plan Assets under ERISA, it is the intention of the Partnership to monitor the investments in the Fund and prohibit the acquisition, redemption or transfer of any Shares by any investor, including a Benefit Plan Investor, unless, after

giving effect to such an acquisition, redemption or transfer, the total proportion of each class of equity interests of the Partnership owned by Benefit Plan Investors would be less 25% of the aggregate value of such class (determined, as described above, by excluding certain Shares held by the Investment Manager, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in each class of equity interests of the Partnership by Benefit Plan Investors to less than 25%, the Partnership may require the compulsory redemption of Shares of any Series. Each shareholder that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires Shares or equity interests of the Partnership the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the “**Maximum Percentage**”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Partnership. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Shares or equity interests of the Partnership, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Investment Manager of that occurrence and shall, if and as directed by the Investment Manager, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Shares held in its general account or Plan Asset Entity.

If the Partnership’s assets were considered Plan Assets, then, under ERISA and the Code, the Investment Manager would be a fiduciary, and certain employees, partners and officers of the Investment Manager, as well as certain affiliates, would become “parties in interest” and “disqualified persons,” with respect to the investing Plans, with the result that the rendering of services to certain related parties or the lending of money or other extensions of credit, or the sale, exchange or leasing of property by the Partnership or certain related parties, or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in equity interests of the Partnership by persons who are fiduciaries and/or parties-in-interest and disqualified persons to a Plan might be deemed to constitute prohibited transactions under such circumstances.

It is anticipated that investment in the Fund by Benefit Plan Investors may be “significant” for purposes of the DOL regulations. In such event, the underlying assets of the Fund would be deemed to constitute Plan Assets. As a general rule, if the assets of the Fund were regarded as Plan Assets of a Benefit Plan Investor, the Investment Manager would be deemed to be a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and the requirement that the Investment Manager follow the directions of the fiduciaries of each Benefit Plan Investor investing in the Fund, as set forth in each such investor’s Subscription Documents, with respect to the investment by the Fund in the Partnership, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any Benefit Plan Investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and the requirement that the Investment Manager follow the directions of the fiduciary of each Benefit Plan Investor investing in the Fund, as set forth in each such investor’s Subscription Documents, with respect to the investment by the Fund in the Partnership, the fiduciary of each such Benefit Plan Investor has retained the fiduciary authority and responsibility with respect to the Benefit

Plan Investor's initial and continuing investment in the Fund as though the Benefit Plan Investor is investing directly in the Partnership.

### **Representation by Plans**

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies, and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. In particular, exempt organizations should consider the applicability to them of the provisions relating to UBTI. By its purchase, each investor will be deemed to have represented that either (i) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (ii) it is not an entity whose assets include Plan Assets or (iii) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

### **Ineligible Purchasers**

Shares may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (i) has investment discretion with respect to the investment of such Plan Assets; (ii) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (iii) is an employer maintaining or contributing to such Plan. A party that is described in clause (i) or (ii) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

### **Plans' Reporting Obligations**

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

*Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.*

## CAYMAN ISLANDS MUTUAL FUND LAW

The Fund is regulated as a mutual fund under the Mutual Funds Law (2013 Revision) of the Cayman Islands (“**Mutual Funds Law**”). The Cayman Islands Monetary Authority (the “**Authority**”) has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Fund to have its accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the Directors and may result in the Authority applying to the court to have the Fund wound up.

The Fund will not, however, be subject to supervision in respect of its investment activities or the constitution of the Fund’s portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of Directors, to appoint a person to advise the Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Fund. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

The Fund, or any directors or agents domiciled in the Cayman Islands, may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Authority, either for itself or for a recognised overseas regulatory authority, under the Monetary Authority Law (2013 Revision), or by the Tax Information Authority, under the Tax Information Authority Law (2013 Revision) or Reporting of Savings Income information (European Union) Law (2007 Revision) and associated regulations, agreements, arrangements and memoranda of understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Fund, director or agent, may be prohibited from disclosing that the request has been made.

## ANTI-MONEY LAUNDERING COMPLIANCE

### Cayman Islands

In order to comply with legislation or regulations aimed at the prevention of money laundering the Fund is required to adopt and maintain anti-money laundering procedures, and may require subscribers to provide evidence to verify their identity and source of funds. Where permitted, and subject to certain conditions, the Fund may also delegate the maintenance of its anti-money laundering procedures (including the acquisition of due diligence information) to a suitable person.

The Fund, and the Administrator on the Fund's behalf, reserve the right to request such information as is necessary to verify the identity of a shareholder (i.e. a subscriber or a transferee). Where the circumstances permit, the Fund, or the Administrator on the Fund's behalf, may be satisfied that full due diligence may not be required where an exemption applies under the Money Laundering Regulations (2013 Revision) of the Cayman Islands, as amended and revised from time to time or any other applicable law.

In the event of delay or failure on the part of the subscriber in producing any information required for verification purposes, the Fund, or the Administrator on the Fund's behalf, may refuse to accept the application, in which case any funds received will be returned without interest to the account from which they were originally debited.

The Fund, and the Administrator on the Fund's behalf, also reserve the right to refuse to make any redemption or dividend payment to a shareholder if the Board of Directors or the Administrator suspect or are advised that the payment of redemption or dividend proceeds to such shareholder may be non-compliant with applicable laws or regulations, or if such refusal is considered necessary or appropriate to ensure the compliance by the Fund or the Administrator with any applicable laws or regulations.

If any person resident in the Cayman Islands knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct or is involved with terrorism or terrorist property and the information for that knowledge or suspicion came to their attention in the course of business in the regulated sector, or other trade, profession, business or employment, the person will be required to report such knowledge or suspicion to (i) the Financial Reporting Authority of the Cayman Islands, pursuant to the Proceeds of Crime Law, 2008 of the Cayman Islands if the disclosure relates to criminal conduct or money laundering, or (ii) a police officer of the rank of constable or higher, or the Financial Reporting Authority, pursuant to the Terrorism Law (2011 Revision) of the Cayman Islands, if the disclosure relates to involvement with terrorism or terrorist financing and property. Such a report shall not be treated as a breach of confidence or of any restriction upon the disclosure of information imposed by any enactment or otherwise.

### United States

In response to increased regulatory concerns with respect to the identification of sources of funds used to make an investment in the Fund, the Investment Manager and/or its affiliates have implemented policies and procedures ("**AML Program**") designed to guard against and identify money laundering activities. Pursuant to the Fund's AML Program, the Investment Manager and/or its affiliates will request prospective investors and, in some instances, existing shareholders to provide additional documentation verifying, among other things, such person's identity and the source of funds used to



purchase its Shares of the Fund. The Investment Manager may decline to accept a subscription based upon this information, or if this information is not provided.

Pursuant to the Fund's AML Program, the Investment Manager and/or its affiliates will undertake enhanced due diligence procedures prior to accepting investors the Investment Manager believes present high risk factors with respect to money laundering activities. Examples, although not comprehensive, of persons posing high risk factors are persons resident in or organized under the laws of a "non-cooperative jurisdiction" or other jurisdictions designated by the Department of the Treasury as warranting special measures due to money laundering concerns, and any person whose capital contributions originate from or are routed through certain banking entities organized or chartered in a non-cooperative jurisdiction.

In addition, the Fund's AML Program prohibits the acceptance of subscriptions from or on behalf of:

1. persons on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Asset Control;
2. the Annex to Executive Order 13224;
3. such other lists as may be promulgated by law or regulation; and
4. foreign banks unregulated in the jurisdiction they are domiciled in or which have no physical presence.

Governmental regulators are continuing to consider appropriate measures to implement anti-money laundering laws as they apply to private investment funds such as the Fund. The Investment Manager and/or its affiliates will take such steps as it determines are necessary to comply with applicable law, regulations, orders, directives or special measures that may be required by governmental regulators. The specific policies and procedures that the Fund may be required to implement remain unclear, although such steps may include additional measures to confirm the identity of each investor, including the principal beneficial owners of the investor, if applicable, and/or reporting suspicious transactions to governmental regulators.

The requirements for the Investment Manager to guard against and identify money laundering activities in deciding whether to accept subscriptions are in addition to the discretion that the Investment Manager has in deciding whether to accept subscriptions.

## ANNEX A

### Definition of “U.S. Person”

For purposes of the applicable prohibitions against ownership and transfer of Shares of the Fund, the term “U.S. Person” means:

- (1) a resident or citizen of the United States;
- (2) a partnership or corporation organized under the laws of the United States;
- (3) any entity not organized under the laws of the United States:
  - (a) that has its principal office or place of business in the United States; or
  - (b)
    - (i) in which citizens or residents of or entities organized under the laws of or existing in the United States directly or indirectly hold in the aggregate 50% or more of the beneficial interests; and
    - (ii) that will own directly or indirectly, either alone or together with affiliated persons, an aggregate of more than 9.9% of the Fund’s outstanding Shares; or
  - (c)
    - (i) that is organized principally for passive investment (such as an investment company, a commodity pool or other similar vehicle); and
    - (ii)
      - (A) in which the amount of units of participation held by United States Persons (other than “qualified eligible participants” as defined in Rule 4.7(a)(2) under the United States Commodity Exchange Act) represents in the aggregate 10% or more of the beneficial interest in the entity;
      - (B) that was formed for the purpose of facilitating investment by United States Persons in the Fund, or in any other commodity pool with respect to which the operator is exempt from certain requirements of Part 4 of the regulations promulgated by the United States Commodity Futures Trading Commission by virtue of its participants being non-United States Persons; or
      - (C) that was formed by United States Persons principally for the purpose of investing in securities not registered under the United States Securities Act of 1933, as amended, unless it is formed and owned by “accredited investors” (as defined in Rule 501(a) under the Securities Act of 1933, as amended) who are not natural persons, estates or trusts;
- (4) an estate or trust:
  - (a) of which an executor, administrator or trustee is a United States Person, unless:
    - (i) an executor, administrator or trustee who is not a United States Person has sole or shared investment discretion with respect to the assets of the estate or trust; and
    - (ii)
      - (A) in the case of an estate, it is governed by non-U.S. law; or

- (B) in the case of a trust, no beneficiary (and no settlor if the trust is revocable) is a United States Person; or
- (b) the income of which is subject to United States income tax regardless of source;
- (5) any agency or branch of a foreign entity located in the United States;
- (6) any non-discretionary account or similar account (other than an estate or trust) held for the benefit or account of one or more United States Persons; and
- (7) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States, unless it is held by a dealer or other professional fiduciary exclusively for the benefit or account of one or more non-United States Persons.

For purposes of the foregoing, the term “*United States*” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia. Persons requiring details regarding other terms used in the foregoing definition (such as “qualified eligible participant” and “accredited investor”) should contact the Administrator.

## **EXHIBIT 67**

THIS SUPPLEMENT IS CONFIDENTIAL. IT IS NOT TO BE GIVEN TO ANY PERSON OTHER THAN THE PERSON TO WHOM IT HAS BEEN DELIVERED AND IS NOT TO BE REPRODUCED IN ANY MANNER WHATSOEVER. ANY FURTHER DISTRIBUTION OR REPRODUCTION OF THIS SUPPLEMENT, IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS BY AN OFFEREE, IS UNAUTHORIZED.

**SERIES A SHARES**  
**SUPPLEMENT TO**  
**CONFIDENTIAL PRIVATE OFFERING MEMORANDUM**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

This Supplement (this “**Supplement**”) to the Confidential Private Offering Memorandum, as may be supplemented or amended from time to time (the “**Memorandum**”), of Highland Multi Strategy Credit Fund, Ltd. (the “**Fund**”) must be read in conjunction with the Memorandum. Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the Memorandum.

This Supplement is being provided to you as a current shareholder in the Fund whose Shares in the Fund will be, should you remain invested in the Fund, re-designated as Series A Shares.

The terms of your investment in the Fund are the same as those described in the Memorandum in all material respects, except as otherwise set forth in this Supplement.

You should not construe the contents of this Supplement as legal, tax, investment or other advice. You should consult your own advisors as to legal, business, tax, ERISA and other related matters concerning an investment in the Fund. Please review (i) this Supplement, (ii) the Memorandum, (iii) the Memorandum of Association and Articles of Association of the Fund (the “**Articles**”), (iv) the Fourth Amended and Restated Limited Partnership Agreement of the of Highland Multi Strategy Credit Fund, L.P. (the “**Partnership**”, and, such agreement, the “**Partnership Agreement**”), and (v) the Confidential Private Placement Memorandum of the Partnership (the “**Partnership Memorandum**”) carefully, including all risks, potential conflicts of interests and terms contained therein prior to making the decision to remain invested in the Fund.



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## SUMMARY OF TERMS

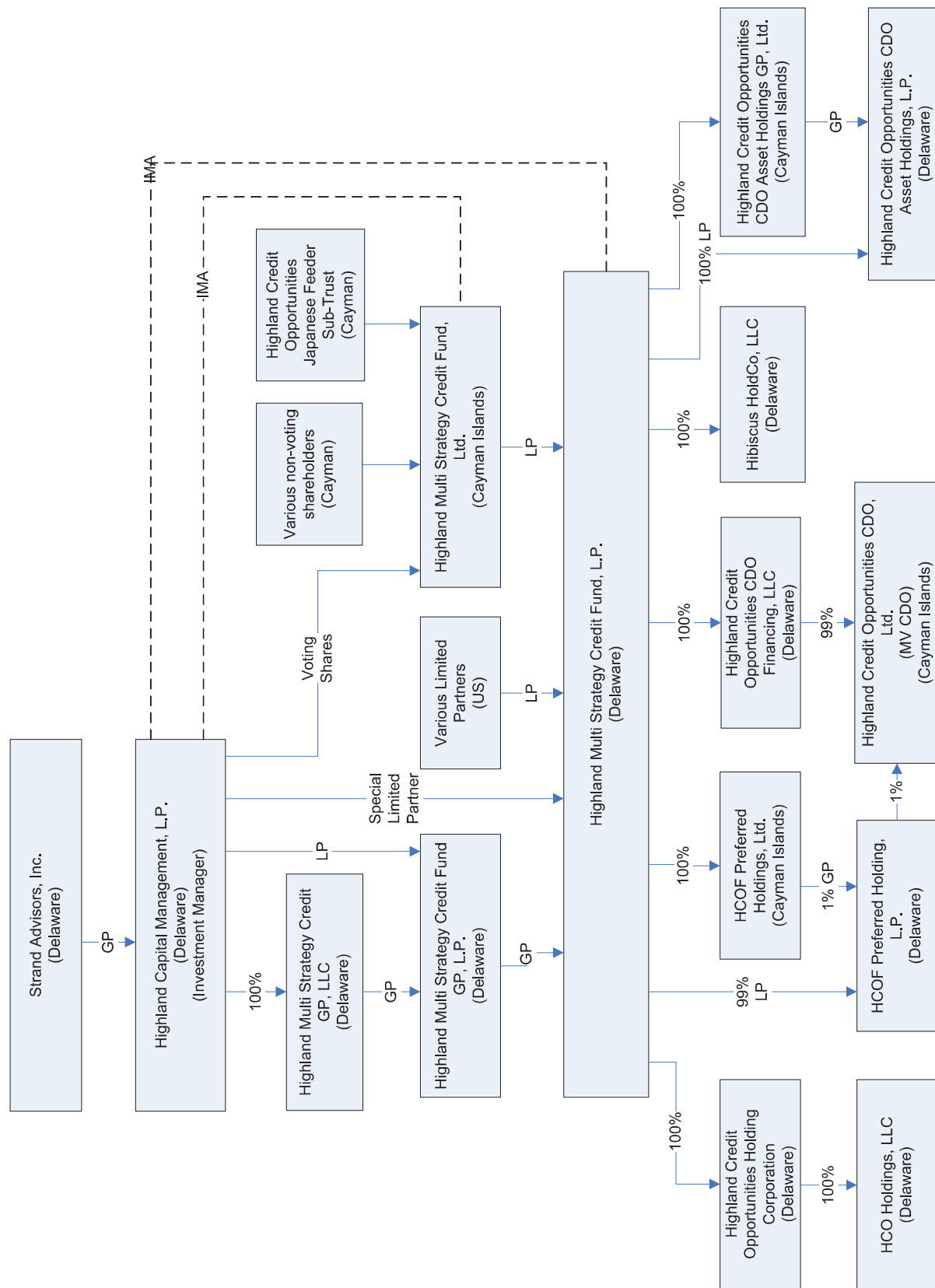
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*The following “Summary of Terms” governing a shareholder’s investment in Series A Shares is qualified in its entirety and should be read in connection with the Memorandum, the Articles, the Partnership Agreement and the Partnership Memorandum. The following discussion is qualified by reference to such other documents. Capitalized terms not otherwise defined herein have the meaning ascribed to such terms in the Memorandum. The terms of your investment in the Fund are the same as those described in the Memorandum in all material respects, except as otherwise set forth in this Supplement.*

- |  |   |
|--|---|
| <b>Proposed Amendments</b>                           | The Board of Directors proposes to amend the terms of an investment in the Fund. Under such amendment, all outstanding Shares of the Fund as of the effective date of the amendment (the “ <b>Effective Date</b> ”) will be re-designated as Series A Shares, and the Fund will create three new series of Shares – Series B Shares, Series C Shares and Series D Shares.   |
| <b>Series A Shares</b>                               | This Supplement being provided exclusively to existing shareholders of the Fund (the “ <b>Series A Shareholders</b> ”). Following the implementation of the amendment, existing shareholders will hold Series A Shares of the Fund as of the Effective Date and may, subject to Fund’s authority to reject any additional subscription, purchase additional Series A Shares after the Effective Date. The Series A Shares will not otherwise be offered to any other investors.   |
| <b>Management Fee</b>                                | The Management Fee applicable to Series A Shares is calculated and payable quarterly in advance at an annual rate of 1.5% of the net asset value of each Series A Share.  |
| <b>Performance Allocation; High Water Mark Reset</b> | The “high water mark” limitation described in the Memorandum and the Partnership Memorandum will be reset as of the Effective Date, whereby for purposes of calculating the Performance Allocation applicable to holders of Series A Shares, each Series A Shareholder will be deemed to have made an initial investment in the Fund on the Effective Date in the amount equal to the net asset value of such shareholder’s Shares of the Fund as of the Effective Date.  |
| <b>Redemption</b>                                    | A shareholder holding Series A Shares will be permitted to redeem all or any of its Series A Shares as of the last Business Day of each calendar quarter following the three-year anniversary of the Effective Date upon written notice to the Administrator at least 90 days prior to the requested redemption date. This three year “lock-up” period will apply on a subscription-by-subscription basis, whereby if a Series A Shareholder makes an additional subscription for Series A Shares after the Effective Date, such shareholder may redeem those Shares no earlier than the last Business Day of the first calendar quarter following the three-year anniversary of the issuance of the Shares being redeemed. |

## **EXHIBIT 68**

003939



## **EXHIBIT 69**

003940

**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

**November 1, 2013**



**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### **PRELIMINARY STATEMENTS**

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### **AGREEMENT**

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### **1. Appointment.**

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,

guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

**2. Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “**CPO**”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “**CFTC**”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and

the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### **3. Fees and Expenses.**

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### **4. Other Activities and Investments.**

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the



Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients.

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

#### 5. Account and Other Information.

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "**Authorized Representative**")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.

- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

**6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

**7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

**8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnitee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnitee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnitee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnitee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnitee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnitee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to

assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

**9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

**10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

**11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with

affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.

**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By: 

Name: James Dondero

Title: Director

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By: 

Name: James Dondero

Title: President

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: STRAND ADVISORS, INC.

By: 

Name: James Dondero

Title: President



## **EXHIBIT 70**

003952

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# **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

## **Fourth Amended and Restated Limited Partnership Agreement**

November 1, 2014

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THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17-101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;



(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

**“Advisers Act”** means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

**“Advisory Committee”** has the meaning set forth in Section 4.6.

**“Affiliate”** means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Affiliated Investor”** means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

**“Agreement”** means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

**“Alternative Investment Vehicle”** has the meaning set forth in Section 4.7.

**“Arbitration Rules”** has the meaning set forth in Section 8.7(b)(i).

**“Authorized Representative”** has the meaning set forth in Section 7.5(a).

**“Bad Actor Limited Partner”** means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

**“BHCA”** means the U.S. Bank Holding Company Act of 1956, as amended.

**“BHCA Subject Person”** means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

**“Business Day”** means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

**“Calculation Period”** means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation

Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

***“Capital Account”*** means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

***“Carryforward Account”*** means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

- (a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.

- (b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

***“Certificate”*** means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

***“Code”*** means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“**Dispute**” has the meaning set forth in Section 8.7.

“**Effective Date**” means the date set forth above as the effective date of this Agreement.

“**Election Notice**” has the meaning set forth in Section 8.11(c).

“**FAA**” has the meaning set forth in Section 8.7(b)(ii)

“**FATCA**” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“**FINRA**” means the Financial Industry Regulatory Authority, Inc.

“**Fiscal Year**” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “**Fiscal Year**” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“**GAAP**” means generally accepted accounting principles in the United States, as amended.

“**General Partner**” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Interest**” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“**Investment Company Act**” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“**Investment Management Agreement**” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“**Investment Manager**” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“**Investments**” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

**“Limited Partners”** means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

**“Majority-in-Interest of Limited Partners”** means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

**“Management Fee”** means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

**“Negative Basis”** means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

**“Negative Basis Partner”** means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Net Assets”** means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

**“Net Loss”** means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

**“Net Profit”** means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

**“New Issue Rules”** has the meaning set forth in Section 3.8(b).

**“Nonrecourse Deductions”** has the meaning set forth in Regulations Section 1.704-2(b)(1) and (c).

**“Non-Voting Interest”** means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

**“Offshore Fund”** means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

**“Orderly Realization”** has the meaning set forth in Section 6.1.

**“Other Account”** means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

**“Partner”** means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and **“Partners”** means the General Partner and all of the Limited Partners.

**“Partnership”** means the limited partnership governed by this Agreement.

**“Partnership Minimum Gain”** has the meaning set forth in Regulations Section 1.704-2(b)(2) and (d).



**“Partnership Percentage”** means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

**“Performance Allocation”** means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

**“Performance Change”** means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a **“Positive Performance Change,”** and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a **“Negative Performance Change.”**

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).

**“Positive Basis”** means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

**“Positive Basis Partner”** means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Prior Agreement”** has the meaning set forth in the Preliminary Statements to this Agreement.

**“Realization Period”** has the meaning set forth in Section 6.1.

**“Recent Amendments”** means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

**“Regulations”** means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

**“Regulatory Allocations”** has the meaning set forth in Section 3.10(d).

**“Restricted Capital Accounts”** has the meaning set forth in Section 3.8(b).

**“Restricted Issues”** has the meaning set forth in Section 3.8(b).

**“Revocation Notice”** has the meaning set forth in Section 8.11(c).

**“RIC Limited Partner”** means a Limited Partner that is registered as an investment company under the Investment Company Act.

**“Schedule of Partners”** means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

**“Series”** means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

**“Series A Capital Account”** means the Capital Account attributable to a Limited Partner’s Series A Interest.

“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(l).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

“**Withdrawal Date**” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## **Article II ORGANIZATION**

### **2.1 Continuation of Limited Partnership**

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided herein.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.



- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other

differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely

conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.



- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("***New Issue Rules***"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("***Restricted Issues***") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("***Restricted Capital Accounts***") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items

of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### **3.9 Allocation to Avoid Capital Account Deficits**

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### **3.10 Regulatory Allocations**

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### **3.11 Allocations for Income Tax Purposes**

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal

income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the

liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### **3.12 Individual Partner's Tax Treatment**

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non-U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### **3.13 Distributions**

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the



General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any

action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

#### **4.2 Expenses**

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to

trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs

of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.



- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.

- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### **4.6 Advisory Committee**

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “**Advisory Committee**”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“**Alternative Investment Vehicles**”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general

partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is

defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5:
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on of the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of



the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “*Series D Withdrawal Date*”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets:
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;

- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions; or
  - (vi) automatically upon liquidation of the Partnership.
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "***Suspension***"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

## Article VI SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION

### 6.1 Soft Wind Down

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "**Orderly Realization**"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "**Realization Period**"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.

## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the



Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## **Article VII**

### **ACCOUNTING AND VALUATION; BOOKS AND RECORDS**

#### **7.1 Accounting and Reports**

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.

## **7.2 Valuation of Partnership Assets and Interests**

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## **7.3 Determinations by the General Partner**

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### **7.4 Books and Records**

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### **7.5 Confidentiality**

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.

- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## **Article VIII GENERAL PROVISIONS**

### **8.1 Amendment of Partnership Agreement**

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:



- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.

## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney-in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
  - (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
  - (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power-of-attorney,

regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

## 8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## 8.7 Dispute Resolution

The following procedures shall be used to resolve any controversy or claim ("*Dispute*") arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### (a) Mediation

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### (b) Arbitration

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect (“**Arbitration Rules**”). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act (“**FAA**”), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party’s actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator’s fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes



it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## **8.8 Consents and Voting**

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited

Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.


**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President


**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President

*Signature Page to the Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy  
Credit Fund, L.P.*

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## **EXHIBIT 71**

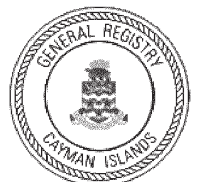
004007

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



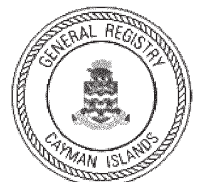
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**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



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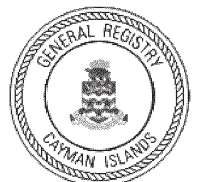
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**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

- 1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

<b>"Administrator"</b>	means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
<b>"Articles"</b>	means these articles of association of the Company.
<b>"Auditor"</b>	means the person (if any) for the time being performing the duties of auditor of the Company.
<b>"Business Day"</b>	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
<b>"Cayman Islands"</b>	means the British Overseas Territory of the Cayman Islands.
<b>"Class"</b>	means a separate class of Participating Share (and includes any sub-class of any such class).
<b>"Company"</b>	means the above-named Company.
<b>"Directors"</b>	means the directors for the time being of the Company.
<b>"Dollars" or "US\$"</b>	refers to the currency of the United States.
<b>"Electronic Record"</b>	has the same meaning as in the Electronic Transactions Law.

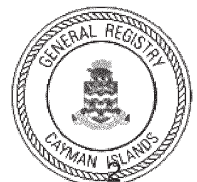


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<b>"Electronic Transactions Law"</b>	means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.
<b>"Eligible Investor"</b>	means a person eligible to hold Participating Shares, as determined from time to time by the Directors.
<b>"FATCA"</b>	means: <ul style="list-style-type: none"> <li>(i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;</li> <li>(ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and</li> <li>(iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.</li> </ul>
<b>"Gross Negligence"</b>	shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.
<b>"Investment Manager"</b>	means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.
<b>"Management Share"</b>	means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.
<b>"Master Fund"</b>	means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.
<b>"Member"</b>	means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



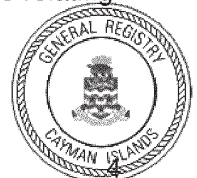


<b>"Memorandum"</b>	means the memorandum of association of the Company.
<b>"Net Asset Value"</b>	means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.
<b>"Net Asset Value per Participating Share"</b>	means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.
<b>"New Issue"</b>	has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.
<b>"New Issue Investment"</b>	means any New Issue acquired by the Company.
<b>"New Issue Shares"</b>	means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles
<b>"Offering Memorandum"</b>	means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.
<b>"Ordinary Resolution"</b>	means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.
<b>"Participating Share"</b>	means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.
<b>"Prohibited Person"</b>	means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.
<b>"Redemption Date"</b>	means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares



of that Class and/or Series.

<b>"Redemption Fee"</b>	means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
<b>"Redemption Notice"</b>	means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
<b>"Redemption Price"</b>	means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
<b>"Register of Members"</b>	means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
<b>"Registered Office"</b>	means the registered office for the time being of the Company.
<b>"Sales Charge"</b>	means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
<b>"Seal"</b>	means the common seal of the Company and includes every duplicate seal.
<b>"Separate Account"</b>	means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
<b>"Series"</b>	means a separate series of Participating Share (and includes any sub-series of any such series).
<b>"Share" and "Shares"</b>	means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
<b>"Share Rights"</b>	means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating



to the offer or holding of such Participating Shares).

"Special Resolution"	has the same meaning as in the Statute and includes a unanimous written resolution.
"Statute"	means the Companies Law (2013 Revision) of the Cayman Islands.
"Subscriber"	means the subscriber to the Memorandum.
"Subscription Date"	means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.
"Subscription Price"	means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
"Suspension"	means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a " <b>Calculation Suspension</b> "); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an " <b>Issue Suspension</b> "); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a " <b>Redemption Suspension</b> "); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a " <b>Payment Suspension</b> ").
"Transfer"	means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and " <b>Transferred</b> " shall be construed accordingly.
"Treasury Share"	means a Share held in the name of the Company as a treasury share in accordance with the Statute.
"Valuation Date"	means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
"Valuation Point"	means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.



## **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## **3 Service Providers**

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

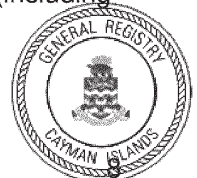
## **4 Rights attaching to Shares**

- 4.1 The Management Shares shall have the following rights:
- (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:





- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
  - (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
  - (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.
- 4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.
- 4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.
- 5 Share Capital**
- 5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including

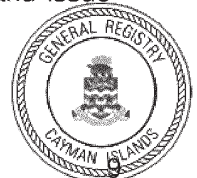


management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
  - (b) transfer that Share by an instrument of transfer to any person; and
  - (c) update the Register of Members in respect of the issue and transfer of that Share.
- 5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.
- 5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.
- 5.4 The Company shall not issue Shares to bearer.
- 5.5 Fractional Shares may be issued.
- 5.6 Shares shall only be issued as fully paid-up.
- 5.7 No right of pre-emption or first refusal shall attach to any Shares.
- 5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

- 6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.
- 6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting



matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

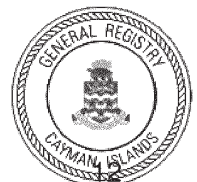
- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.



- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## **9 Suspensions**

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.





- 9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## **10 Transfer of Shares**

- 10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.
- 10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.
- 10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:
- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
  - (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.
- 10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## **11 Transmission of Shares**

- 11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.
- 11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:
- (a) such person's entitlement to such Shares; and/or
  - (b) such person's status as an Eligible Investor,



elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.

11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## 12 Redemption of Shares

12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.



- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.



- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such



Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### 13 Compulsory Redemption

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### 14 FATCA

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.





14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:

- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
- (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
  - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
  - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
  - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
- (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
  - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
  - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or



- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.



16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, *pari passu* with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second



Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:

- (a) the creation, allotment or issue of further Shares ranking *pari passu* therewith and which may be issued with the benefit of the terms referred to below;
- (b) the purchase or redemption of any Shares;
- (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
- (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
- (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
- (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.

18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.



## **19 Variation of Terms**

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## **20 Certificates for Shares**

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## **21 Register of Members**

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## **22 Closing Register of Members and Fixing Record Date**

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.





22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.

22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

## **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.

23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.

23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.

23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

## **24 Lien on Shares**

24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.



- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;



- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate



representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,



an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.





- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the



Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.



### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

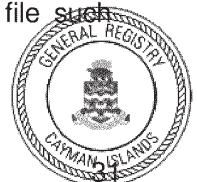
- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.



- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### 39 Presumption of Assent

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such



Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or





the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

## **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

## **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.



- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

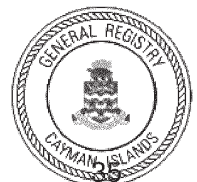
#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



#### **47 Dividends, Distributions and Reserves**

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.



47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.

47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.



- 49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

- 50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.
- 50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

- 51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.
- 51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.





- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## 52 Winding Up

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be



carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### 53 Indemnity and Insurance

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an **"Indemnified Person"**) shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.



**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



## **EXHIBIT 72**

004050

## HIGHLAND CREDIT OPPORTUNITIES FUND, LTD.

### SUBSCRIBER INFORMATION FORM

**PART A** OF THIS SUBSCRIBER INFORMATION FORM IS DIVIDED INTO THREE SECTIONS. ALL SUBSCRIBERS ARE REQUIRED TO COMPLETE SECTION I. SUBSCRIBERS WHO ARE NATURAL PERSONS, INDIVIDUAL RETIREMENT ACCOUNTS (IRAs) OR GRANTOR TRUSTS MUST COMPLETE SECTION II. ALL OTHER SUBSCRIBERS MUST COMPLETE SECTION III.

ALL SUBSCRIBERS MUST COMPLETE THE SUBSCRIBER QUALIFICATION QUESTIONS IN **PART B**.

SUBSCRIBERS SUBSCRIBING AS A CUSTODIAN OR AN AGENT ON BEHALF OF A BENEFICIAL OWNER SHOULD COMPLETE THE QUESTIONS BELOW WITH REFERENCE TO THE BENEFICIAL OWNER OF THE SHARES.

***YOUR SUBSCRIPTION WILL NOT BE DEEMED COMPLETE UNTIL ALL OF THE REQUIRED DOCUMENTATION LISTED HEREIN AND ADDITIONALLY REQUESTED DOCUMENTATION IS RECEIVED BY THE ADMINISTRATOR.***

#### PART A – SUBSCRIBER INFORMATION

#### SECTION I. TO BE COMPLETED BY ALL SUBSCRIBERS

##### 1. Identity of Subscriber

Name(s):

THE DUGARBOY

Country of domicile/  
Citizenship

USA

INVESTMENT TRUST

Please check *all* of the boxes that describe the beneficial owner(s) for whose account the Shares are being acquired.

☐ Individual

☐ Broker-dealer

☐ Joint (spouses)

☐ Insurance company

☐ Joint (other)

☐ Registered investment company

☒ Personal trust (taxable to grantor)

☐ Tax-exempt endowment

☐ Personal trust (other)

☐ Other tax-exempt organization

☐ Individual retirement account

☐ Employee benefit plan (self-directed)



- |  |  |
|--|--|
| <input type="checkbox"/> Charitable trust              | <input type="checkbox"/> Employee benefit plan (trustee directed)            |
| <input type="checkbox"/> Private tax-exempt foundation | <input type="checkbox"/> Fund of Funds                                       |
| <input type="checkbox"/> Other private fund            | <input type="checkbox"/> Banking or thrift institution                       |
| <input type="checkbox"/> Family partnership or LLC     | <input type="checkbox"/> Sovereign wealth fund or foreign office institution |
| <input type="checkbox"/> Business entity (other)       | <input type="checkbox"/> Other   |

If "Other" or "Business entity (other)" was checked, please describe the entity or beneficial owner: \_\_\_\_\_

2. **Contact Information**

Primary Contact for Notices and Communications

Name: JAMES DONDERO

Mailing Address: 300 CRESCENT CT STE 700  
DALLAS, TX 75201

Telephone: 972-628-4100

Fax: \_\_\_\_\_

E-mail: JDONDERO@HCMLP.COM

Secondary Contact for Notices and Communications (optional)

Name: MELISSA SCHROTH

Mailing Address: 300 CRESCENT CT STE. 700  
DALLAS, TX 75201

Telephone: 972-628-4100

Fax: \_\_\_\_\_

E-mail: MSCHROTH@HCMLP.COM

Send copy of Financial Statements and Tax Information Returns to (optional)

Name: MELISSA SCHROTH  
Mailing Address: 300 CRESCENT CT STE 700  
DALLAS, TX 75201  
Telephone: 972-628-4100  
Fax: \_\_\_\_\_  
E-mail: MSCHROTH@HCHLP.COM

Please set forth below the names of persons authorized by the Subscriber to give and receive instructions between the Fund (or its Administrator) and the Subscriber together with their respective signatures. Such persons are the only persons so authorized until further written notice to the Administrator signed by one or more of such persons.

<u>Name</u>	<u>Signature</u>
<u>MELISSA SCHROTH</u>	_____
<u>JAMES DONDERO</u>	_____
_____	_____
_____	_____

**3. Remitting Bank or Financial Institution**

Except as otherwise agreed by the Fund, all subscriptions are payable in full by wire transfer of readily available funds to the account of the Fund **at least two business days prior to the proposed date of subscription**. Please identify the bank or other financial institution (the "**Wiring Institution**") from which the Subscriber's funds will be wired. Note that any amounts paid to the Subscriber will be paid to the same account from which its subscription funds were originally remitted, which shall be in the name of the Subscriber, unless the Fund agrees otherwise.

A. Name of Wiring Institution<sup>1</sup>: NEXBANK  
Address<sup>2</sup>: DALLAS TEXAS

<sup>1</sup> Important notice: please instruct your bank to ensure that the originating account and bank information is available in the wire. **Your transaction may be delayed or rejected if this information is not provided.**

<sup>2</sup> If the Wiring Institution is not located in a jurisdiction that is member of the Financial Action Task Force on Money Laundering (the "**FATF**"), the Administrator may require additional information. For a current list of FATF members see: [www.fatf-gafi.org](http://www.fatf-gafi.org).

ABA, Chips or SWIFT Number:

Account Name:

Account Number:

For Benefit of:

Account Representative:

Telephone:

[REDACTED]

THE DUGABOY INVESTMENT TRUST

[REDACTED]

[Subscriber Name] JAMES DONDERO

(TRUSTEE)

B. Is the Subscriber a customer of the Wiring Institution?



Yes



No

If you responded "No," please contact the Administrator for additional information that may be required.

4. Electronic Delivery of Reports and Other Communications

The Fund may make reports and other communications available in electronic form, such as e-mail or by posting on a web site (with notification of the posting by e-mail). Do you consent to receive deliveries of reports and other communications from the Fund (including annual and other updates of our consumer privacy policies and procedures) exclusively in electronic form without separate mailing of paper copies?



Yes



No

5. Information Regarding Actual Ownership of the Shares

Is the Subscriber subscribing for the Shares with the intent to sell, distribute or transfer the Shares to any other person or persons?



Yes



No

Is the Subscriber subscribing for the Shares as agent, nominee, trustee, partner, or otherwise on behalf of, for the account of, or jointly with any other person or entity?



Yes



No

Will any other person or persons have a beneficial interest in the Shares acquired or a right to receive payments through contract or otherwise relating to the increase or decrease in value of the Shares (other than as a shareholder, partner or other beneficial owner of equity interests in the Subscriber)?

☐ Yes ☒ No

Does the Subscriber control, or is the Subscriber controlled by or under common control with, any other existing or prospective investor in the Fund?

☐ Yes ☒ No

Note: If any of the above questions were answered "Yes," please provide identifying information or contact the Administrator:

---

**6. Government Entities**

(a) Is the Subscriber a government entity or an officer, agent or employee thereof?

☐ Yes ☒ No

Note: Government entities include all state and local governments, their agencies and instrumentalities, and any investment programs, defined benefit plans as defined in Section 414(j) of the Internal Revenue Code of 1986, as amended (the "**Code**"), state general funds, pools of assets or plans sponsored or established by state and local governments, including all public pension plans and any participant-directed plan or program of a government entity, such as "qualified tuition plans" authorized by section 529 of the Code and retirement plans authorized by section 403(b) or 457 of the Code.

If the answer is "Yes," please answer the following question. If the answer is "No," skip to question 7.

Is the Subscriber aware of any political contributions it or any of its employees has received from Highland Capital Management, L.P. (in its capacity as investment manager of the Fund, the "**Investment Manager**") or any of the Investment Manager's employees?

☐ Yes ☐ No

If the answer is "Yes," please provide the date of the contribution:

---

If the answer to either or both of the above questions is "Yes," please contact the Administrator.

**7. Private Investment Fund Experience**

Has the Subscriber previously made an investment in a private investment fund such as a hedge fund, private equity or venture capital fund, commodity pool, real estate or energy partnership or fund of funds?

☒ Yes ☐ No

**8. Net Worth**

Is the Subscriber's net worth more than 10 times the amount of the subscription commitment?

☒ Yes ☐ No

**9. Ability to Bear Risk**

Does the Subscriber have the financial ability to bear the economic risk of this investment and have adequate means to provide for its current needs and contingencies?

☒ Yes ☐ No



**SECTION II. ADDITIONAL QUESTIONS FOR NATURAL PERSONS, INDIVIDUAL RETIREMENT ACCOUNTS OR GRANTOR TRUSTS**

**1. Please indicate desired type of ownership interest**

☐ Individual  
☐ Joint

☒ Individual Retirement Account  
☒ Grantor Trust

**2. Place of Residence**

(a) Indicate the state where Subscriber has his or her principal residence:

TEXAS

Note: If you are married and live in a community property state, both you and your spouse must sign the signature page of the Subscription Agreement. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington and Wisconsin. Property held by married persons resident in Alaska may also be subject to community property law if the married persons opted into the community property regime.

(b) Is the Subscriber or trust grantor a United States citizen or permanent resident of the United States?

☒ Yes ☐ No

**3. Social Security Number:**



**4. Joint Subscriptions**

If you are subscribing with another person, please answer the following questions:

(a) Please indicate type of ownership interest:

☐ Joint tenants (rights of survivorship)  
☐ Tenants in common (no rights of survivorship)

(b) If you are purchasing Shares jointly with another person, please answer the following questions:

(i) Is the other person a United States citizen or permanent resident of the United States?

☐ Yes ☐ No

(ii) If the answer to the above question is "Yes," please provide such other person's U.S. Social Security number: \_\_\_\_\_

**5. Individual Retirement Account Investors**

- (a) If the Subscriber is subscribing as a trustee or custodian for an individual retirement account, is the Subscriber a qualified IRA custodian or trustee?

☐ Yes ☐ No

- (b) Name of qualified IRA trustee or custodian:

\_\_\_\_\_

**6. Grantor Trust Investors**

- (a) Please indicate whether the Subscriber, for federal income tax purposes, files now or has ever filed a tax or information return as a partnership, as a "grantor" trust or (if the Subscriber is a U.S. corporation) as an "S corporation" under Sections 1361-1379 of the Code.

☐ Yes ☒ No

- (b) If the answer is "Yes," will the investment in the Fund represent more than 75% of the assets of the Subscriber?

☐ Yes ☒ No

**SECTION III. ADDITIONAL QUESTIONS FOR ENTITIES AND NON-GRANTOR TRUSTS**

**1. Organizational Data**

(a) Legal form of entity: \_\_\_\_\_

(b) Jurisdiction of organization: \_\_\_\_\_

(c) Year of organization: \_\_\_\_\_

(d) Briefly identify the Subscriber's primary business: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) Identify the Subscriber's principal place of business:  
\_\_\_\_\_  
\_\_\_\_\_

(f) Total number of shareholders, partners or other holders of equity or beneficial interests or other securities (including any debt securities other than short term paper of the Subscriber) (If the number is more than 100, it is sufficient to respond "more than 100."):  
\_\_\_\_\_

(g) Is the Subscriber a wholly owned or majority-owned subsidiary of another entity?

☐ Yes ☐ No

If yes, please provide name and address:  
\_\_\_\_\_

(h) Is the direct parent of the Subscriber a wholly owned or majority-owned subsidiary of another entity?

☐ Yes ☐ No

If yes, please provide name and address:  
\_\_\_\_\_

- (i) Was the Subscriber organized for the specific purpose of acquiring the Shares?

☐ Yes ☐ No

- (j) Have shareholders, partners or other holders of equity or beneficial interests in the Subscriber been provided the opportunity to decide individually whether or not to participate, or the extent of their participation, in the Subscriber's investment in the Fund (*i.e.*, have investors in the Subscriber been permitted to determine whether their capital will form part of the specific capital invested by the Subscriber in the Fund)?

☐ Yes ☐ No

- (k) Is the Subscriber an entity engaged primarily in investing or trading securities?

☐ Yes ☐ No

If the answer is "Yes," please answer the following question. If the answer is "No," skip to question 2.

Does the current amount of the Subscriber's subscription to the Fund exceed 40% of the value of the Subscriber's total assets?

☐ Yes ☐ No

## 2. Benefit Plan Accounts

- (a) Is the Subscriber (1) an employee benefit plan subject to the fiduciary provisions of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), (2) a "plan" subject to Section 4975 of the Code, (3) an entity that otherwise constitutes a "benefit plan investor" within the meaning of any Department of Labor regulation promulgated under Section 3(42) of ERISA, (a party described in (1), (2), or (3), a "**Plan**"), or (4) an entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the Subscriber (a "**Plan Asset Entity**")?

☐ Yes ☐ No

- (b) Is the Subscriber a Plan that is both voluntary and contributory?

☐ Yes ☐ No

- (c) Have beneficiaries of the Plan been provided the opportunity to decide individually whether or not to participate, or the extent of their participation, in the Plan's investment in the Fund (*i.e.*, have beneficiaries of the Plan been permitted to determine whether their capital will form part of the specific capital invested by the Plan in the Fund)?

☐ Yes ☐ No

- (d) Is the Subscriber either (1) an insurance company general account the underlying assets of which include "plan assets" for purposes of ERISA or (2) a Plan Asset Entity?

☐ Yes ☐ No

If the answer is "Yes", the maximum percentage of the Subscriber constituting "plan assets" will be:

---

(Note that the Subscriber has an obligation under the Subscription Agreement to promptly notify the Fund if this percentage is exceeded in any calendar month).

### 3. Regulated Institutions

- (a) Is the Subscriber a regulated institution that is subject to legal or regulatory restrictions or limitations on the nature of its investments (such as a bank or an insurance company)?

☐ Yes ☐ No

- (b) If the answer is "Yes," has the Subscriber verified that the proposed subscription is in compliance with applicable laws and regulations?

☐ Yes ☐ No

### 4. Tax Information

- (a) Employer identification number:
- 

- (b) Indicate the annual date on which the Subscriber's taxable year ends for purposes of reporting federal income tax or filing information returns:
-



- (c) Please indicate whether the Subscriber, for federal income tax purposes, files now or has ever filed a tax or information return, as a partnership, as a "grantor" trust or (if the Subscriber is a U.S. corporation) as an "S corporation" under Sections 1361-1379 of the Code.

☐ Yes ☐ No

If the answer is "Yes," will the investment in the Fund represent more than 75% of the assets of the Subscriber?

☐ Yes ☐ No

- (d) Is the Subscriber exempt from federal income tax (e.g., a qualified employee benefit plan or trust, retirement account, charitable remainder trust, or a charitable foundation or other tax-exempt organization described in Section 501(c)(3) of the Code)?

☐ Yes ☐ No

**5. Bank Investors**

- (a) Is the Subscriber an insured depository institution, as defined in the Federal Deposit Insurance Act or a company that controls directly or indirectly an insured depository institution?

☐ Yes ☐ No

- (b) Is the Subscriber treated as a bank holding company for the purposes of Section 8 of the International Banking Act of 1978?

☐ Yes ☐ No

- (c) Is the Subscriber a direct or indirect subsidiary of an entity described in (a) or (b) above?

☐ Yes ☐ No

## PART B – SUBSCRIBER QUALIFICATION

SUBSCRIPTIONS WILL BE ACCEPTED ONLY FROM PERSONS WHO QUALIFY AS ELIGIBLE INVESTORS WITHIN THE MEANING OF APPLICABLE FEDERAL AND STATE SECURITIES REGULATIONS. UNLESS OTHERWISE INDICATED, RESPONSES SHOULD BE GIVEN BY REFERENCE TO THE SPECIFIC PERSON FOR WHOSE ACCOUNT THE SHARES ARE BEING ACQUIRED. THE SUBSCRIBER MAY BE REQUIRED TO PROVIDE SUCH FURTHER INFORMATION AND EXECUTE AND DELIVER SUCH DOCUMENTS AS THE FUND OR THE ADMINISTRATOR MAY REASONABLY REQUEST TO VERIFY THAT THE SUBSCRIBER QUALIFIES AS AN ELIGIBLE INVESTOR.

### SECTION I. ACCREDITED INVESTOR STATUS

Each Subscriber must indicate whether the intended beneficial owner of the Shares qualifies as an “accredited investor” pursuant to *at least one* of the following tests. (Please check *all* that apply, or, if none applies, consult the Administrator.)

#### FOR NATURAL PERSONS:

- ☐ The Subscriber is a *natural person* whose individual net worth, or joint net worth with that person’s spouse, at the time of purchase exceeds \$1,000,000, *excluding* the value of the Subscriber’s primary residence.<sup>3</sup>
- ☐ The Subscriber is a *natural person* with individual income (without including any income of the Subscriber’s spouse) in excess of \$200,000 or joint income with that person’s spouse of \$300,000, in each of the two most recent years and who reasonably expects to reach the same income level in the current year.
- ☒ The Subscriber is an individual retirement account or a grantor trust and the owner of the individual retirement account or the grantor of the grantor trust is a *natural person* that meets the requirements described above.<sup>4</sup>

#### FOR ENTITIES:

- ☐ The Subscriber is an *entity* with total assets in excess of \$5,000,000 that was not formed for the purpose of investing in the Fund and is one of the following:
  - ☐ a corporation;
  - ☐ a partnership;
  - ☐ a limited liability company;

<sup>3</sup> An individual need not deduct from his or her net worth the amount of mortgage debt secured by an excluded primary residence other than (i) the amount by which the mortgage liability exceeds the fair value of the residence and (ii) any increase in the amount of the debt secured by the primary residence in the 60 days preceding the date hereof unless the increase was a result of the acquisition of the residence.

<sup>4</sup> Additional information may be required in connection with a grantor trust’s investment.

- ☐ a business trust; or
- ☐ a tax-exempt organization described in Section 501(c)(3) of the Code.
- ☐ The Subscriber is a personal (non-business) trust, other than an employee benefit trust, with total assets in excess of \$5,000,000 that was not formed for the purpose of investing in the Fund and whose decision to invest in the Fund has been directed by a person who has such knowledge and experience in financial and business matters that such person is capable of evaluating the merits and risks of the investment.
- ☐ The Subscriber is an employee benefit plan within the meaning of Title I of ERISA, (including an individual retirement account), which satisfies at least one of the following conditions:
  - ☐ it has total assets in excess of \$5,000,000;
  - ☐ the investment decision is being made by a plan fiduciary that is a bank, savings and loan association, insurance company or registered investment adviser; or
  - ☐ it is a self-directed plan (*i.e.*, a tax-qualified defined contribution plan in which a participant may exercise control over the investment of assets credited to his or her account) and the decision to invest is made by those participants investing, and each such participant qualifies as an accredited investor.
- ☐ The Subscriber is an employee benefit plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions that has total assets in excess of \$5,000,000.
- ☐ The Subscriber is licensed, or subject to supervision, by federal or state examining authorities such as a "bank," "savings and loan association," "insurance company," or "small business investment company" (as such terms are used and defined in 17 CFR §230.501(a)) or is an account for which a bank or savings and loan association is subscribing in a fiduciary capacity.
- ☐ The Subscriber is registered with the Securities and Exchange Commission as a broker or dealer or an investment company; or has elected to be treated or qualifies as a "business development company" (within the meaning of Section 2(a)(48) of the Investment Company Act of 1940, as amended (the "***Investment Company Act***"), or Section 202(a)(22) of the Investment Advisers Act of 1940, as amended (the "***Investment Advisers Act***")).
- ☐ The Subscriber is an entity in which *all* of the equity owners are persons described above.

## SECTION II. QUALIFIED CLIENT STATUS

Each subscriber must indicate whether the intended beneficial owner of the Shares qualifies as a "qualified client." IRAs and revocable grantor trusts should complete the questions for natural persons.

### FOR NATURAL PERSONS:

- ☒ The Subscriber (or the grantor, in the case of a grantor trust) is a natural person whose net worth (together, in the case of a natural person, with assets held jointly with that person's spouse), at the time of subscription exceeds \$2,000,000, *excluding* the value of the Subscriber's primary residence.<sup>5</sup>

### FOR ENTITIES:

- ☐ The Subscriber is an entity that has a net worth at the time of subscription in excess of \$2,000,000

If the entity is an entity engaged primarily in investing or trading in securities, state whether each of the shareholders, partners or other holders of equity or beneficial interests in the Subscriber (please answer both (A) and (B)):

- (A) has a net worth of at least \$2,000,000 *excluding* the value of the holder's primary residence:<sup>6</sup>

☐ Yes ☐ No

- (B) is either an entity which is not engaged primarily in investing or trading in securities or a natural person:

☐ Yes ☐ No

<sup>5</sup> An individual need not deduct from his or her net worth the amount of mortgage debt secured by an excluded primary residence other than (i) the amount by which the mortgage liability exceeds the fair value of the residence and (ii) any increase in the amount of the debt secured by the primary residence in the 60 days preceding the date hereof unless the increase was a result of the acquisition of the residence.

<sup>6</sup> See footnote immediately above.

**SECTION III. FUND INVESTMENTS IN FINRA-RESTRICTED ISSUES AND AFFILIATION WITH FINRA MEMBERS IN UNDERWRITTEN OFFERINGS**

The Fund may, from time to time, consider direct or indirect investing in certain publicly offered equity securities, more commonly known as “new issue” securities (“*New Issues*”), through member firms of the Financial Industry Regulatory Authority, Inc. (“*FINRA*”) in accordance with Rules 5130 and 5131 adopted by FINRA. Also, FINRA requires any member that is participating in a public offering of securities to report any affiliation between a 5% shareholder of the company whose securities are being offered with a FINRA member. In order for the Fund to be able to determine the extent to which a Subscriber is eligible to participate in New Issues and to comply with any filings required in any underwritten public offering that is conducted by any company in which the Fund invests, the Subscriber must complete the questionnaire below. *Even if the Subscriber does not wish to participate in the profits related to New Issues, the Subscriber must complete Items A and B, as the tests in each Item are conducted separately.*

**A. Determination of Restricted Person Status under Rule 5130:**

Section 1 (Restricted Persons)

The Subscriber is:

- ☐ a FINRA member or other securities broker-dealer;
- ☐ an affiliate of a broker-dealer.<sup>7</sup>
- ☐ an officer, director, general partner, associated person or employee of any member of FINRA or any other securities broker-dealer, in either case other than a limited business broker-dealer.<sup>8</sup>

If the Subscriber checked any of the preceding boxes, please describe the name and CRD number of the applicable FINRA member along with a description of the relationship between such broker-dealer or affiliate and the Subscriber including, if applicable, the percentage of the Subscriber that is owned by a FINRA member: \_\_\_\_\_

<sup>7</sup> As used herein, an “*affiliate*” means an entity which controls, is controlled by or is under common control with such broker-dealer. “Control” means (i) beneficial ownership of 10% or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days; (ii) the right to 10% or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days; (iii) beneficial ownership of 10% or more of the outstanding subordinated debt of an entity, including any right to receive such subordinated debt within 60 days; (iv) beneficial ownership of 10% or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days; or (v) the power to direct or cause the direction of the management or policies of an entity.

<sup>8</sup> As used herein, a “*limited business broker-dealer*” means any broker-dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities or direct participation programs.



- ☐ an agent of any member of the FINRA or any other securities broker-dealer that is engaged in the investment banking or securities business.
- ☐ a person who, directly or indirectly, owns or has contributed capital to any FINRA member or other securities broker-dealer (other than solely a limited business broker-dealer), and the Subscriber:
  - (a) is listed, or required to be listed, in Schedule A of the Form BD for such FINRA member or other securities broker-dealer, and is identified by an ownership code of at least 10%;
  - (b) is listed, or required to be listed, in Schedule B of the Form BD for such FINRA member or other securities broker-dealer, and such listing relates to a direct owner of such FINRA member or other securities broker-dealer that is identified by an ownership code of at least 10%;
  - (c) is listed, or required to be listed, in Schedule C of the Form BD of the FINRA member or other securities broker-dealer that meets any of the criteria noted in paragraphs (a) or (b) above;
  - (d) owns 10% or more of a public reporting company listed, or required to be listed, as a direct owner in Schedule A of a Form BD of any FINRA member or other securities broker-dealer (other than solely a limited business broker-dealer). For this purpose, a "public reporting company" does not include a reporting company that is listed on a national securities exchange; or
  - (e) owns 25% or more of a public reporting company listed, or required to be listed, as an indirect owner in Schedule B of a Form BD of any FINRA member or other securities broker-dealer (other than solely a limited business broker-dealer). For this purpose, a "public reporting company" does not include a reporting company that is listed on a national securities exchange.

If the Subscriber checked the immediately preceding box, please describe the name and CRD number of the FINRA member on whose form the relationship is disclosed: \_\_\_\_\_

- ☐ a person who may act as a finder with respect to any public offering of securities.
- ☐ a person, such as an attorney, accountant or financial consultant, whose professional activities may include acting in a fiduciary capacity to any managing underwriter of any public offering of securities.
- ☐ a person who has the authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment advisor or other collective investment account (including any hedge fund, investment partnership, investment corporation or any other collective investment vehicle that

is engaged primarily in the purchase and/or sale of securities), other than a family investment account or investment club.

- ☐ a member of the immediate family of any person to whom any of the preceding paragraphs refer.<sup>9</sup>

If the Subscriber checked this box, please specify the identity and the nature of the relationship with the Restricted Person, the firm with which the Restricted Person is associated, and whether the Restricted Person either contributes directly or indirectly to the Subscriber's support or receives material support from the Subscriber.

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- ☐ a domestic or foreign bank, bank branch, trust company, or other conduit for an undisclosed principal. The Fund may request additional information in order to determine the eligibility of the undisclosed principal.
- ☐ an employee benefit plan qualified under ERISA, that is sponsored by a FINRA member or other securities broker-dealer or an affiliate thereof.
- ☐ an entity (including a partnership, investment fund, limited liability company or other account) which either (i) knows that one or more of its beneficial owners is a Restricted Person described in any of the preceding categories, or (ii) has not affirmatively determined that there is no Restricted Person described in any of the preceding categories that has a beneficial interest in the entity.<sup>10</sup>

A Subscriber who has checked one of the boxes above may be able to participate in New Issues to the extent an exemption in Item C applies. See C below.

#### Section 2 (Unrestricted Persons)

- ☒ None of the Restricted Person Categories in Section 1 above apply and the Subscriber is eligible to fully participate in profits and losses from investments in New Issues.

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<sup>9</sup> The term "*immediate family*" includes parents; mother-in-law or father-in-law; husband or wife; brother or sister; brother-in-law or sister-in-law; son-in-law or daughter-in-law; children; whether by birth or adoption; and any other person who is supported, directly or indirectly, to a material extent by such person. For this purpose, "*material support*" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

<sup>10</sup> The term "*beneficial interest*" means any economic interest such as the right to share in gains or losses. The receipt of a management or performance-based fee for operating a collective investment account, or other fee for acting in a fiduciary capacity, is not considered a beneficial interest in the account. However, for purposes of FINRA Rule 5130 and 5131, if such fee is subsequently invested into the account (as a deferred fee arrangement or otherwise), it would then be considered a beneficial interest in the account.

**B. Determination of Covered Person Status under Rule 5131:**

Section 1 (Persons Covered by Rule 5131)

The Subscriber is:

- ☐ an executive officer or director of a public company.<sup>11</sup>
- ☒ an executive officer or director of a covered non-public company.<sup>12</sup>
- ☐ a person materially supported by an executive officer or director of a public company or a covered non-public company.<sup>13</sup>

If any of the three preceding boxes are checked, please provide the name of the “public company” or “covered non-public company” in the space below.

NEXBANK, MEM, CORNERSTONE, CCS MEDICAL, AM. BANKNOTE

If the Subscriber is an entity in which any of the above persons have a direct or indirect beneficial interest, please specify the current beneficial interest of each such person (as a percentage) and each relevant “public company” or “covered non-public company” for which the relevant investor is an executive officer or director.

Note that Subscribers checking the boxes above may not be restricted in their participation in New Issues depending on such Subscriber’s Interest in the Fund and the investment banking relationships of the companies they serve.

Section 2 (Persons Not Covered by Rule 5131)

- ☐ None of the Covered Person Categories in Section 1 above apply and the Subscriber is eligible to fully participate in profits and losses from investments in New Issues.

<sup>11</sup> As used herein, a “*public company*” is any company that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), or any company that files periodic reports pursuant to Section 15(d) of the Exchange Act.

<sup>12</sup> As used herein, a “*covered non-public company*” means any non-public company satisfying any of the following three criteria:

- (a) income of at least \$1 million in the previous fiscal year or in two of the three previous fiscal years *and* shareholders’ equity of at least \$15 million;
- (b) shareholders’ equity of at least \$30 million and an operating history of two years; or
- (c) total assets and total revenue of at least \$75 million in the latest fiscal year *or* in two of the three most recent fiscal years.

<sup>13</sup> As used herein, “*material support*” means directly or indirectly providing more than 25% of a person’s income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing each other with material support.

C. **Determination of Exempted Entity Status under Rules 5130 and 5131:**

A Subscriber who has checked one of the boxes set forth in Item A, Section 1 or Item B, Section 1 above may be eligible to participate in New Issues if the Subscriber meets certain criteria for exempted entities. In order for the Fund to be able to determine the extent to which an exemption applies, please check all appropriate boxes that describe the Subscriber.

Section 1 (Rules 5130 and 5131)

The Subscriber is an entity that:

- ☐ is an investment company registered under the Investment Company Act;
- ☐ is a common trust fund or similar fund, as described in Section 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), and the fund (i) has investments from 1,000 or more accounts and (ii) does not limit beneficial interests in the fund principally to trust accounts of Restricted Persons;
- ☐ is an insurance company general, separate or investment account, and (i) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders and (ii) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to Restricted Persons, or, if a general account, the insurance company does not limit its policyholders principally to Restricted Persons;
- ☐ is a publicly traded entity (other than a broker-dealer or an affiliate of a broker-dealer where such broker-dealer is authorized to engage in the public offering of New Issues either as a selling group or underwriter) that (i) is listed on a national securities exchange, or (ii) is a foreign issuer whose securities meet the quantitative designation criteria for listing on a national securities exchange;
- ☐ is an investment company organized under the laws of a foreign jurisdiction, (i) that is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; and (ii) in which no person owning more than 5% of the shares of such investment company is a Restricted Person;
- ☐ is an employee benefit plan under ERISA that is qualified under Section 401(a) of the Code, and such plan is not sponsored solely by a broker-dealer;
- ☐ is a state or municipal government benefit plan that is subject to state and/or municipal regulation;
- ☐ is a tax-exempt charitable organization under Section 501(c)(3) of the Code and has attached a copy of the IRS determination letter confirming the entity's qualification under Section 501(c)(3) of the Code, by virtue of which there are no "beneficial owners" as calculated based on the definition of "beneficial interest" under FINRA Rule 5130; or

- ☐ is a church plan under Section 414(e) of the Code.
- ☒ None of the preceding categories in this Item C apply to the Subscriber.

Section 2 (Rule 5130 only)

The Subscriber is:

- ☐ an entity that represents, based upon a representation from the beneficial account holders or a person authorized to represent the beneficial owners of the Subscriber (in either case, dated no earlier than 12 months prior to the date of the Subscription Agreement), that none of the beneficial owners of the Subscriber who participate in New Issues are persons who are not entitled to do so under FINRA Rule 5130, and the Subscriber is eligible to purchase New Issues in compliance with FINRA Rule 5130; or
- ☐ is an entity (including a private investment vehicle, such as a hedge fund or fund of hedge funds) (i) in which the beneficial interests of Restricted Persons do not exceed in the aggregate 10% of such entity or (ii) that limits participation in New Issue profits by Restricted Persons to not more than 10% of the profits from New Issues.

If the immediately preceding box is checked, please specify the current percentage of the net profits from New Issues allocable to beneficial owners of such entity who are Restricted Persons.

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# HIGHLAND CREDIT OPPORTUNITIES FUND, LTD.

## SUBSCRIPTION AGREEMENT

Highland Credit Opportunities Fund, Ltd.  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201

Ladies and Gentlemen:

### 1. Documents Received

(a) The undersigned (the “**Subscriber**”) hereby acknowledges having (i) received, read and understood the current Confidential Private Offering Memorandum, as supplemented and amended from time to time (the “**Private Offering Memorandum**”), of Highland Credit Opportunities Fund, Ltd., a Cayman Islands exempted company (the “**Fund**”), including but not limited to those sections dealing with risk factors, conflicts of interest, fees and tax consequences of an investment in the Fund, and the Memorandum and Articles of Association of the Fund, as amended to date (the “**Articles**”), (ii) received a copy of Form ADV Part 2A, the firm brochure, and Form ADV Part 2B, the brochure supplement, of Highland Capital Management, L.P. (in its capacity as the investment manager of the Fund, the “**Investment Manager**”), as amended to date (the “**Form ADV**”), prior to or simultaneously with delivery of this Subscription Agreement to the Fund and (iii) been given the opportunity to (A) ask questions of, and receive answers from the Investment Manager or one of its affiliates concerning the terms and conditions of the offering and other matters pertaining to an investment in the Fund and (B) obtain any additional information that the Investment Manager can acquire without unreasonable effort or expense that is necessary to evaluate the merits and risks of an investment in the Fund.

(b) Appendix A hereto contains the definitions of certain capitalized terms used but not otherwise defined herein and should be read by the Subscriber prior to entering into this Subscription Agreement.

### 2. Subscription Commitment

(a) The Subscriber hereby irrevocably subscribes for shares of the Fund (the “**Shares**”), subject to Articles, as may be amended from time to time, and the Private Offering Memorandum, and agrees to contribute in cash (unless otherwise agreed by the Fund) to the capital of the Fund, the amount set forth on the Signature Page of this Subscription Agreement. Such amount shall be payable in full in readily available funds by wire transfer to the bank account of the Fund at least two business days prior to the proposed date of subscription.

(b) The Subscriber understands that this subscription is not binding on the Fund until accepted by the Fund, and it may be rejected, in whole or in part, by the Fund in its absolute discretion. If and to the extent rejected, the Fund shall, to the extent permitted by law, return to the Subscriber, without interest or deduction, any payment tendered by the Subscriber, and the Fund and the Subscriber shall have no further obligation to each other hereunder. The Subscriber acknowledges and accepts that none of the Fund, the Investment Manager, the Fund’s

administrator (the “*Administrator*,” which term shall be construed to include any sub-administrator of the Fund unless the context otherwise requires) nor their respective agents, affiliates or representatives shall be responsible for any lost profit, revenue or damages of any kind due to a delayed acceptance or a rejected subscription.

### 3. Representations, Warranties and Covenants – All Subscribers

To induce the Fund to accept this subscription, the Subscriber hereby makes the following representations, warranties and covenants to the Fund:

(a) The information set forth in the subscriber information form attached hereto, which shall be considered an integral part of this Subscription Agreement (the “*Subscriber Information Form*”), is true, correct, accurate and complete, and will be relied upon by the Fund for the purpose of determining the eligibility of the Subscriber to purchase and own Shares.

(b) The Subscriber hereby represents that the information set forth in the Subscriber Information Form is true, correct, accurate and complete as of the date hereof, and the Subscriber agrees to notify the Fund immediately if any representation or warranty contained in this Subscription Agreement, or any information provided pursuant to the Subscriber Information Form becomes untrue, misleading, or otherwise requires updating at any time. For so long as the Subscriber is a shareholder of the Fund, the Subscriber further agrees to provide any revised or updated information necessary to cause the Subscriber Information Form to remain true and correct as soon as practicable upon the Subscriber becoming aware that any such change or revision is necessary. The Subscriber agrees to provide, if requested, any additional information that may reasonably be required to substantiate the Subscriber’s status as an “accredited investor” or “qualified purchaser” or to otherwise determine the eligibility of the Subscriber to purchase Shares. The Subscriber agrees to provide any additional information and execute any additional documents as may reasonably be required in connection with any subscription, credit facility or other similar borrowing arrangement by the Fund or any lender named in the credit facility or similar lending arrangement.

(c) The Subscriber consents to the disclosure of any such information, and any other information furnished to the Fund, to any governmental authority or self-regulatory organization or, to the extent required by law or deemed (subject to applicable law) by the Fund to be in the best interest of the Fund, to any other person.

(d) Except as disclosed in the accompanying Subscriber Information Form, the Subscriber is acquiring the Shares for the Subscriber’s own account; does not have any contract, undertaking or arrangement with any person or entity to sell, transfer or grant a participation with respect to any of the Shares; and is not acquiring the Shares with a view to or for sale in connection with any distribution of the Shares.

(e) The Subscriber or an advisor or consultant relied upon by the Subscriber in reaching a decision to subscribe has such knowledge and experience in financial, tax and business matters as to enable the Subscriber or such advisor or consultant to evaluate the merits and risks of an investment in the Fund (including the risks set forth in the Private Offering Memorandum) and to make an informed investment decision with respect thereto and has made its own investment decision, including decisions regarding suitability based on its own judgment

or upon the advice from such advisers as it deemed necessary and not upon the views or advice of the Fund, the Investment Manager, or their affiliates or representatives.

(f) The Subscriber understands that the Shares have not been and will not be registered under the Securities Act of 1933, as amended (the “*Securities Act*”), or any state law and that the Fund is not registered under the Investment Company Act of 1940, as amended (the “*Investment Company Act*”). The Subscriber agrees to notify the Fund prior to any proposed sale, transfer, distribution or other disposition of the Shares or any beneficial interest therein, and will not sell, transfer, distribute or otherwise dispose of the Shares (including, without limitation, by pledge, option, swap or nominee or similar relationship, and further including, without limitation, the offering or listing of any Shares on or through any placement agent, intermediary, online service, site, agent or other similar person, service or entity) without the consent of the directors of the Fund (the “*Directors*”) and the Investment Manager, which may be granted or withheld in their sole discretion, and unless the Shares are registered or such sale, transfer, distribution or other disposition is exempt from registration. The Subscriber understands that any such transfers without the consent of the Directors and the Investment Manager are null and void. The Subscriber also understands that the Fund has no intention to register the Fund or the Shares with the Securities and Exchange Commission or any state and is under no obligation to assist the Subscriber in obtaining or complying with any exemption from registration. The Fund may require that a proposed transferee meet appropriate financial and other suitability standards and that the transferor furnish a legal opinion satisfactory to the Fund and its counsel that the proposed transfer complies with applicable federal, state and any other applicable securities laws. An appropriate legend evidencing such restrictions may be placed on any certificates issued representing the Shares and appropriate stop-transfer instructions may be placed with respect to the Shares.

(g) The Subscriber confirms that it has not been invited as a member of the public in the Cayman Islands to subscribe for Shares.

(h) In formulating a decision to invest in the Fund, the Subscriber has not relied or acted on the basis of any representations or other information purported to be given on behalf of the Fund or the Investment Manager, except as set forth in the Private Offering Memorandum or the Articles or the Form ADV (it being understood that no person has been authorized by the Fund or the Investment Manager to furnish any such representations or other information).

(i) The Subscriber recognizes that there is not now any secondary market for the Shares and that such a market is not expected to develop; accordingly, it may not be possible for the Subscriber readily to liquidate the Subscriber’s investment in the Fund other than through a redemption of Shares as provided in the Articles and the Subscriber may be holding such Shares for an indefinite period of time.

(j) The Subscriber understands the investment objectives and policies of, and the investment strategies that may be pursued by, the Fund. The Subscriber’s investment is consistent with the investment purposes and objectives and cash flow requirements of the Subscriber and will not adversely affect the Subscriber’s overall need for diversification and liquidity.

(k) The Subscriber can afford a complete loss of its investment in the Fund and can afford to hold its investment in the Fund for an indefinite period of time.

(l) If the Subscriber is a natural person, the Subscriber is qualified to become a shareholder of the Fund and has the legal capacity to execute, deliver and perform this Subscription Agreement.

(m) If the Subscriber is a corporation, partnership, limited liability company, trust or other entity, it is authorized and qualified to become a shareholder of, and authorized to make its subscription payment to, the Fund and otherwise to comply with its obligations as a shareholder of the Fund; the person signing this Subscription Agreement on behalf of such entity has been duly authorized by such entity to do so; and this Subscription Agreement has been duly executed and delivered on behalf of the Subscriber and is the valid and binding agreement of the Subscriber, enforceable against the Subscriber in accordance with its terms. In addition, such Subscriber will, upon request of the Fund or the Administrator, deliver any documents, including an opinion of counsel to the Subscriber, evidencing the existence of the Subscriber, the legality of an investment in the Fund and the authority of the person executing this Subscription Agreement on behalf of the Subscriber.

(n) The purchase of the Shares hereunder and the compliance by such Subscriber with all of the provisions of this Subscription Agreement applicable to such Subscriber and the consummation by such Subscriber of the transactions herein and therein contemplated will not (a) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which such Subscriber is a party or by which such Subscriber is bound or to which any of the property or assets of such Subscriber is subject, nor (b) will such action result in any violation of (i), if such Subscriber is an entity, the provisions of the organizational documents of such Subscriber or (ii) any statute applicable to such Subscriber or any order, rule or regulation of any court or governmental agency or body having jurisdiction over such Subscriber or the property of such Subscriber.

(o) The Subscriber has carefully reviewed and understands the various risks of an investment in the Fund, as well as the fees and conflicts of interest to which the Fund is subject, as set forth in the Private Offering Memorandum. The Subscriber hereby consents and agrees to the payment of the fees so described to the parties identified as the recipients thereof, and to such conflicts of interest.

(p) The Subscriber believes that the compensation terms of the Fund represent an "arm's-length" arrangement and the Subscriber is satisfied that it has received adequate disclosure from the Fund and the Investment Manager to enable it to understand and evaluate the compensation and other terms of the Fund and the risks associated therewith.

(q) The Subscriber represents and warrants that no holder of any beneficial interest in the Shares (each a "***Beneficial Interest Holder***") and, in the case of a Subscriber which is an entity, no Related Person is:



- (1) A person or entity whose name appears on the List of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Asset Control from time to time;
- (2) A Foreign Shell Bank; or
- (3) A person or entity resident in or whose subscription funds are transferred from or through an account in a Non-Cooperative Jurisdiction.

The Subscriber agrees promptly to notify the Fund or the person appointed to administer the Fund's anti-money laundering program, if applicable, of any change in information affecting this representation and covenant.

(r) The Subscriber represents that (except as otherwise disclosed to the Fund in writing):

- (1) neither it, any Beneficial Interest Holder nor any Related Person (in the case of a Subscriber that is an entity) is a Senior Foreign Political Figure, any member of a Senior Foreign Political Figure's Immediate Family or any Close Associate of a Senior Foreign Political Figure;
- (2) neither it, any Beneficial Interest Holder nor any Related Person (in the case of a Subscriber that is an entity) is resident in, or organized or chartered under the laws of, a jurisdiction that has been designated by the Secretary of the Treasury under Section 311 or 312 of the USA PATRIOT Act as warranting special measures due to money laundering concerns;<sup>14</sup> and
- (3) its subscription funds do not originate from, nor will they be routed through, an account maintained at a Foreign Shell Bank, an "offshore bank," or a bank organized or chartered under the laws of a Non-Cooperative Jurisdiction.

(s) The Subscriber acknowledges and agrees that any amounts paid to it will be paid to the same account from which its subscription funds were originally remitted, unless the Fund agrees otherwise.

(t) If the Subscriber is purchasing the Shares as agent, representative or intermediary/nominee, or in any similar capacity for any other person, or is otherwise requested to do so by the Fund, it shall provide a copy of its anti-money laundering policies ("**AML Policies**") to the Fund. The Subscriber represents that (i) it is in compliance with its AML Policies, (ii) its AML Policies have been approved by counsel or internal compliance personnel who have been reasonably informed of the legal requirements and best practices for anti-money laundering policies and their implementation, and (iii) it has not received a deficiency letter, negative report or any similar determination regarding its AML Policies from independent

<sup>14</sup> The Treasury Department's Financial Crimes Enforcement Network ("**FinCEN**") issues advisories regarding countries of primary money laundering concern. FinCEN's advisories are posted at [http://www.fincen.gov/pub\\_main.html](http://www.fincen.gov/pub_main.html).



accountants, internal auditors or some other person responsible for reviewing compliance with its AML Policies.

(u) The Subscriber represents and warrants that as a result of its acquisition and holding of the Shares: (i) the assets of the Fund will not constitute the assets of any employee benefit plan subject to any federal, state, local or non-U.S. law, rule or regulations (“*Similar Law*”) that is similar to (A) the U.S. Employee Retirement Income Security Act of 1974, as amended (“*ERISA*”), or (B) Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “*Code*”); (ii) the Investment Manager will not be considered to be a fiduciary of the Subscriber under any Similar Law; and (iii) no activity of the Fund contemplated in the Private Offering Memorandum or the Articles will violate any Similar Law.

(v) The Subscriber will promptly provide any additional documentation the Fund or the Administrator may request in the future to the extent that the Fund or the Administrator determines necessary in order to comply with applicable anti-money laundering laws or policies or any other applicable law.

(w) The Subscriber acknowledges that due to anti-money laundering requirements operating within their respective jurisdictions, the Fund, the Investment Manager and/or the Administrator (as the case may be) may require additional documentation before a subscription application or redemption request can be processed. Please be aware that your failure to provide or a delay in providing any such documentation may delay your acceptance to the Fund, cause your subscription to be rejected entirely or delay the satisfaction of your redemption request, as applicable. The Fund, the Investment Manager and the Administrator shall be held harmless and indemnified against any loss arising as a result of any such delay or rejection due to the Subscriber’s failure to provide or delay in providing any such requested information.

(x) The Subscriber acknowledges and agrees that Shares of the Fund will not be issued until such time as the Fund and/or the Administrator has received and is satisfied with all the information and documentation requested to verify the Subscriber’s identity. Where at the sole discretion of the Fund, Shares are issued prior to the Fund and/or Administrator having received all the information and documentation required to verify the Subscriber’s identity, the Subscriber will be prohibited from redeeming any Shares so issued, and the Fund and the Administrator on its behalf reserves the right to refuse to make any redemption payment or distribution to the Subscriber, until such time as the Fund and/or the Administrator, as applicable, has received and is satisfied with all the information and documentation requested to verify the Subscriber’s identity.

(y) The Subscriber acknowledges and agrees that each of the Fund, the Administrator and the Investment Manager may disclose to each other, to any affiliate, to any other service provider to the Fund or to any regulatory body in any applicable jurisdiction copies of the Subscriber’s subscription documents and any information concerning the Subscriber in their respective possession, whether provided by the Subscriber to the Fund, the Administrator or the Investment Manager or otherwise, including details of the Subscriber’s Shares, historical and pending transactions in the Shares and the value thereof, and any such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed on any such person by law or otherwise.

(z) The Subscriber agrees to provide the Fund and/or the Administrator any additional tax information or documentation that the Fund or the Administrator believes will enable it, the Fund or any subsidiary of the foregoing to comply with or mitigate any of their respective tax reporting, tax withholding, and/or tax compliance obligations, including any such obligations under the U.S. Hiring Incentives to Restore Employment Act (P.L. 111-147), or which may arise as a result of a change in law or in the interpretation thereof.

(aa) The Subscriber understands that Akin Gump Strauss Hauer & Feld LLP ("**Akin Gump**") acts as U.S. counsel to the Fund, the Investment Manager and their affiliates. The Subscriber also understands that, in connection with this offering of Shares and ongoing advice to the Fund, the Investment Manager and their affiliates, Akin Gump will not be representing investors in the Fund, including the Subscriber, and no independent counsel has been retained to represent investors in the Fund. In addition, Akin Gump does not undertake to monitor the compliance of the Investment Manager and its affiliates with the investment program, valuation procedures and other guidelines set forth in the Private Offering Memorandum, nor does Akin Gump monitor compliance with applicable laws. In preparing the Private Offering Memorandum, Akin Gump relied on information furnished to it by the Fund and/or the Investment Manager, and did not investigate or verify the accuracy or completeness of the information set forth therein concerning the Fund, the Investment Manager and their affiliates and personnel.

#### 4. Representations, Warranties and Covenants – ERISA Subscribers

If the Subscriber is, or is acting on behalf of, an employee benefit plan which is subject to ERISA or Section 4975 of the Code, to induce the Fund to accept this subscription, the Subscriber hereby makes the following additional representations, warranties and covenants to the Fund:

(a) The person executing this Subscription Agreement on behalf of the Subscriber either is a "named fiduciary" (within the meaning of ERISA) of the Subscriber, or is acting on behalf of a named fiduciary of the Subscriber pursuant to a proper delegation of authority.

(b) The person executing this Subscription Agreement on behalf of the Subscriber represents and warrants on behalf of such person or the Subscriber, as applicable, as follows:

- (1) The Subscriber is (w) an employee benefit plan subject to the fiduciary provisions of ERISA, (x) a "plan" subject to Section 4975 of the Code, (y) an entity that otherwise constitutes a "benefit plan investor" within the meaning of any Department of Labor regulation promulgated under Section 3(42) of ERISA (a party described in (w), (x) or (y) a "**Plan**") or (z) any entity whose underlying assets include "plan assets" for purposes of ERISA by reason of a Plan's investment in the Subscriber (a "**Plan Asset Entity**").
- (2) The execution and delivery of this Subscription Agreement and the consummation of the transactions contemplated hereunder, and in the Private Offering Memorandum and the Articles will not result in a breach or violation of any charter or organizational documents pursuant to which

the Subscriber was formed, or any statute, rule, regulation or order of any court or governmental agency or body having jurisdiction over the Subscriber or any of its assets, or in any material respect, any mortgage, indenture, contract, agreement or instrument to which the Subscriber is a party or otherwise subject.

- (3) The investment in the Fund is permitted by the documents of the Subscriber and such documents permit the Subscriber to invest in private investment funds that will engage in the investment program described in the Private Offering Memorandum.

(c) The Subscriber is not in any way affiliated with (*i.e.*, does not own or control, is not owned or controlled by, nor is under common ownership or control with) any person or entity which will receive compensation, directly or indirectly, from the Fund, as specifically identified and described in the Private Offering Memorandum.

(d) The Subscriber acknowledges and agrees that the decision to invest in the Fund and the review of the terms of the Fund must be made solely and independently by a fiduciary of the Subscriber who has no affiliation with the Investment Manager or any of its affiliates or employees, without relying on any recommendation of the Investment Manager or any of its affiliates or employees as a primary basis for its decision.

(e) The appropriate fiduciaries of the Subscriber have considered the investment in light of the risks relating thereto and fiduciary responsibility provisions of ERISA applicable to the Subscriber and have determined that, in view of such considerations, the investment is appropriate for the Subscriber and is consistent with such fiduciaries' responsibilities under ERISA, and the appropriate fiduciaries: (i) are responsible for the Subscriber's decision to invest in the Fund, including the determination that such investment is consistent with the requirement imposed by Section 404 of ERISA that employee benefit plan investments be diversified so as to minimize the risk of large losses; (ii) are independent of the Investment Manager and any of its affiliates and employees and of any person or entity that will receive compensation, whether directly or indirectly, from the Fund, as specifically identified and described in the Private Offering Memorandum; (iii) are qualified and authorized to make such investment decision; and (iv) in making such decision, have not relied on the recommendation of the Investment Manager or any of its affiliates or employees.

(f) The Subscriber through the appropriate fiduciaries has been given the opportunity to discuss the Subscriber's investment in the Fund, and the structure and operation of the Fund with the Investment Manager and has been given all information that the Subscriber or the appropriate fiduciaries have requested and which the Subscriber or the appropriate fiduciaries deemed relevant to the Subscriber's decision to participate in the Fund.

## **5. Representations, Warranties and Covenants – Insurance Company General Account and Plan Asset Entity Subscribers**

(a) If the Subscriber is acquiring the Shares with the assets of the general account of an insurance company (a "**General Account**"), the Subscriber represents, warrants and covenants that, on each day the Subscriber owns the Shares, either (i) the assets of such General Account

are not considered to be plan assets within the meaning of Section 3(42) of ERISA, Department of Labor Regulations Section 2510.3-101 or Department of Labor regulations issued pursuant to Section 401(c)(1)(A) of ERISA, or (ii) the execution and delivery of this Subscription Agreement, and the acquisition and redemption of the Shares, is exempt from the prohibited transaction rules of Section 406(a) of ERISA and Section 4975(c)(1)(A) - (D) of the Code by virtue of Department of Labor Prohibited Transaction Class Exemption 95-60 or some other exemption of such rules.

(b) By signing this Subscription Agreement, each Subscriber that is either a Plan Asset Entity or using the assets of a General Account hereby covenants that if, after its initial acquisition of the Shares, at any time during any calendar month the percentage of the assets of such General Account (as reasonably determined by the Subscriber) or Plan Asset Entity, as applicable, that constitute "plan assets" for purposes of Title I of ERISA or Section 4975 of the Code exceeds the maximum percentage limit specified by the Subscriber in Question 2(d) of Section III of the Subscriber Information Form, then such Subscriber shall promptly notify the Fund of such occurrence and the Fund may require the Subscriber to redeem or dispose of all or a portion of the Shares held in such General Account or by such Plan Asset Entity, as applicable, by the end of the next following calendar month or such other time as may be determined by the Investment Manager.

## 6. Indemnification

(a) The Subscriber understands the meaning and legal consequences of the representations, warranties, agreements, covenants and confirmations set out above and agrees that the subscription made hereby, if accepted by the Fund, will be accepted in reliance thereon. The Subscriber agrees to indemnify and hold harmless the Fund, the Directors, the Investment Manager and their affiliates, and the partners, members, managers, stockholders, other beneficial owners, officers, directors and employees of any of the foregoing (together, the "**Indemnified Persons**") from and against any and all loss, damage, liability or expense, including reasonable costs and attorneys' fees and disbursements, which an Indemnified Person may incur by reason of, or in connection with, any representation or warranty made herein (or in the accompanying Subscriber Information Form) not having been true, correct and complete when made, any misrepresentation made by the Subscriber or any failure by the Subscriber to fulfill any of the covenants or agreements set forth herein, in the Subscriber Information Form or in any other document provided by the Subscriber to the Fund.

(b) To the extent that any provisions of this Subscription Agreement, including, without limitation, Section 6 hereof, are not enforceable under applicable law by virtue of any person not being party to this Subscription Agreement (each such person, a "**Third Party**"), the Subscriber hereby agrees that the Fund may execute one or more deed polls and/or enter into one or more separate agreements with any such Third Party and take all further actions as may be necessary or desirable, in the sole opinion of the Fund, to give effect to such provisions.

(c) The Subscriber expressly consents to the Investment Manager or the Administrator accepting and executing any instructions transmitted in written or facsimile form (or by other electronic means) in respect of an investment in the Fund to which this application relates (including, without limitation, withdrawal requests). If instructions are given by the Subscriber in facsimile form (or by other electronic means), the Subscriber undertakes to send



the original letter of instructions to the Fund and the Administrator and hereby agrees to hold harmless and indemnify each of the Indemnified Persons, the Administrator and any of its employees and agents against any loss of any nature whatsoever arising to any of them as a result of any of them acting upon instructions submitted by facsimile or by other electronic means. Each Indemnified Person and each of the Administrator and any of its employees and agents may rely conclusively upon and shall incur no liability (i) for any loss arising from the non-receipt of any instructions relating to the Shares of the Subscriber delivered by facsimile or other electronic means or (ii) in respect of any action taken upon any notice, consent, request, instructions or other instrument believed in good faith to be genuine or to be signed by properly authorized persons on behalf of the Subscriber. Each Indemnified Person and each of the Administrator and any of its employees and agents shall be allowed such amount of time to act on and implement any instructions as may be reasonable having regard to their systems and operations and any other circumstances then prevailing and shall not be liable for any loss arising from any delay in acting on any instruction.

## **7. Miscellaneous**

(a) The Subscriber agrees that neither this Subscription Agreement, nor any of the Subscriber's rights, interest or obligations hereunder, is transferable or assignable by the Subscriber, and further agrees that the transfer or assignment of any Shares acquired pursuant hereto shall be made only in accordance with the provisions hereof and all applicable laws. Any assignment in violation of this Section 7(a) shall be null and void.

(b) The Subscriber agrees that, except as permitted by applicable law, it may not cancel, terminate or revoke this Subscription Agreement or any agreement of the Subscriber made hereunder, and that this Subscription Agreement shall survive the death or legal disability of the Subscriber and shall be binding upon the Subscriber's heirs, executors, administrators, successors and assigns.

(c) All of the representations, warranties, covenants, agreements, indemnities and confirmations set out above and in the Subscriber Information Form shall survive the acceptance of the subscription made herein and the issuance of any Shares.

(d) This Subscription Agreement together with the Subscriber Information Form constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by both parties.

(e) The Subscriber hereby agrees that any representation made hereunder will be deemed to be reaffirmed by the Subscriber at any time it makes an additional capital contribution to the Fund and the act of making such additional contribution will be evidence of such reaffirmation.

(f) Within 10 days after receipt of a written request therefor from the Fund, the Subscriber agrees to provide such information and to execute and deliver such documents as the Fund may deem reasonably necessary to comply with any and all laws, rules, regulations, orders and ordinances to which the Fund is or may be subject.



(g) The Subscriber agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its investment in the Fund) or disclose to any person, any information or matter relating to the Fund and its affairs and any information or matter related to any investment of the Fund (other than disclosure to the Subscriber's authorized representatives); provided that (i) the Subscriber may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Subscriber, (y) the information otherwise is or becomes legally known to the Subscriber other than through disclosure by the Fund, or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) the Subscriber may make such disclosure to its Beneficial Interest Holders to the extent required under the terms of its arrangements with such persons; and (iii) the Subscriber will be permitted, after written notice to the Fund, to correct any false or misleading information that becomes public concerning the Subscriber's relationship to the Fund. Prior to making any disclosure required by law, the Subscriber shall use its best efforts to notify the Fund of such disclosure. Prior to any disclosure to any authorized representative or Beneficial Interest Holder, the Subscriber shall advise such persons of the confidentiality obligations set forth herein and each such person shall agree to be bound by such obligations. Notwithstanding the foregoing, the Subscriber may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided in connection with this Subscription Agreement to the Subscriber relating to such tax treatment or tax structure. The Subscriber acknowledges and agrees that the Fund and the Investment Manager would be damaged irreparably and would not have an adequate remedy at law if this Section (g) is not performed in accordance with its specific terms or is otherwise breached. Accordingly, in addition to any other remedy to which it may be entitled at law or in equity, each party will be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Section 7(g) and to enforce specifically this Section 7(g), without bond or other security being required. The rights and remedies in this Section 7(g) are cumulative and in addition to any other rights and remedies otherwise available at law or in equity. Nothing will be considered an election of remedies or a waiver of the right to pursue any other right or remedy to which party may be entitled.

(h) The Subscriber acknowledges and understands that if any person who is resident in the Cayman Islands has a suspicion that a payment to the Fund (by way of subscription or otherwise) is the proceeds of criminal conduct, that person is required to report such suspicion to the relevant Cayman authorities pursuant to The Proceeds of Crime Law (as amended) of the Cayman Islands.

(i) Except as otherwise indicated in PART A – SECTION I.4 of the Subscriber Information Form, the Subscriber has agreed to receive and accept reports and communications indefinitely from the Fund, the Administrator and the Investment Manager exclusively via e-mail to the e-mail address set forth in the Subscriber Information Form unless the Subscriber notifies the Investment Manager or the Administrator in writing that the Subscriber wishes to receive reports to either another e-mail address or alternatively, via regular mail in lieu of electronic mail. *If instructions are given by the Subscriber via e-mail, the Subscriber agrees to indemnify each Indemnified Person and each of the Administrator and any of its employees and agents*

*against any loss of any nature whatsoever arising to any of them as a result of any of them acting upon instructions submitted by facsimile or by other electronic means. Each Indemnified Party and the Administrator may rely conclusively upon and shall incur no liability in respect of any loss arising from (i) the non-receipt of any instructions relating to the interests of the Subscriber delivered via e-mail or (ii) any action taken upon any notice, consent, request, instructions or other instrument believed in good faith to be genuine or to be signed by properly authorized persons on behalf of the Subscriber.*

## **8. Standing Proxy**

The Subscriber hereby designates and appoints the Administrator with power of substitution, as the Subscriber's true and lawful proxy for the purpose of voting any Shares issued pursuant to this Subscription Agreement (or such portion thereof from time to time owned by the Subscriber) as said proxy may determine on any and all matters arising at any annual or special general meeting of the Fund or any class meeting upon which such Shares could be voted by the Subscriber (or the person in whose name the Shares hereby subscribed are registered at the Subscriber's direction) if present in person at the meeting. This proxy may be revoked by the Subscriber (or his registered nominee) either personally or by presentation of a subsequently executed form of proxy at any annual or special general meeting or any class meeting of the Fund or by written notice to the Administrator received at the Fund's registered office prior to any such meeting.

## **9. Notices**

Any notice required or permitted to be given to the Subscriber in relation to the Fund shall be sent to the address specified in Part A, Section I of the Subscriber Information Form or to such other address as the Subscriber designates by written notice received by the Fund. The Subscriber acknowledges and agrees that any consent that need be obtained from the Subscriber by the Fund may be obtained by the form of a negative consent following written notice. For purposes of clarity, the Fund may provide the Subscriber with reasonable advance notice of an issue requiring the Subscriber's consent, and if the Subscriber does not respond to such notice within a reasonable time as set forth in the notice, the Subscriber shall be deemed to have approved and consent to such issue.

## **10. Arbitration and Mediation**

The Subscriber acknowledges and agrees that the following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with this Subscription Agreement, the Articles or otherwise involving the Fund and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### **(a) Mediation.**

(i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a

mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.

(ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.

(iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

(iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

(b) Arbitration.

(i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of this document will control.

(ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, provided, however, that the Fund or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will another arbitration law or regulation preclude application of the FAA, including any choice of law provisions in this agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

(iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and

conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.

(iv) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Subscription Agreement. This provision is intended to supersede any rights under Texas Civil Practices and Remedies Code § 38.001(8), which rights the parties expressly waive.

(v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes it. In any event, there shall be no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

(vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.

(vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## **11. Governing Law**

Except for Section 10 of this Subscription Agreement which shall be governed by the laws of the State of Texas, this Subscription Agreement shall be governed by, and construed in accordance with, the laws of the Cayman Islands, without giving effect to any conflict of law principles that would result in the application of the laws of any other jurisdiction.

[Signature Page Follows]



SIGNATURE PAGE

By signing below, the Subscriber (1) confirms that the information contained in the Subscriber Information Form is accurate and complete, (2) agrees to the terms of the Subscription Agreement, the Private Offering Memorandum and the Articles and (3) requests that the records of the Fund reflect the Subscriber's admission as a shareholder.

Executed as a Deed:

Dated: \_\_\_\_\_, 20\_\_

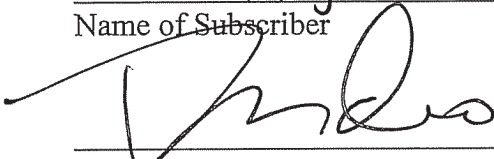
AMOUNT OF SUBSCRIPTION

\$ 180,000.00

\_\_\_\_\_  
Name of Other Subscriber  
(if a natural person and purchasing jointly)

THE DUGABOY INVESTMENT TRUST  
Name of Subscriber

\_\_\_\_\_  
Signature of Other Subscriber  
(if natural person and purchasing jointly)

  
Signature

\_\_\_\_\_  
Witness

MELISSA SCHROTH  
Witness

  
\_\_\_\_\_

EXECUTIVE ACCOUNTANT  
Name and title or representative  
capacity, if applicable

If the Subscriber is an individual retirement account, Keogh Plan or other self-directed plan, the custodian or trustee of the Subscriber is also required to execute this Agreement below:

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name of custodian or trustee

\_\_\_\_\_  
Signature  
Title: \_\_\_\_\_

The Subscriber's subscription is accepted, subject to the provisions of the Subscription Agreement, the Private Offering Memorandum and the Articles.

Highland Credit Opportunities Fund, Ltd.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **EXHIBIT 73**

004087

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of May 11, 2020 between and among UBS Securities LLC and UBS AG, London Branch (collectively, “UBS”), on the one hand, and Highland Multi Strategy Credit Fund, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.) (“MSCF”), Highland Credit Opportunities CDO, Ltd. (“Credit Opps”), and Highland Credit Opportunities CDO Asset Holdings, L.P. (“Asset Holdings,” and together with MSCF and Credit Opps, the “Funds”), on the other. UBS and the Funds are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

A. **WHEREAS**, MSCF and Credit Opps are parties to that certain Loan Agreement, made by and between MSCF, Credit Opps, and NexBank, SSB (“NexBank,” and together with MSCF and Credit Opps, the “Loan Parties”), dated as of May 1, 2018 (as amended, the “Loan Agreement”);

B. **WHEREAS**, Asset Holdings, a wholly owned subsidiary of MSCF, holds life settlement policies with policy numbers [REDACTED] (collectively, the “Life Settlement Policies”);

C. **WHEREAS**, on June 28, 2019, the Loan Parties entered into that certain Second Amendment to Loan Agreement pursuant to which it was agreed that the Life Settlement Policies with policy numbers [REDACTED] (the “NexBank Life Settlement Policies”) would be pledged to secure the obligations under the Loan Agreement;

D. **WHEREAS**, on June 28, 2019, Asset Holdings executed that certain Collateral Assignment of Life Insurance in favor of NexBank pursuant to which Asset Holdings believes it assigned the NexBank Life Settlement Policies to NexBank to secure the obligations under the Loan Agreement (“Assignment”);

E. **WHEREAS**, the Funds have determined that it is in their best interests to sell the Life Settlement Policies;

F. **WHEREAS**, UBS believes that it has a valid claim that the Life Settlement Policies were fraudulently conveyed to Asset Holdings in 2009 (the “Fraudulent Conveyance Claims”);

G. **WHEREAS**, the Fraudulent Conveyance Claims, among other claims, are the subject of a lawsuit brought by UBS in the Supreme Court of the State of New York, captioned *UBS Securities LLC and UBS AG, London Branch v. Highland Capital Management, L.P., Highland Special Opportunity Holding Company, Highland CDO Opportunity Master Fund, L.P., Highland Financial Partners, L.P., Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., Strand Advisors, Inc.*, No. 650097/2009, against Highland Credit Opportunities CDO, L.P., the predecessor of MSCF, amongst other parties (the “State Court Action”);

H. **WHEREAS**, UBS, in the State Court Action, has asserted, among other things, that the Life Settlement Policies or their value must be turned over to UBS;

I. **WHEREAS**, the Funds, among other defendants in the State Court Action, dispute UBS's claims to the Life Settlement Policies and the validity of the Fraudulent Conveyance Claims and UBS disputes the validity of the Assignment;

J. **WHEREAS**, because of the Fraudulent Conveyance Claims and the Assignment, the Funds' ability to sell the Life Settlement Policies has been compromised;

K. **WHEREAS**, solely to avoid the expense, inconvenience, and uncertainty associated with litigation, and without either Party admitting liability, fault, or wrongdoing, or releasing or waiving any rights or defenses with respect to the Fraudulent Conveyance Claims, the Parties desire to enter into this Agreement to allow the Life Settlement Policies to be sold and the proceeds to be distributed.

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Sale of Life Settlement Policies; Free and Clear.**

(a) The Funds will use commercially reasonable efforts to cause the Life Settlement Policies to be sold at an auction (the "Auction") conducted by Maple Life Analytics, LLC ("Maple") for \$37,135,000.00 in addition to amounts sufficient to reimburse the Funds for any Life Settlement Policy premiums paid in or after May 2020.

(b) Subject to the terms of this Agreement, including Section 4 hereof, UBS agrees that, if all or some of the Life Settlement Policies are sold at the Auction, any such sale of the Life Settlement Policies will be free and clear of any and all claims (including the Fraudulent Conveyance Claims) against or interests in such Life Settlement Policies that have been, could have been, or could be asserted by UBS whether in the State Court Action or otherwise. For the avoidance of doubt, UBS shall retain any and all such claims against (i) any Life Settlement Policies that are not sold in the Auction and/or (ii) against the Funds for the full value of such claims as they otherwise existed at the time of the completion of the Auction, including without limitation, for the value of any Life Settlement Policies sold at auction, and for any prejudgment interest, attorneys' fees, punitive damages, or other economic claims. For the avoidance of doubt, the Parties' intent is that this Agreement shall neither diminish nor augment the recoverable value of any claims UBS has with respect to the Funds or the Life Settlement Policies.

2. **Distribution of Proceeds.**

(a) Subject to Section 2(b), the proceeds from the Auction will be distributed as soon as reasonably practicable as follows:

(i) *First*, \$371,350.00 to Maple as payment for their fees;

(ii) *Second*, \$100,000.00 to MSCF to be used to pay other expenses associated with the Auction;

(iii) *Third*, \$15,840,000.000, representing the net proceeds from the sale of the NexBank Life Settlement Policies, to NexBank in satisfaction of its claimed security interest in the NexBank Life Settlement Policies and in repayment of a portion of the obligations owed by the Loan Parties to NexBank pursuant to the Loan Agreement;

(iv) *Fourth*, \$1,750,000 to Highland Capital Management, L.P. (“HCMLP”), in satisfaction of certain amounts previously loaned to MSCF for the payment of Life Settlement Policy premiums and certain other operating expenses;

(v) *Fifth*, \$8,969,000.00 to MSCF to be used to pay operating costs of the Funds (or to repay advances made to pay such costs), including, but not limited to, amounts due under the Loan Agreement and premiums due on any remaining life settlement policies, provided that none of the amounts in this Section 2(a)(v) shall be transferred to HCMLP as direct or indirect repayment of any amounts advanced by HCMLP to MSCF prior to the commencement of HCMLP’s chapter 11 bankruptcy case; and

(vi) *Sixth*, \$10,104,650.00 to the Escrow Account (as defined below) on the terms set forth in Section 3 hereof;

(b) In addition to the distributions set forth above:

(i) HCMLP will be entitled to receive any premium repayments or refunds made by any buyer of a Life Settlement Policy prior to any distributions being made pursuant to Section 2; and

(ii) Subject to Section 5 below, MSCF will retain any payments or proceeds received on the Life Settlement Policies that are not otherwise payable to the buyer of such Life Settlement Policy in the Auction.

(c) Notwithstanding anything in this Agreement to the contrary:

(i) if some, but not all, of the NexBank Life Settlement Policies are sold at the Auction, or if the NexBank Life Settlement Policies are sold for less than \$15,840,000.00, the amount set forth in Section 2(a)(iii) will be reduced to reflect the net proceeds from the NexBank Life Settlement Policies actually sold and the amount set forth in Section 2(a)(i) will be adjusted to reflect the fee actually payable to Maple; and

(ii) if the proceeds from the Auction are less than \$37,135,000.00 for any reason, other than as set forth in Section 2(c)(i), the amount set forth in Section 2(a)(i) will be adjusted to reflect the fee actually payable to Maple and any decrease in the gross proceeds shall be apportioned equally (i.e., by 50%) to each of the amounts set forth in Section 2(a)(vi) and Section 2(a)(iv). If the proceeds from the Auction are greater than \$37,135,000.00, then the additional gross proceeds shall be apportioned equally (i.e., by 50%) to each of the amounts set forth in Section 2(a)(v) and Section 2(a)(vi).

3. **Escrow Account.** The proceeds from the Auction distributed pursuant to Section 2(a)(vi), will be deposited in an escrow account (the “Escrow Account”) maintained at Citibank the terms and conditions set forth in the escrow agreement in the form attached hereto as **Exhibit A** (the “Escrow Agreement”). All costs associated with maintaining the Escrow Account will be paid by the Funds. As set forth in the Escrow Agreement, the Escrow Account will be maintained for a period of two years from the date proceeds are initially deposited therein, unless such date is extended by mutual agreement of the Parties or pursuant to an order from a court of applicable jurisdiction, and no amounts will be released from the Escrow Account during such two year period unless subject to court order or the agreement of the Parties. For the avoidance of doubt, it is expected that UBS will seek an extension of this two year period (upon a proper showing) if UBS’s claims against HCMLP and/or the Funds have not been resolved. Any amounts remaining in the Escrow Account at the expiration of the two year period, as may be extended and subject to contrary court order or agreement of the Parties, will be distributed to MSCF.

4. **No Release; No Waiver.** Except as set forth in Section 1(a) hereof, nothing contained herein is or will be construed as a waiver or release (i) by UBS of any claim, cause of action, or right of relief against any of the Funds or their predecessors, including the Fraudulent Conveyance Claims, whether in law, equity, or contract, including with respect to any proceeds from the sale of any of the Life Settlement Policies (the “Sale”) held in the Escrow Account (the “Escrow Amount”), or (ii) by the Funds, their predecessors, or any other party of any defense whether in law, equity, or contract with respect to the Fraudulent Conveyance Claims or any other claims that UBS may assert. All such rights are expressly reserved. For the avoidance of doubt, notwithstanding the Sale of the Life Settlement Policies, (a) UBS’s claims against the Life Settlement Policies are fully preserved against the proceeds of the Sale up to the Escrow Amount, and (b) all of UBS’s claims, causes of action, and rights of relief, whether in law or equity, against the Funds and their predecessors, or any of them, and whether currently pending or not, are preserved as to (but not limited by) the total proceeds of the Sale as against any and all present and future assets held by, or interests in, the Funds (other than the Life Settlement Policies) and shall in no way be deemed altered, diminished, impaired, released, or waived in any respect by the Sale, this Agreement, or the execution of this Agreement. For the further avoidance of doubt, the payment of proceeds from the Sale to HCMLP shall not be deemed in any way to impair, release, or waive any claims, causes of action, or rights of relief held by UBS against HCMLP or the Funds and their predecessors, nor shall any such payments in any way impair, release, waive, alter, or diminish UBS’s ability to recover such amounts on account of its claims against HCMLP in HCMLP’s chapter 11 case or otherwise. For the further avoidance of doubt, any claims UBS currently has (if any) with respect to the Life Settlement Policies or otherwise against the Funds and their predecessors, including but not limited to, claims for the value of the Life Settlement Policies as of the date of the Auction, claims for prejudgment interest, claims for attorneys’ fees and/or claims for punitive damages are intended to be preserved against the Funds, and shall not be diminished (or augmented) by the fact of the Sale of the Life Settlement Policies in the Auction.

5. **No Additional Distributions.**

(a) Except for the distributions set forth in Section 2 above, none of the Funds will make any distributions or redemption payments to any of MSCF’s limited partners, general



partners, shareholders, or other equity holders (collectively, the “Equity Parties”) (regardless of whether an Equity Party has tendered its equity interest for redemption) for two years from the date of the closing of the Life Settlement Policy sales (the “Standstill Term”) unless such payments are made with the mutual agreement of HCMLP and UBS or pursuant to an order from a court of applicable jurisdiction. It is agreed that the Funds shall provide UBS with no less than five (5) business days’ advance written notice prior to seeking such an order. It is expressly recognized that, upon a proper showing (subject to proper objections by HCMLP), UBS may obtain a court-ordered extension of the Standstill Term. The Standstill Term may be extended by mutual agreement of the Parties or pursuant to an order from a court of applicable jurisdiction. Following the expiration of the Standstill Term, as may be extended, MSCF may make distributions or redemption payments to the Equity Parties, to the extent permissible and appropriate, in its sole discretion. For the avoidance of doubt, the expiration of the Standstill Term, in of itself, shall not have any impact on UBS’s rights, if any, with respect to its claims against HCMLP and/or the Funds.

(b) During the Standstill Term (and any extension of that term pursuant to agreement or court order as set forth herein), the Funds agree to provide UBS with no less than five (5) business days’ written notice of any proposed sale, transfer, or other disposition of any assets held by, or interest in, the Funds, including the proceeds from such transfer or disposition, and the proposed transferee with respect to such assets or interests.

6. **Representations and Warranties.** As of the date hereof, the Funds represent, warrant and covenant that the Funds’ current assets and their most recent valuations are set forth in **Schedule 1** hereto in the following format:

Asset	Value	Date of Valuation	Source of Valuation

For the avoidance of doubt, nothing in this Section 6 or **Schedule 1** constitutes a representation or warranty as to the actual value of the Funds’ assets or the price that can or may be obtained from a sale, if any, of such assets.

7. **Successors In Interest.** Each of the Parties agrees that this Agreement will be binding upon the Parties, and, as applicable, upon their predecessors, successors, subsidiaries,

divisions, alter egos, affiliated and related entities, and their past or present officers, directors, partners, employees, attorneys, assigns, agents, representatives, and any or all of them.

8. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the Fraudulent Conveyance Claims. Nothing in this Agreement will imply an admission of liability, fault or wrongdoing by the Funds or any other person. In particular, the execution of this Agreement will not constitute an admission of liability, fault, or wrongdoing on the part of the Funds or any other person

9. **Confidentiality.** The Parties agree that the information provided in **Schedule 1** shall be strictly confidential except as required by law or if necessary to disclose to enforce this Agreement (but in such case the Parties will take reasonable care to ensure confidentiality to the extent permitted by law). The Parties to this Agreement stipulate and covenant not to repeat, speak, display or disclose any of the information set forth in **Schedule 1** to anyone other than their attorneys and advisors; *provided however*, that such information may be provided to the unsecured creditor committee appointed in the bankruptcy of HCMLP.

10. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**UBS**

UBS Legal Department – Americas Litigation  
Attn: Patrick Shilling  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-3685  
E-mail: patrick.shilling@ubs.com

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

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071  
Attention: Jeffrey E. Bjork, Esq.  
Telephone No.: 213-485-1234  
Facsimile No.: 213-891-8763  
E-mail: jeff.bjork@lw.com

**MSCF, Asset Holdings, or Credit Opps**

Highland Multi Strategy Credit Fund, L.P.  
c/o Highland Capital Management, L.P.

300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: Legal Department  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

11. **Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. **Severability.** If any term or provision, or portion thereof, of this Agreement is declared to be illegal or invalid, the validity of the remaining provisions or portions thereof will

not be affected thereby, and the illegal or invalid provision or portions thereof will be deemed not a part of the Agreement.


15. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. **Governing Law; Venue.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan with respect to any disputes arising from or out of this Agreement.

*[Remainder of Page Intentionally Blank]*

**IT IS HEREBY AGREED.**

**UBS SECURITIES LLC and UBS AG London Branch**

By:   
Name: Patrick Shilling  
Its: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
LTD.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_


**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**IT IS HEREBY AGREED.**

**UBS SECURITIES LLC and UBS AG London Branch**

By:   
Name: William W. Chandler  
Its: Authorized Signatory

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
LTD.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_


**IT IS HEREBY AGREED.**

**UBS SECURITIES LLC and UBS AG London Branch**

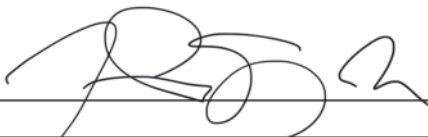
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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_


**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO LTD.**

By:  \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Authorized Signatory

**HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, LP**

By:  \_\_\_\_\_  
Name: JAMES P. BERRY, JR.  
Its: Authorized Signatory

**Schedule 1**

**Fund Assets**

**As of 4.30.20 [1][2]**

[illegible]

[REDACTED]

**Exhibit A**

**Form of Escrow Agreement**



## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into as of May \_\_\_, 2020, by and among (i) **UBS Securities LLC** (“**UBS**”), (ii) **Highland Multi Strategy Credit Fund, L.P.** (“**MSCF**”) and **Highland Credit Opportunities CDO Asset Holdings, LP** (“**Asset Holdings**”) and together with MSCF, sometimes referred to individually and collectively, the “**Funds**”) and the Funds together with UBS, sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”), and (iii) **CITIBANK, N.A.**, as escrow agent (the “**Escrow Agent**”).

## RECITALS

WHEREAS, the Parties, along with UBS AG, London Branch and Highland Credit Opportunities CDO, Ltd., entered into a Settlement Agreement dated May 11, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the “Settlement Agreement”) pursuant to which the Parties have agreed to place in escrow a portion of the proceeds from the sale of certain assets (the “Sale Proceeds”).

WHEREAS, the Parties and the Escrow Agent desire to set forth their rights and obligations with respect to the Escrow Funds (as defined below) and the distribution and release thereof.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Appointment. The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

2. Escrow Funds.

(a) Simultaneous with the execution and delivery of this Agreement, MSCF shall deposit or cause to be deposited with the Escrow Agent Sale Proceeds in the amount of \$10,104,650.00 (or such other amount as may be agreed to by the Parties) (such amount, the “Escrow Amount”) in immediately available funds. The Escrow Agent hereby acknowledges receipt of the Escrow Amount, together with all products and proceeds thereof, including all interest, dividends, gains and other income (collectively, the “Escrow Earnings”) earned with respect thereto (collectively, the “Escrow Funds”) in separate and distinct account (the “Escrow Account”), subject to the terms and conditions of this Agreement.

(b) For greater certainty, all escrow earnings shall be retained by the Escrow Agent and reinvested in the Escrow Funds and shall become part of the Escrow Funds; and shall be disbursed as part of the Escrow Funds in accordance with the terms and conditions of this Agreement.

3. Investment of Escrow Funds.

(a) Unless otherwise instructed in writing by the Parties, the Escrow Agent shall hold the Escrow Funds in a “noninterest-bearing deposit account” insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Funds shall at all times remain available for distribution in accordance with Section 4 below.

(b) The Escrow Agent shall send an account statement to each of the Parties on a monthly basis reflecting activity in the Escrow Account for the preceding month.

(c) The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions of this Agreement. The Escrow Agent does not have a duty nor will it undertake any duty to provide investment advice.

4. Disposition and Termination of the Escrow Funds.

(a) Escrow Funds. The Parties shall act in accordance with, and the Escrow Agent shall hold and release the Escrow Funds as provided in, this Section 4(a) as follows:

(i) Upon receipt of a Joint Release Instruction with respect to the Escrow Funds, the Escrow Agent shall promptly, but in any event within two (2) Business Days after receipt of a Joint Release Instruction, disburse all or part of the Escrow Funds in accordance with such Joint Release Instruction.

(ii) Upon receipt by the Escrow Agent of a copy of Final Determination from any Party, the Escrow Agent shall on the second (2nd) Business Day following receipt of such copy, disburse as directed, part or all, as the case may be, of the Escrow Funds (but only to the extent funds are available in the Escrow Account) to the applicable Party or Parties, in accordance with such Final Determination. The Escrow Agent will act on such Final Determination without further inquiry.

(iii) If the Escrow Funds have not been released in accordance with clause (i) or (ii) of this Section 4(a) on or before May [ ], 2022, or such later date as agreed, and notified to the Escrow Agent, in writing by the Parties or established pursuant to an order from a court of applicable jurisdiction (the “Escrow End Date”), then, upon receipt of written instruction from the Funds (the “Final Instruction”) executed by an authorized signer of each of the Funds, unless the Parties deliver to the Escrow Agent a Joint Release Instruction or a contrary order from a court of applicable jurisdiction prior to the disbursement expressly superseding such Final Instruction, the Escrow Agent shall on the second (2nd) Business Day following receipt of such Final Instruction, disburse all remaining Escrow Funds in accordance with such Final Instruction. The Funds agree not to send the Final Instruction prior to the Escrow End Date.

(iv) All payments of any part of the Escrow Funds shall be made by wire transfer of immediately available funds or check as set forth in the Joint Release Instruction, Final Determination or Final Instruction, as applicable.

(v) Any instructions setting forth, claiming, containing, objecting to, or in any way related to the transfer or distribution of any funds on deposit in any Escrow Account under the terms of this Agreement must be in writing, executed by the appropriate Party or Parties as evidenced by the signatures of the person or persons set forth on Exhibit A-1 and Exhibit A-2, and delivered to the Escrow Agent either (i) by confirmed facsimile only at the fax number set forth in Section 11 below or (ii) attached to an e-mail received on a Business Day from an e-mail address set forth in Section 11 below. In the event a Joint Release Instruction, Final Instruction or Final Determination is delivered to the Escrow Agent, whether in writing, by facsimile or otherwise, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the person or persons designated in Exhibits A-1 and/or A-2 annexed hereto (the “Call Back Authorized Individuals”), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing, executed by an authorized signer of the applicable Party set forth on Exhibit A-1 or Exhibit A-2, actually received and acknowledged by the Escrow Agent.

(b) Certain Definitions.

(i) “Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are not required or authorized by law to be closed in New York, New York.

(ii) “Final Determination” means a final non-appealable order of any court of competent jurisdiction, including without limitation, any judgment, order or decree, that finally adjudicates ownership of, or entitlement to, the Sale Proceeds, together with (A) a certificate of the prevailing Party to the effect that such order is final and non-appealable and from a court of competent jurisdiction having proper authority and (B) the written payment instructions of the prevailing Party to effectuate such order.

(iii) “Joint Release Instruction” means the joint written instruction, substantially in the form of Exhibit B attached hereto, executed by an authorized signer of each of UBS and the Funds directing the Escrow Agent to disburse all or a portion of the Escrow Funds, as applicable.

(iv) “Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

5. Escrow Agent. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein, which shall be deemed purely ministerial in nature, and no duties, including but not limited to any fiduciary duties, shall be implied. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between

the Parties, in connection herewith, if any, including without limitation the Settlement Agreement, nor shall the Escrow Agent be required to determine if any Person has complied with any such agreements, nor shall any additional obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. Notwithstanding the terms of any other agreement between the Parties, the terms and conditions of this Agreement will control the actions of Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any Joint Release Instruction, Final Instruction or Final Determination furnished to it hereunder and believed by it to be genuine and to have been signed and presented by an authorized signer of the proper Party or Parties. Concurrent with the execution of this Agreement, the Parties shall deliver to the Escrow Agent authorized signers' forms in the form of Exhibit A-1 and Exhibit A-2 attached hereto. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document, notice, instruction or request. The Escrow Agent shall have no duty to solicit any payments which may be due it or the Escrow Funds. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in a Joint Release Instruction, Final Instruction or Final Determination. The Escrow Agent may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets or any action or nonaction based on such declaratory judgment. The Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder. The Escrow Agent will not be liable for any action taken, suffered or omitted to be taken by it in good faith except to the extent that the Escrow Agent's gross negligence or willful misconduct was the cause of any direct loss to either Party. To the extent practicable, the Parties agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for any special, indirect, punitive, incidental or consequential losses or damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such losses or damages and regardless of the form of action.

6. Resignation and Removal of Escrow Agent. The Escrow Agent (a) may resign and be discharged from its duties or obligations hereunder by giving thirty (30) calendar days advance notice in writing of such resignation to the Parties specifying a date when such resignation shall take effect or (b) may be removed, with or without cause, by the Parties acting jointly at any time by providing written notice to the Escrow Agent. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's line of business may be transferred, shall be the Escrow Agent under this Agreement without further act (provided that the Escrow Agent will provide the Parties with reasonable notice of any such merger, conversion, consolidation or sale.) The Escrow Agent's sole responsibility after such thirty (30) day notice period expires or after receipt of written notice of removal shall be to hold and safeguard the Escrow Funds (without any obligation to reinvest the same) and to deliver the same (i) to a substitute or successor escrow



agent pursuant to a joint written designation from the Parties, (ii) as set forth in a Joint Release Instruction or (iii) in accordance with the directions of a Final Determination, and, at the time of such delivery, the Escrow Agent's obligations hereunder shall cease and terminate. In the event the Escrow Agent resigns, if the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following receipt of the notice of resignation, the Escrow Agent may petition any court of competent jurisdiction for the appointment of such a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

7. Fees and Expenses. All fees and expenses of the Escrow Agent are described in Schedule 1 attached hereto and shall be paid by the Funds. The fees agreed upon for the services to be rendered hereunder are intended as full compensation for the Escrow Agent services as contemplated by this Agreement.

8. Indemnity. UBS, on the one hand, and the Funds, on the other hand, hereby agree to, severally and not jointly, indemnify, defend, and hold harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs or expenses (including the reasonable fees and expenses of one outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively "Escrow Agent Losses") arising out of or in connection with (a) the Escrow Agent's execution and performance of this Agreement, tax reporting or withholding, the enforcement of any rights or remedies under or in connection with this Agreement, or as may arise by reason of any act, omission or error of the Indemnatee, except to the extent that such Escrow Agent Losses, as adjudicated by a court of competent jurisdiction, have been caused by the fraud, gross negligence or willful misconduct of such Indemnatee, or (b) its following any instructions or other directions from UBS or the Funds. Notwithstanding anything to the contrary herein, the Parties agree, solely as between the Parties, that any obligation for indemnification under this Section 8 (or for reasonable fees and expenses of the Escrow Agent described in Section 7) shall be borne by the Party or Parties determined by a court of competent jurisdiction to be responsible for causing the loss, damage, liability, cost or expense against which the Escrow Agent is entitled to indemnification or, if no such determination is made, then one-half by UBS and one-half by the Funds. The Parties acknowledge that the foregoing indemnities shall survive the resignation or removal of the Escrow Agent or the termination of this Agreement.

9. Tax Matters.

(a) MSCF shall be responsible for and the taxpayer on all taxes due on the interest or income earned, if any, on the Escrow Funds for the calendar year in which such interest or income is earned. The Escrow Agent shall report any interest or income earned on the Escrow Funds to the IRS or other taxing authority on IRS Form 1099. Prior to the date hereof, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 as applicable and such other forms and documents that the Escrow Agent may request.



(b) The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the Escrow Funds. The Escrow Agent shall withhold any taxes required to be withheld by applicable law, including but not limited to required withholding in the absence of proper tax documentation, and shall remit such taxes to the appropriate authorities.

(c) The Escrow Agent, its affiliates, and its employees are not in the business of providing tax or legal advice to any taxpayer outside of Citigroup, Inc. and its affiliates. This Agreement and any amendments or attachments hereto are not intended or written to be used, and may not be used or relied upon, by any such taxpayer or for the purpose of avoiding tax penalties. Any such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

10. Covenant of Escrow Agent. The Escrow Agent hereby agrees and covenants with the Parties that it shall perform all of its obligations under this Agreement and shall not deliver custody or possession of any of the Escrow Funds to anyone except pursuant to the express terms of this Agreement or as otherwise required by law.

11. Notices. All notices, requests, demands and other communications required under this Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) on the day of transmission if sent by electronic mail ("e-mail") with a PDF attachment executed by an authorized signer of the Party/ Parties to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of the transmission, (iv) by overnight delivery with a reputable national overnight delivery service, or (v) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five Business Days after the date such notice is deposited with the United States Postal Service. If notice is given to a Party, it shall be given at the address for such Party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes.

if to UBS, then to:

UBS Legal Department – Americas Litigation  
Attn: Patrick Shilling  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-3685  
E-mail: patrick.shilling@ubs.com

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

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071  
Attention: Jeffrey E. Bjork, Esq.  
Telephone No.: 213-485-1234  
Facsimile No.: 213-891-8763  
E-mail: jeff.bjork@lw.com

or, if to MSCF or Asset Holdings, then to:

Highland Multi Strategy Credit Fund, L.P.  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: Legal Department  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

or, if to the Escrow Agent, then to:

Citibank, N.A.  
Citi Private Bank  
One Sansome Street, 24<sup>th</sup> Floor  
San Francisco, CA 94144  
Attn: Hamyd Mazrae  
Telephone No.: 415-627-6044  
Facsimile No.: 415-592-5584  
E-mail: hamyd.mazrae@citi.com

Notwithstanding the above, in the case of communications delivered to the Escrow Agent pursuant to the foregoing clause (i) through (iv) of this Section 11, such communications shall be deemed to have been given on the date received by the Escrow Agent. In the event that the

Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of communication as the Escrow Agent deems appropriate.

12. Termination. This Agreement shall terminate on the first to occur of (a) the distribution of all of the amounts in the Escrow Funds in accordance with this Agreement or (b) delivery to the Escrow Agent of a written notice of termination executed jointly by the Parties after which this Agreement shall be of no further force and effect except that the provisions of Section 8 hereof shall survive termination.

13. Miscellaneous. The provisions of this Agreement may be waived, altered, amended or supplemented, in whole or in part, only by a writing signed by all of the parties hereto. Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any party without the prior consent of the other parties. This Agreement shall be governed by and construed under the laws of the State of New York. Each party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and submits to the exclusive jurisdiction of the federal and state courts in the Borough of Manhattan in the City of New York. The parties hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising from or relating to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the parties to this Agreement may be transmitted by facsimile or electronic transmission in portable document format (.pdf), and such facsimile or .pdf will, for all purposes, be deemed to be the original signature of such party whose signature it reproduces, and will be binding upon such party. If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. The Parties represent, warrant and covenant that each document, notice, instruction or request provided by such Party to the Escrow Agent shall comply with applicable laws and regulations. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Agreement shall be enforced as written. Except as expressly provided in Sections 7 and 8, nothing in this Agreement, whether express or implied, shall be construed to give to any person or entity other than the Escrow Agent and the Parties any legal or equitable right, remedy, interest or claim under or in respect of this Agreement or any funds escrowed hereunder.

14. Compliance with Court Orders. In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other

Person, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

15. Further Assurances. Following the date hereof, each party shall deliver to the other parties such further information and documents and shall execute and deliver to the other parties such further instruments and agreements as any other party shall reasonably request to consummate or confirm the transactions provided for herein, to accomplish the purpose hereof or to assure to any other party the benefits hereof.

16. Assignment. No assignment of the interest of any of the Parties shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and consented to by the Escrow Agent (such consent not to be unreasonably withheld). Any transfer or assignment of the rights, interests or obligations hereunder in violation of the terms hereof shall be void and of no force or effect.

17. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility), it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

18. Compliance with Federal Law. To help the U.S. Government fight the funding of terrorism and money laundering activities and to comply with Federal law requiring financial institutions to obtain, verify and record information on the source of funds deposited to an account, the Parties agree to provide the Escrow Agent with the name, address, taxpayer identification number, and remitting bank for all Parties depositing funds at Citibank pursuant to the terms and conditions of this Agreement. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, an identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

19. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**UBS SECURITIES LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



ESCROW AGENT:

**CITIBANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Schedule 1**

**ESCROW AGENT FEE SCHEDULE  
Citibank, N.A., Escrow Agent**

**Acceptance Fee**

To cover the acceptance of the Escrow Agency appointment, the study of the Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

**Fee: WAIVED**

**Administration Fee**

The annual administration fee covers maintenance of the Escrow Account including safekeeping of assets in the escrow account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent's records, follow-up of the Agreement's provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Agreement. Fee is based on Escrow Amount being deposited in a non-interest bearing deposit account, FDIC insured to the applicable limits.

**Fee: WAIVED**

**Tax Preparation Fee**

To cover preparation and mailing of Forms 1099-INT, if applicable for the escrow parties for each calendar year:

**Fee: WAIVED**

**Transaction Fees**

To oversee all required disbursements or release of property from the escrow account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Agreement:

**Fee: WAIVED**

**Other Fees**

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment.

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**TERMS AND CONDITIONS:** The above schedule of fees does not include charges for out-of-pocket expenses or for any services of an extraordinary nature that Citibank or its legal counsel may be called upon from time to time to perform. Fees are also subject to satisfactory review of the documentation, and Citibank reserves the right to modify them should the characteristics of the transaction change. Citibank's participation in this program is subject to internal approval of the third party depositing monies into the escrow account to be established hereunder. The Acceptance Fee, if any, is payable upon execution of the Agreement. Should this schedule of fees be accepted and agreed upon and work commenced on this program but subsequently halted and the program is not brought to market, the Acceptance Fee and legal fees incurred, if any, will still be payable in full.

EXHIBIT A-1

Certificate as to UBS' Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of UBS and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of UBS. The below listed persons (must list at least two individuals, if applicable) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s).

Name / Title / Telephone

Specimen Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone *(Required for DocuSign Capabilities)*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone *(Required for DocuSign Capabilities)*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Mobile Phone *(Required for DocuSign Capabilities)*

NOTE: Actual signatures are required above. Electronic signatures, "Docusigned" signatures and/or signature fonts are not acceptable.

*Exhibit to Escrow Agreement*

EXHIBIT A-2

Certificate as to the Funds' Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Funds and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under this Agreement, on behalf of the Funds. The below listed persons (must list at least two individuals, if applicable) have also been designated Call Back Authorized Individuals and will be notified by Citibank N.A. upon the release of Escrow Funds from the escrow account(s)..

Name / Title / Telephone

Specimen Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Mobile Phone (*Required for DocuSign Capabilities*)

NOTE: Actual signatures are required above. Electronic signatures, "Docusigned" signatures and/or signature fonts are not acceptable.

*Exhibit to Escrow Agreement*

EXHIBIT B

Form of Joint Release Instruction

[•], 202[•]

Citibank, N.A.  
c/o Citi Private Bank  
One Sansome Street  
San Francisco, CA 94104  
Attn: Hamyd Mazrae  
E-mail: hamyd.mazrae@citi.com

**Re: Joint Release Instruction**

Dear Mr. Mazrae,

Reference is made to that certain Escrow Agreement by and among (i) **UBS Securities LLC** (“UBS”), (ii) **Highland Multi Strategy Credit Fund, L.P.** (“MSCF”) and **Highland Credit Opportunities CDO Asset Holdings, LP** (“Asset Holdings” and together with MSCF, the “Funds”) and (iii) **CITIBANK, N.A.** (the “Escrow Agent”), dated as of [•], 2020 (the “Escrow Agreement”). Unless otherwise indicated, all capitalized terms used and not otherwise defined herein have the respective meanings given to them in the Escrow Agreement.

This notice constitutes a Joint Release Instruction signed jointly by UBS and the Funds pursuant to Exhibit A-1 and Exhibit A-2 to the Escrow Agreement.

UBS and the Funds hereby jointly instruct the Escrow Agent, in accordance with Section 4(a)i of the Escrow Agreement to release \$[•] from the Escrow Account to [recipient], via wire transfer of immediately available funds to the following wire instructions:

Name of Bank: [•]  
ABA #: [•]  
Beneficiary Account #: [•]  
Beneficiary Account Name: [•]

The Parties acknowledge that prior to the remittance of funds from the Escrow Account, the Escrow Agent will need to speak to an authorized representative of each of UBS and the Funds to confirm payment details.

**[SIGNATURE PAGES FOLLOW]**



Very truly yours,

**UBS SECURITIES LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Very truly yours,

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**HIGHLAND CREDIT OPPORTUNITIES CDO  
ASSET HOLDINGS, LP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 18**

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650 Poydras Street, Suite 2500

New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

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4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

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New Orleans, LA 70130

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Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

**SUPPLEMENTAL EXHIBIT LIST FOR THE MAY 21, 2021 HEARING**

The Dugaboy Investment Trust (“Trust”), by and through its undersigned counsel, submits the following supplemental exhibit list for the hearing set for 9:00 a.m. Central Time on May 21, 2021 in connection with the *Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* [Docket No. 2199] filed by Highland Capital Management, L.P. (the “Debtor”).



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NO.	EXHIBIT	OFFERED	ADMITTED
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2	Settlement Motion (Dkt. #2199)		
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5	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief (Dkt. #1943)		
6	Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (Dkt. #1473)		
7	Retained Claims Listing		
8	Amended and Restated Memorandum and Articles of Association Highland Multi Strategy Credit Fund Ltd (UBS 0001- 00043)		
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20	Expert Report John Levitske (UBS0522-0639)		
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22	Charge Over Shares (UBS 0732- 0758)		
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29	Excerpt of testimony of Jim Seery (Dkt. #571) page 66		

The Trust reserves the right to amend or supplement this exhibit list prior to the hearing.

May 20, 2021

Respectfully submitted,

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I do hereby certify that on May 20, 2021, a copy of the above and foregoing *Supplemental Exhibit List for the May 21, 2021 Hearing* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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May 20, 2021

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/s/Douglas S. Draper

# **Exhibit 1**

## **Settlement Agreement**

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SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of March 30, 2021, by and among (i) Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), (ii) Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat,” and together with its general partner and its direct and indirect wholly-owned subsidiaries, the “MSCF Parties”), (iii) Strand Advisors, Inc. (“Strand”), and (iv) UBS Securities LLC and UBS AG London Branch (collectively, “UBS”).

Each of HCMLP, the MSCF Parties, Strand, and UBS are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

**WHEREAS**, in 2007, UBS entered into certain contracts with HCMLP and two funds managed by HCMLP—Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO Fund, the “Funds”) related to a securitization transaction (the “Knox Agreement”);

**WHEREAS**, in 2008, the parties to the Knox Agreement restructured the Knox Agreement;

**WHEREAS**, UBS terminated the Knox Agreement and, on February 24, 2009, UBS filed a complaint in the Supreme Court of the State of New York, County of New York (the “State Court”) against HCMLP and the Funds seeking to recover damages related to the Knox Agreement, in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the “2009 Action”);

**WHEREAS**, UBS’s lone claim against HCMLP in the 2009 Action for indemnification was dismissed in early 2010, and thereafter UBS amended its complaint in the 2009 Action to add five new defendants, Highland Financial Partners, L.P. (“HFP”), Highland Credit Strategies Master Funds, L.P. (“Credit-Strat”), Highland Crusader Offshore Partners, L.P. (“Crusader”), Multi-Strat, and Strand, and to add new claims for fraudulent inducement, fraudulent conveyance, tortious interference with contract, alter ego, and general partner liability;

**WHEREAS**, UBS filed a new, separate action against HCMLP on June 28, 2010, for, *inter alia*, fraudulent conveyance and breach of the implied covenant of good faith and fair dealing, captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”);

**WHEREAS**, in November 2010, the State Court consolidated the 2009 Action and the 2010 Action (hereafter referred to as the “State Court Action”), and on May 11, 2011, UBS filed a Second Amended Complaint in the 2009 Action;

**WHEREAS**, in 2015, UBS entered into settlement agreements with Crusader and Credit-Strat, and thereafter UBS filed notices with the State Court in the State Court Action dismissing its claims against Crusader and Credit-Strat;



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**WHEREAS**, the State Court bifurcated claims asserted in the State Court Action for purposes of trial, with the Phase I bench trial deciding UBS's breach of contract claims against the Funds and HCMLP's counterclaims against UBS;

**WHEREAS**, on August 7, 2017, the Funds, along with Highland CDO Opportunity Fund, Ltd., Highland CDO Holding Company, Highland Financial Corp., and HFP, purportedly sold assets with a purported collective fair market value of \$105,647,679 (the "Transferred Assets") and purported face value of over \$300,000,000 to Sentinel Reinsurance, Ltd. ("Sentinel") pursuant to a purported asset purchase agreement (the "Purchase Agreement");

**WHEREAS**, Sentinel treated the Transferred Assets as payment for a \$25,000,000 premium on a document entitled "Legal Liability Insurance Policy" (the "Insurance Policy");

**WHEREAS**, the Insurance Policy purports to provide coverage to the Funds for up to \$100,000,000 for any legal liability resulting from the State Court Action (the "Insurance Proceeds");

**WHEREAS**, one of the Transferred Assets CDO Fund transferred to Sentinel was CDO Fund's limited partnership interests in Multi-Strat (the "CDOF Interests");

**WHEREAS**, Sentinel had also received from HCMLP limited partnership interests in Multi-Strat for certain cash consideration (together with the CDOF Interests, the "MSCF Interests");

**WHEREAS**, the existence of the Purchase Agreement and Insurance Policy were unknown to Strand's independent directors and the Debtor's bankruptcy advisors prior to late January 2021;

**WHEREAS**, in early February 2021, the Debtor disclosed the existence of the Purchase Agreement and Insurance Policy to UBS;

**WHEREAS**, prior to such disclosure, the Purchase Agreement and Insurance Policy were unknown to UBS;

**WHEREAS**, on November 14, 2019, following the Phase I trial, the State Court issued its decision determining that the Funds breached the Knox Agreement on December 5, 2008 and dismissing HCMLP's counterclaims;

**WHEREAS**, Sentinel purportedly redeemed the MSCF Interests in November 2019 and the redeemed MSCF Interests are currently valued at approximately \$32,823,423.50 (the "Sentinel Redemption");

**WHEREAS**, on February 10, 2020, the State Court entered a Phase I trial judgment against the Funds in the amount of \$1,039,957,799.44 as of January 22, 2020 (the "Phase I Judgment");

**WHEREAS**, Phase II of the trial of the State Court Action, includes, *inter alia*, UBS's claim for breach of implied covenant of good faith and fair dealing against HCMLP, UBS's

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fraudulent transfer claims against HCMLP, HFP, and Multi-Strat, and UBS's general partner claim against Strand;

**WHEREAS**, on October 16, 2019, HCMLP filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case"). The Bankruptcy Case was transferred to the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court") on December 4, 2019;

**WHEREAS**, Phase II of the trial of the State Court Action was automatically stayed as to HCMLP by HCMLP's bankruptcy filing;

**WHEREAS**, on May 11, 2020, UBS, Multi-Strat, Highland Credit Opportunities CDO, Ltd., and Highland Credit Opportunities CDO Asset Holdings, L.P. (collectively, the "May Settlement Parties"), entered into a Settlement Agreement (the "May Settlement") pursuant to which the May Settlement Parties agreed to the allocation of the proceeds of certain sales of assets held by Multi-Strat, including escrowing a portion of such funds, and restrictions on Multi-Strat's actions;

**WHEREAS**, on June 26, 2020, UBS timely filed two substantively identical claims in the Bankruptcy Case: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch (hereinafter collectively referred to as the "UBS Claim"). The UBS Claim asserts a general unsecured claim against HCMLP for \$1,039,957,799.40;

**WHEREAS**, on August 3, 2020, the Bankruptcy Court entered an *Order Directing Mediation* [Docket No. 912] pursuant to which HCMLP, UBS, and several other parties were directed to mediate their Bankruptcy Case disputes before two experienced third-party mediators, Retired Judge Allan Gropper and Sylvia Mayer (together, the "Mediators"). HCMLP and UBS formally met with the Mediators together and separately on numerous occasions, including on August 27, September 2, 3, and 4, and December 17, 2020, and had numerous other informal discussions outside of the presence of the Mediators, in an attempt to resolve the UBS Claim;

**WHEREAS**, on August 7, 2020, HCMLP filed an objection to the UBS Claim [Docket No. 928]. Also on August 7, 2020, the Redeemer Committee of the Highland Crusader Fund, and Crusader, Highland Crusader Fund, L.P., Highland Crusader Fund, Ltd., and Highland Crusader Fund II, Ltd. (collectively, the "Redeemer Committee"), objected to the UBS Claim [Docket No. 933]. On September 25, 2020, UBS filed its response to these objections [Docket No. 1105];

**WHEREAS**, on October 16, 2020, HCMLP and the Redeemer Committee each moved for partial summary judgment on the UBS Claim [Docket Nos. 1180 and 1183, respectively], and on November 6, 2020, UBS opposed these motions [Docket No. 1337];

**WHEREAS**, by Order dated December 9, 2020, the Bankruptcy Court granted, as set forth therein, the motions for partial summary judgment filed by HCMLP and the Redeemer Committee and denied UBS's request for leave to file an amended proof of claim [Docket No. 1526];

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**WHEREAS**, on November 6, 2020, UBS filed *UBS's Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018* [Docket No. 1338] (the "3018 Motion"), and on November 16, 2020, HCMLP and the Redeemer Committee each opposed the 3018 Motion [Docket Nos. 1404 and 1409, respectively];

**WHEREAS**, by Order dated December 8, 2020, the Bankruptcy Court granted the 3018 Motion and allowed the UBS Claim, on a temporary basis and for voting purposes only, in the amount of \$94,761,076 [Docket No. 1518];

**WHEREAS**, on January 22, 2021, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P. (As Modified)* [Docket No. 1808] (as amended, and as may be further amended, supplemented, or otherwise modified, the "Plan");

**WHEREAS**, on March 29, 2021, the Debtor caused CDO Fund to make a claim on the Insurance Policy to collect the Insurance Proceeds pursuant to the Phase I Judgment;

**WHEREAS**, on March 29, 2021, UBS filed an adversary proceeding seeking injunctive relief and a motion for a temporary restraining order and preliminary injunction to, among other things, enjoin the Debtor from allowing Multi-Strat to distribute the Sentinel Redemption to Sentinel or any transferee of Sentinel (the "Multi-Strat Proceeding"), which relief the Debtor, in its capacity as Multi-Strat's investment manager and general partner, does not oppose;

**WHEREAS**, the Parties wish to enter into this Agreement to settle all claims and disputes between and among them, to the extent and on the terms and conditions set forth herein, and to exchange the mutual releases set forth herein, without any admission of fault, liability, or wrongdoing on the part of any Party; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Rule 9019") and section 363 of the Bankruptcy Code;

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**A G R E E M E N T**

**1. Settlement of Claims.** In full and complete satisfaction of the UBS Released Claims (as defined below):

(a) The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against HCMLP, which shall be treated as a Class 8 General Unsecured Claim under the Plan;<sup>1</sup> and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against HCMLP, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan.

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(b) Multi-Strat will pay UBS the sum of \$18,500,000 (the “Multi-Strat Payment”) as follows: (i) within two (2) business days after the Order Date, the May Settlement Parties will submit a Joint Release Instruction (as defined in the May Settlement) for the release of the amounts held in the Escrow Account (as defined in the May Settlement) to be paid to UBS in partial satisfaction of the Multi-Strat Payment on the date that is ten (10) business days following the Order Date; and (ii) Multi-Strat will pay UBS the remainder of the Multi-Strat Payment in immediately available funds on the date that is ten (10) business days following the Order Date, provided that, for the avoidance of doubt, the amounts held in the Escrow Account will not be paid to UBS until and unless the remainder of the Multi-Strat Payment is made.

(c) Subject to applicable law, HCMLP will use reasonable efforts to (i) cause CDO Fund to pay the Insurance Proceeds in full to UBS as soon as practicable, but no later than within 5 business days of CDO Fund actually receiving the Insurance Proceeds from or on behalf of Sentinel; (ii) if Sentinel refuses to pay the Insurance Proceeds, take legal action reasonably designed to recover the Insurance Proceeds or the MSCF Interests or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment and in addition shall provide reasonable assistance to UBS in connection with any legal action UBS takes to recover the Insurance Proceeds or to return the Transferred Assets to the Funds to satisfy the Phase I Judgment or obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF Interests; (iii) cooperate with UBS and participate (as applicable) in the investigation or prosecution of claims or requests for injunctive relief against the Funds, Multi-Strat, Sentinel, James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, Transferred Assets, the transfer of the MSCF Interests, or any potentially fraudulent transfer of assets from the Funds to Sentinel, excluding the individuals listed on the schedule provided to UBS on March 25, 2021 (the “HCMLP Excluded Employees”); (iv) as soon as reasonably practicable, provide UBS with all business and trustee contacts at the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, if any, that are actually known by the Debtor after reasonable inquiry; (v) as soon as reasonably practicable, provide UBS with a copy of the governing documents, prospectuses, and indenture agreements for the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd, as applicable, that are in the Debtor’s actual possession, custody, or control, (vi) as soon as reasonably practicable, provide, to the extent possible, any CUSIP numbers of the securities of the Funds, HFP, Greenbriar CLO Ltd., Greenbriar CLO Corp., Aberdeen Loan Funding Ltd, Eastland CLO Ltd, Grayson CLO Ltd, Valhalla CLO Ltd, and Governance Re Ltd., as applicable, including information regarding the location and amount of any cash related to those entities’ holdings, in each case only to the extent actually known by the Debtor after reasonable inquiry; (vii) cooperate with UBS to assign or convey any such assets described in Section 1(c)(vi) or any other assets owned or controlled by the Funds and/or HFP, including for avoidance of doubt any additional assets currently unknown to the Debtor that the Debtor discovers in the future after the Agreement Effective Date; (viii) respond as promptly as reasonably possible to requests by UBS for access to relevant documents and approve as promptly as reasonably possible requests for access to relevant documents from third parties as needed with respect to the Transferred Assets, the Purchase Agreement, the Insurance Policy, the



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MSCF Interests and any other assets currently or formerly held by the Funds or HFP, including without limitation the requests listed in **Appendix A** (provided, however, that the provision of any such documents or access will be subject to the common interest privilege and will not constitute a waiver of any attorney-client or other privilege in favor of HCMLP) that are in the Debtor's actual possession, custody, or control; (ix) preserve all documents in HCMLP's possession, custody, or control regarding or relating to the Purchase Agreement, the Insurance Policy, the MSCF Interests, or any transfer of assets from the Funds to Sentinel, including but not limited to the documents requested in Appendix A, from 2016 to present, and issue a litigation hold to all individuals deemed reasonably necessary regarding the same; and (x) otherwise use reasonable efforts to assist UBS to collect its Phase I Judgment against the Funds and HFP and assets the Funds and/or HFP may own, or have a claim to under applicable law ahead of all other creditors of the Funds and HFP; provided, however, that, from and after the date hereof, HCMLP shall not be required to incur any out-of-pocket fees or expenses, including, but not limited to, those fees and expenses for outside consultants and professionals (the "Reimbursable Expenses"), in connection with any provision of this Section 1(c) in excess of \$3,000,000 (the "Expense Cap"), and provided further that, for every dollar UBS recovers from the Funds (other than the assets related to Greenbriar CLO Ltd. or Greenbriar CLO Corp.), Sentinel, Multi-Strat (other than the amounts set forth in Section 1(b) hereof), or any other person or entity described in Section 1(c)(iii) in connection with any claims UBS has that arise out of or relate to the Phase I Judgment, the Purchase Agreement, the Insurance Policy, the Transferred Assets, the MSCF Interests, or the Insurance Proceeds (the "UBS Recovery"), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP, subject to: (1) the occurrence of the Agreement Effective Date and (2) UBS's receipt and review of invoices and time records (which may be redacted as reasonably necessary) for outside consultants and professionals in connection with such efforts described in this Section 1(c), up to but not exceeding the Expense Cap after any disputes regarding the Reimbursable Expenses have been resolved pursuant to procedures to be agreed upon, or absent an agreement, in a manner directed by the Bankruptcy Court; and provided further that in any proceeding over the reasonableness of the Reimbursable Expenses, the losing party shall be obligated to pay the reasonable fees and expenses of the prevailing party; and provided further that any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c) shall be conducted in consultation with UBS, including but not limited to the selection of necessary outside consultants and professionals to assist in such litigation; and provided further that UBS shall have the right to approve HCMLP's selection of outside consultants and professionals to assist in any litigation in which HCMLP is a co-plaintiff with UBS or a plaintiff pursuing claims on behalf of or for UBS's benefit pursuant to this Section 1(c).

(d) Redeemer Appeal.

(i) On the Agreement Effective Date, provided that neither the Redeemer Committee nor any entities acting on its behalf or with any assistance from or coordination with the Redeemer Committee have objected to this Agreement or the 9019 Motion (as defined below), UBS shall withdraw with prejudice its appeal of the *Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [Docket No. 1273] (the "Redeemer Appeal"); and



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(ii) The Parties have stipulated to extend the deadline for the filing of any briefs in the Redeemer Appeal to June 30, 2021 and will agree to such further extensions as necessary to facilitate this Settlement Agreement.

(e) As of the Agreement Effective Date, the restrictions and obligations set forth in the May Settlement, other than those in Section 7 thereof, shall be extinguished in their entirety and be of no further force or effect.

(f) On the Agreement Effective Date, the Debtor shall instruct the claims agent in the Bankruptcy Case to adjust the claims register in accordance with this Agreement.

(g) On the Agreement Effective Date, any claim the Debtor may have against Sentinel or any other party, and any recovery related thereto, with respect to the MSCF Interests shall be automatically transferred to UBS, without any further action required by the Debtor. For the avoidance of doubt, the Debtor shall retain any and all other claims it may have against Sentinel or any other party, and the recovery related thereto, unrelated to the MSCF Interests.

**2. Definitions.**

(a) “Agreement Effective Date” shall mean the date the full amount of the Multi-Strat Payment defined in Section 1(b) above, including without limitation the amounts held in the Escrow Account (as defined in the May Settlement), is actually paid to UBS.

(b) “HCMLP Parties” shall mean (a) HCMLP, in its individual capacity; (b) HCMLP, as manager of Multi-Strat; and (c) Strand.

(c) “Order Date” shall mean the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019 and section 363 of the Bankruptcy Code.

(d) “UBS Parties” shall mean UBS Securities LLC and UBS AG London Branch.

**3. Releases.**

(a) **UBS Releases.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the UBS Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue (A) the HCMLP Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, and (B) the MSCF Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), except as expressly set forth below, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys’ fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known

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or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the “UBS Released Claims”), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to (1) the obligations of the HCMLP Parties and MSCF Parties under this Agreement, including without limitation the allowance of or distributions on account of the UBS Claim or the settlement terms described in Sections 1(a)-(g) above; (2) the Funds or HFP, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy, or such prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, and/or Insurance Policy by UBS; (3) James Dondero or Mark Okada, or any entities, including without limitation Hunter Mountain Investment Trust, Dugaboy Investment Trust, and NexBank, SSB, owned or controlled by either of them, other than the HCMLP Parties and MSCF Parties (but for the avoidance of doubt, such releases of the HCMLP Parties and MSCF Parties shall be solely with respect to such entities and shall not extend in any way to James Dondero or Mark Okada in their individual capacity or in any other capacity, including but not limited to as an investor, officer, trustee, or director in the HCMLP Parties or MSCF Parties); (4) Sentinel or its subsidiaries, parents, affiliates, successors, designees, assigns, employees, or directors, including James Dondero, Isaac Leventon, Scott Ellington, Andrew Dean, Christopher Walter, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and/or any other current or former employee or director of the Funds or Sentinel and/or any other former employee or former director of any of the HCMLP Parties that is believed to be involved with the Purchase Agreement, Insurance Policy, MSCF Interests, or Transferred Assets, including for any liability with respect to the prosecution, enforcement, collection, or defense of the Phase I Judgment, Purchase Agreement, the MSCF Interests, any potentially fraudulent transfer of assets from the Funds to Sentinel and/or Insurance Policy, excluding the HCMLP Excluded Employees; (5) the economic rights or interests of UBS in its capacity as an investor, directly or indirectly (including in its capacity as an investment manager and/or investment advisor), in any HCMLP-affiliated entity, including without limitation in the Redeemer Committee and Credit Strat, and/or in such entities’ past, present or future subsidiaries and feeders funds (the “UBS Unrelated Investments”); and (6) any actions taken by UBS against any person or entity, including any HCMLP Party or MSCF Party, to enjoin a distribution on the Sentinel Redemption or the transfer of any assets currently held by or within the control of CDO Fund to Sentinel or a subsequent transferee or to seek to compel any action that only such person or entity has standing to pursue or authorize in order to permit UBS to recover the Insurance Proceeds, Transferred Assets, the Phase I Judgment or any recovery against HFP; provided, however, that, from and after the date hereof, any out-of-pocket fees or expenses incurred by HCMLP in connection with this Section 3(a)(6) will be considered Reimbursable Expenses and shall be subject to, and applied against, the Expense Cap as if they were incurred by HCMLP pursuant to Section 1(c) subject to the occurrence of the Agreement Effective Date and after any disputes regarding such Reimbursable Expenses have been resolved in the manner described in Section 1(c).

(b) **HCMLP Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the HCMLP Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of

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their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "HCMLP Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement; and (b) the obligations of the UBS Parties in connection with the UBS Unrelated Investments.

(c) **Multi-Strat Release.** Upon the occurrence of the Agreement Effective Date, and to the maximum extent permitted by law, each of the MSCF Parties hereby forever, finally, fully, unconditionally, irrevocably, and completely releases, relieves, acquits, remises, exonerates, forever discharges, and covenants never to sue any of the UBS Parties and each of their current and former advisors, attorneys, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (each in their capacities as such), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorneys' fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, or statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those that have been or could have been alleged or asserted in the State Court Action or the Bankruptcy Case (collectively, the "Multi-Strat Released Claims"), provided, however, that notwithstanding anything to the contrary herein, such releases shall not apply to the obligations of the UBS Parties under this Agreement or Section 7 of the May Settlement.

4. **No Third Party Beneficiaries.** Except for the parties released by this Agreement, no other person or entity shall be deemed a third-party beneficiary of this Agreement.

5. **UBS Covenant Not to Sue.** Subject to the occurrence of the Agreement Effective date, if UBS ever controls any HCMLP-affiliated defendant in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment (collectively, the "Controlled State Court Defendants"), UBS covenants on behalf of itself and the Controlled State Court Defendants, if any, that neither UBS nor the Controlled State Court Defendants will assert or pursue any claims that any Controlled State Court Defendant has or may have against any of the HCMLP Parties; provided, however, that nothing shall prohibit UBS or a Controlled State Court Defendant from taking any of the actions set forth in Section 3(a)(1)-(6); provided further, however, if and to the extent UBS receives any distribution from any Controlled State Court Defendant that is derived from a claim by a Controlled State Court Defendant against the Debtor, subject to the exceptions set forth in Section 3(a), which distribution is directly

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attributable to any property the Controlled State Court Defendant receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such recovery shall be credited against all amounts due from the Debtor's estate on account of the UBS Claim allowed pursuant to Section 1(a) of this Agreement, or if such claim has been paid in full, shall be promptly turned over to the Debtor or its successors or assigns.

**6. Agreement Subject to Bankruptcy Court Approval.**

(a) The force and effect of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement and the releases herein by the Bankruptcy Court. The Parties agree to use reasonable efforts to have this Agreement expeditiously approved by the Bankruptcy Court by cooperating in the preparation and prosecution of a mutually agreeable motion and proposed order (the "9019 Motion") to be filed by the Debtor no later than five business days after execution of this Agreement by all Parties unless an extension is agreed to by both parties.

**7. Representations and Warranties.**

(a) Each UBS Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the UBS Released Claims and has not sold, transferred, or assigned any UBS Released Claim to any other person or entity, and (ii) no person or entity other than such UBS Party has been, is, or will be authorized to bring, pursue, or enforce any UBS Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such UBS Party.

(b) Each HCMLP Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HCMLP Released Claims and has not sold, transferred, or assigned any HCMLP Released Claim to any other person or entity, and (ii) no person or entity other than such HCMLP Party has been, is, or will be authorized to bring, pursue, or enforce any HCMLP Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such HCMLP Party.

(c) Each MSCF Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the Multi-Strat Released Claims and has not sold, transferred, or assigned any Multi-Strat Released Claim to any other person or entity, and (ii) no person or entity other than such MSCF Party has been, is, or will be authorized to bring, pursue, or enforce any Multi-Strat Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) such MSCF Party.



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8. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the UBS Claim. Nothing in this Agreement shall be construed, expressly or by implication, as an admission of liability, fault, or wrongdoing by HCMLP, the MSCF Parties, Strand, UBS, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of HCMLP, the MSCF Parties, Strand, UBS, or any other person.

9. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their representatives, successors, and assigns.

10. **Notice.** Each notice and other communication hereunder shall be in writing and will, unless otherwise subsequently directed in writing, be delivered by email and overnight delivery, as set forth below, and will be deemed to have been given on the date following such mailing.

**HCMLP Parties or the MSCF Parties**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Telephone No.: 972-628-4100  
E-mail: notices@HighlandCapital.com

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

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
E-mail: jpomerantz@pszjlaw.com

**UBS**

UBS Securities LLC  
UBS AG London Branch  
Attention: Elizabeth Kozlowski, Executive Director and Counsel  
1285 Avenue of the Americas  
New York, NY 10019  
Telephone No.: 212-713-9007  
E-mail: elizabeth.kozlowski@ubs.com

UBS Securities LLC  
UBS AG London Branch  
Attention: John Lantz, Executive Director  
1285 Avenue of the Americas  
New York, NY 10019



EXECUTION VERSION

Telephone No.: 212-713-1371  
E-mail: john.lantz@ubs.com

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

Latham & Watkins LLP  
Attention: Andrew Clubok  
Sarah Tomkowiak  
555 Eleventh Street, NW, Suite 1000  
Washington, D.C. 20004-1304  
Telephone No.: 202-637-3323  
Email: andrew.clubok@lw.com  
sarah.tomkowiak@lw.com

11. **Advice of Counsel.** Each of the Parties represents that such Party has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the subject matter of this Agreement, and supersedes and replaces all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation, or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

13. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arm's-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

14. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

15. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement.

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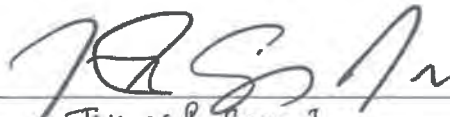
Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

16. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of New York without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Borough of Manhattan, New York, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

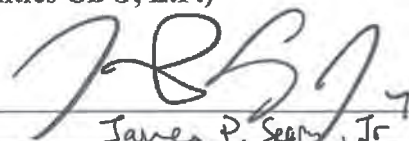
*[Remainder of Page Intentionally Blank]*

IT IS HEREBY AGREED.

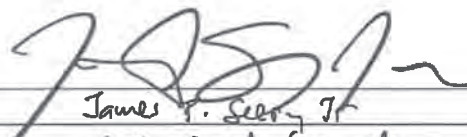
HIGHLAND CAPITAL MANAGEMENT, L.P.

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory


HIGHLAND MULTI STRATEGY CREDIT FUND, L.P. (f/k/a Highland Credit Opportunities CDO, L.P.)

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

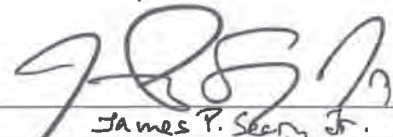
HIGHLAND CREDIT OPPORTUNITIES CDO, Ltd.

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

HIGHLAND CREDIT OPPORTUNITIES CDO ASSET HOLDINGS, L.P.

By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

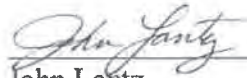
STRAND ADVISORS, INC.


By:   
Name: James P. Seery, Jr.  
Its: Authorized Signatory

004147

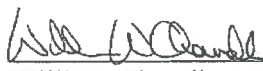
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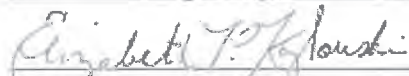
UBS SECURITIES LLC

By:   
Name: John Lantz  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

UBS AG LONDON BRANCH

By:   
Name: William Chandler  
Its: Authorized Signatory

By:   
Name: Elizabeth Kozlowski  
Its: Authorized Signatory

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APPENDIX A

- The search parameters (custodians, date ranges, search terms) used to locate the documents produced to UBS on February 27, 2021 (and any additional parameters used for the previous requests from UBS);
- Identity of counsel to, and trustees of, CDO Fund or SOHC;
- Current or last effective investment manager agreements for CDO Fund and SOHC, including any management fee schedule, and any documentation regarding the termination of those agreements;
- The tax returns for the CDO Fund and SOHC from 2017-present;
- Communications between any employees of Sentinel (or its affiliates) and any employees of the HCMLP Parties, CDO Fund, SOHC, or any of Dondero, Leventon, or Ellington from 2017-present;
- Documents or communications regarding or relating to the Purchase Agreement, Insurance Policy, or June 30, 2018 Memorandum entitled "Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets" (the "Tax Memo"), including without limitation (i) amendments to these documents, (ii) transfer of assets pursuant to these documents, (iii) board minutes or resolutions regarding or relating to these documents, (iv) claims made on the Insurance Policy; (v) communications with the IRS regarding the asset transfer pursuant to these documents; and (vi) any similar asset purchase agreements, capital transfer agreements, or similar agreements;
- Documents or communications regarding or relating to the value of any assets transferred pursuant to the Insurance Policy or Purchase Agreement, including without limitation those assets listed in Schedule A to the Purchase Agreement, from 2017 to present, including documentation supporting the \$105,647,679 value of those assets as listed in the Tax Memo;
- Documents showing the organizational structure of Sentinel and its affiliated entities, including information on Dondero's relationship to Sentinel;
- Any factual information provided by current or former employees of the HCMLP Parties, CDO Fund, SOHC, or Sentinel regarding or relating to the Purchase Agreement, Insurance Policy, Tax Memo, and/or transfer of assets pursuant to those documents;
- Debtor's settlement agreements with Ellington and Leventon;
- Copies of all prior and future Monthly Reports and Valuation Reports (as defined in the Indenture, dated as of December 20, 2007, among Greenbriar CLO Ltd., Greenbriar CLO Corp., and State Street Bank and Trust Company); and
- Identity of any creditors of CDO Fund, SOHC, or HFP and amount of debts owed to those creditors by CDO Fund, SOHC, or HFP, including without limitation any debts owed to the Debtor.



PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*pro hac vice*)  
Robert J. Feinstein (NY Bar No. 1767805) (*pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*pro hac vice*)  
Elissa A. Wagner (CA Bar No. 213589) (*pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)  
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Dallas, TX 75231  
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Facsimile: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

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

---

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

---

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH UBS SECURITIES LLC AND UBS AG LONDON BRANCH  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

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<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

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**TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:**

Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), files this Motion (the “Motion”) for entry of an order pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), substantially in the form attached hereto as **Exhibit A**, approving a settlement agreement (the “Settlement Agreement”)<sup>2</sup> entered into between the Debtor and certain related parties, on the one hand, and UBS Securities LLC and UBS AG London Branch (collectively, “UBS”), on the other hand. A copy of the Settlement Agreement is attached as **Exhibit 1** to the *Declaration of Robert J. Feinstein in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (“Feinstein Declaration”), filed concurrently herewith. In support of this Motion, the Debtor respectfully states as follows:

**INTRODUCTION**

1. The Settlement Agreement resolves more than \$1 billion in claims that UBS filed in the Bankruptcy Case (collectively, the “UBS Claim”), as well as UBS’s claims against certain related parties that have been pending for more than a decade in the Supreme Court of the State of New York, County of New York (the “State Court”).<sup>3</sup> The UBS Claim arises from: (i) a judgment entered by the State Court against Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”) and Highland Special Opportunities Holding Company (“SOHC,” and together with CDO

---

<sup>2</sup> Capitalized terms used herein, but not defined, have the meanings ascribed to such terms in the Settlement Agreement or elsewhere in this Motion, as applicable.

<sup>3</sup> The UBS Claim includes (i) Claim No. 190 filed by UBS Securities LLC, attached as **Exhibit 2** to the Feinstein Declaration, and (ii) Claim No. 191 filed by UBS AG London Branch, attached as **Exhibit 3** to the Feinstein Declaration.

Fund, the “Funds”) and (ii) related claims against the Debtor and other funds managed by the Debtor.

2. The Settlement Agreement provides for the allowance of the UBS Claim as (i) a single general unsecured claim in the amount of \$65,000,000 against the Debtor, which will be treated as a Class 8 General Unsecured Claim under the Plan,<sup>4</sup> and (ii) a single subordinated unsecured claim in the amount of \$60,000,000 against the Debtor, which will be treated as a Class 9 Subordinated General Unsecured Claim under the Plan. The Settlement Agreement also provides for a payment of \$18,500,000 to UBS by Highland Credit Opportunities CDO, L.P. (n/k/a Highland Multi Strategy Credit Fund, L.P.) (“Multi-Strat”), a non-Debtor fund managed by the Debtor that is a co-defendant in the State Court litigation. In exchange for the allowance of the UBS Claim as set forth above and the payment by Multi-Strat, UBS will, among other things, release claims against the Debtor, Multi-Strat, and the Debtor’s general partner, Strand Advisors, Inc. (“Strand”), also named as a defendant in the State Court litigation, as described in Section 3 of the Settlement Agreement. The Settlement Agreement also obligates the Debtor to assist UBS in its collection efforts against the Funds in the State Court litigation and its pursuit of other claims, subject to a cap on its expenses of \$3,000,000, provided that, to the extent provided for in Section 1(c) of the Settlement Agreement, for every dollar UBS recovers from the Funds (other than certain of the preferred shares issued by Greenbriar CLO Ltd. or Greenbriar CLO Corp. (collectively, “Greenbriar”), Sentinel Reinsurance, Ltd. (“Sentinel”), Multi-Strat (other than the initial payment of \$18,500,000 referred to above), or any other person or entity described in Section 1(c)(iii) of the Settlement Agreement (the “UBS Recovery”), UBS will reimburse HCMLP ten percent of the UBS Recovery for the Reimbursable Expenses incurred by HCMLP.

---

<sup>4</sup> As used herein, the term “Plan” refers to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified)* [Dkt. No. 1808], as may be amended, supplemented, or restated.



3. The Settlement Agreement is the product of extensive arms-length negotiations among the parties and their counsel, as well as multiple mediation sessions with Judge Allan L. Gropper (Ret.) and Sylvia A. Mayer (together, the “Mediators”). Moreover, the parties had the benefit of this Court’s decision on the motions for partial summary judgment filed by the Debtor and the Redeemer Committee of the Highland Crusader Fund (the “Redeemer Committee”), and the Court’s ruling on UBS’s motion to temporarily allow its claim for voting purposes. After the Debtor, Redeemer Committee, and UBS submitted comprehensive briefing and voluminous exhibits, and the Court heard approximately five hours of argument, the Court granted the partial summary judgment motions to the extent set forth in its December 9, 2020 Order, and temporarily allowed the UBS Claim for the purposes of voting in the amount of \$94,761,076 (the “UBS Rulings”). Of that amount, approximately \$43,000,000 (inclusive of pre-judgment interest) related to transfers made to Multi-Strat, based on the Court estimating a 90% chance that UBS would prevail on that portion of its claim (under either a fraudulent conveyance or breach of implied covenant theory).

4. After the mediation and the UBS Rulings, the parties reached an initial settlement in principle. The Debtor disclosed that initial settlement to the Court and parties-in-interest at the February 2, 2021, hearing on confirmation of the Plan. Specifically, with UBS’s consent, the Debtor announced the initial settlement under which UBS was to receive (i) a single Class 8 General Unsecured Claim of \$50,000,000, (ii) a single Class 9 Subordinated General Unsecured Claim of \$25,000,000 (along with \$18,500,000 from Multi-Strat and an agreement to assist UBS, to the extent possible, with the conveyance of CDO Fund’s assets to UBS). Those amounts were well in line with the UBS Rulings and reflected the parties’ respective assessments of the risks of litigating the claims to a final decision based on the then-known facts and the rulings.

5. Notably, among the critical facts predating UBS’s prosecution of its Proof of Claim was information provided to UBS in formal and informal discovery regarding the Funds’

assets. Before the Bankruptcy Case was filed, UBS was advised by the Debtor's prepetition management that the Funds had no material assets. During the course of the Bankruptcy Case, the Debtor's prepetition management – including its general counsel and senior litigation counsel – reiterated those “no asset” representations to the Independent Board,<sup>5</sup> including claiming that the Funds were “ghost funds” that had no material assets. These representations were, in turn, relayed to UBS.

6. As the recently uncovered facts described below reveal, the representations of the Debtor's prepetition management to UBS prior to the Bankruptcy Case and to the Independent Board *after* the filing of the Bankruptcy Case were fraudulent. The fraudulent representations appear to have been made as part of an orchestrated scheme by former management to hide from the Independent Board and UBS that in August 2017 more than \$300 million in face amount of securities and cash were secretly transferred from the Funds to a related entity owned and controlled by James Dondero and Scott Ellington.

7. The Independent Board's initial investigation into the UBS Claim and the defenses and potential liabilities of the Debtor and its managed and owned funds began in January 2020. The UBS Claim was the largest in the case, and the Independent Board brought intense focus to all of the legal and factual matters surrounding the underlying contracts, the defaults, and the decade-long litigation underlying the UBS Claim. In directing that extensive investigation, the Independent Board instructed Mr. Ellington, Isaac Leventon, and other members of the Debtor's legal department to provide detailed information regarding the history of the transactions, the Funds, and the UBS Claim generally. Mr. Dondero also provided information to the Independent Board regarding the transactions, the Funds, the litigation, and the pre-petition settlement negotiations with UBS. This post-petition information provided by the Debtor's employees

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<sup>5</sup> The term “Independent Board” means the independent board of directors at Strand appointed by this Court on January 9, 2020. See *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*. Dkt. No. 399.

became part of the factual support for the Debtor's objection to the UBS Claim, and undergirded the Debtor's aggressive objection to the UBS Claim.

8. Prior to the mediation, UBS made additional discovery requests of the Debtor and the Funds. James P. Seery, Jr. (a member of the Independent Board and the Debtor's Chief Executive Officer and Chief Restructuring Officer) tasked the Debtor's in-house legal team with providing the responses to UBS's discovery requests. When Mr. Seery and outside counsel pressed the Debtor's employees for a timely response, Mr. Ellington claimed that he and Mr. Leventon were engaged in a "Herculean task" and had spent "in excess of 100 hours trying to piece together everything we can to create a true and accurate document based record of what happened" to the Funds and their assets. Ultimately, Mr. Leventon claimed that substantially all of the assets that had been at the Funds were used to pay the Funds' legal fees incurred in the litigation against UBS. He also provided specific documents purporting to show that certain assets were "written off" with the exception of certain preferred shares in Greenbriar that were supposedly difficult to locate. The Debtor reported the findings to UBS and used the findings in its presentation to the Mediators and this Court. As the Debtor ultimately learned, Mr. Ellington and Mr. Leventon's statements were false and were apparently made as part of a coordinated post-petition conspiracy to cover-up the illegal pre-petition transfers.

9. After the mediation and the UBS Rulings failed to result in a resolution of the UBS Claim, the Debtor and UBS continued to negotiate. During that time, the Debtor was also involved in significant disputes with Mr. Dondero. Upon learning that Mr. Ellington and Mr. Leventon had breached their respective duties to the Debtor by assisting Mr. Dondero's actions against the estate, they were terminated on January 5, 2021. Upon further investigation, in late January 2021, Mr. Seery working in conjunction with the Debtor's bankruptcy advisors, uncovered certain facts and circumstances relating to the Funds that were extremely disturbing.

10. Specifically, the Debtor's investigation revealed that in or around August 2017, shortly after rulings were issued in favor of UBS in the State Court Action (defined below), and in advance of the impending trial in State Court, Highland's principal, Mr. Dondero, acting in concert with others then employed by Highland, orchestrated the surreptitious transfer of all or substantially all of the assets of the Funds, among others, which had a face value of more than \$300 million in the aggregate (the "Transferred Assets"), to Sentinel. Sentinel is a Cayman-domiciled entity that, on information and belief, is indirectly owned and controlled by Mr. Dondero and Mr. Ellington.<sup>6</sup> The transfer of the Funds' assets appears to be for (at best) a fraction of their total value.<sup>7</sup> Upon information and belief, the Transferred Assets included, among other assets: (i) CDO Fund's interest in Multi-Strat that was ostensibly "redeemed" in November 2019 (the "Sentinel Redemption"), and (ii) assets held by CDO Fund related to Greenbriar, Aberdeen Loan Funding Ltd., Eastland CLO Ltd., Grayson CLO Ltd., Valhalla CLO Ltd., and Governance Re, Ltd., including cash payments related to those assets.<sup>8</sup> The Independent Board disclosed this information to UBS promptly upon its discovery in February 2021. Prior to that disclosure, neither these assets nor the transfers was ever disclosed to UBS.

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<sup>6</sup> On information and belief, Mr. Dondero indirectly owns 70% of Sentinel and Mr. Ellington indirectly owns the remaining 30%. Although Mr. Dondero and Mr. Ellington are the ultimate beneficial owners, their ownership of Sentinel is held through a series of exceedingly complicated intermediate holding and operating companies.

<sup>7</sup> Highland and the Funds, acting through Mr. Dondero, Mr. Ellington, Mr. Leventon, Jean Paul Sevilla, Matthew DiOrio, Katie Irving, and other Highland employees, fraudulently (or, at a bare minimum, in breach of their fiduciary duties) transferred these assets pursuant to a so-called purchase agreement (the "Purchase Agreement"), purportedly to satisfy a \$25,000,000 premium on a \$100,000,000 "after the event," legal liability insurance policy issued by Sentinel (the "Insurance Policy"). The Insurance Policy was supposedly intended to insure against an adverse judgment in the UBS State Court Action (defined below), notwithstanding that the Transferred Assets were worth more than both the premium and the policy limit combined.

<sup>8</sup> The Debtor believes that the timing of both the transfer of the Transferred Assets and the Sentinel Redemption are relevant. In July 2016, the Redeemer Committee commenced its arbitration for, among other things, breach of contract and breach of fiduciary duty against the Debtor. In March 2017 (approximately five months before the Purchase Agreement), the State Court denied the Debtor's motion for summary judgement as to UBS's fraudulent transfer claim, among others, and UBS's suit was being set for trial. In the spring and summer of 2017, Patrick Daugherty and Joshua Terry commenced their own actions against the Debtor or its affiliates. The walls of Mr. Dondero's fraudulent fortress were under attack. Similarly, in April 2019, Redeemer received its final arbitration award, and in November 2019, the State Court entered its \$1 billion judgment in favor of UBS against the Funds – around the same time that the Sentinel Redemption was ostensibly made.

11. It also became clear to Mr. Seery and the Independent Board that they had been materially misled by a coordinated conspiracy to cover up the fraud, which was engineered by, among others, Mr. Dondero, Mr. Ellington, Mr. Leventon, as in-house senior litigation counsel, and certain other employees of the Debtor.

12. In light of these shocking revelations, UBS sought to reopen the settlement discussions. Due to the potential increased risk of additional monetary exposure to the Debtor's estate, the Debtor agreed to revisit the terms of the settlement and ultimately came to revised terms as reflected in the Settlement Agreement. As revised and incorporated into the Settlement Agreement, UBS will receive an increased allowed Class 8 Claim in the amount of \$65 million, and an increased subordinated Class 9 Claim in the amount of \$60 million. These increases reflect the facts and circumstances recently uncovered which increase the Debtor's potential exposure on UBS's asserted claim for breach of the implied covenant of good faith and fair dealing. While the revised, settled UBS Claim exceeds the total estimate the Court previously provided in the UBS Rulings, the non-subordinated amount of UBS's allowed Class 8 Claim, \$65 million, remains less than the Court's estimate of \$94,761,076. And, while that increased Class 8 Claim is potentially dilutive of the recoveries of other creditors, in the Debtor's judgment, the newly discovered facts increase the risk of UBS obtaining a higher recovery on the UBS Claim if it were litigated to conclusion.

13. The Settlement Agreement reflects informed decisions made by highly sophisticated parties, represented by experienced counsel, taking into account (among other things) the significant litigation risk to both UBS and the Debtor if the parties proceed to trial on UBS's claims against the Debtor, Multi-Strat, and Strand. As just a few examples, and as discussed at length in the parties' submissions and oral argument in connection with the partial summary judgment motions and the 3018 Motion (defined below), a litigated resolution of the UBS Claim would involve (i) a determination as to whether Highland Financial Partners, L.P. ("HFP") was the



alter ego of the Funds that contracted with UBS, (ii) factual and legal disputes as to whether HFP received fair consideration for the allegedly fraudulent transfers at issue, including whether the underlying debt could be recharacterized as equity, and whether the debt was secured, and (iii) vigorously contested issues as to whether the Debtor owed or breached a duty of good faith and fair dealing in connection with the transfers made by HFP or its subsidiaries.

14. There is no guarantee that the Debtor would prevail, particularly in light of the number and variety of complex issues that would need to be determined, the recently uncovered fraud, and the fact that it no longer controls many of the witnesses. Moreover, even if the Debtor ultimately prevailed on most (if not all) of its defenses, the time and expense required to litigate the issues outlined above, and the other issues that would need to be addressed to fully resolve the dispute with UBS, would be a significant drain on the Debtor's estate, with a concomitant detrimental impact on the Debtor's creditors. Absent the Settlement Agreement, further litigation of the UBS Claim would involve substantial (and expensive) pre-trial preparation, a lengthy trial, and likely appeals. The Debtor also would need to defend against UBS's claims against Multi-Strat and Strand in the State Court Action, as the Debtor is the investment manager of Multi-Strat, and Strand has been sued for derivative liability as the Debtor's general partner. It has not yet been determined where those claims would be tried, an issue that itself would generate additional litigation and cause further delay. Any attempt to remove the claims to this Court in all likelihood would be vigorously contested by UBS; and if the claims remained in the State Court, the case could not be tried for the foreseeable future due to the pandemic, particularly if UBS continued to demand a jury trial.

15. The Settlement Agreement ends the Debtor's decade-long dispute with UBS, and avoids the expense, delay, and uncertainty of further litigation on the UBS Claim. The Independent Board, including Mr. Seery, has been intimately involved in the negotiation of the Settlement Agreement and believes it to be a fair and reasonable compromise that undoubtedly is

in the best interests of the Debtor's estate and its creditors. Accordingly, the Debtor respectfully requests that the Court grant this Motion and approve the Settlement Agreement.

### **JURISDICTION AND VENUE**

16. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

17. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 9019.

### **RELEVANT BACKGROUND**

#### **I. The State Court Litigation**

18. On February 24, 2009, UBS filed its first complaint against the Debtor and the Funds in an action captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P., et al.*, Index No. 650097/2009 (N.Y. Sup. Ct.) (the "2009 Action"). In that complaint, UBS asserted an indemnification claim for breach of contract against the Debtor based on restructured warehouse agreements entered into in 2008 among UBS, the Debtor, and the Funds which provided that the Funds, not the Debtor, would bear the risk of any investment losses.

19. UBS's breach of contract claim against the Debtor was dismissed in early 2010. UBS then amended its complaint in the 2009 Action to add new claims and five new defendants, HFP, Multi-Strat, Strand, Highland Credit Strategies Master Funds, L.P. ("Credit Strategies"), and Highland Crusader Offshore Partners, L.P. ("Crusader"). The claims against the new defendants included, among other things, (i) actual and constructive fraudulent transfer claims based on transfers of \$233,455,147 of assets by HFP or its subsidiaries in March 2009, (ii) a claim for declaratory relief against HFP seeking a determination that HFP was the alter ego of one of the Funds, and (iii) a claim against Strand for general partner liability.

20. On June 28, 2010, UBS filed a new, separate action against the Debtor captioned *UBS Securities LLC, et al. v. Highland Capital Management, L.P.*, Index No. 650752/2010 (N.Y. Sup. Ct.) (the “2010 Action”). In the 2010 Action, UBS asserted claims against the Debtor for fraudulent transfer (actual and constructive) and breach of the implied covenant of good faith and fair dealing, alleging that the Debtor received certain of the March 2009 transfers (which UBS alleged were orchestrated by the Debtor) and that the March 2009 transaction breached a purported duty of good faith and fair dealing under the warehouse agreements. UBS also sought pre-judgment interest, calculated at nine percent under New York law, attorneys’ fees, and punitive damages. The 2009 Action and 2010 Action (collectively, the “State Court Action”) were later consolidated.

21. The claims asserted in the State Court Action were bifurcated for purposes of trial. Phase I of the trial commenced on July 9, 2018, and was limited to UBS’s breach of contract claim against the Funds, and certain contractual counterclaims asserted by the Debtor. Phase I of the trial concluded on July 27, 2018. The State Court issued its decision more than a year later, on November 14, 2019, determining that the Funds breached the warehouse agreements on December 5, 2008. The Phase I judgment was entered against the Funds on February 10, 2020, in the principal amount of \$519,374,149 with \$520,583,650.44 in prejudgment interest included for an overall judgment of \$1,039,957,799.44. UBS Claim ¶ 23.

22. The claims to be tried in Phase II of the State Court Action included (i) UBS’s claim against the Debtor for breach of the implied covenant of good faith and fair dealing, (ii) UBS’s fraudulent transfer claims against the Debtor, HFP, and Multi-Strat, (iii) UBS’s claim for declaratory relief against HFP, and (iv) UBS’s general partner liability claim against Strand.<sup>9</sup> Phase II of the trial was automatically stayed as to the Debtor by its bankruptcy filing.

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<sup>9</sup> UBS’s claims against Credit Strategies and Crusader, as the recipients of \$172,411,785 of the assets transferred in the March 2009 transaction, were settled in June 2015.

## II. The Bankruptcy Case

23. The Debtor commenced the Bankruptcy Case in the District of Delaware on October 16, 2019, by filing its voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Bankruptcy Case was transferred to this Court on December 4, 2019. The Official Committee of Unsecured Creditors (“OCUC”) was appointed by the U.S. Trustee on October 29, 2019, before the Bankruptcy Case was transferred to this Court.

24. On May 20, 2020, UBS moved for relief from the automatic stay (the “Stay Relief Motion”), seeking stay relief to prosecute its claims against the Debtor in the State Court. Dkt. No. 644. The Debtor, Redeemer Committee, OCUC, and Acis Capital Management, L.P. and Acis Capital Management GP, LLC all objected to the Stay Relief Motion. Following a hearing on June 15, 2020, the Court denied the Stay Relief Motion and set June 26, 2020 as the deadline for UBS to file its proof of claim against the Debtor. Dkt. No. 765.

25. On August 3, 2020, the Court entered the *Order Directing Mediation*, pursuant to which the Debtor and UBS (among other parties) were directed to mediate their disputes before the Mediators. Dkt. No. 912.

26. On February 22, 2021, the Bankruptcy Court entered the *Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief*, Dkt. No. 1943, which confirmed the Plan.<sup>10</sup>

## III. The UBS Claim

27. UBS filed the UBS Claim in the Bankruptcy Case on June 26, 2020. The UBS Claim consists of two substantively identical claims: (i) Claim No. 190 filed by UBS Securities LLC; and (ii) Claim No. 191 filed by UBS AG London Branch. Feinstein Decl. Exhibits 2 and 3. UBS asserted a general unsecured claim against the Debtor for \$1,039,957,799.40, *i.e.*,

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<sup>10</sup> The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

the exact amount of UBS's breach of contract judgment against the Funds. The UBS Claim seeks "damages arising from the Debtor's breach of the implied covenant of good faith and fair dealing, its specific role in directing the fraudulent transfers of assets involving HFP" and interest, punitive damages and attorneys' fees. UBS Claim ¶ 26.

28. The Debtor and the Redeemer Committee and the Highland Crusader Funds ("Redeemer/Crusader") each objected to the UBS Claim on August 7, 2020. Dkt. Nos. 928, 933. UBS filed its response to the claim objections on September 25, 2020. Dkt. No. 1105.

#### IV. The Partial Summary Judgment Motions and UBS's 3018 Motion

29. On October 16, 2020, the Debtor filed a motion for partial summary judgment on the UBS Claim, as did Redeemer/Crusader. Dkt. Nos. 1214, 1215. UBS filed its response on November 6, 2020, and the moving parties submitted their replies on November 16, 2020. Dkt. Nos. 1337, 1402, 1408. The Debtor and Redeemer/Crusader sought to disallow (i) any claim against the Debtor that arose prior to February 24, 2009, including any claim to enforce the Phase I judgment against the Debtor, (ii) any claim to impose alter ego liability on the Debtor, and (iii) any claim seeking recovery from the Debtor pertaining in any way to the transfers of \$172,411,785 of assets made collectively to Credit Strategies and Crusader in March 2009. By Order dated December 9, 2020, the Court granted the motions for partial summary judgment filed by the Debtor and Redeemer/Crusader, and denied UBS's request for leave to file an amended proof of claim. Dkt. No. 1526.

30. On November 6, 2020, UBS filed a motion pursuant to Bankruptcy Rule 3018, seeking the temporary allowance of the UBS Claim for purposes of voting on the Plan. Dkt. No. 1338 (the "3018 Motion"). UBS requested that the Court temporarily allow the UBS Claim in the amount of \$543,620,736.03, which included (i) the \$233,455,147 of assets transferred in March 2009, (ii) approximately \$45,000,000 that UBS asserted was held by HFP after the March 2009 transaction, and (iii) \$265,165,589.03 for nine percent pre-judgment interest from March



2009 to the petition date. Dkt. No. 1342 ¶ 38. With respect to the March 2009 transfers, UBS included the following chart:

Recipient	Market Value of Assets
Credit Strategies	\$20,044,219
Crusader Holding	\$108,961,751
Crusader Offshore	\$43,405,815
Multi-Strat Entities	\$25,782,988
Debtor	\$17,778,566
Citibank, N.A.	\$17,481,808
<b>Total</b>	<b>\$233,455,147</b>

Dkt. No. 1342 ¶ 15. UBS also asserted that the Debtor could be liable for additional amounts purportedly held by CDO Fund, because the Debtor interfered (in breach of its implied covenant of good faith and fair dealing) with CDO Fund's obligation to bear responsibility for 51% of the losses suffered by UBS under the warehouse agreements. *See, e.g.*, 11/20/20 Hrg. Tr. [Dkt. 1482] at 207:21 (asserting that \$23,000,000 was held by CDO Fund as of December 31, 2009).

31. The Debtor and Redeemer/Crusader objected to the 3018 Motion on November 16, 2020. Dkt. Nos. 1404, 1409. The Debtor (joined by Redeemer/Crusader) argued that the UBS Claim should be temporarily allowed in the maximum amount of \$35,742,978.98. The calculation of that amount used the \$233,455,147 of transfers in March 2009 as a starting point, then subtracted the \$172,411,785 transferred to Credit Strategies and Crusader (*i.e.*, the parties that settled with UBS in 2015), leaving a remaining principal amount of \$61,043,362 (or \$119,143,263.26 with 9% prejudgment interest). The Debtor further argued that a 70% discount should be applied to account for the substantial likelihood that UBS would not be able to establish most, if not all, of its claims at trial ( $\$119,143,263.26 \times .30 = \$35,742,978.978$ ). Dkt. No. 1404 at 1.

32. The Debtor, Redeemer/Crusader, and UBS collectively submitted more than 3,000 pages of exhibits in connection with the partial summary judgment motions and 3018 Motion. *See, e.g.*, Dkt. Nos. 1413, 1414, 1418.

33. On November 20, 2020, the Court held a hearing on the partial summary judgment motions and 3018 Motion. During the all-day hearing, the Court heard lengthy arguments by counsel for the Debtor, Redeemer/Crusader, and UBS. The Court received extensive evidence, including deposition clips and excerpts from one of UBS's expert's report relating to, among other things, the terms of the warehouse agreements, the March 2009 transfers and underlying notes, the pre-petition operation of the Debtor's business, and the convoluted history of the State Court Action to date. At the conclusion of the hearing, the Court granted the partial summary judgment motions (as discussed above) and temporarily allowed the UBS Claim for voting purposes in the amount of \$94,761,076. 11/20/20 Hrg. Tr. at 213:25-214:1.<sup>11</sup> That amount reflected the following:

- \$8 million for the amount transferred to the Debtor in March 2009. The Court used the adjusted amount included in one of the tables to UBS's expert's report, with no discount applied for litigation risk. 11/20/20 Hrg. Tr. at 215:16-22. UBS continued to dispute whether the original amount (\$17,778,566) or the adjusted amount should be used. *Id.* at 217:4-23.
- Approximately \$23.2 million for the total amount transferred to Multi-Strat in March 2009 (\$25,782,988), reflecting a 90% chance that UBS would prevail on that portion of its claim. 11/20/20 Hrg. Tr. at 214:14-215:15.
- Approximately \$3.5 million for the total amount transferred to Citibank, N.A. in March 2009 (\$17,481,808), reflecting a 20% chance that UBS would prevail on that portion of its claim. 11/20/20 Hrg. Tr. at 215:23-216:3.
- \$30 million for pre-judgment interest on the above three amounts. 11/20/20 Hrg. Tr. at 216:4-7.
- \$10 million relating to the approximately \$68 million that UBS argued was held by HFP and CDO Fund, at minimum, after the March 2009 transfers. 11/20/20 Hrg. Tr. at 216:8-15.
- \$10 million relating to pre-judgment interest on the above amount. 11/20/20 Hrg. Tr. at 216:15-16.

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<sup>11</sup> An excerpt of the transcript from the November 20, 2020 hearing setting forth the Court's ruling on the 3018 Motion is attached as **Exhibit 4** to the Feinstein Declaration.

- \$10 million to take into account UBS's demand for attorneys' fees. 11/20/20 Hrg. Tr. at 216:17-24.

The Court's order on the 3018 Motion was entered on December 7, 2020. Dkt. No. 1518.

**V. Summary of the Salient Terms of the Settlement Agreement**

34. In an effort to resolve the long-standing and highly contentious dispute between the Debtor and UBS, the parties and their counsel engaged in extensive negotiations and multiple sessions with the Mediators. *See, e.g.*, Settlement Agreement at 2. Those efforts resulted in the Settlement Agreement, which the parties executed on March 30, 2021.

35. The principal terms of the Settlement Agreement are as follows:<sup>12</sup>

- The parties to the Settlement Agreement are (i) the Debtor, (ii) Multi-Strat, together with its general partner and its direct and indirect wholly-owned subsidiaries, (iii) Strand, and (iv) UBS. Settlement Agreement at 1.
- The UBS Claim will be allowed as (i) a single, general unsecured claim in the amount of \$65,000,000 against the Debtor, which shall be treated as a Class 8 General Unsecured Claim under the Plan, and (ii) a single, subordinated unsecured claim in the amount of \$60,000,000 against the Debtor, which shall be treated as a Class 9 Subordinated General Unsecured Claim under the Plan. *Id.* § 1(a).
- Multi-Strat will pay \$18,500,000 to UBS, to be funded in part with certain Multi-Strat assets previously placed in escrow pursuant to an agreement between Multi-Strat and UBS (among other parties) entered into in May 2020. *Id.* § 1(b).<sup>13</sup>
- UBS will withdraw with prejudice its appeal of this Court's order approving the Debtor's settlement with Redeemer/Crusader [Dkt. No. 1273] if Redeemer/Crusader do not object to this Settlement Agreement. *Id.* § 1(d).
- The Debtor will transfer to UBS any claim it may have against Sentinel or any other party with respect to the Multi-Strat Interest transferred as part of the Transferred Assets. *Id.* § 1(g).

<sup>12</sup> In the event of any inconsistency between this Motion and the Settlement Agreement, the terms of the Settlement Agreement shall control.

<sup>13</sup> The two other parties to the May 2020 agreement – Highland Credit Opportunities CDO, Ltd. and Highland Credit Opportunities CDO Asset Holdings, L.P. – also are signatories to the Settlement Agreement. Settlement Agreement at 3, 14.

- The parties will exchange broad mutual releases upon the effective date of the Settlement Agreement. *Id.* §§ 2(a), 3(a)-(c).
- If UBS ever controls or has authority over any HCMLP-affiliated defendant(s) in the State Court Action by virtue of the prosecution, enforcement, or collection of the Phase I Judgment, neither UBS nor such defendant(s) will assert or pursue any claims that such defendant(s) has or may have against the Debtor or any other HCMLP Parties (as defined in the Settlement Agreement) (provided that nothing prohibits those actions set forth in Section 3(a)(1)-(6) of the Settlement Agreement), and if UBS receives any distribution from any such defendant(s) that is derived from a claim such defendant(s) has against the Debtor (subject to the exceptions set forth in Section 3(a)) which distribution is directly attributable to any property such defendant(s) receives from the Debtor and separate and distinct from property owned or controlled by CDO Fund, SOHC, or Multi-Strat, then such amount will be credited against amounts due to UBS under Section 1(a) of the Settlement Agreement. *Id.*, § 5.
- The Debtor will use reasonable efforts to assist UBS in, among other things, collecting its judgment against the Funds and assets the Funds may own, including by cooperating with UBS (i) to assign or convey any assets owned or controlled by the Funds and/or HFP and (ii) in its pursuit of the Transferred Assets and claims against the individuals and entities set forth in 1(c)(ii)-(iii) of the Settlement Agreement, subject to a limit on the Debtor's incurrence of no more than \$3 million in expenses in connection therewith and the right to reimbursement of those amounts as set forth in the Settlement Agreement. *Id.* § 1(c).
- The effectiveness of the Settlement Agreement is expressly conditioned upon this Court's approval of the Settlement Agreement. *Id.* §§ 2(c), 6.

### **RELIEF REQUESTED**

36. By this Motion, the Debtor requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the Motion, approving the Settlement Agreement, and authorizing the Debtor and its agents to take all actions necessary or desirable to implement the Settlement Agreement without the need for further notice or approval by the Court. The Debtor seeks approval of the Settlement Agreement pursuant to Bankruptcy Rule 9019 and,

to the extent that the Settlement Agreement is viewed as requiring the Debtor to take action outside the ordinary course of business as the investment manager of Multi-Strat, the Debtor also seeks approval of the Settlement Agreement pursuant to Bankruptcy Code section 363(b).

### **BASIS FOR RELIEF REQUESTED**

37. Bankruptcy Rule 9019 provides that “[o]n motion ... and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). Settlements are favored in the bankruptcy context to “minimize litigation and expedite the administration of a bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996). The approval of a settlement is within the “sound discretion” of the Court. *In re Jackson Brewing Co.*, 624 F.2d 599, 603 (5th Cir. 1980).

38. Pursuant to Bankruptcy Rule 9019(a), the Court may approve a settlement if it is fair, reasonable, and in the best interests of the estate. *See, e.g., Official Comm. of Unsecured Creditors v. Moeller (In re Age Ref., Inc.)*, 801 F.3d 530, 540 (5th Cir. 2015). A settlement should be approved unless it falls below the lowest point in the range of reasonableness, based on a comparison between the terms of the settlement and the costs and benefits of further litigation. *See, e.g., Jackson Brewing Co.*, 624 F.2d at 602 (court must compare the “terms of the compromise with the likely rewards of litigation”); *Cook v. Waldron*, 2006 U.S. Dist. LEXIS 31411, \*10 (S.D. Tex. April 18, 2006) (court should “canvass the issues” to decide if settlement falls “below the lowest point in the range of reasonableness”).

39. In evaluating a proposed settlement, courts consider (i) the “probability of success in the litigation, with due consideration for the uncertainty in fact and law,” (ii) the “complexity and likely duration of the litigation and any attendant expense, inconvenience and delay,” and (iii) “[a]ll other factors bearing on the wisdom of the compromise.” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (quoting *Jackson Brewing Co.*, 624 F.2d at 602). The “other factors” include



“the best interests of the creditors, ‘with proper deference to their reasonable views,’” as well as “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* (quoting *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortg. Corp.)*, 68 F.3d 914, 917-18 (5th Cir. 1995)).

40. A trustee (or debtor-in-possession) also “is permitted to settle lawsuits pursuant to section 363(b)” of the Bankruptcy Code. *Id.* at 354. Section 363(b) provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. 363(b)(1). A settlement involving a transaction outside the ordinary course of business “‘must be supported by an articulated business justification, good business judgment, or sound business reasons.’” *Gluckstadt Holdings, L.L.C. v. VCR I, L.L.C. (In re VCR I, L.L.C.)*, 922 F.3d 323, 327 (5th Cir. 2019) (quoting *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010)).

41. As discussed in detail below, all of the factors to be considered pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 363(b) weigh **heavily** in favor of approving the Settlement Agreement in this case.

42. **Probability of Success in the Litigation.** While the first factor to be considered does not require a “mini-trial” on the merits, *Cajun Elec. Power Coop.*, 119 F.3d at 356, the Court can evaluate the Settlement Agreement with the benefit of having already considered the extensive briefing, evidence, and argument presented by the Debtor, UBS, and the Redeemer Committee in connection with the partial summary judgment motions and 3018 Motion. As illustrated at the November 20, 2020 hearing and in the parties’ briefs, resolution of the UBS Claim through litigation would involve many complex issues, with resulting uncertainty as to whether the Debtor or UBS ultimately would prevail.

43. For instance, to establish its fraudulent transfer claims relating to the March 2009 transfers, UBS would need to prove that it was a creditor of the entity (HFP) that allegedly

made the purported fraudulent transfers, which would require proof that HFP was the alter ego of one of the Funds that was a party to the contracts with UBS. While the Debtor believes that it would be difficult for UBS to establish its alter ego claim, UBS is equally confident that it will prevail, relying on (among other things) the survival of its alter ego allegations following dispositive motion practice in the State Court Action (and the recently uncovered fraud may help its case).

44. Litigation of the UBS Claim also would require a determination as to whether HFP received fair consideration in exchange for the March 2009 transfers. The Debtor asserts that the transfers were made on account of secured notes issued by HFP. UBS, on the other hand, contends that the debt should be recharacterized as equity, that the notes were unsecured, and that the value of the notes was not equivalent to the amount of the March 2009 transfers. Other hotly contested issues include: (i) whether the Debtor could be held responsible for transfers made by HFP to any entity other than the Debtor, including the transfer made to a completely unrelated third-party (Citibank, N.A.); (ii) whether the transfers were made in good faith, or with actual fraudulent intent; and (iii) whether UBS can recover the attorneys' fees it has incurred – which likely are substantial – from the Debtor, in light of the high standard required for an award of attorneys' fees under New York law. *See, e.g.*, Dkt. No. 1404 ¶¶ 22-23.

45. The Debtor also disputes the merits of UBS's claim for breach of the implied covenant of good faith and fair dealing. The Debtor maintains that UBS cannot use the implied covenant to "rewrite" the warehouse agreements, which were heavily negotiated contracts among sophisticated parties that placed all risk of loss on the Funds, not the Debtor. The Debtor also maintains that UBS will not be able to prove the Debtor breached any purported duty of good faith and fair dealing as to the March 2009 transfers made by HFP or its subsidiaries, given that HFP was not a party to the warehouse agreements and was not a defendant in the State Court Action at the time of the transfers, and the transfers were made after UBS terminated the warehouse agreements.

UBS, of course, has raised its own arguments in response to each of the Debtor's points. Specifically, UBS maintains that its claim does not "rewrite" the warehouse agreements because the Debtor was a party to all three contracts – and in fact was the only Highland party to one of the three contracts – whereby it expressly promised that the Funds would bear all losses on the contracts, thus obligating itself not to interfere with, injure, or frustrate UBS's right to recover such losses from the Funds. UBS also maintains that the Debtor exerted its control over the Funds to move assets out of UBS's reach and into the pockets of other Highland-affiliated entities. And UBS maintains that the Debtor's principal arguments have already been rejected by the New York appellate courts (although the Debtor disputes that contention). Accordingly, UBS is confident that it will prevail on its implied covenant claim. (Moreover, the recent discovery of the Sentinel transactions, including the transfer of the Transferred Assets by CDO Fund, provides additional weight to UBS's claim.)

46. As one final example of the plethora of issues that would need to be resolved absent the Settlement Agreement, the parties dispute whether UBS's implied covenant claim is limited to the allegedly fraudulent transfers made by HFP or its subsidiaries in March 2009. The Debtor has asserted that the March 2009 transfers – with only approximately \$61 million of transfers remaining at issue in light of the Court's ruling on the partial summary judgment motions – are the only basis for UBS's implied covenant claim. UBS, on the other hand, has argued that damages on its implied covenant claim may include, in addition to the remaining \$61 million of March 2009 transfers still at issue, all or some portion of any assets held by HFP, SOHC, and CDO Fund after the March 2009 transfers were made, which until, the Independent Board informed it of the Transferred Assets, UBS believed to be approximately \$45 million at HFP and approximately \$23 million at CDO Fund – but now understands was significantly more. *See, e.g.*, 11/20/20 Hrg. Tr. at 138:10-139:5; 207:19-208:14.

47. These and other issues were the subject of extensive discovery and numerous competing expert opinions in the State Court Action. For the more than ten years that the State Court

Action has been pending, UBS and the Debtor – each represented by sophisticated business people and experienced counsel – have maintained diametrically different views on the merits of UBS’s claims and the Debtor’s defenses. The Settlement Agreement appropriately takes into account the complexity of the issues that would need to be resolved in further litigation, and the resulting uncertainty. Moreover, the settlement amount agreed upon by the parties is consistent with the Court’s evaluation of the UBS Claim in connection with the 3018 Motion. Therefore, the Settlement Agreement satisfies the “probability of success” factor.

48. **Expense, Inconvenience, and Delay.** The Settlement Agreement resolves claims that UBS asserted against the Debtor, Multi-Strat, and Strand more than ten years ago. The convoluted history of the State Court Action itself speaks volumes about the expense, inconvenience, and delay likely to result from further litigation of the UBS Claim. Indeed, the only claims resolved to date – UBS’s breach of contract claim against the Funds and the Debtor’s contractual counterclaims (which were rejected) – required a thirteen-day bench trial in the State Court.

49. Litigation of UBS’s claims against the Debtor, including the resolution of the complex issues outlined above, would require enormous time and effort, and the expenditure of millions of dollars by the Debtor’s estate. Pre-trial preparation and trial is, of course, expensive and time-consuming in any complex case. And here, expert witnesses who prepared their expert reports years ago would need to be re-engaged, and fact witnesses involved in transactions that occurred more than ten years ago would need to be prepared for trial – many of whom are no longer under the Debtor’s control and some of whom are adverse to the Debtor today. Furthermore, any result obtained at trial in all likelihood would be subjected to appellate review. By finally ending the acrimonious, decade-old dispute between the Debtor and UBS without further expense, the Settlement Agreement easily satisfies the “expense, inconvenience, and delay” factor.

50. **Other Factors.** As an initial matter, there can be no doubt that the Settlement Agreement was the product of good faith, arms-length negotiations between the Debtor and UBS.

The parties reached agreement after extensive negotiations and multiple sessions with the Mediators. And, no party could credibly contend that there was collusion between the Debtor and UBS, who have been aggressive adversaries for more than a decade.

51. As to the second “other factor” identified by the Fifth Circuit, approval of the Settlement Agreement is in the best interests of the Debtor’s creditors. The UBS Claim was filed as a \$1 billion claim in June 2020, and already has been the subject of vigorously contested litigation in this Court. Pursuant to the Settlement Agreement, the UBS Claim will be resolved, without further litigation expense to the Debtor’s estate, with (i) allowance of a single, general unsecured claim in the amount of \$65 million against the Debtor, (ii) allowance of a single, subordinated unsecured claim in the amount of \$60 million against the Debtor, and (iii) the \$18.5 million payment by Multi-Strat. Resolution of the UBS Claim on these terms benefits the many other Class 8 unsecured creditors who share ratably with UBS and would be at risk of substantial dilution if the UBS Claim were allowed at \$1 billion, as UBS has asserted, or anything approaching that amount.

52. **Sound Business Reasons and Justifications.** As outlined above, there are sound business reasons and justifications for entering into the Settlement Agreement, particularly as it pertains to Multi-Strat. UBS has alleged that Multi-Strat was the direct recipient of \$25,782,988 of the amount allegedly fraudulently transferred by HFP in March 2009. While the Debtor believes there are numerous meritorious defenses to that claim, litigation of UBS’s claim against Multi-Strat would involve the same uncertainty and expense as litigation of UBS’s fraudulent transfer claim against the Debtor, including the impact of the fraud on certain Multi-Strat transactions. Furthermore, after hearing extensive evidence and argument relating to, among other things, the fraudulent transfer claims, the Court determined there was a 90% chance that UBS would prevail on the Multi-Strat portion of its claim (*i.e.*, a value of approximately \$43 million, including pre-judgment interest, and potentially attorney fees). *See* 11/20/20 Hrg. Tr. at 214:10-215:15. The settlement payment to be made by Multi-Strat (\$18,500,000) takes into account the strengths and



weaknesses of both parties' positions, as well as the benefit of resolving the litigation without further expense. Therefore, the Debtor respectfully requests that the Settlement Agreement be approved pursuant to both Bankruptcy Rule 9019 and section 363(b) of the Bankruptcy Code (to the extent necessary).

53. Finally, the Debtor is also authorized, as investment manager, to cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action without seeking leave under 11 U.S.C. § 363(b). *First*, section 363(b) applies to "property of the estate." 11 U.S.C. § 363(b)(1). However, the assets of a debtor's non-debtor subsidiaries are *not* property of a debtor's estate. *See, e.g., In re Guyana Dev. Corp.*, 168 B.R. 892, 905 (Bankr. S.D. Tex. 1994) ("As a general rule, property of the estate includes the debtor's stock in a subsidiary but not the assets of the subsidiary."). Here, Multi-Strat is not wholly owned by the Debtor and has meaningful third party investors. Thus, the payment to be made by Multi-Strat pursuant to the Settlement Agreement will not involve property of the Debtor's estate or implicate 11 U.S.C. § 363(b). Instead, it will involve the transfer of Multi-Strat's property in settlement of UBS's claim against Multi-Strat. *Second*, even if 11 U.S.C. § 363 is relevant, the Debtor is authorized to operate its business in the ordinary course without notice or hearing pursuant to 11 U.S.C. § 363(c)(1). As the investment manager of Multi-Strat, the Debtor can, in the ordinary course of business, cause Multi-Strat to settle the claims UBS has asserted against Multi-Strat in the State Court Action. *Finally*, even if the Settlement Agreement is viewed as requiring the Debtor to take action outside the ordinary course of business as the investment manager of Multi-Strat, the Settlement Agreement should be approved pursuant to section 363(b) of the Bankruptcy Code for the reasons set forth above.

#### **NO PRIOR REQUEST**

54. No previous request for the relief sought herein has been made to this Court or any other court.

**NOTICE**

55. Notice of this Motion shall be given to (i) counsel for UBS, (ii) counsel to the OCUC, (iii) the Debtor's principal secured parties, (iv) the Office of the United States Trustee, and (v) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested herein, no other or further notice need be given.

**PRAYER**

**WHEREFORE**, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the Motion and the relief requested herein, and granting the Debtor such other and further relief as the Court deems just and proper.

[remainder of page intentionally blank]

Dated: April 15, 2021.

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**Exhibit A**  
**Proposed Order**

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

\_\_\_\_\_

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

\_\_\_\_\_

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§

**ORDER APPROVING DEBTOR’S SETTLEMENT WITH  
UBS SECURITIES LLC AND UBS AG LONDON BRANCH  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on the *Debtor’s Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith* (the “Motion”)<sup>2</sup> filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case; and the

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.



Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered the Motion, the materials submitted in support of the Motion, all responses to the Motion, and the arguments presented by counsel at the hearing on the Motion; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest, and is supported by sound business reasons and justifications; and the Court having determined that the legal and factual bases set forth in the Motion establish sufficient cause for the relief granted herein; and adequate notice of the Motion having been given; and after due deliberation and good cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.
2. The Settlement Agreement attached as **Exhibit 1** to the Feinstein Declaration is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code.
3. The Debtor and its agents are authorized to take any and all actions necessary or desirable to implement the Settlement Agreement without further notice or further Court approval.
4. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**### END OF ORDER ###**

### **Exhibit 3**

**See Debtor's Exhibit No. 73**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

) Chapter 11

) Case No. 19-34054-sgj11

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

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



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## DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

### ARTICLE I.

#### RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW AND DEFINED TERMS

##### A. Rules of Interpretation, Computation of Time and Governing Law

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” means an “affiliate” as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not



unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all



distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.



51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

59. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

62. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

69. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

71. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

77. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

87. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. “*Petition Date*” means October 16, 2019.

91. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of



Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.



104. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

105. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

107. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. “*Related Entity*” means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

132. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II. ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.



**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.



**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

*1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.



- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THIS PLAN

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### **1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.**

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

2. *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be



overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.



5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the



Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

*1. Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

*2. Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

*3. Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

*4. Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant



Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.



## ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).



Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

## **ARTICLE VI.**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor’s books and records.



If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to



such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*1. Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

*2. Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.**  
**EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized



Debtor, or the Claimant Trust, as applicable.

**C. Effect of Non-Occurrence of Conditions to Effectiveness**

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

**D. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.  
EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose



before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

*1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

#### **G. Term of Injunctions or Stays**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.



**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to pay taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.  
RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;



- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## ARTICLE XII. MISCELLANEOUS PROVISIONS

### A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.



**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
 300 Crescent Court, Suite 700  
 Dallas, Texas 75201  
 Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
 10100 Santa Monica Blvd., 13th Floor  
 Los Angeles, CA 90067  
 Attn: Jeffrey N. Pomerantz, Esq.  
 Ira D. Kharasch, Esq.  
 Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: November 24, 2020

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief  
Restructuring Officer

Prepared by:

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*Counsel for the Debtor and Debtor-in-Possession*

**Exhibit 5**

*See Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief (Dkt. #1943)*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)

)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)

**DISCLOSURE STATEMENT FOR THE FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

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Counsel for the Debtor and Debtor-in-Possession

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





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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned cases (the “Debtor”), is sending you this document and the accompanying materials (the “Disclosure Statement”) because you are a creditor or interest holder in connection with the *Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.*, dated November 24, 2020, as the same may be amended from time to time (the “Plan”).<sup>2</sup> The Debtor has filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

This Disclosure Statement has not yet been approved by the Bankruptcy Court as containing adequate information within the meaning of section 1125(a) of the Bankruptcy Code. The Debtor intends to seek an order or orders of the Bankruptcy Court (a) approving this Disclosure Statement as containing adequate information and (b) confirming the Plan.

A copy of the Plan is attached hereto as Exhibit A.

The Debtor believes that the Plan is fair and equitable, will maximize the value of the Debtor’s Estate, and is in the best interests of the Debtor and its constituents. Notably, the Plan provides for the transfer of the majority of the Debtor’s Assets to a Claimant Trust. The balance of the Debtor’s Assets, including the management of the Managed Funds, will remain with the Reorganized Debtor. The Reorganized Debtor will be managed by New GP LLC – a wholly-owned subsidiary of the Claimant Trust. This structure will allow for continuity in the Managed Funds and an orderly and efficient monetization of the Debtor’s Assets.

The Claimant Trust, the Litigation Trust, or the Reorganized Debtor, as applicable, will institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action without any further order of the Bankruptcy Court, and the Claimant Trust and Reorganized Debtor, as applicable, will sell, liquidate, or otherwise monetize all Claimant Trust Assets and Reorganized Debtor Assets and resolve all Claims, except as otherwise provided in the Plan, the Claimant Trust Agreement, or the Reorganized Limited Partnership Agreement.

**IMPORTANT INFORMATION ABOUT THIS  
DISCLOSURE STATEMENT FOR YOU TO READ**

The Debtor is providing the information in this Disclosure Statement to Holders of Claims and Equity Interests in connection with the Debtor’s Plan. Nothing in this Disclosure Statement may be relied upon or used by any Entity for any purpose other than with respect to confirmation of the Plan. The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose.

This Disclosure Statement has not been filed for approval with the Securities and Exchange Commission (“SEC”) or any state authority and neither the SEC nor any state authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern.



the merits of the Plan. Any representation to the contrary is a criminal offense. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction.

This Disclosure Statement contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The Debtor considers all statements regarding anticipated or future matters to be forward-looking statements. Forward-looking statements may include statements about:

- the effects of insolvency proceedings on the Debtor’s business and relationships with its creditors;
- business strategy;
- financial condition, revenues, cash flows, and expenses;
- financial strategy, budget, projections, and operating results;
- variation from projected operating and financial data;
- substantial capital requirements;
- availability and terms of capital;
- plans, objectives, and expectations;
- the adequacy of the Debtor’s capital resources and liquidity; and
- the Claimant Trust’s or the Reorganized Debtor’s ability to satisfy future cash obligations.

Statements concerning these and other matters are not guarantees of the Claimant Trust’s or Reorganized Debtor’s future performance. There are risks, uncertainties, and other important factors that could cause the Claimant Trust’s or Reorganized Debtor’s actual performance or achievements to be different from those that may be projected. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. Therefore, any analyses, estimates, or recovery projections may or may not turn out to be accurate.

This Disclosure Statement has been prepared pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and is not necessarily in accordance with federal or state securities laws or other similar laws.

No legal or tax advice is provided to you by this Disclosure Statement. The Debtor urges each Holder of a Claim or an Equity Interest to consult with its own advisers with respect to any legal, financial, securities, tax or business advice in reviewing this Disclosure Statement, the Plan and each of the proposed transactions contemplated thereby. Further, the Bankruptcy Court's approval of the adequacy of disclosures contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan or a guarantee by the Bankruptcy Court of the accuracy or completeness of the information contained herein.

Pachulski Stang Ziehl & Jones LLP ("PSZ&J") is general insolvency counsel to the Debtor. Development Specialists, Inc. ("DSI") is the Debtor's financial advisor. PSZ&J, DSI, and the Independent Board (as defined below) have relied upon information provided by the Debtor in connection with preparation of this Disclosure Statement. PSZ&J has not independently verified the information contained herein.

This Disclosure Statement contains, among other things, summaries of the Plan, the management of the Reorganized Debtor, the Claimant Trust, certain statutory provisions, certain events in the Debtor's Chapter 11 Case, and certain documents related to the Plan that are attached hereto and incorporated herein by reference or that may be filed later with the Plan Supplement. Although the Debtor believes that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that the summaries do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any conflict, inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern and control for all purposes. Except where otherwise specifically noted, factual information contained in this Disclosure Statement has been provided by the Debtor's management. The Debtor does not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission.

In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and on various assumptions regarding the Debtor's business. The Debtor's management has reviewed the financial information provided in this Disclosure Statement. Although the Debtor has used its reasonable business judgment to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited (unless otherwise expressly provided herein) and no representations or warranties are made as to the accuracy of the financial information contained herein or assumptions regarding the Debtor's business and its, the Reorganized Debtor's, and the Claimant Trust's future results. The Debtor expressly cautions readers not to place undue reliance on any forward-looking statements contained herein.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation or waiver. Rather, this Disclosure Statement shall constitute a statement made in settlement negotiations related to potential contested matters, potential adversary proceedings and other pending or threatened litigation or actions.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in the Disclosure Statement. Except as provided under the Plan, the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, may seek to investigate, file and prosecute Claims and Causes of Action and may object to Claims or Equity Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies any such Claims or Equity Interests or objections to Claims or Equity Interests on the terms specified in the Plan.

The Debtor is generally making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof where feasible, unless otherwise specifically noted. Although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so. Holders of Claims and Equity Interests reviewing this Disclosure Statement should not infer that, at the time of their review, the facts set forth herein have not changed since the Disclosure Statement was sent. Information contained herein is subject to completion, modification, or amendment. The Debtor reserves the right to file an amended or modified Plan and related Disclosure Statement from time to time.

The Debtor has not authorized any Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtor has not authorized any representations concerning the Debtor or the value of its property other than as set forth in this Disclosure Statement.

Holders of Claims or Equity Interests must rely on their own evaluation of the Debtor and their own analyses of the terms of the Plan in considering the Plan. Importantly, each Holder of a Claim should review the Plan in its entirety and consider carefully all of the information in this Disclosure Statement and any exhibits hereto, including the risk factors described in greater detail in ARTICLE IV herein, "Risk Factors."

If the Plan is confirmed by the Bankruptcy Court and the Effective Date occurs, all Holders of Claims against, and Holders of Equity Interests in, the Debtor will be bound by the terms of the Plan and the transactions contemplated thereby.

The effectiveness of the Plan is subject to certain material conditions precedent described herein and set forth in Article IX of the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Plan to become effective will be satisfied (or waived).

**EXHIBITS**

**EXHIBIT A** – Plan of Reorganization

**EXHIBIT B** – Organizational Chart of the Debtor

**EXHIBIT C** – Liquidation Analysis/Financial Projections

THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT  
ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH  
FULLY SET FORTH HEREIN.

**ARTICLE I.**  
**EXECUTIVE SUMMARY**

**This Disclosure Statement is provided for informational purposes only.**

**In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distributions to the Debtor's creditors and interest holders. The Debtor believes that any delay in confirmation of the Plan would result in significant administrative expenses resulting in less value available to the Debtor's constituents. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.**

This Executive Summary is being provided to Holders of Allowed Claims and Equity Interests as an overview of the material items addressed in the Disclosure Statement and the Plan, which is qualified by reference to the entire Disclosure Statement and by the actual terms of the Plan (including all exhibits attached hereto and to the Plan and the Plan Supplement), and should not be relied upon for a comprehensive discussion of the Disclosure Statement and/or the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan of reorganization or liquidation. As such, this Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code. This Disclosure Statement includes, without limitation, information about:

- the Debtor's operating and financial history;
- the significant events that have occurred to date;
- the Confirmation process; and
- the terms and provisions of the Plan, including key aspects of the Claimant Trust and the Reorganized Debtor, certain effects of Confirmation of the Plan, certain risk factors relating to the Plan, and the manner in which distributions will be made under the Plan.

The Debtor believes that any alternative to Confirmation of the Plan would result in significant delays, litigation, and additional costs, and ultimately would diminish the Debtor's value. **Accordingly, the Debtor strongly supports confirmation of the Plan.**

**A. Summary of the Plan**

The Plan represents a significant achievement for the Debtor. As discussed herein, the Plan provides that the Claimant Trust will receive the majority of the Debtor's assets, including Causes of Action. The assets being transferred to the Claimant Trust are referred to, collectively, as the Claimant Trust Assets. The Claimant Trust will – for the benefit of the Claimant Trust



Beneficiaries – monetize the Claimant Trust Assets, pursue the Causes of Action, and work to conclude the various lawsuits and litigation claims pending against the Estate.

The Plan also provides for the reorganization of the Debtor. This will be accomplished by the cancellation of the Debtor's current Equity Interests, which consist of partnership interests held by: The Dugaboy Investment Trust;<sup>3</sup> the Hunter Mountain Investment Trust ("Hunter Mountain"); Mark Okada, personally and through family trusts; and Strand, the Debtor's general partner. On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. The Reorganized Debtor will be managed by the Claimant Trust, as the managing member of New GP LLC.

The Reorganized Debtor will oversee the monetization of the Reorganized Debtor Assets, which consist of, among other Assets, the management of the Managed Funds. The net proceeds from the Reorganized Debtor Assets will ultimately be distributed to the Claimant Trust and available for distribution to the Claimant Trust Beneficiaries.

The following is an overview of certain other material terms of the Plan:

- Allowed Priority Non-Tax Claims will be paid in full;
- Allowed Retained Employee Claims will be Reinstated;
- Allowed Convenience Claims will receive the lesser of (i) 85% of their Allowed Claim or (ii) such Holder's Pro Rata share of the Convenience Claims Cash Pool (*i.e.*, \$13,150,000). Holders of Convenience Claims can elect the treatment provided to General Unsecured Claims by making the GUC Election on their Ballots;
- Allowed General Unsecured Claims and Allowed Subordinated Claims will receive their Pro Rata share of Claimant Trust Interests. The Claimant Trust Interests distributed to Allowed General Unsecured Claims will be senior to those distributed to Allowed Subordinated Claims as set forth in the Claimant Trust Agreement. Holders of General Unsecured Claims that are liquidated as of the Confirmation Date can elect the treatment provided to Convenience Class Election by reducing their Claims to \$1,000,000 and making the Convenience Class Election on their Ballots; and
- Allowed Class B/C Limited Partnership Interests and Allowed Class A Limited Partnership Interests will receive their Pro Rata share of the Contingent Claimant Trust Interests.

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<sup>3</sup> The Dugaboy Investment Trust is a Delaware trust created to manage the assets of James Dondero and his family.

## **B. An Overview of the Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11 of the Bankruptcy Code, a debtor may remain in possession of its assets and business and attempt to reorganize its business for the benefit of such debtor, its creditors, and other parties in interest. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The commencement of a Chapter 11 case creates an estate comprised of all of the legal and equitable interests of a debtor in property as of the date that the bankruptcy petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession,” unless the bankruptcy court orders the appointment of a trustee. The filing of a bankruptcy petition also triggers the automatic stay provisions of section 362 of the Bankruptcy Code which provide, among other things, for an automatic stay of all attempts to collect prepetition claims from a debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay generally remains in full force and effect until the consummation of a plan of reorganization or liquidation, following confirmation of such plan of reorganization.

The Bankruptcy Code provides that upon commencement of a chapter 11 bankruptcy case, the Office of the United States Trustee may appoint a committee of unsecured creditors and may, in its discretion, appoint additional committees of creditors or of equity interest holders if necessary to assure adequate representation. Please see ARTICLE II for a discussion of the U.S. Trustee and the statutory committees.

Upon the commencement of a chapter 11 bankruptcy case, all creditors and equity interest holders generally have standing to be heard on any issue in the chapter 11 proceedings pursuant to section 1109(b) of the Bankruptcy Code.

The formulation and confirmation of a plan is the principal objective of a chapter 11 case. The plan sets forth the means of satisfying the claims against and equity interests in the debtor.

## **C. Purpose and Effect of the Plan**

### **1. The Plan of Reorganization**

The Debtor is reorganizing pursuant to chapter 11 of the Bankruptcy Code. As a result, the Confirmation of the Plan means that the Debtor’s business will continue to operate following confirmation of the Plan through the Claimant Trust and the Reorganized Debtor to monetize assets for distribution to Holders of Allowed Claims. The Claimant Trust will hold the Claimant Trust Assets and manage the efficient monetization of, the Claimant Trust Assets. The Claimant Trust will also manage the Reorganized Debtor through the Claimant Trust’s ownership of the Reorganized Debtor’s general partner, New GP LLC. The Claimant Trust will also be the sole limited partner in the Reorganized Debtor. The Reorganized Debtor will manage the wind down

of the Managed Funds as well as the monetization of the balance of the Reorganized Debtor Assets. The Claimant Trust will also establish a Litigation Sub-Trust in accordance with the Plan, which will also be for the benefit of the Claimant Trust Beneficiaries. The Litigation Sub-Trust will receive the Estate Claims. The Litigation Trustee shall be the exclusive trustee of the Estate Claims included in the Claimant Trust Assets subject to oversight by the Claimant Trust Oversight Committee

A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or an equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code to the terms and conditions of the confirmed plan, whether or not such Entity voted on the plan or affirmatively voted to reject the plan.

## 2. Plan Overview

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtor. For classification and treatment of Claims and Equity Interests, the Plan designates Classes of Claims and Classes of Equity Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The following chart briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan.<sup>4</sup> Amounts listed below are estimated.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for eight Classes of Claims against and/or Equity Interests in the Debtor.

**The projected recoveries set forth in the table below are estimates only and therefore are subject to change. For a complete description of the Debtor's classification and treatment of Claims or Equity Interests, reference should be made to the entire Plan and the risk factors described in ARTICLE IV below. For certain classes of Claims, the actual amount of Allowed Claims could be materially different than the estimated amounts shown in the table below.**

<sup>4</sup> This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description.

Class	Type of Claim or Interest	Estimated Prepetition Claim Amount [1]	Impaired	Entitled to Vote	Estimated Recovery
1	Jefferies Secured Claim	\$0.00	No	No	100%
2	Frontier Secured Claim[2]	\$5,209,964	Yes	Yes	100%
3	Other Secured Claims	\$551,116	No	No	100%
4	Priority Non-Tax Claim	\$16,489	No	No	100%
5	Retained Employee Claim	\$0	No	No	100%
6	PTO Claims [3]	\$1,181,886	No	No	100%
7	Convenience Claims[4]	\$12,064,333	Yes	Yes	85.00%
8	General Unsecured Claims[5]	\$180,442,199	Yes	Yes	85.31%
9	Subordinated Claims	Undetermined	Yes	Yes	Undetermined
10	Class B/C Limited Partnership Interests	N/A	Yes	Yes	Undetermined
11	Class A Limited Partnership Interests	N/A	Yes	Yes	Undetermined

[1] Excludes Priority Tax Claims and certain other unclassified amounts totaling approximately \$1.1 million owed to Joshua and Jennifer Terry and Acis under a settlement agreement.

[2] Excludes interest accrued postpetition estimated at \$318,000, which will be paid on the Effective Date. The Liquidation Analysis/Financial Projections provide for the payment of postpetition interest.

[3] Represents outstanding PTO Claims as of September 30, 2020. PTO Claims are subject to adjustment depending on the amount of actual prepetition PTO Claims outstanding as of the Effective Date. PTO claims are accounted for in the Liquidation Analysis/Financial Projections as an administrative claim and will be paid out in ordinary courses pursuant to applicable state law.

[4] Represents the estimated gross prepetition amount of Convenience Claims with a total payout amount estimated at 85% of \$12.06 million, or \$10.25 million. This number includes approximately \$1.113 million of potential Rejection Claims and assumes that Holders of Allowed General Unsecured Claims that are each less than \$2.50 million opt into the Convenience Class.

[5] Assumes no recovery for UBS, the HarbourVest Entities, IFA, Hunter Mountain, and an Allowed Claim of only \$3,722,019 for Mr. Daugherty (each as discussed further below). Assumes \$1.440 million of potential rejection damage claims. The Liquidation Analysis/Financial Projections assume Highland RCP, LP and Highland RCP Offshore, LP offset their Claim of \$4.4 million against amounts owed to the Debtor.

### 3. Voting on the Plan

Under the Bankruptcy Code, acceptance of a plan by a Class of Claims or Equity Interests is determined by calculating the number and the amount of Claims voting to accept, based on the actual total Allowed Claims or Equity Interests voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan. Acceptance by a Class of Equity Interests requires at least two-thirds in amount of the total Allowed Equity Interests in the Class to vote in favor of the Plan.

Under the Bankruptcy Code, only Classes of Claims or Equity Interests that are “Impaired” and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is “Unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is “Impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Plan. Whether a Holder of a Claim or Equity Interest in Class 2 and Class 7 through Class 11 may vote to accept or reject the Plan will also depend on whether the Holder held such Claim or Equity Interest as of November 23, 2020 (the “Voting Record Date”). The Voting Record Date and all of the Debtor’s solicitation and voting procedures shall apply to all of the Debtor’s Creditors and other parties in interest.

Pursuant to the Plan, Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, there are no Classes that will not receive or retain any property and no Classes are deemed to reject the Plan.

4. Confirmation of the Plan

(a) Confirmation Generally

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed below.

The confirmation of a plan by the Bankruptcy Court binds the debtor, any issuer of securities under a plan, any person acquiring property under a plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan discharges a debtor from any debt that arose before the confirmation of such plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

(b) The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Debtor will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned from time to time without further notice except for an



announcement of the adjourned date made at the Confirmation Hearing of any adjournment thereof.

5. Confirming and Effectuating the Plan

It is a condition to the Effective Date of the Plan that the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Official Committee of Unsecured Creditors (the "Committee"). Certain other conditions contained in the Plan must be satisfied or waived pursuant to the provisions of the Plan.

6. Rules of Interpretation

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meaning ascribed to such terms in the Plan; (2) unless otherwise specified, any reference in this Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document shall be a reference to such document in the particular form or substantially on such terms and conditions described; (3) unless otherwise specified, any reference in this Disclosure Statement to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references in this Disclosure Statement to Sections are references to Sections of this Disclosure Statement; (6) unless otherwise specified, all references in this Disclosure Statement to exhibits are references to exhibits in this Disclosure Statement; (7) unless otherwise set forth in this Disclosure Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in this Disclosure Statement that is not otherwise defined in this Disclosure Statement or the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

7. Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests

As set forth above, Holders of Claims in Class 1 and Class 3 through Class 6 are not entitled to vote on the Plan. As a result, such parties will not receive solicitation packages or ballots but, instead, will receive this a notice of non-voting status, a notice of the Confirmation Hearing, and instructions on how to receive a copy of the Plan and Disclosure Statement.

The Debtor, with the approval of the Bankruptcy Court, has engaged Kurtzman Carson Consultants LLC (the "Voting Agent") to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the "Solicitation Package"):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

- The Bankruptcy Court order approving this Disclosure Statement (the “Disclosure Statement Order”) (excluding exhibits);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- A single Ballot, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the “Voting Instructions”);
- A pre-addressed, postage pre-paid return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

On November 13, 2020, the Debtor filed the Plan Supplement [D.I. 1389] that included, among other things, the form of Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Reorganized Limited Partnership Agreement, New GP LLC Documents, the New Frontier Note, the Senior Employee Stipulation, and the identity of the initial members of the Claimant Trust Oversight Committee. The Plan Supplement also includes a schedule of the Causes of Action that will be retained after the Effective Date. The Plan Supplement may be supplemented or amended through and including December 18, 2020. If the Plan Supplement is supplemented, such supplemented documents will be made available on the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

If you are the Holder of a Claim or Equity Interest and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, via email at [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com) and reference “Highland Capital Management, L.P.” in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. If your Claim or Equity Interest is subject to a pending claim objection and you wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim or Equity Interest for voting purposes or you will not be entitled to vote to accept or reject the Plan. Any such motion must be filed so that it is heard in sufficient time prior to the Voting Deadline to allow for your vote to be tabulated.

**THE DEBTOR, THE REORGANIZED DEBTOR, AND THE CLAIMANT TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.**

8. Instructions and Procedures for Voting

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtor or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 23, 2020, as the Voting Record Date for the determination of the Holders of Claims and Equity Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

**The deadline to vote on the Plan is January 5, 2021 at 5:00 p.m. (prevailing Central Time) (the "Voting Deadline").** In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address, as applicable:

**If by first class mail, personal delivery, or overnight mail to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

**If by electronic voting:**

**You may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot. IMPORTANT NOTE: You will need the Unique Electronic Ballot ID Number and the Unique Electronic Ballot PIN Number set forth on your customized ballot in order to vote via the Balloting Agent's online portal. Each Electronic Ballot ID Number is to be used solely for voting on those Claims or Interests on your electronic ballot. You must complete and submit an electronic ballot for each Electronic Ballot ID Number you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

Only the Holders of Claims and Equity Interests in Class 2 and Class 7 through Class 11 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim and Equity Interest must vote its entire Claim or Equity Interest, as applicable, within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to

reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM OR EQUITY INTEREST IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the Solicitation Package that you have received, or (c) the amount of your Claim or Equity Interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents filed in these Chapter 11 Case may be obtained free of charge on the Voting Agent's website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp) or by calling toll free at: (877) 573-3984, or international at: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at [pacer.uscourts.gov](http://pacer.uscourts.gov). Subject to any rules or procedures that have or may be implemented by the Court as a result of the COVID 19 Pandemic, documents filed in this case may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Central Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, Texas 75242-1496.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") by January 11, 2021. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

**THE DEBTOR URGES HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

9. The Confirmation Hearing

The Bankruptcy Court has scheduled Confirmation Hearing Dates on January 13, 2021, and January 14, 2021, at 9:30 a.m. prevailing Central time. The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties-in-interest.



10. The Deadline for Objecting to Confirmation of the Plan

**The Bankruptcy Court has set a deadline of January 5, 2021, at 5:00 p.m. prevailing Central time, for the filing of objections to confirmation of the Plan (the “Confirmation Objection Deadline”).** Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name of the objecting party and the amount and nature of the Claim of such Entity or the amount of Equity Interests held by such Entity; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the parties set forth below (the “Notice Parties”).

**CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE. INSTRUCTIONS WITH RESPECT TO THE CONFIRMATION HEARING AND DEADLINES WITH RESPECT TO CONFIRMATION WILL BE INCLUDED IN THE NOTICE OF CONFIRMATION HEARING APPROVED BY THE BANKRUPTCY COURT.**

11. Notice Parties

- Debtor: Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (Attn: James P. Seery, Jr.);
- Counsel to the Debtor: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4003 (Attn: Jeffrey Pomerantz, Esq.; Ira Kharasch, Esq., and Gregory Demo, Esq.);
- Counsel to the Committee: Sidley Austin, LLP, One South Dearborn, Chicago, Illinois 60603 (Attn: Matthew Clemente, Esq., and Alyssa Russell, Esq.); and
- Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Lisa Lambert, Esq.).

12. Effect of Confirmation of the Plan

The Plan contains certain provisions relating to (a) the compromise and settlement of Claims and Equity Interests; (b) exculpation of certain parties; and (c) the release of claims against certain parties by the Debtor.

**The Plan shall bind all Holders of Claims against and Equity Interests in the Debtor to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder (i) will receive or retain any property or interest in property under the Plan, (ii) has filed a proof of claim in the Chapter 11 Case, or (iii) did not vote to accept or reject the Plan.**



**D. Effectiveness of the Plan**

It will be a condition to the Effective Date of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following confirmation, the Plan will go into effect on the Effective Date.

**E. RISK FACTORS**

Each Holder of a Claim or an Equity Interest is urged to consider carefully all of the information in this Disclosure Statement, including the risk factors described in ARTICLE IV herein titled, "Risk Factors."

**ARTICLE II.**  
**BACKGROUND TO THE CHAPTER 11 CASE AND SUMMARY OF**  
**BANKRUPTCY PROCEEDINGS TO DATE**

**A. Description and History of the Debtor's Business**

Prior to the Petition Date, the Debtor was a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm evolved over twenty-five years, building on its credit expertise and value-based approach to expand into other asset classes.

As of the Petition Date, the Debtor operated a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor's investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, the Debtor provided shared services to its affiliated registered investment advisers.

**B. The Debtor's Corporate Structure**

The Debtor is headquartered in Dallas, Texas. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Debtor's business. As of the Petition Date, the Debtor employed approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Pursuant to various contractual arrangements, the Debtor, as of the Petition Date, provided money management and advisory services for approximately \$2.5 billion of assets under management shared services for approximately \$7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisers. None of these affiliates filed for Chapter 11 protection. As of September 30, 2020, the Debtor provided money management and advisory services for approximately \$1.641 billion of assets under management and shared services for approximately \$7.136 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisers. Further, on the Petition Date, the value of the Debtor's Assets was approximately

\$566.5 million. As of September 30, 2020, the total value of Debtor's Assets totaled approximately \$328.3 million.

The drop in the value of the Debtor's Assets and assets under management was caused, in part, by the COVID-19 global pandemic. Specifically, the decline was the result of, among other things, the drop in value of the Debtor's assets generally, the loss of value in the Prime Accounts discussed below, the professional and other costs associated with the Chapter 11 Case, and the reserve of approximately \$59 million against a loan receivable listed as an asset.

<u>Asset</u>	<u>10/16/2019</u>	<u>9/30/2020</u>
Investments (FV)[1]	\$232,620,000	\$109,479,000
Investments (Equity)	\$161,819,000	\$101,213,000
Cash/Cash Equivalents	\$2,529,000	\$5,888,000
Management/Incentive Fees Receivable	\$2,579,000	\$3,350,000
Fixed Assets, net	\$3,754,000	\$2,823,000
Loan Receivables	\$151,901,000	\$93,445,000[2]
Other Assets	\$11,311,000	\$12,105,000
<b>Totals</b>	<b>\$566,513,000</b>	<b>\$328,302,000</b>

[1] Includes decrease in value of assets, costs of Chapter 11 Cases, and assets sold to satisfy liabilities.

[2] Net of reserve of \$59 million.

The Debtor's organizational chart is attached hereto as Exhibit B. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity.

### C. Business Overview

The Debtor's primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC ("Jefferies"), as described in additional detail below. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor's stand-alone annual revenue totaled approximately \$50 million. During calendar year 2019, the Debtor's stand-alone revenue totaled approximately \$36.1 million.

### D. Prepetition Capital Structure

#### 1. Jefferies Margin Borrowings (Secured)

The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the "Brokerage Agreement"). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with

Jefferies (the “Prime Account”). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

As of the Petition Date, the Debtor held approximately \$57 million of equity in liquid and illiquid securities (the “Securities”) in the Prime Account. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof.

However, because of the economic distress caused by the COVID-19 global pandemic, the value of the Securities held in the Prime Account dropped since the Petition Date, and Jefferies has exerted significant pressure on the Debtor to liquidate the Securities to satisfy margin calls. As of September 30, 2020, the equity value of the Securities in the Prime Account was approximately \$23.3 million, and the Debtor owed no amounts to Jefferies. The Debtor has been actively selling Securities to cover operating expenses and professional fees.

2. The Frontier Bank Loan (Secured)

The Debtor and Frontier State Bank (“Frontier Bank”) are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the “Original Frontier Loan Agreement”), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain First Amended and Restated Loan Agreement (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

Pursuant to that certain Security and Pledge Agreement dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor’s obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the “Frontier Collateral”).

The aggregate principal balance of the Frontier Loan was approximately \$5.2 million. As of September 30, 2020, the value of the Frontier Collateral was approximately \$13.1 million, and approximately \$318,000 in postpetition interest had accrued.

3. Other Unsecured Obligations

As discussed below, the Plan provides for four Classes of unsecured claims: (i) PTO Claims, (ii) the Convenience Claims, (iii) the General Unsecured Claims, and (iv) the Subordinated Claims.

The Debtor has various substantial litigation claims asserted against it, which have been classified as General Unsecured Claims. In addition, as of the Petition Date, the Debtor had ordinary course trade debt, unaccrued employee bonus obligations and loan repayment, and

contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that were potentially in the tens of millions of dollars. The Debtor is still assessing these claims and its liability for such amounts. These Claims have been classified as Convenience Claims and Subordinated Claims.

#### 4. Equity Interests

The Debtor is a Delaware limited partnership. As of the Petition Date, the Debtor had three classes of limited partnership interest (Class A, Class B, and Class C). The Class A interests were held by The Dugaboy Investment Trust, Mark Okada, personally and through family trusts, and Strand, the Debtor's general partner. The Class B and C interests were held by Hunter Mountain.

In the aggregate, the Debtor's limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by The Dugaboy Investment Trust, (c) 0.0627% by Mark Okada, personally and through family trusts, and (d) 0.25% by Strand.

#### E. SEC Filings

The Debtor is an investment adviser registered with the SEC as required by the Investment Advisers Act of 1940. As a registered investment adviser, the Debtor is required to file (at least annually) a Form ADV. The Debtor's current Form ADV is available at <https://adviserinfo.sec.gov/>.

Following the Effective Date, it is anticipated that the Reorganized Debtor will maintain its registration with the SEC as a registered investment adviser.

#### F. Events Leading Up to the Debtor's Bankruptcy Filings

The Chapter 11 Case was precipitated by the rendering of an Arbitration Award (as that term is defined below) against the Debtor on May 9, 2019, by a panel of the American Arbitration Association (the "Panel"), in favor of the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Funds (the "Crusader Funds") that were formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Funds' investors, as the Crusader Funds' assets lost significant value.

On October 15, 2008, the Debtor placed the Crusader Funds in wind-down, thereby compulsorily redeeming the Crusader Funds' limited partnership interests. The Debtor also declared that it would liquidate the Crusader Funds' remaining assets and distribute the proceeds to investors.

However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a Joint Plan of Distribution of the Crusader Funds



(the “Crusader Plan”), and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors (the “Crusader Scheme”), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Funds’ investors to oversee the Debtor’s management of the Crusader Funds.

Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of \$1.2 billion to the Crusader Funds’ investors. The Debtor distributed a further \$315.3 million through June 2016.

However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the “Arbitration”), and (c) commenced litigation in Delaware Chancery Court, to, among other things, obtain a status quo order in aid of the arbitration, which order was subsequently entered.

Following an evidentiary hearing, the Panel issued (a) a *Partial Final Award*, dated March 6, 2019 (the “March Award”), (b) a *Disposition of Application for Modification of Award*, dated March 14, 2019 (the “Modification Award”), and (c) a *Final Award*, dated May 9, 2019 (the “Final Award” and together with the March Award and the Modification Award, the “Arbitration Award”). Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages against the Debtor in the aggregate amount of \$136,808,302; as of the Petition Date, the total value of the Arbitration Award was \$190,824,557, inclusive of interest

Prior to the Petition Date, the Redeemer Committee moved in the Chancery Court to confirm the Arbitration Award. For its part, the Debtor moved to vacate parts of the Final Award contending that certain aspects were procedurally improper. The Redeemer Committee’s motion to confirm the Arbitration Award and the Debtor’s motion to vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day the Debtor filed for bankruptcy

On the Petition Date, the Debtor believed that the aggregate value of its assets exceeded the amount of its liabilities; however, the Debtor filed the Chapter 11 Case because it did not have sufficient liquidity to immediately satisfy the Award or post a supersedeas bond necessary to pursue an appeal.

#### **G. Additional Prepetition Litigation**

In addition to the litigation with the Redeemer Committee described above, the Debtor, both directly and through certain subsidiaries, affiliates, and related entities, was party to substantial prepetition litigation. Although the Debtor disputes the allegations raised in this litigation and believes it has substantial defenses, this litigation has resulted in substantial Claims against the Debtor’s Estate, each of which has been classified as a General Unsecured Claim. To the extent that these litigation Claims cannot be resolved consensually, they will be litigated by the Claimant Trustee or Reorganized Debtor, as applicable. The Debtor’s major prepetition litigation is as follows:



- Redeemer Committee: The dispute with the Redeemer Committee is described in ARTICLE II.F above. As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves the Redeemer Committee's claims against the Estate; however, that order is currently subject to appeal.
- Acis Capital Management, L.P., & Acis Capital Management GP, LLC: On January 30, 2018, Joshua Terry filed involuntary bankruptcy petitions against both Acis Capital Management, L.P. ("Acis LP") and its general partner, Acis Capital Management GP, LLC ("Acis GP," and collectively with Acis LP, "Acis") in the Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Judge Jernigan presiding (the same judge presiding over the Chapter 11 Case), Case No. 18-30264-SGJ (the "Acis Case"). Mr. Terry had been an employee of the Debtor and a limited partner of Acis LP. Mr. Terry was terminated in June 2016, and obtained a multi-million dollar arbitration award against Acis. Overruling various objections, the Bankruptcy Court entered the orders for relief for the Acis debtors in April 2018, and a chapter 11 trustee was appointed. The Debtor filed a proof of claim against Acis and an administrative claim. Acis disputes the Debtor's claim, and the Debtor has not received any distributions on its claim to date. On January 31, 2019, Acis's chapter 11 plan was confirmed, and Mr. Terry become the sole owner of reorganized Acis. Several appeals remain pending, including an appeal of the entry of the Acis orders for relief and the Acis confirmation order.

The Acis trustee commenced a lawsuit against the Debtor, among others, alleging fraudulent conveyance and other causes of action in relation to the Debtor's alleged prepetition effort to control and transfer away Acis's assets to avoid paying Mr. Terry's claim. After the confirmation of the Acis plan, reorganized Acis allegedly supplanted the Acis Trustee as plaintiff and filed an amended complaint against the Debtor and other defendants, which claims comprise Acis's pending proof of claim against the Debtor.

As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves Acis's claims against the Estate; however, that order is currently subject to appeal.

- UBS Securities LLC and UBS AG London Branch: UBS Securities LLC ("UBS Securities") filed a proof of claim in the amount of \$1,039,957,799.40 [Claim No. 190] (the "UBS Securities Claim"), and UBS AG, London Branch ("UBS London," and together with UBS Securities, "UBS") filed a substantively identical proof of claim in the amount of \$1,039,957,799.40 [Claim No. 191] (the "UBS London Claim" and together with the UBS Securities Claim, the "UBS Claim"). The UBS Claim was based on the amount of a judgment UBS received on a breach of contract claim against funds related to the Debtor that were unable to honor margin calls in 2008. Although the Debtor had no obligation under UBS's contracts with the funds, UBS alleges the Debtor is liable for the judgment because it (i) breached an alleged duty to ensure that the funds could pay UBS, (ii) caused or permitted \$233 million in alleged fraudulent transfers to be made by

Highland Financial Partners, L.P. (“HFP”) in March 2009, and (iii) is an alter ego of the funds. The Debtor believes there are meritorious defenses to most, if not all, of the UBS Claim for numerous reasons, including: (i) decisions by the New York Appellate Division that limited UBS’s claims to the March 2009 transfers that it alleges were fraudulent; (ii) those decisions should also apply to any alter ego claim (which at this time has not been formally asserted against the Debtor); (iii) UBS settled claims relating to \$172 million of the \$233 million in alleged fraudulent transfers and the Debtor is covered by the release; and (iv) the March 2009 transfers were in any event part of a wholly legitimate transaction that did not target UBS and for which HFP received fair consideration. Those and several additional defenses are described in the *Debtor’s Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 928].

On October 19, 2020, both the Debtor and the Redeemer Committee filed motions seeking partial summary judgment of the UBS Claim, which, if granted, will significantly decrease the UBS Claim.<sup>5</sup> UBS responded to these motions on November 6, 2020 [D.I. 1341]. On November 20, 2020, the Bankruptcy Court granted partial summary judgment in favor of the Debtor and the Redeemer Committee. It is anticipated that the Bankruptcy Court will enter a formal order within the next couple of weeks.

- Patrick Daugherty: Patrick Daugherty has Filed a Proof of Claim for “at least \$37,483,876.62” [Claim Nos. 67; 77] (the “Daugherty Claim”).<sup>6</sup> Mr. Daugherty is a former limited partner and employee of the Debtor. The Daugherty Claim has three components, and Mr. Daugherty asserts claims: (1) for indemnification for any taxes Mr. Daugherty is required to pay as a result of the IRS audit of the Debtor’s 2008-2009 tax return; (2) for defamation arising from a 2017 press release posted by the Debtor; and (3) arising from a pending Delaware lawsuit against the Debtor, which seeks to recover a judgment of \$2.6 million in respect of Highland Employee Retention Assets (“HERA”), plus interest, from assets Mr. Daugherty claims were fraudulently transferred to the Debtor. The Daugherty Claim also seeks (a) the value of Mr. Daugherty’s asserted interest in HERA, which he values at approximately \$26 million; and (b) indemnification for fees incurred in the Delaware action and in previous litigation in Texas State Court. The Debtor believes that the Daugherty Claim should be allowed in the amount of

<sup>5</sup> See *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1180]; *Debtor’s Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1181]; *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1183]; and *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor’s Motion for Partial Summary Judgment on Proof of Claim No. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1186].

<sup>6</sup> On October 23, 2020, Mr. Daugherty filed *Patrick Hagaman Daugherty’s Motion for Leave to Amend Proof of Claim No. 77* [D.I. 1280] pursuant to which Mr. Daugherty has asked leave to amend the Daugherty Claim to assert damages of \$40,710,819.42. On November 17, 2020, the Bankruptcy Court approved Mr. Daugherty’s request to amend the Daugherty Claim from the bench.

\$3,722,019; however, the Debtor believes, for various reasons, that the balance of the Daugherty Claim lacks merit. The Debtor's defenses to the Daugherty Claim are described in the *Debtor's (i) Objection to Claim No. 77 of Patrick Hagaman Daugherty and (ii) Complaint to Subordinate Claim of Patrick Hagaman Daugherty* [D.I. 1008].

#### **H. The Debtor's Bankruptcy Proceeding**

On October 16, 2019, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Case to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").<sup>7</sup> The Debtor continues to operate its business and manage its properties as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the later of the Effective Date and the date indicated in any order providing for the implementation of such stay or injunction.

#### **I. First Day Relief**

On or about the Petition Date, the Debtor filed certain "first day" motions and applications (the "First Day Motions") with the Delaware Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case and to facilitate the Debtor's transition to debtor-in-possession status. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Frank Waterhouse in Support of First Day Motions* [D.I. 11] (the "First Day Declaration"). At a hearing on October 19, 2019, the Delaware Bankruptcy Court granted virtually all of the relief initially requested in the First Day Motions [D.I. 39, 40, 42-44].

The Delaware Bankruptcy Court subsequently entered an order authorizing the Debtor to pay critical vendor claims on a final basis [D.I. 168]. Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Bankruptcy Court entered an order authorizing the Debtor to continue its cash management system on a final basis [D.I. 379].

The First Day Motions, the First Day Declaration, and all orders for relief granted in this case can be viewed free of charge at <https://www.kccllc.net/hcmlp>.

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<sup>7</sup> All docket reference numbers refer to the docket maintained by the Bankruptcy Court.

## J. Other Procedural and Administrative Motions

On and after the Petition Date, the Debtor also filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case, including:

- Interim Compensation Motion. On October 29, 2019, the Debtor filed the *Debtor's Motion Pursuant o Sections 105(a), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 72] (the "Interim Compensation Motion"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to section 330 and 331 of the Bankruptcy Code. On November 14, 2019, the Delaware Bankruptcy Court entered an order granting the Interim Compensation Motion [D.I. 141].
- Ordinary Course Professionals. On October 29, 2019, the Debtor filed the Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [D.I. 75] (the "OCP Motion"). The OCP Motion sought authority for the Debtor to retain and compensate certain professionals in the ordinary course of its business. On November 26, 2019, the Delaware Bankruptcy Court entered an order granting the OCP Motion [D.I. 176].
- Retention Applications. During the course of the chapter 11 case, the Delaware Bankruptcy Court or Bankruptcy Court, as applicable, have approved a number of applications by the Debtor seeking to retain certain professionals pursuant to sections 327, 328 and/or 363 of the Bankruptcy Code, including Pachulski Stang Ziehl & Jones LLP as legal counsel [D.I. 183], Development Specialists, Inc. as chief restructuring officer and financial advisor [D.I. 342], Kurtzman Carson Consultants LLC as administrative advisor [D.I. 74], Mercer (US) Inc. as compensation consultant [D.I. 381], Hayward & Associates PLLC as local counsel [D.I. 435], Foley Gardere, Foley & Lardner LLP as special Texas counsel [D.I. 513], Deloitte Tax LLP as tax services provider [D.I. 551], Wilmer Cutler Pickering Hale and Dorr LLP as regulatory and compliance counsel [D.I. 669], and Hunton Andrews Kurth LLP as special tax counsel [D.I. 763].

## K. United States Trustee

While the Chapter 11 Case was pending in the Delaware Bankruptcy Court, the U.S. Trustee for Region 3 appointed Jane Leamy as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Delaware U.S. Trustee"). Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Delaware U.S. Trustee no longer represented the U.S. Trustee, and the U.S. Trustee for Region 6 appointed Lisa Lambert as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Texas U.S. Trustee," and together with the



Delaware U.S. Trustee, the “U.S. Trustee”). The Debtor has worked cooperatively to address concerns and comments from the U.S. Trustee’s office during this Chapter 11 Case.

**L. Appointment of Committee**

On October 29, 2019, the Delaware U.S. Trustee appointed the Committee in this Chapter 11 Case [D.I. 65]. The members of the Committee are (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP, LLP. Meta-E Discovery is a vendor to the Debtor. The other members of the Committee are litigants in prepetition litigation with the Debtor as described in ARTICLE II.G. The Bankruptcy Court approved the retention of Sidley Austin LLP as counsel to the Committee [D.I. 334], Young Conaway Stargatt & Taylor, LLP as Delaware co-counsel to the Committee [D.I. 337], and FTI Consulting, Inc. as financial advisor to the Committee [D.I. 336].

**M. Meeting of Creditors**

The meeting of creditors under section 341(a) of the Bankruptcy Code was initially scheduled for November 20, 2019, at 9:30 a.m. (prevailing Eastern Time) at the J. Caleb Boggs Federal Building, 844 N. King Street, Room 3209, Wilmington, Delaware 19801, and was rescheduled to December 3, 2019, at 10:30 a.m. (prevailing Eastern Time). At the meeting of creditors, the Delaware U.S. Trustee and creditors asked questions of a representative of the Debtor.

Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Texas U.S. Trustee scheduled an additional meeting of creditors under section 341(a) for January 9, 2020, at 11:00 a.m. (prevailing Central Time) at the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242, at the conclusion of that meeting, the Texas U.S. Trustee continued the meeting to January 22, 2020. The Texas U.S. Trustee and creditors asked questions of a representative of the Debtor at the January 9 and January 22, 2020 meetings.

**N. Schedules, Statements of Financial Affairs, and Claims Bar Date**

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”) on December 19, 2019 [D.I. 247-248]. A creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated or disputed may have elected to file a proof of claim against the Debtor.

The Bankruptcy Court established (i) April 8, 2020 as the deadline for Creditors (other than governmental units) to file proofs of claim against the Debtor; (ii) April 13, 2020, as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code), (iii) April 23, 2020, and as the deadline for any investors in any fund managed by the Debtor to file proofs of claim against the Debtor; and (iv) May 26, 2020 as the deadline for the Debtor’s employees to file proofs of claim against the Debtor pursuant to and accordance with Court’s order entered on April 3, 2020 [D.I. 560].<sup>8</sup> Consequently, the bar date for filing proofs

<sup>8</sup> During the course of its Chapter 11 Case, the Debtor entered into stipulations to extend the Bar Date for certain other claimants or potential claimants.



of claims has passed and any claims filed after the applicable bar date will be considered late filed.

**O. Governance Settlement with the Committee**

On January 9, 2020, the Bankruptcy Court entered the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [D.I. 339] (the “Settlement Order”).

Among other things, the Settlement Order approved a term sheet (the “Term Sheet”) agreed to by the Debtor and the Committee pursuant to which the Debtor agreed to abide by certain protocols governing the production of documents and certain protocols governing the operation of the Debtor’s business (the “Operating Protocols”). Under the Operating Protocols, the Debtor agreed to seek consent from the Committee prior to entering into certain “Transactions” (as defined in the Operating Protocols. The Operating Protocols were amended on February 21, 2020, with the consent of the Committee [D.I. 466].

Pursuant to the Term Sheet, the Debtor also granted the Committee standing to pursue certain estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and the Related Entities (as defined in the Operating Protocols) (collectively, the “Estate Claims”). To the extent permitted, the Estate Claims and the ability to pursue the Estate Claims are being transferred to either the Claimant Trust or Litigation Sub-Trust pursuant to the Plan.

In connection with the Settlement Order, an independent board of directors was also appointed at Strand, the Debtor’s general partner (the “Independent Board”). The members of the Independent Board are John S. Dubel, James P. Seery, Jr., and Russell Nelms. The Independent Board was tasked with managing the Debtor’s operations during the Chapter 11 Case and facilitating a reorganization or orderly liquidation of the Debtor’s Estate.

**P. Appointment of James P. Seery, Jr., as Chief Executive Officer and Chief Restructuring Officer**

Following their appointment in January 2020, the Independent Board determined that it would be more efficient for the Debtor to have a traditional corporate management structure, i.e. a fully engaged chief executive officer supervised by the Independent Board. The Independent Board ultimately determined that Mr. Seery – a member of the Independent Board – had the requisite experience and expertise to lead the Debtor. On June 23, 2020, the Debtor filed *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [D.I. 774] (the “Seery Retention Motion”) to retain Mr. Seery as chief executive officer, chief restructuring officer, and foreign representative.

The Bankruptcy Court entered an order approving the Seery Retention Motion on July 16, 2020 [D.I. 854]. Mr. Seery was retained as the Debtor’s chief executive officer and the duties of Bradley Sharp of DSI as the Debtor’s chief restructuring officer and foreign representative were transferred to Mr. Seery.

**Q. Mediation**

On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [D.I. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation and appointed Sylvia Mayer and Allan Gropper as the mediators (the “Mediators”). The mediation began on August 27, 2020, and is still open as of the date of this Disclosure Statement

**R. Postpetition Settlements**

1. Settlement with Acis and the Terry Parties

With the assistance of the Mediators, on September 9, 2020, (i) the Debtor, (ii) Acis LP, (iii) Acis GP, and (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (together, the “Terry Parties”) executed that certain Settlement Agreement and General Release. On September 23, 2020, the Debtor filed the *Debtor’s Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [D.I. 1087] (the “Acis Settlement Motion”).

The Settlement Agreement and General Release contain the following material terms, among others:

- The proof of claim filed by Acis [Claim No. 23] will be Allowed in the amount of \$23,000,000 as a General Unsecured Claim.
- On the Effective Date of the Plan (or any other plan of reorganization confirmed by the Bankruptcy Court), the Debtor will pay in cash to:
  - Mr. and Mrs. Terry in the amount of \$425,000 plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed by the Terry Parties [Claim No. 156];
  - Acis LP in the amount of \$97,000, which amount represents the legal fees incurred by Acis LP with respect to the *NWCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195/2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP [Claim No. 159]; and
  - Mr. Terry in the amount of \$355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

The Settlement Agreement also provides that within five days of the Bankruptcy Court's approval of the Settlement Agreement and the General Release, the Debtor will move to withdraw, with prejudice, the proofs of claim that the Debtor filed in the Acis bankruptcy cases and the motion filed by the Debtor in the Acis bankruptcy cases seeking an administrative claim for postpetition services provided to Acis.

On October 5, 2020, James Dondero filed an objection to the Acis Settlement Motion [D.I. 1121] (the "Dondero Objection"). On October 28, 2020, the Bankruptcy Court entered an order approving the Acis Settlement Motion and overruling the Dondero Objection in its entirety [D.I. 1347]. On November 9, 2020, Mr. Dondero filed a notice of his intent to appeal the order approving the Acis Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Acis Settlement Motion and related documents for additional information on the Settlement Agreement and General Release.

## 2. Settlement with the Redeemer Committee

The Debtor, Eames, Ltd., the Redeemer Committee, and the Crusader Funds (collectively, the "Settling Parties") executed a settlement (the "Redeemer Stipulation"). The Redeemer Stipulation was also executed, solely with respect to paragraphs 10 through 15 thereof, by Hockney, Ltd., Strand, Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO, L.P., House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC (collectively, the "Additional Release Parties"). On September 23, 2020, the Debtor filed *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [D.I. 1089] seeking approval of the Redeemer Stipulation (the "Redeemer Settlement Motion").

The Redeemer Stipulation contains the following material terms, among others:

- The proof of claim filed by the Redeemer Committee [Claim No. 72] will be Allowed in the amount of \$137,696,610 as a General Unsecured Claim;
- The proof of claim filed by the Crusader Funds [Claim No. 81] will be Allowed in the amount of \$50,000 as a General Unsecured Claim;
- The Debtor and Eames, Ltd., each (a) consented to the cancellation of certain interests in the Crusader Funds held by them, and (b) agreed that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable Donor Advised Fund;<sup>4</sup>
- The Debtor and Eames each acknowledged that they will not receive any portion of certain reserved distributions, and the Debtor further acknowledged that it will not receive any payments from the Crusader Funds in respect of any deferred fees, distribution fees, or management fees;

- The Debtor and the Redeemer Committee agreed to a form of amendment to the shareholders' agreement for Cornerstone Healthcare Group and to a process to monetize Cornerstone Healthcare Group;
- Upon the effective date of the Redeemer Stipulation, the Settling Parties and the Additional Release Parties shall exchange releases as set forth in the Redeemer Stipulation; and
- All litigation between the Debtor, Eames, Ltd., and the Additional Highland Release Parties (as defined in the Redeemer Stipulation) on the one hand, and the Redeemer Committee and the Crusader Funds, on the other hand, will cease.

On October 16, 2020, UBS filed an objection to the Redeemer Settlement Motion [D.I. 1190] (the "UBS Objection"). On October 22, 2020, the Bankruptcy Court entered an order approving the Redeemer Settlement Motion and overruling the UBS Objection in its entirety [D.I. 1273]. On November 6, 2020, UBS filed a notice of its intent to appeal the order approving the Redeemer Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Redeemer Settlement Motion and related documents for additional information on the Redeemer Stipulation.

#### **S. Certain Outstanding Material Claims**

As discussed above, April 8, 2020, was the general bar date for filing proofs of claim. The Debtor has begun the process of resolving those Claims. Although each Claim represents a potential liability of the Estate, the Debtor believes that, in addition to UBS's Claim, the Claims filed by Integrated Financial Associates, Inc. ("IFA"), the HarbourVest Entities,<sup>9</sup> and Hunter Mountain represent the largest unresolved Claims against the Estate.

- IFA Proof of Claim. IFA filed a proof of claim [Claim No. 93] (the "IFA Claim") seeking damages in the amount of \$241,002,696.73 arising from the purported joint control of the Debtor and NexBank, SSB, and the Debtor's management of various lenders to IFA. The Debtor believes that IFA's claim should be disallowed in its entirety. IFA's claim and the Debtor's defenses thereto are described in greater detail in the *Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 868]. On October 4, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 1126], which capped the IFA Claim, for all purposes, at \$8,000,000.
- HarbourVest Entities Proofs of Claim. The HarbourVest Entities are investors in Highland CLO Funding, Ltd. ("HCLOF") and filed proofs of claim against the

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<sup>9</sup> "HarbourVest Entities" means HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.



Debtor's Estate [Claim No. 143, 147, 149, 150, 153, 154] (the "HarbourVest Claims"). The Debtor included an assertion of "no liability" in respect of the HarbourVest Claims in its Debtor's *First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No-Liability Claims; and (f) Insufficient Documentation Claims* [D.I. 906]. HarbourVest provided a response in its *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documents Claims* [D.I. 1057]. The HarbourVest Entities' response argued that the Debtor's objection should be overruled, and set forth allegations in support of claims under federal and state law and Guernsey law, including claims for fraud, violations of securities laws, breaches of fiduciary duties, and RICO violations. The Debtor intends to vigorously defend the HarbourVest Claims on various grounds, including, among others, the failure to state a claim upon which relief can be granted, the lack of reasonable reliance, the lack of misrepresentations, the lack of reasonable reliance, the failure to mitigate damages, the parties' agreements bar or otherwise limit the Debtor's liability, and waiver and estoppel. The HarbourVest Entities invested approximately \$80 million in HCLOF but seek an allowed claim in excess of \$300 million dollars (after giving effect to treble damages for the alleged RICO violations).

- Hunter Mountain Proof of Claim. Hunter Mountain is one of the Debtor's limited partners. Hunter Mountain filed a proof of claim [Claim No. 152] seeking a \$60,298,739 indemnification claim against the Debtor because of the Debtor's alleged failures to make priority distributions to Hunter Mountain under the Debtor's Partnership Agreement. The Debtor believes that it has meritorious defenses to Hunter Mountain's claim. Hunter Mountain's claim and the Debtor's defenses to such claim are described in greater detail in the *Debtor's (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* [D.I. 995]. The Debtor believes that Hunter Mountain's proof of claim should either be disallowed in its entirety or subordinated in its entirety.

In addition to the foregoing, the UBS Claim (in the amount of \$1,039,957,799.40) and the Daugherty Claim (in the amount of \$40,710,819.42) remain outstanding. As set forth above, partial summary judgment on the UBS Claim was granted in favor of the Debtor and the Redeemer Committee on November 20, 2020, and a formal order is expected to be entered within the next couple of weeks.

The Daugherty Claim has been allowed for voting purposes only in the amount of \$9,134,019 [D.I. 1422]. In a bench ruling on November 20, 2020, the Bankruptcy Court allowed UBS Claims for voting purposes only in the amount of \$94,761,076 [D.I. 1646].

#### **T. Treatment of Shared Service and Sub-Advisory Agreements**

As discussed in the Plan, the Reorganized Debtor will manage the wind down of the Managed Funds. However, it is not anticipated that either the Reorganized Debtor or the



Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities<sup>10</sup> pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities.

Currently, the Debtor receives approximately \$2.2 million per month in revenue from such contracts. However, in order to service those contracts, the Debtor must maintain a full staff and the cost of providing services under such contracts, among other factors, has historically resulted in a net loss to the Debtor. As such, the Debtor does not believe that assuming these contracts would benefit the Estate.

Further, the contracts generally contain anti-assignment provisions which the Debtor believes may be enforceable under 11 U.S.C. § 365(c). These provisions, therefore, would arguably prevent the assignment of such contracts without the consent of the Debtor's contract counterparty. However, even if 11 U.S.C. § 365(c) would not prevent assignment, the contracts are generally terminable at will by either party. As such, assuming and assigning such contracts without the consent of the contract counterparty would be of nominal or no benefit to the Estate. It is doubtful that any assignee would provide consideration to the Debtor for the assignment of such contract as the contract counterparty could simply terminate the contract immediately following assignment. As such, the Debtor does not believe that there is any benefit to the Estate in attempting to assign these contracts.

Notwithstanding the foregoing disclosure, the Debtor is currently assessing whether it is both possible and in the best interests of the Estate to assume and assign such shared services and sub-advisory agreements to a Related Entity.

During the course of this Chapter 11 Case, Mr. Daugherty stated that he would be willing to assume the Debtor's obligations under the shared service and sub-advisory contracts. The Independent Directors reviewed Mr. Daugherty's proposal and for the foregoing reasons, among others, determined that it was not workable and would provide no benefit to the Estate.

#### **U. Portfolio Managements with Issuer Entities**

The Debtor is party to certain portfolio management agreements (including any ancillary agreements relating thereto collectively being the "Portfolio Management Agreements" and each a "Portfolio Management Agreement") with ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd. (each an "Issuer" and collectively the "Issuers") wherein the Debtor agreed to generally provide certain services to each Issuer in the Debtor's capacity as a portfolio manager in exchange for certain fees as described in the applicable Portfolio Management Agreement.

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<sup>10</sup> For the avoidance of doubt, the Debtor does not consider any of the Issuers (as defined herein) to be a Related Entity.

The Issuers filed proofs of claim [Claim No. 165, 168, and 169] asserting claims against the Debtor for damages arising from, relating to or otherwise concerning (i) such Issuer's Portfolio Management Agreement(s) with the Debtor, including, without limitation, failure to perform or other breach of the Portfolio Management Agreement(s), rejection of the Portfolio Management Agreement(s), any cure amount as a result of assumption of the Portfolio Management Agreement(s), any adequate assurance of future performance as a result of assumption of the Portfolio Management Agreement(s), and any failure to provide and pay for indemnification or other obligations under the Portfolio Management Agreement(s); and (ii) the action or inaction of the Debtor to the detriment of such Issuer (collectively, the "Issuer Claims"). The Debtor believes that it has satisfied its obligations to the Issuers; that the Issuer Claims lack merit; and that the Debtor will have no liability with respect to the Issuer Claims. However, such proofs of claim remain outstanding.

The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

**V. Resignation of James Dondero**

On October 9, 2020, Mr. Dondero resigned as an employee and portfolio manager of the Debtor.

**W. Exclusive Periods for Filing a Plan and Soliciting Votes**

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization; however, a court may extend these periods upon request of a party in interest and "for cause."

The Debtor filed motions to extend the exclusive period, and the Bankruptcy Court entered the following orders granting such applications:

- Order Granting Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 460];
- Agreed Order Extending Exclusive Periods by Thirty Days [D.I. 668];

- Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 820]; and
- Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptance of a Chapter 11 Plan [D.I. 1092].

Pursuant to the foregoing orders, the Bankruptcy Court extended the exclusivity period through June 12, 2020, for the filing of a plan, which was subsequently extended through July 13, 2020, and again through August 12, 2020. The Bankruptcy Court also extended the exclusivity period for the solicitation of votes to accept such plan through August 11, 2020, which was subsequently extended through September 10, 2020, and again through October 13, 2020, and December 4, 2020.

#### **X. Negotiations with Constituents**

The Debtor, Mr. Dondero, and certain of the creditors have been negotiating a consensual reorganization plan for the Debtor that contemplates the Debtor continuing its business largely in its current form. Those negotiations have yet to reach conclusion but are continuing, and the negotiations were part of the previously discussed mediation. There is no certainty that those negotiations will reach a consensual resolution of the Debtor's bankruptcy case.

#### **Y. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461.

The Debtor is the contributing sponsor of the Pension Plan. As such, the PBGC asserts that Debtor is liable to contribute to the Pension Plan the amounts necessary to satisfy the minimum funding standards in ERISA and the Internal Revenue Code of 1986, as amended ("IRC"). See 29 U.S.C. §§ 1082, 1083; 26 U.S.C. §§ 412, 430. As the sponsor of the Pension Plan, the PBGC asserts Debtor is also liable for insurance premiums owed to PBGC. See 29 U.S.C. §§ 1306, 1307. The PBGC asserts that any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) are also jointly and severally liable with the Debtor for such obligations relating to the Pension Plan.

The Pension Benefit Guaranty Corporation ("PBGC"), the federal agency that administers the pension insurance program under Title IV of ERISA, filed contingent proofs of claims against the Debtors for (1) the Pension Plan's potential underfunded benefit liabilities; (2) the potential unliquidated unpaid minimum funding contributions owed to the Pension Plan; and (3) the potential unliquidated insurance premiums owed to PBGC. The PBGC acknowledges that, as of the date of this Disclosure Statement, there is nothing currently owed by the Debtor to the PBGC.

The Debtor reserves the right to contest any claims filed by the PBGC for any reason.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

No provision contained in the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof), shall be construed as discharging, releasing, exculpating, or relieving any person or entity, including the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, government policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions for satisfaction, release, injunction, exculpation, and discharge of claims in the Plan, Confirmation Order, or the Bankruptcy Code.

### **ARTICLE III. SUMMARY OF THE PLAN**

**THIS ARTICLE III IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ARTICLE III AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL CONTROL AND GOVERN.**

#### **A. Administrative and Priority Tax Claims**

##### **1. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions



relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## 2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.



### 3. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

## **B. Classification and Treatment of Classified Claims and Equity Interests**

### 1. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

2. **Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

3. **Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

Please refer to “Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests” and “Instructions and Procedures for Voting” in ARTICLE I.C.7 and ARTICLE I.C.8 for a discussion of how the how votes on the Plan will be solicited and tabulated.

4. **Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

5. **Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

6. Cramdown

If any Class of Claims or Equity Interests is deemed to reject the Plan or does not vote to accept the Plan, the Debtor may (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with the terms of the Plan and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**C. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

The New Frontier Note will include the following terms: (i) an extension of the maturity date to December 31, 2022; (ii) quarterly interest only payments; (iii) a payment on the New Frontier Note equal to fifty percent of the outstanding principal on December 31, 2021, if the New Frontier Note is not paid in full on or prior to such date; (iv) mandatory prepayments from the proceeds of the sale of any collateral securing the New Frontier Note; and (v) the payment of fees and expenses incurred in negotiating the terms of the New Frontier Note.

3. *Class 3 – Other Secured Claims*

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

4. *Class 4 – Priority Non-Tax Claims*

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

“PTO Claims” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is



Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

*"Convenience Claim"* means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

*"Convenience Claim Pool"* means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

By making the GUC Election on their Ballots, each Holder of a Convenience Claim can elect the treatment provided to General Unsecured Claims.

8. *Class 8 – General Unsecured Claims*

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes the Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and

will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.

“*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

“*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

9. *Class 9 – Subordinated Claims*

- *Classification:* Class 9 consists of the Subordinated Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.

“*Subordinated Claim*” means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a

Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **E. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

#### **F. Means for Implementation of the Plan**

##### **1. Summary**

The Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in the Plan and the Claimant Trust Agreement.

2. The Claimant Trust<sup>11</sup>

(a) *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant

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<sup>11</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.



Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

(a) *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

(b) *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in the Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in Article IV.C of the Plan.

(c) *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

(d) *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

- the payment of the Claimant Trust Expenses;
- the payment of other reasonable expenses of the Claimant Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- the orderly monetization of the Claimant Trust Assets;
- litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

- the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- the payment of other reasonable expenses of the Litigation Sub-Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

(e) *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(f) *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

(g) *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(h) *Tax Reporting.*

The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.



The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

(i) *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in the Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

(j) *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

(k) *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

(l) *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are



investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

(m) *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

3. The Reorganized Debtor

(a) *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

(b) *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

(c) *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

(d) *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

(e) *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

(f) *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in the Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court

(g) *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in Article IV.B.1 of the Plan, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

4. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement

of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with the Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

5. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

6. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the



cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

7. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

8. Control Provisions

To the extent that there is any inconsistency between the Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, the Plan shall control.

9. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under Article III.C of the Plan shall receive no Plan Distributions.

10. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I of the Plan) and fully enforceable as if stated in full herein.

11. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal



Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**A. Treatment of Executory Contracts and Unexpired Leases**

1. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts

and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [D.I. 1122].

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

3. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with the Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to Article V.C of the Plan shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to Article V.C of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**B. Provisions Governing Distributions**

**1. Dates of Distributions**

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in the Plan. Except as otherwise provided in the Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to the Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under the Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

2. Distribution Agent

Except as provided herein, all distributions under the Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

3. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

4. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

As used above, "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant



Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

“*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

HarbourVest and Mr. Daugherty have objected to the mechanisms for calculating the amount of the Disputed Claims Reserve with respect to the HarbourVest Claim and the Daugherty Claim, respectively, and intend to press their objections at the hearing for confirmation of the Plan.

5. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

6. Rounding of Payments

Whenever the Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under the Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under the Plan.

7. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under the Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in Article VI.I of the Plan within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall



revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

8. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in the Plan, all distributions shall be made pursuant to the terms of the Plan and the Confirmation Order. Except as otherwise provided in the Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

9. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under the Plan, unless the Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under the Plan shall not be subject to any claim by any Person.

10. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under the Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

11. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under the Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

12. Withholding Taxes

In connection with the Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under the Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

13. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

14. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to Article IV of the Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

15. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by the Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with Article VI.O of the Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under the Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**C. Procedures for Resolving Contingent, Unliquidated and Disputed Claims**

1. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

2. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of the Plan.

3. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

4. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*Allowance of Claims*

After the Effective Date and subject to the other provisions of the Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and

defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

#### *Estimation*

Subject to the other provisions of the Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with the Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

#### *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**



**D. Effectiveness of the Plan****1. Conditions Precedent to the Effective Date**

The Effective Date of the Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of Article VIII.B of the Plan of the following:

- the Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to the Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate the Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in the Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under the Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (iii) the implementation of the Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.
- All documents and agreements necessary to implement the Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.



- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement the Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to the Plan in an amount determined by the Debtor in good faith.

2. Waiver of Conditions

The conditions to effectiveness of the Plan set forth in Article VIII of the Plan (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate the Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

3. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in Article VIII.B of the Plan, if the Effective Date of the Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

4. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**E. Exculpation, Injunction, and Related Provisions**

**1. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

For purposes of the following provisions:

- “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”
- “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.
- “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO

Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

## 2. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

## 3. Exculpation

Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

4. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to Article IX.D of the Plan (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with



respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to Article IX.D of the Plan will vest and the Employee will be indefeasibly released pursuant to Article IX.D of the Plan if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

In addition to the obligations set forth in Article IX.D of the Plan, as additional consideration for the foregoing releases, the Senior Employees will waive their rights to certain deferred compensation owed to them by the Debtor. As of the date hereof, the total deferred compensation owed to the Senior Employees was approximately \$3.9 million, which will be reduced by approximately \$2.2 million to approximately \$1.7 million. That reduction is composed of a reduction of (i) approximately \$560,000 in the aggregate in order to qualify as Convenience Claims, (ii) approximately \$510,000 in the aggregate to reflect the Convenience Claims treatment of 85% (and may be lower depending on the number of Convenience Claims), and (iii) of approximately \$1.15 million in the aggregate to reflect an additional reduction of 40%.

As of the date of this Disclosure Statement, the Debtor has not identified any Causes of Action against any Released Parties. However, as set forth above, during the Chapter 11 Case, the Committee was granted sole standing to investigate and pursue the Estate Claims, which may include Causes of Action against certain of the Released Parties. As of the date of this Disclosure Statement, the Committee has not identified any Estate Claims against any Released Parties. The Debtor currently believes that there are no material Estate Claims or other Causes of Action against any Released Party.

##### 5. Preservation of Rights of Action

###### *Maintenance of Causes of Action*

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as



appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

6. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any

judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to Article XII. D of the Plan, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in Article XI of the Plan, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

#### 7. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

#### 8. Continuance of January 9 Order

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on

January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**F. Article XII.D of the Plan**

Article XII.D of the Plan provides that, notwithstanding anything in the Plan to the contrary, nothing in the Plan will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**G. Binding Nature of Plan**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in Article IX of the Plan, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a)

**H. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- The Debtor has complied and will comply with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Debtor's bankruptcy case, or in connection with the Plan and incident to the case, has been or will be disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the

approval of the Bankruptcy Court as reasonable if it is to be fixed after confirmation of the Plan;

- Each Class of Claims or Equity Interests that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code;
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full in Cash on the Effective Date, or as soon thereafter as is reasonably practicable;
- Confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor thereto under the Plan;
- The Debtor has paid or will pay all fees payable under section 1930 of title 28, and the Plan provides for the payment of all such fees on the Effective Date; and
- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits, if applicable.

#### 1. Best Interests of Creditors Test

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that each holder of a claim or equity interest in each impaired class: (i) has accepted the plan; or (ii) among other things, will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the net Cash proceeds (the “Liquidation Proceeds”) that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor’s Estate were liquidated; (b) determine the distribution (the “Liquidation Distribution”) that each non-accepting Holder of a Claim or Equity Interest would receive from the Liquidation Proceeds under the priority scheme dictated in chapter 7; and (c) compare each Holder’s Liquidation Distribution to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated.

#### 2. Liquidation Analysis

Any liquidation analysis, including the estimation of Liquidation Proceeds and Liquidation Distributions, with respect to the Debtor (the “Liquidation Analysis”) is subject to numerous assumptions and there can be no guarantee that the Liquidation Analysis will be accurate. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims and Equity Interests at the projected amounts of Allowed Claims



and Equity Interests set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims and Equity Interests that represents its best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims and Equity Interests. The estimate of the amount of Allowed Claims and Equity Interests set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any Plan Distribution to be made on account of Allowed Claims and Equity Interests under the Plan and Disclosure Statement.

The full Liquidation Analysis is attached hereto as Exhibit C.

Furthermore, any chapter 7 trustee appointed in a chapter 7 liquidation would have to confront all of the issues described in this Disclosure Statement, including the prepetition litigation claims. This process would be significantly time-consuming and costly, and reduce any recoveries available to the Debtor's Estate. The Debtor believes that liquidation under chapter 7 would result in (i) smaller distributions being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee, (ii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's operations, and (iii) the failure to realize greater value from all of the Debtor's assets.

Therefore, the Debtor believes that confirmation of the Plan will provide each Holder of a Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

### 3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor, unless the plan contemplates such liquidation or reorganization. For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtor has analyzed the ability of the Claimant Trust and the Reorganized Debtor to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their business. A copy of the financial projections prepared by the Debtor is attached hereto as Exhibit C.

The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. The Debtor believes that its available Cash and any additional proceeds from the Debtor's Assets will be sufficient to allow the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, to make all payments required to be made under the Plan. Accordingly, the Debtor believes that the Plan is feasible.



4. Valuation

In order to provide information and full disclosure to parties in interest regarding the Debtor's assets, the Debtor estimates that its value and the total value of its Assets, as of September 30, 2020, was approximately \$328.3 million.

5. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accepts the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default— (a) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan and are not insiders. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by holders of at least two-thirds in amount of the allowed interests of such class. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. Section 1126(d) of the Bankruptcy Code, except as otherwise provided in section 1126(e) of the Bankruptcy Code, defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of equity interests in that class actually voting to accept or to reject the plan.

Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims or Equity Interests in any voting class must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Class, and without considering whether the Plan "discriminates unfairly" with respect to such Class, as both standards are described herein.

6. Confirmation Without Acceptance by Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if less than all impaired classes entitled to vote on the plan have accepted it, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired Class's rejection or deemed rejection of the Plan, the Plan will be confirmed, at the Debtor's request, in a procedure commonly known as "cram down," so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Plan.

7. No Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

8. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class:

The condition that a plan be "fair and equitable" to a non-accepting Class of Secured Claims includes the requirements that: (a) the Holders of such Secured Claims retain the liens securing such Claims to the extent of the Allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the Plan; and (b) each Holder of a Secured Claim in the Class receives deferred Cash payments totaling at least the Allowed amount of such Claim with a present value, as of the Effective Date of the Plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting Class of unsecured Claims includes the requirement that either: (a) the plan provides that each Holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the allowed amount of such Claim; or (b) the Holder of any Claim or Equity Interest that is junior to the Claims of such Class will not receive or retain under the plan on account of such junior Claim or Equity Interest any property.

The condition that a plan be "fair and equitable" to a non accepting Class of Equity Interests includes the requirements that either: (a) the plan provides that each Holder of an Equity Interest in that Class receives or retains under the plan, on account of that Equity Interest, property of a value, as of the Effective Date of the plan, equal to the greater of (i) the allowed

amount of any fixed liquidation preference to which such Holder is entitled, (ii) any fixed redemption price to which such Holder is entitled, or (iii) the value of such interest; or (b) if the Class does not receive such an amount as required under (a), no Class of Equity Interests junior to the non-accepting Class may receive a distribution under the plan.

To the extent that any class of Claims or Class of Equity Interests rejects the Plan, the Debtor reserves the right to seek (a) confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (b) modify the Plan in accordance with Article XIII.C of the Plan.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan.

#### ARTICLE IV. RISK FACTORS

**ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.**

##### A. Certain Bankruptcy Law and Other Considerations

1. Parties in Interest May Object to the Debtor's Classification of Claims and Equity Interests, or Designation as Unimpaired.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Holders of Claims or Equity Interests or the Bankruptcy Court will reach the same conclusion.

There is also a risk that the Holders of Claims or Equity Interests could object to the Debtor's designation of Claims or Equity Interests as Unimpaired, and the Bankruptcy Court could reach the same conclusion.

2. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, findings by the bankruptcy court that: (i) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a

need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to Holders of Claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. Continued Risk Following Effectiveness.

Even if the Effective Date of the Plan occurs, the Debtor, the Reorganized Debtor, and Claimant Trust will continue to face a number of risks, including certain risks that are beyond its control, such as changes in assets, asset values, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of liquidation reflecting the Plan will achieve the Debtor's stated goals.

In addition, at the outset of the Chapter 11 Case, the Bankruptcy Code provides the Debtor with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtor will have retained the exclusive right to propose the Plan upon filing its petition. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtor's ability to achieve confirmation of the Plan in order to achieve the Debtor's stated goals.

5. The Effective Date May Not Occur.

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.



6. The Chapter 11 Case May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than selling the assets in an orderly and controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. Claims Estimation

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated herein.

8. The Financial Information Contained Herein is Based on the Debtor's Books and Records and, Unless Otherwise Stated, No Audit was Performed.

**The financial information contained in this Disclosure Statement has not been audited.** In preparing this Disclosure Statement, the Debtor relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement and, while the Debtor believes that such financial information fairly reflects its financial condition, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

**B. Risks Related to Recoveries under the Plan**

1. The Reorganized Debtor and/or Claimant Trust May Not Be Able to Achieve the Debtor's Projected Financial Results

The Reorganized Debtor or Claimant Trust, as applicable, may not be able to achieve their projected financial results. The Financial Projections represent the best estimate of the Debtor's future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtor or Claimant Trust, as well as the United States and world economies in general, and the investment industry in which the Debtor operates. The Debtor's Financial Projections include key assumptions on (i) target asset monetization values, (ii) timing of asset monetization, and (iii) costs to effectuate the Plan. In terms of achieving target asset monetization values, the Debtor faces issues including investment assets with cross-ownership across related entities and challenges associated with



collecting notes due from affiliates. The Debtor's Financial Projections anticipate that all investment assets will be sold by 2022, which may be at risk due to the semi-liquid or illiquid nature of the Debtor's assets, as well as general market conditions, including the sustained impact of COVID-19. Costs are based on estimates and may increase with delays or any other unforeseen factor. If the Reorganized Debtor or Claimant Trust do not achieve their projected financial results, the recovery for Claimant Trust Beneficiaries may be negatively affected and the Claimant Trust may lack sufficient liquidity after the Effective Date.

2. Claim Contingencies Could Affect Creditor Recoveries

The estimated Claims and projected creditor recoveries set forth in this Disclosure Statement are based on various assumptions the actual amount of Allowed Claims may differ from the estimates. Should one or more of the underlying assumptions ultimately prove incorrect, the actual Allowed amounts of Claims may vary materially from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

3. If Approved, the Debtor Release Could Release Claims Against Potential Defendants of Estate Causes of Action With Respect to Which the Claimant Trust Would Otherwise Have Recourse

The Claimant Trust Assets will include, among other things, Causes of Action, including Estate Claims that will be assigned to the Litigation Sub-Trust. The Committee's investigation of potential Estate Claims is still ongoing. Because the Committee has not concluded its investigation as of the date hereof, and such investigation will be transferred to the Litigation Trustee, there is no certainty of whether there are viable Estate Claims against any of the Released Parties. In the event there are viable Estate Claims against any of the Released Parties, such claims cannot be pursued for the ultimate benefit of Claimant Trust Beneficiaries if the Debtor Release is approved.

**C. Investment Risk Disclaimer**

1. Investment Risks in General.

The Reorganized Debtor is and will remain a registered investment adviser under the Investment Advisers Act of 1940, and the Reorganized Debtor will continue advising the Managed Funds. No guarantee or representation is made that the Reorganized Debtor's or the Managed Funds' investment strategy will be successful, and investment results may vary substantially over time.

2. General Economic and Market Conditions and Issuer Risk.

Any investment in securities carries certain market risks. Investments by the Reorganized Debtor, the Managed Funds, or the Claimant Trust may decline in value for any number of reasons over which none of the Managed Funds, the Reorganized Debtor, the Claimant Trust, or the Claimant Trustee may have control, including changes in the overall

market and other general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, currency exchange rates and controls and national, international political circumstances (including wars and security operations), and acts of God (including pandemics like COVID-19). The value of the Managed Funds or the assets held by the Reorganized Debtor or Claimant Trust may also decline as a result of factors pertaining to particular securities held by the Managed Funds, Reorganized Debtor, or Claimant Trust, as applicable, such as perception or changes in the issuer's management, the market for the issuer's products or services, sources of supply, technological changes within the issuer's industry, the availability of additional capital and labor, general economic conditions, political conditions, acts of God, and other similar conditions. All of these factors may affect the level and volatility of security prices and the liquidity and the value of the securities held by the Managed Fund, Reorganized Debtor, or Claimant Trust. Unexpected volatility or illiquidity could impair the Managed Funds', Reorganized Debtor's, or Claimant Trust's profitability or result in it suffering losses.

**D. Disclosure Statement Disclaimer**

1. The Information Contained Herein is for Disclosure Purposes Only.

The information contained in this Disclosure Statement is for purposes of disclosure in connection with the Plan and may not be relied upon for any other purposes.

2. This Disclosure Statement was Not Approved by the SEC.

Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

3. This Disclosure Statement Contains Forward-Looking Statements.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements.

4. No Legal or Tax Advice is Provided to You by This Disclosure Statement.

**This Disclosure Statement is not legal or tax advice to you.** The contents of this Disclosure Statement should not be construed as legal, business or tax advice, and are not personal to any person or entity. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than as a disclosure of certain information to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Admissions Are Made by This Disclosure Statement.

The information and statements contained in this Disclosure Statement will neither (i) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Reorganized Debtor, the Claimant Trust, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

6. No Reliance Should Be Placed on Any Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Reorganized Debtor or Claimant Trustee, as applicable, may seek to investigate, file and prosecute litigation rights and claims against any third parties and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such litigation claims or objections to Claims or Equity Interests.

7. Nothing Herein Constitutes a Waiver of Any Right to Object to Claims or Equity Interests or Recover Transfers and Assets.

The Debtor, the Reorganized Debtor, the Claimant Trustee, or any party in interest, as the case may be, reserve any and all rights to object to that Holder's Allowed Claim regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

8. The Information Used Herein was Provided by the Debtor and was Relied Upon by the Debtor's Advisors.

Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

9. The Disclosure Statement May Contain Inaccuracies.

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, the information contained in this Disclosure Statement is as of the date of the Disclosure Statement and does not address events that may occur after such date. The Debtor may update this Disclosure Statement but is not required to do so.

10. No Representations Made Outside the Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

**ARTICLE V.**

**ALTERNATIVES TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which case, a trustee would be elected or appointed to liquidate the Debtor's assets. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

**ARTICLE VI.**

**U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Implementation of the Plan will have federal, state, local or foreign tax consequences to the Debtor and Holders of Equity Interests as well as Holders of Claims. No tax opinion or ruling has been sought or will be obtained with respect to any tax consequences of the Plan, and the following discussion does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims. This discussion assumes that each Holder of Claims is for United States federal income tax purposes:

- An individual who is a citizen or resident of the United States for federal income tax purposes;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any other person that is subject to U.S. federal income taxation on a net income basis.
- an estate the income of which is subject to United States federal income tax without regard to its source; or
- a trust (1) that is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) that has a valid election in effect under applicable treasury regulations to be treated as a United States person.



This discussion also assumes that each Holder holds the Claims as capital assets under Section 1221 of the Internal Revenue Code.

The summary provides general information only and does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder of Claims in light of such Holder's own individual circumstances. In particular, the summary does not address the federal income tax consequences of the Plan to Holders of Claims that may be subject to special rules, such as non-U.S. persons, insurance companies, financial institutions, regulated investment companies, broker-dealers, persons who acquired Claims as part of a straddle, hedge, conversion transaction or other integrated transaction, or persons who acquired Claims in connection with the performance of services; persons who hold Claims through a partnership or other pass-through entity and tax-exempt organizations. The summary does not address foreign, state, local, estate or gift tax consequences of the Plan, nor does it address the federal income tax consequences to Holders of Equity Interests.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the final, temporary and proposed Treasury regulations promulgated thereunder, judicial decisions and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, judicial decision or administrative action. Moreover, due to a lack of definitive authority, substantial uncertainties exist with respect to various tax consequences of the Plan.

**THE TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS OR EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.**

**A. Consequences to the Debtor**

It is anticipated that the consummation of the Plan will not result in any federal income tax liability to the Debtor. The Debtor is a partnership for federal income tax purposes. Therefore, the income and loss of the Debtor is passed-through to the Holders of its Equity Interests, and the Debtor does not pay federal income tax.

**1. Cancellation of Debt**

Generally, the discharge of a debt obligation of a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income that must be included in the debtor's income. Due to the nature of the Impaired Claims, it is anticipated that



the Debtor will not recognize any material amount of COD income. If any such COD income is recognized, it will be passed-through to the Holders of its Equity Interests, and the Holders of such Equity Interest generally will be required to include such amounts in income, unless a Holder is entitled to exclude such amounts from income under Section 108 of the Internal Revenue Code, based on the Holder's individual circumstances.

2. Transfer of Assets

Pursuant to the Plan, the Debtor's assets (including the Claimant Trust Assets and Reorganized Debtor Assets) will be transferred directly or indirectly to the Claimant Trust. For federal income tax purposes, any such assets transferred to the Claimant Trust will be deemed to have been transferred to the Claimant Trust Beneficiaries followed by the transfer by such Holders to the Claimant Trust of such assets in exchange for the respective Holders' beneficial interests in the Claimant Trust. The Claimant Trust thereafter will be treated as a grantor trust for federal income tax purposes. See U.S. Federal Income Tax Treatment of the Claimant Trust, below.

The Debtor's transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets. As discussed above, the Debtor is a partnership for federal income tax purposes. Any gain or loss recognized as a result of the taxable disposition of such assets will be passed through to the Holders of Equity Interests in the Debtor. The Debtor will not be required to pay any tax as a result of such disposition.

**B. U.S. Federal Income Tax Treatment of the Claimant Trust**

It is intended that the Claimant Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Claimant Trust Agreement requires all relevant parties to treat, for U.S. federal income tax purposes, the transfer of the Debtor's assets to the Claimant Trust as (i) a transfer of such assets to the Claimant Trust Beneficiaries (to the extent of the value of their respective interests in the applicable Claimant Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Claimant Trust (to the extent of the value of their respective interests in the applicable Claimant Trust Assets), with the beneficiaries being treated as the grantors and owners of the Claimant Trust.

The Plan and the Claimant Trust Agreement generally provide that the Claimant Trust Beneficiaries must value the assets of the Claimant Trust consistently with the values determined by the Claimant Trustee for all U.S. federal income tax purposes. As soon as possible after the Effective Date, the Claimant Trustee, based upon his good faith determination after consultation with his counsel and other advisors, shall inform the beneficiaries in writing as to his estimate of the value of the assets transferred to the Claimant Trust and the value of such assets allocable to each Class of beneficiaries.

Consistent with the treatment of the Claimant Trust as a grantor trust, the Claimant Trust Agreement will require each beneficiary to report on its U.S. federal income tax return its allocable share of the Claimant Trust's income, gain, loss or deduction that reflects the

beneficiary's interest in the interim and final distributions to be made by the Claimant Trust. Furthermore, certain of the assets of the Claimant Trust will be interests in the Reorganized Debtor, which will be a partnership for U.S. federal income tax purposes. The income, gain, loss or deduction of the Reorganized Debtor will also flow through the Claimant Trust to the beneficiaries of the Claimant Trust. Therefore, a beneficiary may incur a federal income tax liability with respect to its allocable share of the income of the Claimant Trust (including the income of the Reorganized Debtor) whether or not the Claimant Trust has made any distributions to such beneficiary. The character of items of income, gain, deduction, and credit to any beneficiary and the ability of such beneficiary to benefit from any deduction or losses will depend on the particular situation of such beneficiary. The interests of the beneficiaries may shift from time to time as the result of the allowance or disallowance of claims that have not been allowed at the Effective Date, which could give rise to tax consequences both to the Holders of claims that have, and have not been, allowed at the Effective Date. The Claimant Trustee will file with the IRS tax returns for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each beneficiary a separate statement setting forth such beneficiary's share of items of Trust income, gain, loss, deduction, or credit. Each beneficiary will be required to report such items on its U.S. federal income tax return. Holders are urged to consult their tax advisors regarding the appropriate federal income tax treatment of distributions from the Claimant Trust.

The discussion above assumes that the Claimant Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Claimant Trust and the beneficiaries could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Claimant Trust).

### **C. Consequences to Holders of Allowed Claims**

#### **1. Recognized Gain or Loss**

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such Holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). In general, the "amount realized" by a Holder will equal the sum of any cash and the aggregate fair market value of any property received by such Holder pursuant to the Plan (for example, such Holder's undivided beneficial interest in the assets of the Claimant Trust). A Holder that receives or is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its receipt or deemed receipt. See U.S. Federal Income Tax Treatment of the Claimant Trust, above for more information regarding the tax treatment of the Claimant Trust Interests.

Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long it has been held, whether the claim was acquired at

a market discount, and whether and to what extent the Holder had previously claimed a bad debt deduction.

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled to a deduction for U.S. federal income tax purposes. The rules governing the character, timing and amount of such a deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

2. Distribution in Discharge of Accrued Unpaid Interest

Pursuant to the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received (whether cash or other property) by a Holder of a claim is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as interest income if not previously included in the Holder's gross income. Conversely, a Holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult their tax advisors regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

3. Information Reporting and Withholding

All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding" (currently at a rate of up to 24%). Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

**D. Treatment of the Disputed Claims Reserve**

Pursuant to the Plan, the Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity. Such taxes will be paid out of the Disputed Claims Reserve and therefore may reduce amounts paid to Holders of Allowed Claims from the Claimant Trust. If the Claimant Trustee does not make such an election to treat the Disputed Claims Reserve as a separate taxable entity, the net income, if any, earned in the Disputed Claims Reserve will be taxable to the Holders of Allowed Claims in accordance with

the principles discussed above under the heading “U.S. Federal Income Tax Treatment of the Claimant Trust”, possibly in advance of any distributions to the Holders.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PLAN.**

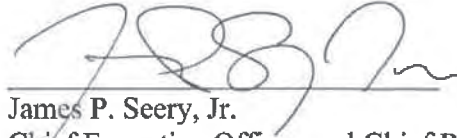
#### **ARTICLE VII. RECOMMENDATION**

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distribution to the Debtor’s creditors and interest holders. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.



James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
Officer

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**EXHIBIT A**

**PLAN OF REORGANIZATION**

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

)  
) Chapter 11  
)  
) Case No. 19-34054-sgj11  
)  
)  
)  
)  
)

**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

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

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**DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the "Debtor"), proposes the following chapter 11 plan of reorganization (the "Plan") for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.****RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS****A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to "Articles," "Sections," "Exhibits" and "Plan Documents" are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) "\$" or "dollars" means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

## **B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. "*Acis*" means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. "*Administrative Expense Claim*" means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. "*Administrative Expense Claims Bar Date*" means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. "*Administrative Expense Claims Objection Deadline*" means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. "*Affiliate*" means an "affiliate" as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. "*Allowed*" means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.



16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.



51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

59. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the



Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

62. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

69. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

71. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

77. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

87. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. “*Petition Date*” means October 16, 2019.

91. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328, 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.



104. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

105. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

107. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. “*Related Entity*” means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the



Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

132. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. “*Voting Record Date*” means November 23, 2020.

## ARTICLE II.

### ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

#### A. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.



**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of



voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

*1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. *Class 10 – Class B/C Limited Partnership Interests*

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.



11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

I. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

J. Subordinated Claims

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.**  
**MEANS FOR IMPLEMENTATION OF THIS PLAN**

A. Summary

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

## **B. The Claimant Trust<sup>2</sup>**

### *1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.



5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.



The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

### **C. The Reorganized Debtor**

#### **1. Corporate Existence**

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

#### **2. Cancellation of Equity Interests and Release**

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

#### **3. Issuance of New Partnership Interests**

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

#### **4. Management of the Reorganized Debtor**

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant



Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust



will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

**ARTICLE V.**  
**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).



Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts



or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

## **ARTICLE VI.**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor’s books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to



such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such



Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*1. Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

*2. Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

#### **B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

**C. Effect of Non-Occurrence of Conditions to Effectiveness**

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

**D. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**

**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose



before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal



misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

*1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

#### **G. Term of Injunctions or Stays**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**ARTICLE X.  
BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to pay taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.  
RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;



- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;



- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

## ARTICLE XII. MISCELLANEOUS PROVISIONS

### A. Payment of Statutory Fees and Filing of Reports

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
 300 Crescent Court, Suite 700  
 Dallas, Texas 75201  
 Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
 10100 Santa Monica Blvd., 13th Floor  
 Los Angeles, CA 90067  
 Attn: Jeffrey N. Pomerantz, Esq.  
 Ira D. Kharasch, Esq.  
 Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.



**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: November 24, 2020

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief  
Restructuring Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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Zachery Z. Annable (TX Bar No. 24053075)

10501 N. Central Expy, Ste. 106

Dallas, TX 75231

Telephone: (972) 755-7100

Facsimile: (972) 755-7110

Email: MHayward@HaywardFirm.com

ZAnnable@HaywardFirm.com

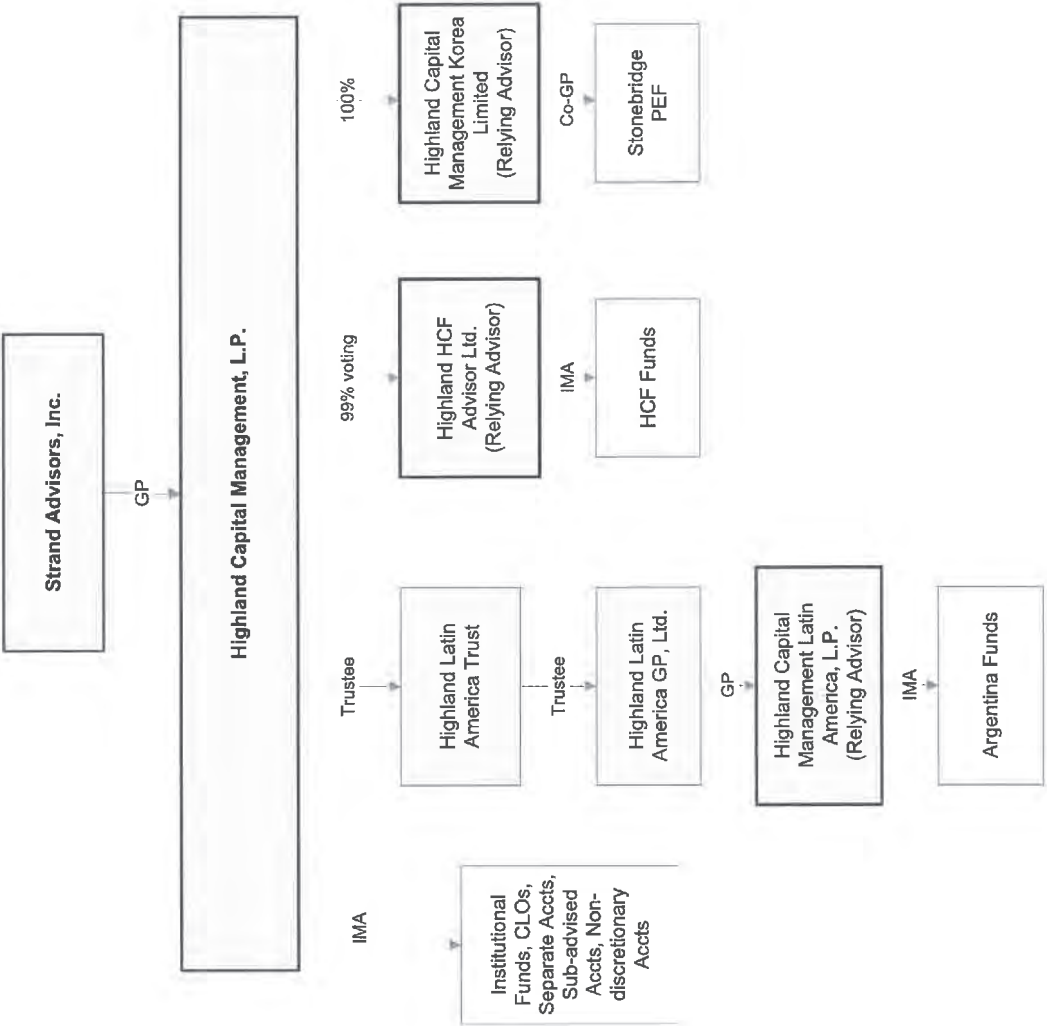
*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT B**

**ORGANIZATIONAL CHART OF THE DEBTOR**

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**EXHIBIT C**

**LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS**



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***Highland Capital Management, L.P.  
Disclaimer For Financial Projections***

This document includes financial projections for July 2020 through December 2022 (the “Projections”) for Highland Capital Management, L.P. (“Company”). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company’s anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

11/13/2020

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**Highland Capital Management, L.P.**  
**Statement of Assumptions**

- A. Plan effective date is January 31, 2021.
- B. All investment assets are sold by December 31, 2022.
- C. All demand notes are collected in the year 2021.
- D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
- E. Fixed assets used in daily business operations are sold in February 2021.
- F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
- G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter.
- H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
- I. Litigation Trustee budget is \$6,500,000.
- J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
- K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims received their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
- L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
- M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume \$0 for UBS, IFA, HM and HV.  
 Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
- N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
- O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate \$13.15 million. Plan currently projects Class 7 payout of \$9.96 million.
- P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
  - o By September 30, 2021 - \$50,000,000
  - o By March 31, 2022 - additional \$50,000,000
  - o By June 30, 2022 - additional \$25,000,000
  - o All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

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**Highland Capital Management, L.P.  
Plan Analysis Vs. Liquidation Analysis  
(US \$000's)**

	Plan Analysis
Estimated cash on hand at 1/31/2020	\$ 25,076
Estimated proceeds from monetization of assets [1][2]	190,445
Estimated expenses through final distribution[1][3]	(33,642)
Total estimated \$ available for distribution	181,879
Less: Claims paid in full	
Unclassified [4]	
Administrative claims [5]	(1,078)
Class 1 - Jefferies Secured Claim	(10,574)
Class 2 - Frontier Secured Claim [6]	-
Class 3 - Other Secured Claims	(5,463)
Class 4 - Priority Non-Tax Claims	(551)
Class 5 - Retained Employee Claims	(16)
Class 6 - PTO Claims	-
Class 7 - Convenience Claims [7][8][9]	-
Subtotal	(10,255)
Estimated amount remaining for distribution to general unsecured claims	(27,937)
Class 8 - General Unsecured Claims [8][10]	153,942
Subtotal	176,049
% Distribution to general unsecured claims	176,049
Estimated amount remaining for distribution	87.44%
Class 9 - Subordinated Claims	-
Class 10 - Class B/C Limited Partnership Interests	no distribution
Class 11 - Class A Limited Partnership Interest	no distribution

**Footnotes:**

- [1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee  
Assumes Chapter 7 Trustee engages new professionals to help liquidate assets  
[2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable  
[3] Estimated expenses through final distribution exclude non-cash expenses:  
Depreciation of \$462 thousand in 2021

Highland Capital Management, L.P.  
Balance Sheet  
(US \$000's)

	Actual Jun-20	Actual Sep-20	Forecast ----> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21
<b>Assets</b>							
Cash and Cash Equivalents	\$ 14,994	\$ 5,888	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-
<b>TOTAL ASSETS</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>
<b>Liabilities</b>							
Post-petition Liabilities	\$ 26,226	\$ 19,138	\$ 19,280	\$ 2,891	\$ -	\$ -	\$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-
Claims	-	-	-	-	-	-	-
Unclassified	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-
Class 2 - Frontier Secured Claim	-	-	-	5,210	-	-	-
Class 3 - Other Secured Claims	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-
Class 6 - PTO Claims	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049
Class 9 – Subordinated Claims	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049
<b>TOTAL LIABILITIES</b>	<b>\$ 152,591</b>	<b>\$ 145,481</b>	<b>\$ 141,230</b>	<b>\$ 184,150</b>	<b>\$ 176,049</b>	<b>\$ 126,049</b>	<b>\$ 126,049</b>
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309

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**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Actual		Actual		Forecast --->	
	Jan 2020 to June 30		3 month ended Sept 2020		3 month ended Dec 2020	
	2020 Total		2020 Total		2020 Total	
Revenue						
Management Fees	\$ 6,572	\$	1,949	\$	2,651	\$
Shared Service Fees	7,672		3,765		3,788	
Other Income	3,126		538		340	
Total revenue	\$ 17,370	\$	6,252	\$	6,779	\$
Operating Expenses [1]	13,328		9,171		9,079	
Income/(loss) From Operations	\$ 4,042	\$	(2,918)	\$	(2,301)	\$
Professional Fees	17,522		7,707		7,741	
Other Income/(Expenses) [2]	2,302		1,518		1,057	
Operating Gain/(Loss)	\$ (11,178)	\$	(9,107)	\$	(8,985)	\$
Realized and Unrealized Gain/(Loss)						
Other Realized Gains/(Loss)	-		-		-	
Net Realized Gain/(Loss) on Sale of Investment	(28,418)		1,549		(12,167)	
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)		(7,450)		-	
Net Realized Gain/(Loss) from Equity Method Investees	-		-		(94)	
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	(80,782)		(1,700)		-	
Total Realized and Unrealized Gain/(Loss)	\$ (139,129)	\$	(7,601)	\$	(12,262)	\$
Net Income	\$ (150,307)	\$	(16,708)	\$	(21,247)	\$

Footnotes:



**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

	Forecast --->			
	3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022
Revenue				
Management Fees	\$ -	\$ -	\$ -	\$ -
Shared Service Fees	-	-	-	-
Other Income	-	-	-	-
Total revenue	\$ -	\$ -	\$ -	\$ -
Operating Expenses	1,443	643	758	1,088
Income/(loss) From Operations	\$ (1,443)	\$ (643)	\$ (758)	\$ (1,088)
Professional Fees	2,788	2,788	1,288	1,288
Other Income/(Expenses)	408	419	434	184
Operating Gain/(Loss)	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (2,193)
Realized and Unrealized Gain/(Loss)				
Other Realized Gains/(Loss)	-	-	-	(51,775)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-
Net Realized Gain/(Loss) from Equity Method Investees	-	-	-	-
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	\$ -	\$ -	\$ -	\$ (51,775)
Net Income	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (53,967)

**Highland Capital Management, L.P.**  
**Cash Flow Indirect**  
**(US \$000's)**

	Forecast ---->					Mar-21	Jun-21	Sep-21	Dec-21	Mar-22
	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21					
Net (Loss) Income	\$ (16,708)	\$ (21,247)	\$ (71,794)	\$ (28,167)	\$ (8,134)	\$ (13,192)	\$ (3,015)	\$ (1,904)	\$ (1,904)	\$ (1,904)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash	231	231	231	231	-	-	-	-	-	-
Depreciation and amortization	-	-	763	(522)	-	-	-	-	-	-
Other realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355				
Investment realized (gain)/ loss	(9,150)	-	-	-	-	-	-	-	-	-
Unrealized (gain) / loss	(470)	3,092	930	1,884	417	1,933				
(Increase) Decrease in Current Assets	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	-
Increase (Decrease) in Current Liabilities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)				
Net Cash Increase / (Decrease) - Operating Activities										
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278				
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278				
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	-	-	-	-
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	-	-	-	-
Net Change in Cash	\$ (9,107)	\$ 22,454	\$ (23,408)	\$ 91,979	\$ (6,484)	\$ 16,374	\$ (5,669)	\$ (5,669)	\$ (5,669)	\$ (5,669)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	106,803	106,803	106,803
Ending Cash	\$ 5,887	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803	\$ 106,803	\$ 106,803	\$ 106,803	\$ 106,803

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 19**

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*
- a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*
- a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

Vol. 3  
000680  
000752  
000761



Vol. 3  
000798  
000811  
000815  
Thru Vol. 4  
Vol. 4  
001144  
001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 5  
001174  
001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy

		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
05/18/2021	2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
05/20/2021	2339	Amended Exhibit List <i>Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
05/20/2021	2342	Amended Exhibit List <i>Supplemental Exhibit List</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
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*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

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### Schedule of Causes of Action

The Causes of Action shall include, *without limitation*, any cause of action based on the following:

breach of fiduciary duties, breach of duty of care, breach of duty of loyalty, usurpation of corporate opportunities, breach of implied covenant of good faith and fair dealing, conversion, misappropriation of assets, misappropriation of trade secrets, unfair competition, breach of contract, breach of warranty, fraud, constructive fraud, negligence, gross negligence, fraudulent conveyance, fraudulent transfer, fraudulent misrepresentation, negligent misrepresentation, fraudulent concealment, fraudulent inducement, tortious interference, *quantum meruit*, unjust enrichment, abuse of process, alter ego, business disparagement, indemnity, claims for recovery of distributions or dividends, claims for indemnification, promissory estoppel, quasi-contract claims, any counterclaims, equitable subordination, avoidance actions provided for under sections 544 or 547 of the Bankruptcy Code, claims brought under state law, claims brought under federal law, claims under any common-law theory of tort or law or equity, and any claims similar in nature to the foregoing claims.

The Causes of Action shall include, *without limitation*, any cause of action against the following persons and entities:

James Dondero, Mark Okada, Grant Scott, John Honis, any current or former insider of the Debtor, the Dugaboy Investment Trust, Charitable DAF Holdco, Ltd, Hunter Mountain Investment Trust, Nexbank Capital, Inc. Highland Capital Management Services, Inc., NexPoint Advisors GP, LLC, NexPoint Advisors, L.P., Strand Advisors XVI, Inc., Highland Capital Management Fund Advisors, L.P., NexAnnuity Holdings, Inc., the entities listed on the attached **Annex 1** hereto, any current or former employee of the Debtor, and any entity directly or indirectly owned, controlled, or operated for the benefit of the foregoing persons or entities.

The Causes of Action shall include, *without limitation*, any cause of action arising from the following transactions:

The transfer of ownership interests in the Debtor to Hunter Mountain Investment Trust, the creation or transfer of any notes receivable from the Debtor or from any entity related to the Debtor, the creation or transfer of assets to or from any charitable foundation or trust, the formation, performance, or breach of any contract for the Debtor to provide investment management, support services, or any other services, and the distribution of assets or cash from the Debtor to partners of the Debtor.

## Annex 1

11 Estates Lane, LLC	Acis CLO Value Fund II Charitable DAF Ltd.
1110 Waters, LLC	Acis CMOA Trust
140 Albany, LLC	Advisors Equity Group LLC
1525 Dragon, LLC	Alamo Manhattan Hotel I, LLC
17720 Dickerson, LLC	(Third Party)
1905 Wylie LLC	Allenby, LLC
2006 Milam East Partners GP, LLC	Allisonville RE Holdings, LLC
2006 Milam East Partners, L.P.	AM Uptown Hotel, LLC
201 Tarrant Partners, LLC	Apex Care, L.P
2014 Corpus Weber Road LLC	Asbury Holdings, LLC ( <i>fka HCSLR</i>
2325 Stemmons HoldCo, LLC	<i>Camelback Investors (Delaware), LLC</i> )
2325 Stemmons Hotel Partners, LLC	Ascendant Advisors
2325 Stemmons TRS, Inc.	Atlas IDF GP, LLC
300 Lamar, LLC	Atlas IDF, LP
3409 Rosedale, LLC	BB Votorantim Highland Infrastructure, LLC
3801 Maplewood, LLC	BDC Toys Holdco, LLC
3801 Shenandoah, L.P.	Beacon Mountain, LLC
3820 Goar Park LLC	Bedell Trust Ireland Limited (Charitable trust
400 Seaman, LLC	account)
401 Ame, L.P.	Ben Roby (third party)
4201 Locust, L.P.	BH Equities, LLC
4312 Belclaire, LLC	BH Heron Pointe, LLC
5833 Woodland, L.P.	BH Hollister, LLC
5906 DeLoache, LLC	BH Willowdale Manager, LLC
5950 DeLoache, LLC	Big Spring Partners, LLC
7758 Ronnie, LLC	Blair Investment Partners, LLC
7759 Ronnie, LLC	Bloomdale, LLC
AA Shotguns, LLC	Brave Holdings III Inc.
Aberdeen Loan Funding, Ltd.	Brentwood CLO, Ltd.
Acis CLO 2017-7 Ltd	Brentwood Investors Corp.
Acis CLO Management GP, LLC	Brian Mitts
Acis CLO Management GP, LLC ( <i>fka Acis</i>	Bristol Bay Funding Ltd.
<i>CLO Opportunity Funds GP, LLC</i> )	Bristol Bay Funding, Ltd.
Acis CLO Management Holdings, L.P.	BVP Property, LLC
Acis CLO Management Intermediate Holdings	C-1 Arbors, Inc.
I, LLC	C-1 Cutter's Point, Inc.
Acis CLO Management Intermediate Holdings	C-1 Eaglecrest, Inc.
II, LLC	C-1 Silverbrook, Inc.
Acis CLO Management, LLC ( <i>fka Acis CLO</i>	Cabi Holdco GP, LLC
<i>Opportunity Funds SLP, LLC</i> )	Cabi Holdco I, Ltd
Acis CLO Trust	Cabi Holdco I, Ltd.

Cabi Holdco, L.P.  
 California Public Employees' Retirement System  
 Camelback Residential Investors, LLC  
 Camelback Residential Investors, LLC  
*(fka Sevilla Residential Partners, LLC)*  
 Camelback Residential Partners, LLC  
 Capital Real Estate - Latitude, LLC  
 Castle Bio Manager, LLC  
 Castle Bio, LLC  
 CG Works, Inc.  
 CG Works, Inc.  
*(fka Common Grace Ventures, Inc.)*  
 Charitable DAF Fund, L.P.  
 Charitable DAF GP, LLC  
 Charitable DAF HoldCo, Ltd  
 Charitable DAF HoldCo, Ltd.  
 Claymore Holdings, LLC  
 CLO HoldCo, Ltd  
 CLO Holdco, Ltd.  
 Corbusier, Ltd.  
 Cornerstone Healthcare Group Holding, Inc.  
 Corpus Weber Road Member LLC  
 CP Equity Hotel Owner, LLC  
 CP Equity Land Owner, LLC  
 CP Equity Owner, LLC  
 CP Hotel TRS, LLC  
 CP Land Owner, LLC  
 CP Tower Owner, LLC  
 CRE - Lat, LLC  
 Credit Suisse, Cayman Islands Branch  
 Crossings 2017 LLC  
 Crown Global Insurance Company (third party)  
 Dallas Cityplace MF SPE Owner LLC  
 Dallas Lease and Finance, L.P.  
 Dana Scott Breault  
 James Dondero  
 Reese Avry Dondero  
 Jameson Drue Dondero  
  
 Dana Sprong (Third Party)  
 David c. Hopson  
 De Kooning, Ltd.

deKooning, Ltd.  
 DFA/BH Autumn Ridge, LLC  
 Dolomiti, LLC  
 DrugCrafters, L.P.  
 Dugaboy Investment Trust  
 Dugaboy Management, LLC  
 Dugaboy Project Management GP, LLC  
 Eagle Equity Advisors, LLC  
 Eames, Ltd.  
 Eastland CLO, Ltd.  
 Eastland Investors Corp.  
 EDS Legacy Heliport, LLC  
 EDS Legacy Partners Owner, LLC  
 EDS Legacy Partners, LLC  
 Empower Dallas Foundation, Inc.  
 ENA 41, LLC  
 Entegra Strat Superholdco, LLC  
 Entegra-FRO Holdco, LLC  
 Entegra-FRO Superholdco, LLC  
 Entegra-HOCF Holdco, LLC  
 Entegra-NHF Holdco, LLC  
 Entegra-NHF Superholdco, LLC  
 Entegra-RCP Holdco, LLC  
 Estates on Maryland Holdco, LLC  
 Estates on Maryland Owners SM, Inc.  
 Estates on Maryland Owners, LLC  
 Estates on Maryland, LLC  
 Falcon E&P Four Holdings, LLC  
 Falcon E&P One, LLC  
 Falcon E&P Opportunities Fund, L.P.  
 Falcon E&P Opportunities GP, LLC  
 Falcon E&P Royalty Holdings, LLC  
 Falcon E&P Six, LLC  
 Falcon E&P Two, LLC  
 Falcon Four Midstream, LLC  
 Falcon Four Upstream, LLC  
 Falcon Incentive Partners GP, LLC  
 Falcon Incentive Partners, LP  
 Falcon Six Midstream, LLC  
 Flamingo Vegas Holdco, LLC *(fka Cabi Holdco, LLC)*  
 Four Rivers Co-Invest GP, LLC  
 Four Rivers Co-Invest, L.P.

FRBH Abbington SM, Inc.  
FRBH Abbington, LLC  
FRBH Arbors, LLC  
FRBH Beechwood SM, Inc.  
FRBH Beechwood, LLC  
FRBH C1 Residential, LLC  
FRBH Courtney Cove SM, Inc.  
FRBH Courtney Cove, LLC  
FRBH CP, LLC  
FRBH Duck Creek, LLC  
FRBH Eaglecrest, LLC  
FRBH Edgewater JV, LLC  
FRBH Edgewater Owner, LLC  
FRBH Edgewater SM, Inc.  
FRBH JAX-TPA, LLC  
FRBH Nashville Residential, LLC  
FRBH Regatta Bay, LLC  
FRBH Sabal Park SM, Inc.  
FRBH Sabal Park, LLC  
FRBH Silverbrook, LLC  
FRBH Timberglen, LLC  
FRBH Willow Grove SM, Inc.  
FRBH Willow Grove, LLC  
FRBH Woodbridge SM, Inc.  
FRBH Woodbridge, LLC  
Freedom C1 Residential, LLC  
Freedom Duck Creek, LLC  
Freedom Edgewater, LLC  
Freedom JAX-TPA Residential, LLC  
Freedom La Mirage, LLC  
Freedom LHV LLC  
Freedom Lubbock LLC  
Freedom Miramar Apartments, LLC  
Freedom Sandstone, LLC  
Freedom Willowdale, LLC  
Fundo de Investimento em Direitos Creditórios  
BB Votorantim Highland Infraestrutura  
G&E Apartment REIT The Heights at Olde  
Towne, LLC  
G&E Apartment REIT The Myrtles at Olde  
Towne, LLC  
GAF REIT, LLC  
GAF Toys Holdco, LLC

Gardens of Denton II, L.P.  
Gardens of Denton III, L.P.  
Gleneagles CLO, Ltd.  
Goverannce RE, Ltd.  
Governance Re, Ltd.  
Governance, Ltd.  
Grant Scott  
Grant Scott, Trustee of The SLHC Trust  
Grayson CLO, Ltd.  
Grayson Investors Corp.  
Greater Kansas City Community Foundation  
(third party)  
Greenbriar CLO, Ltd.  
Greg Busseyt  
Gunwale LLC  
Gunwale, LLC  
Hakusan, LLC  
Hammark Holdings LLC  
Hampton Ridge Partners, LLC  
Harbourvest Entities  
Harko, LLC  
Harry Bookey/Pam Bookey (third party)  
Haverhill Acquisition Co., LLC  
Haygood, LLC  
HB 2015 Family LP (third party)  
HCBH 11611 Ferguson, LLC  
HCBH Buffalo Pointe II, LLC  
HCBH Buffalo Pointe III, LLC  
HCBH Buffalo Pointe, LLC  
HCBH Hampton Woods SM, Inc.  
HCBH Hampton Woods, LLC  
HCBH Overlook SM, Inc.  
HCBH Overlook, LLC  
HCBH Rent Investors, LLC  
HCMS Falcon GP, LLC  
HCMS Falcon, L.P.  
HCO Holdings, LLC  
HCOF Preferred Holdings, L.P.  
HCOF Preferred Holdings, LP  
HCOF Preferred Holdings, Ltd.  
HCRE 1775 James Ave, LLC  
HCRE Addison TRS, LLC

HCRE Addison, LLC (*fka HWS Addison, LLC*)

HCRE Hotel Partner, LLC (*fka HCRE HWS Partner, LLC*)

HCRE Las Colinas TRS, LLC

HCRE Las Colinas, LLC (*fka HWS Las Colinas, LLC*)

HCRE Plano TRS, LLC

HCRE Plano, LLC (*fka HWS Plano, LLC*)

HCRE-I Holding Corp.

HCRE-II Holding Corp.

HCRE-III Holding Corp.

HCRE-IV Holding Corp.

HCRE-IX Holding Corp.

HCRE-V Holding Corp.

HCRE-VI Holding Corp.

HCRE-VII Holding Corp.

HCRE-VIII Holding Corp.

HCRE-XI Holding Corp.

HCRE-XII Holding Corp.

HCRE-XIII Holding Corp.

HCRE-XIV Holding Corp.

HCRE-XV Holding Corp.

HCSLR Camelback Investors (Cayman), Ltd.

HCSLR Camelback, LLC

HCT Holdco 2 Ltd.

HCT Holdco 2, Ltd.

HE 41, LLC

HE Capital 232 Phase I Property, LLC

HE Capital 232 Phase I, LLC

HE Capital Asante, LLC

HE Capital Fox Trails, LLC

HE Capital KR, LLC

HE Capital, LLC

HE CLO Holdco, LLC

HE Mezz Fox Trails, LLC

HE Mezz KR, LLC

HE Peoria Place Property, LLC

HE Peoria Place, LLC

Heron Pointe Investors, LLC

Hewett's Island CLO I-R, Ltd.

HFP Asset Funding II, Ltd.

HFP Asset Funding III, Ltd.

HFP CDO Construction Corp.

HFP GP, LLC

HFRO Sub, LLC

Hibiscus HoldCo, LLC

Highland - First Foundation Income Fund

Highland 401(k) Plan

Highland 401K Plan

Highland Argentina Regional Opportunity Fund GP, LLC

Highland Argentina Regional Opportunity Fund, L.P.

Highland Argentina Regional Opportunity Fund, Ltd.

Highland Argentina Regional Opportunity Master Fund, L.P.

Highland Brasil, LLC

Highland Capital Brasil Gestora de Recursos (*fka Highland Brasilinvest Gestora de Recursos, LTDA; fka HBI Consultoria Empresarial, LTDA*)

Highland Capital Management (Singapore) Pte Ltd

Highland Capital Management AG

Highland Capital Management AG (Highland Capital Management SA) (Highland Capital Management Ltd)

Highland Capital Management Fund Advisors, L.P.

Highland Capital Management Fund Advisors, L.P. (*fka Pyxis Capital, L.P.*)

Highland Capital Management Korea Limited

Highland Capital Management Latin America, L.P.

Highland Capital Management LP Retirement Plan and Trust

Highland Capital Management Multi-Strategy Insurance Dedicated Fund, L.P.

Highland Capital Management Real Estate Holdings I, LLC

Highland Capital Management Real Estate Holdings II, LLC

Highland Capital Management Services, Inc.

Highland Capital Management, L.P.



Highland Capital Management, L.P. Charitable Fund

Highland Capital Management, L.P. Retirement Plan and Trust

Highland Capital Management, L.P., as trustee of Acis CMOA Trust and nominee for and on behalf of Highland CLO Assets Holdings Limited

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, L.P., as trustee of Highland Latin America Trust and nominee for and on behalf of Highland Latin America LP, Ltd.

Highland Capital Management, LP  
Highland Capital Management, LP Charitable Fund

Highland Capital Multi-Strategy Fund, LP

Highland Capital of New York, Inc.

Highland Capital Special Allocation, LLC

Highland CDO Holding Company

Highland CDO Opportunity Fund GP, L.P.

Highland CDO Opportunity Fund, L.P.

Highland CDO Opportunity Fund, Ltd.

Highland CDO Opportunity GP, LLC

Highland CDO Opportunity Master Fund, L.P.

Highland CDO Trust

Highland CLO 2018-1, Ltd.

Highland CLO Assets Holdings Limited

Highland CLO Funding, Ltd.

Highland CLO Funding, Ltd.

Highland CLO Funding, Ltd. (*fka Acis Loan Funding, Ltd.*)

Highland CLO Gaming Holdings, LLC

Highland CLO Holdings Ltd.

Highland CLO Holdings, Ltd. (as of 12.19.17)

Highland CLO Management Ltd.

Highland CLO Trust

Highland Credit Opportunities CDO Asset Holdings GP, Ltd.

Highland Credit Opportunities CDO Asset Holdings, L.P.

Highland Credit Opportunities CDO Financing, LLC

Highland Credit Opportunities CDO, Ltd.

Highland Credit Opportunities Holding Corporation

Highland Credit Opportunities Japanese Feeder Sub-Trust

Highland Credit Opportunities Japanese Unit Trust (Third Party)

Highland Credit Strategies Fund, L.P.

Highland Credit Strategies Fund, Ltd.

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Holding Corporation

Highland Credit Strategies Master Fund, L.P.

Highland Dallas Foundation, Inc.

Highland Dynamic Income Fund GP, LLC

Highland Dynamic Income Fund GP, LLC (*fka Highland Capital Loan GP, LLC*)

Highland Dynamic Income Fund, L.P.

Highland Dynamic Income Fund, L.P. (*fka Highland Capital Loan Fund, L.P.*)

Highland Dynamic Income Fund, Ltd.

Highland Dynamic Income Fund, Ltd. (*fka Highland Loan Fund, Ltd.*)

Highland Dynamic Income Master Fund, L.P.

Highland Dynamic Income Master Fund, L.P. (*fka Highland Loan Master Fund, L.P.*)

Highland Employee Retention Assets LLC

Highland Energy Holdings, LLC

Highland Energy MLP Fund (*fka Highland Energy and Materials Fund*)

Highland Equity Focus Fund, L.P.

Highland ERA Management, LLC

Highland eSports Private Equity Fund

Highland Financial Corp.

Highland Financial Partners, L.P.

Highland Fixed Income Fund

Highland Flexible Income UCITS Fund

Highland Floating Rate Fund

Highland Floating Rate Opportunites Fund  
Highland Floating Rate Opportunities Fund  
Highland Fund Holdings, LLC  
Highland Funds I  
Highland Funds II  
Highland Funds III  
Highland GAF Chemical Holdings, LLC  
Highland General Partner, LP  
Highland Global Allocation Fund  
Highland Global Allocation Fund  
*(fka Highland Global Allocation Fund II)*  
Highland GP Holdings, LLC  
Highland HCF Advisor Ltd.  
Highland HCF Advisor, Ltd., as Trustee for  
and on behalf of Acis CLO Trust, as nominee  
for and on behalf of Highland CLO Funding,  
Ltd. (as of 3.29.18)  
Highland Healthcare Equity Income and  
Growth Fund  
Highland iBoxx Senior Loan ETF  
Highland Income Fund  
Highland Income Fund *(fka Highland  
Floating Rate Opportunities Fund)*  
Highland Kansas City Foundation, Inc.  
Highland Latin America Consulting, Ltd.  
Highland Latin America GP, Ltd.  
Highland Latin America LP, Ltd.  
Highland Latin America Trust  
Highland Legacy Limited  
Highland LF Chemical Holdings, LLC  
Highland Loan Funding V, LLC  
Highland Loan Funding V, Ltd.  
Highland Long/Short Equity Fund  
Highland Long/Short Healthcare Fund  
Highland Marcal Holding, Inc.  
Highland Merger Arbitrage Fund  
Highland Multi Strategy Credit Fund GP, L.P.  
Highland Multi Strategy Credit Fund GP, L.P.  
*(fka Highland Credit Opportunities CDO GP,  
L.P.)*  
Highland Multi Strategy Credit Fund, L.P.

Highland Multi Strategy Credit Fund, L.P. *(fka  
Highland Credit Opportunities Fund, L.P., fka  
Highland Credit Opportunities CDO, L.P.)*  
Highland Multi Strategy Credit Fund, Ltd.  
Highland Multi Strategy Credit Fund, Ltd. *(fka  
Highland Credit Opportunities Fund, Ltd.)*  
Highland Multi Strategy Credit GP, LLC  
Highland Multi Strategy Credit GP, LLC *(fka  
Highland Credit Opportunities CDO GP, LLC)*  
Highland Multi-Strategy Fund GP, LLC  
Highland Multi-Strategy Fund GP, LP  
Highland Multi-Strategy IDF GP, LLC  
Highland Multi-Strategy Master Fund, L.P.  
Highland Multi-Strategy Master Fund, LP  
Highland Multi-Strategy Onshore Master  
SubFund II, LLC  
Highland Multi-Strategy Onshore Master  
Subfund, LLC  
Highland Opportunistic Credit Fund  
Highland Park CDO 1, Ltd.  
Highland Park CDO I, Ltd.  
Highland Premier Growth Equity Fund  
Highland Premium Energy & Materials Fund  
Highland Prometheus Feeder Fund I, L.P.  
Highland Prometheus Feeder Fund I, LP  
Highland Prometheus Feeder Fund II, L.P.  
Highland Prometheus Feeder Fund II, LP  
Highland Prometheus Master Fund, L.P.  
Highland Receivables Finance I, LLC  
Highland Restoration Capital Partners GP,  
LLC  
Highland Restoration Capital Partners Master,  
L.P.  
Highland Restoration Capital Partners  
Offshore, L.P.  
Highland Restoration Capital Partners, L.P.  
Highland Santa Barbara Foundation, Inc.  
Highland Select Equity Fund GP, L.P.  
Highland Select Equity Fund, L.P.  
Highland Select Equity GP, LLC  
Highland Select Equity Master Fund, L.P.

Highland Small-Cap Equity Fund  
Highland Socially Responsible Equity Fund  
Highland Socially Responsible Equity Fund  
*(fka Highland Premier Growth Equity Fund)*

Highland Special Opportunities Holding  
Company

Highland SunBridge GP, LLC

Highland Tax-Exempt Fund

Highland TCI Holding Company, LLC

Highland Total Return Fund

Highland's Roads Land Holding Company,  
LLC

Hirst, Ltd.

HMCF PB Investors, LLC

HMx2 Investment Trust  
(Matt McGraner)

Hockney, Ltd.

HRT North Atlanta, LLC

HRT Timber Creek, LLC

HRTBH North Atlanta, LLC

HRTBH Timber Creek, LLC

Huber Funding LLC

Hunter Mountain Investment Trust

HWS Investors Holdco, LLC

Internal Investors

Intertrust

James D. Dondero

Reese Avry Dondero

Jameson Drue Dondero

James Dondero

James Dondero and Mark Okada

James Dondero

Reese Avry Dondero

Jameson Drue Dondero

Japan Trustee Services Bank, Ltd.

Jasper CLO, Ltd.

Jewelry Ventures I, LLC

JMIJM, LLC

Joanna E. Milne Irrevocable Trust dated Nov  
25 1998 (third party)

John Honis

John L. Holt, Jr.

John R. Sears, Jr.

Karisopolis, LLC

Keelhaul LLC

KHM Interests, LLC (third party)

Kuilima Montalban Holdings, LLC

Kuilima Resort Holdco, LLC

KV Cameron Creek Owner, LLC

Lakes at Renaissance Park Apartments  
Investors, L.P.

Lakeside Lane, LLC

Landmark Battleground Park II, LLC

Lane Britain

Larry K. Anders

LAT Battleground Park, LLC

LAT Briley Parkway, LLC

Lautner, Ltd.

Leawood RE Holdings, LLC

Liberty Cayman Holdings, Ltd.

Liberty CLO Holdco, Ltd.

Liberty CLO, Ltd.

Liberty Sub, Ltd.

Long Short Equity Sub, LLC

Longhorn Credit Funding LLC

Longhorn Credit Funding LLC - A

Longhorn Credit Funding LLC - B

Longhorn Credit Funding LLC (LHB)

Longhorn Credit Funding, LLC

Lurin Real Estate Holdings V, LLC

Maple Avenue Holdings, LLC

MaplesFS Limited

Marc C. Manzo

Mark and Pam Okada Family Trust - Exempt  
Descendants' Trust

Mark and Pam Okada Family Trust - Exempt  
Trust #2

Mark and Pamela Okada Family Trust -  
Exempt Descendants' Trust

Mark and Pamela Okada Family Trust -  
Exempt Descendants' Trust #2

Mark and Pamela Okada Family Trust -  
Exempt Trust #2

Mark K. Okada

Mark Okada

Mark Okada and Pam Okada  
 Mark Okada and Pam Okada, as joint owners  
 Mark Okada/Pamela Okada  
 Markham Fine Jewelers, L.P.  
 Markham Fine Jewelers, LP  
 Matt McGraner  
 Meritage Residential Partners, LLC  
 MGM Studios HoldCo, Ltd.  
 Michael Rossi  
 ML CLO XIX Sterling (Cayman), Ltd.  
 N/A  
 Nancy Dondero  
 NCI Apache Trail LLC  
 NCI Assets Holding Company LLC  
 NCI Country Club LLC  
 NCI Fort Worth Land LLC  
 NCI Front Beach Road LLC  
 NCI Minerals LLC  
 NCI Royse City Land LLC  
 NCI Stewart Creek LLC  
 NCI Storage, LLC  
 Neil Labatte  
 Neutra, Ltd.  
 New Jersey Tissue Company Holdco, LLC  
*(fka Marcal Paper Mills Holding Company, LLC)*  
 NexAnnuity Holdings, Inc.  
 NexBank Capital Trust I  
 NexBank Capital, Inc.  
 NexBank Land Advisors, Inc.  
 NexBank Securities Inc.  
 NexBank Securities, Inc.  
  
 NexBank SSB  
 NexBank Title, Inc.  
*(dba NexVantage Title Services)*  
 NexBank, SSB  
 NexPoint Advisors GP, LLC  
 NexPoint Advisors, L.P.  
 NexPoint Capital REIT, LLC  
 NexPoint Capital, Inc.  
 NexPoint Capital, Inc. *(fka NexPoint Capital, LLC)*

NexPoint CR F/H DST, LLC  
 NexPoint Credit Strategies Fund  
 NexPoint Discount Strategies Fund  
*(fka NexPoint Discount Yield Fund)*  
 NexPoint DRIP  
 NexPoint Energy and Materials Opportunities Fund *(fka NexPoint Energy Opportunities Fund)*  
 NexPoint Event-Driven Fund  
*(fka NexPoint Merger Arbitrage Fund)*  
 NexPoint Flamingo DST  
 NexPoint Flamingo Investment Co, LLC  
 NexPoint Flamingo Leaseco, LLC  
 NexPoint Flamingo Manager, LLC  
 NexPoint Flamingo Property Manager, LLC  
 NexPoint Healthcare Opportunities Fund  
 NexPoint Hospitality Trust  
 NexPoint Hospitality, Inc.  
 NexPoint Hospitality, LLC  
 NexPoint Insurance Distributors, LLC  
 NexPoint Insurance Solutions GP, LLC  
 NexPoint Insurance Solutions GP, LLC  
*(fka Highland Capital Insurance Solutions GP, LLC)*  
 NexPoint Insurance Solutions, L.P.  
*(fka Highland Capital Insurance Solutions, L.P.)*  
 NexPoint Latin American Opportunities Fund  
 NexPoint Legacy 22, LLC  
 NexPoint Lincoln Porte Equity, LLC  
 NexPoint Lincoln Porte Manager, LLC  
 NexPoint Lincoln Porte, LLC  
*(fka NREA Lincoln Porte, LLC)*  
 NexPoint Multifamily Capital Trust, Inc.  
 NexPoint Multifamily Capital Trust, Inc.  
*(fka NexPoint Multifamily Realty Trust, Inc., fka Highland Capital Realty Trust, Inc.)*  
 NexPoint Multifamily Operating Partnership, L.P.  
 NexPoint Peoria, LLC  
 NexPoint Polo Glen DST  
 NexPoint Polo Glen Holdings, LLC  
 NexPoint Polo Glen Investment Co, LLC

NexPoint Polo Glen Leaseco, LLC  
 NexPoint Polo Glen Manager, LLC  
 NexPoint RE Finance Advisor GP, LLC  
 NexPoint RE Finance Advisor, L.P.  
 NexPoint Real Estate Advisors GP, LLC  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors II, L.P.  
 NexPoint Real Estate Advisors III, L.P.  
 NexPoint Real Estate Advisors IV, L.P.  
 NexPoint Real Estate Advisors V, L.P.  
 NexPoint Real Estate Advisors VI, L.P.  
 NexPoint Real Estate Advisors VII GP, LLC  
 NexPoint Real Estate Advisors VII, L.P.  
 NexPoint Real Estate Advisors VIII, L.P.  
 NexPoint Real Estate Advisors, L.P.  
 NexPoint Real Estate Capital, LLC  
 NexPoint Real Estate Capital, LLC (*fka Highland Real Estate Capital, LLC, fka Highland Multifamily Credit Fund, LLC*)  
 NexPoint Real Estate Finance OP GP, LLC  
 NexPoint Real Estate Finance Operating Partnership, L.P.  
 NexPoint Real Estate Finance, Inc.  
 NexPoint Real Estate Opportunities, LLC  
 NexPoint Real Estate Opportunities, LLC (*fka Freedom REIT LLC*)  
 NexPoint Real Estate Partners, LLC  
 (fka HCRE Partners, LLC)  
 NexPoint Real Estate Partners, LLC (fka HCRE Partners, LLC)  
 NexPoint Real Estate Strategies Fund  
 NexPoint Residential Trust Inc.  
 NexPoint Residential Trust Operating Partnership GP, LLC  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust Operating Partnership, L.P.  
 NexPoint Residential Trust, Inc.  
 NexPoint Securities, Inc.  
 (*fka Highland Capital Funds Distributor, Inc.*)  
 (*fka Pyxis Distributors, Inc.*)

NexPoint Strategic Income Fund  
 (*fka NexPoint Opportunistic Credit Fund, fka NexPoint Distressed Strategies Fund*)  
 NexPoint Strategic Opportunities Fund  
 NexPoint Strategic Opportunities Fund  
 (*fka NexPoint Credit Strategies Fund*)  
 NexPoint Texas Multifamily Portfolio DST  
 (*fka NREA Southeast Portfolio Two, DST*)  
 NexPoint WLIF I Borrower, LLC  
 NexPoint WLIF I, LLC  
 NexPoint WLIF II Borrower, LLC  
 NexPoint WLIF II, LLC  
 NexPoint WLIF III Borrower, LLC  
 NexPoint WLIF III, LLC  
 NexPoint WLIF, LLC (Series I)  
 NexPoint WLIF, LLC (Series II)  
 NexPoint WLIF, LLC (Series III)  
 NexStrat LLC  
 NexVest, LLC  
 NexWash LLC  
 NFRO REIT Sub, LLC  
 NFRO TRS, LLC  
 NHF CCD, Inc.  
 NHT 2325 Stemmons, LLC  
 NHT Beaverton TRS, LLC  
 (*fka NREA Hotel TRS, Inc.*)  
 NHT Beaverton, LLC  
 NHT Bend TRS, LLC  
 NHT Bend, LLC  
 NHT Destin TRS, LLC  
 NHT Destin, LLC  
 NHT DFW Portfolio, LLC  
 NHT Holdco, LLC  
 NHT Holdings, LLC  
 NHT Intermediary, LLC  
 NHT Nashville TRS, LLC  
 NHT Nashville, LLC  
 NHT Olympia TRS, LLC  
 NHT Olympia, LLC  
 NHT Operating Partnership GP, LLC  
 NHT Operating Partnership II, LLC  
 NHT Operating Partnership, LLC  
 NHT Salem, LLC



NHT SP Parent, LLC  
 NHT SP TRS, LLC  
 NHT SP, LLC  
 NHT Tigard TRS, LLC  
 NHT Tigard, LLC  
 NHT TRS, Inc.  
 NHT Uptown, LLC  
 NHT Vancouver TRS, LLC  
 NHT Vancouver, LLC  
 NLA Assets LLC  
 NMRT TRS, Inc.  
 NREA Adair DST Manager, LLC  
 NREA Adair Investment Co, LLC  
 NREA Adair Joint Venture, LLC  
 NREA Adair Leaseco Manager, LLC  
 NREA Adair Leaseco, LLC  
 NREA Adair Property Manager LLC  
 NREA Adair, DST  
 NREA Ashley Village Investors, LLC  
 NREA Cameron Creek Investors, LLC  
 NREA Cityplace Hue Investors, LLC  
 NREA Crossing Investors LLC  
 NREA Crossings Investors, LLC  
 NREA Crossings Ridgewood Coinvestment, LLC (*fka NREA Crossings Ridgewood Investors, LLC*)  
 NREA DST Holdings, LLC  
 NREA El Camino Investors, LLC  
 NREA Estates Inc.  
 NREA Estates Investment Co, LLC  
 NREA Estates Leaseco, LLC  
 NREA Estates Manager, LLC  
 NREA Estates Property Manager, LLC  
 NREA Estates, DST  
 NREA Gardens DST Manager LLC  
 NREA Gardens DST Manager, LLC  
 NREA Gardens Investment Co, LLC  
 NREA Gardens Leaseco Manager, LLC  
 NREA Gardens Leaseco, LLC  
 NREA Gardens Property Manager, LLC  
 NREA Gardens Springing LLC  
 NREA Gardens Springing Manager, LLC  
 NREA Gardens, DST

NREA Hidden Lake Investment Co, LLC  
 NREA Hue Investors, LLC  
 NREA Keystone Investors, LLC  
 NREA Meritage Inc.  
 NREA Meritage Investment Co, LLC  
 NREA Meritage Leaseco, LLC  
 NREA Meritage Manager, LLC  
 NREA Meritage Property Manager, LLC  
 NREA Meritage, DST  
 NREA Oaks Investors, LLC  
 NREA Retreat Investment Co, LLC  
 NREA Retreat Leaseco, LLC  
 NREA Retreat Manager, LLC  
 NREA Retreat Property Manager, LLC  
 NREA Retreat, DST  
 NREA SE MF Holdings LLC  
 NREA SE MF Holdings, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE MF Investment Co, LLC  
 NREA SE Multifamily LLC  
 NREA SE Multifamily, LLC  
 NREA SE One Property Manager, LLC  
 NREA SE Three Property Manager, LLC  
 NREA SE Two Property Manager, LLC  
 NREA SE1 Andros Isles Leaseco, LLC  
 NREA SE1 Andros Isles Manager, LLC  
 NREA SE1 Andros Isles, DST  
 (Converted from DK Gateway Andros, LLC)  
 NREA SE1 Arborwalk Leaseco, LLC  
 NREA SE1 Arborwalk Manager, LLC  
 NREA SE1 Arborwalk, DST  
 (Converted from MAR Arborwalk, LLC)  
 NREA SE1 Towne Crossing Leaseco, LLC  
 NREA SE1 Towne Crossing Manager, LLC  
 NREA SE1 Towne Crossing, DST  
 (Converted from Apartment REIT Towne Crossing, LP)  
 NREA SE1 Walker Ranch Leaseco, LLC  
 NREA SE1 Walker Ranch Manager, LLC  
 NREA SE1 Walker Ranch, DST  
 (Converted from SOF Walker Ranch Owner, L.P.)  
 NREA SE2 Hidden Lake Leaseco, LLC

NREA SE2 Hidden Lake Manager, LLC  
 NREA SE2 Hidden Lake, DST  
 NREA SE2 Hidden Lake, DST  
 (Converted from SOF Hidden Lake SA Owner,  
 L.P.)

NREA SE2 Vista Ridge Leaseco, LLC  
 NREA SE2 Vista Ridge Manager, LLC  
 NREA SE2 Vista Ridge, DST  
 NREA SE2 Vista Ridge, DST  
 (Converted from MAR Vista Ridge, L.P.)

NREA SE2 West Place Leaseco, LLC  
 NREA SE2 West Place Manager, LLC  
 NREA SE2 West Place, DST  
 (Converted from Landmark at West Place,  
 LLC)

NREA SE3 Arboleda Leaseco, LLC  
 NREA SE3 Arboleda Manager, LLC  
 NREA SE3 Arboleda, DST  
 (Converted from G&E Apartment REIT  
 Arboleda, LLC)

NREA SE3 Fairways Leaseco, LLC  
 NREA SE3 Fairways Manager, LLC  
 NREA SE3 Fairways, DST  
 (Converted from MAR Fairways, LLC)

NREA SE3 Grand Oasis Leaseco, LLC  
 NREA SE3 Grand Oasis Manager, LLC  
 NREA SE3 Grand Oasis, DST  
 (Converted from Landmark at Grand Oasis,  
 LP)

NREA Southeast Portfolio One Manager, LLC  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio One, DST  
 NREA Southeast Portfolio Three Manager,  
 LLC

NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Three, DST  
 NREA Southeast Portfolio Two Manager, LLC  
 NREA Southeast Portfolio Two, DST  
 NREA Southeast Portfolio Two, LLC  
 NREA SOV Investors, LLC  
 NREA Uptown TRS, LLC  
 NREA VB I LLC  
 NREA VB II LLC

NREA VB III LLC  
 NREA VB IV LLC  
 NREA VB Pledgor I LLC  
 NREA VB Pledgor I, LLC  
 NREA VB Pledgor II LLC  
 NREA VB Pledgor II, LLC  
 NREA VB Pledgor III LLC  
 NREA VB Pledgor III, LLC  
 NREA VB Pledgor IV LLC  
 NREA VB Pledgor IV, LLC  
 NREA VB Pledgor V LLC  
 NREA VB Pledgor V, LLC  
 NREA VB Pledgor VI LLC  
 NREA VB Pledgor VI, LLC  
 NREA VB Pledgor VII LLC  
 NREA VB Pledgor VII, LLC  
 NREA VB SM, Inc.  
 NREA VB V LLC  
 NREA VB VI LLC  
 NREA VB VII LLC  
 NREA Vista Ridge Investment Co, LLC  
 NREC AR Investors, LLC  
 NREC BM Investors, LLC  
 NREC BP Investors, LLC  
 NREC Latitude Investors, LLC  
 NREC REIT Sub, Inc.  
 NREC TRS, Inc.  
 NREC WW Investors, LLC  
 NREF OP I Holdco, LLC  
 NREF OP I SubHoldco, LLC  
 NREF OP I, L.P.  
 NREF OP II Holdco, LLC  
 NREF OP II SubHoldco, LLC  
 NREF OP II, L.P.  
 NREF OP IV REIT Sub TRS, LLC  
 NREF OP IV REIT Sub, LLC  
 NREF OP IV, L.P.  
 NREO NW Hospitality Mezz, LLC  
 NREO NW Hospitality, LLC  
 NREO Perilune, LLC  
 NREO SAFStor Investors, LLC  
 NREO TRS, Inc.  
 NRESF REIT Sub, LLC

NXRT Abbington, LLC  
NXRT Atera II, LLC  
NXRT Atera, LLC  
NXRT AZ2, LLC  
NXRT Barrington Mill, LLC  
NXRT Bayberry, LLC  
NXRT Bella Solara, LLC  
NXRT Bella Vista, LLC  
NXRT Bloom, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP I, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine GP II, LLC  
NXRT Brandywine LP, LLC  
NXRT Brandywine LP, LLC  
NXRT Brentwood Owner, LLC  
NXRT Brentwood, LLC  
NXRT Cedar Pointe Tenant, LLC  
NXRT Cedar Pointe, LLC  
NXRT Cityview, LLC  
NXRT Cornerstone, LLC  
NXRT Crestmont, LLC  
NXRT Crestmont, LLC  
NXRT Enclave, LLC  
NXRT Glenview, LLC  
NXRT H2 TRS, LLC  
NXRT Heritage, LLC  
NXRT Hollister TRS LLC  
NXRT Hollister, LLC  
NXRT LAS 3, LLC  
NXRT Master Tenant, LLC  
NXRT Nashville Residential, LLC  
NXRT Nashville Residential, LLC (*fka Freedom Nashville Residential, LLC*)  
NXRT North Dallas 3, LLC  
NXRT Old Farm, LLC  
NXRT Pembroke Owner, LLC  
NXRT Pembroke, LLC  
NXRT PHX 3, LLC  
NXRT Radbourne Lake, LLC  
NXRT Rockledge, LLC  
NXRT Sabal Palms, LLC  
NXRT SM, Inc.

NXRT Steeplechase, LLC  
NXRT Stone Creek, LLC  
NXRT Summers Landing GP, LLC  
NXRT Summers Landing LP, LLC  
NXRT Torreyana, LLC  
NXRT Vanderbilt, LLC  
NXRT West Place, LLC  
NXRTBH AZ2, LLC  
NXRTBH Barrington Mill Owner, LLC  
NXRTBH Barrington Mill SM, Inc.  
NXRTBH Barrington Mill, LLC  
NXRTBH Bayberry, LLC  
NXRTBH Cityview, LLC  
NXRTBH Colonnade, LLC  
NXRTBH Cornerstone Owner, LLC  
NXRTBH Cornerstone SM, Inc.  
NXRTBH Cornerstone, LLC  
NXRTBH Dana Point SM, Inc.  
NXRTBH Dana Point, LLC  
NXRTBH Foothill SM, Inc.  
NXRTBH Foothill, LLC  
NXRTBH Heatherstone SM, Inc.  
NXRTBH Heatherstone, LLC  
NXRTBH Hollister Tenant, LLC  
NXRTBH Hollister, LLC  
NXRTBH Madera SM, Inc.  
NXRTBH Madera, LLC  
NXRTBH McMillan, LLC  
NXRTBH North Dallas 3, LLC  
NXRTBH Old Farm II, LLC  
NXRTBH Old Farm Tenant, LLC  
NXRTBH Old Farm, LLC  
NXRTBH Radbourne Lake, LLC  
NXRTBH Rockledge, LLC  
NXRTBH Sabal Palms, LLC  
NXRTBH Steeplechase, LLC  
(dba Southpoint Reserve at Stoney Creek)-VA  
NXRTBH Stone Creek, LLC  
NXRTBH Vanderbilt, LLC  
NXRTBH Versailles SM, Inc.  
NXRTBH Versailles, LLC  
Oak Holdco, LLC  
Oaks CGC, LLC

Okada Family Revocable Trust  
 Oldenburg, Ltd.  
 Pam Capital Funding GP Co. Ltd.  
 Pam Capital Funding, L.P.  
 PamCo Cayman Ltd.  
 Park West 1700 Valley View Holdco, LLC  
 Park West 2021 Valley View Holdco, LLC  
 Park West Holdco, LLC  
 Park West Portfolio Holdco, LLC  
 Participants of Highland 401K Plan  
 Patrick Willoughby-McCabe  
 PCMG Trading Partners XXIII, L.P.  
 PCMG Trading Partners XXIII, LP  
 PDK Toys Holdco, LLC  
 Pear Ridge Partners, LLC  
 Penant Management GP, LLC  
 Penant Management LP  
 PensionDanmark Holding A/S  
 PensionDanmark  
 Pensionsforsikringsaktieselskab  
 Peoria Place Development, LLC  
 (30% cash contributions - profit participation  
 only)  
 Perilune Aero Equity Holdings One, LLC  
 Perilune Aviation LLC  
 PetroCap Incentive Holdings III, L.P.  
 PetroCap Incentive Partners II GP, LLC  
 PetroCap Incentive Partners II, L.P.  
 PetroCap Incentive Partners III GP, LLC  
 PetroCap Incentive Partners III, LP  
 PetroCap Management Company LLC  
 PetroCap Partners II GP, LLC  
 PetroCap Partners II, L.P.  
 PetroCap Partners III GP, LLC  
 PetroCap Partners III, L.P.  
 Pharmacy Ventures I, LLC  
 Pharmacy Ventures II, LLC  
 Pollack, Ltd.  
 Powderhorn, LLC  
 PWM1 Holdings, LLC  
 PWM1, LLC  
 Quest IRA, Inc FBO Jennifer G. Terry, IRA  
 #1467511

Quest, IRA, Inc. FBO Joshua N. Terry, IRA  
 #1467711  
 RADCO - Bay Meadows, LLLP  
 RADCO - Bay Park, LLLP  
 RADCO NREC Bay Meadows Holdings, LLC  
 RADCO NREC Bay Park Holdings, LLC  
 Ramarim, LLC  
 Rand Advisors Series I Insurance Fund  
 Rand Advisors Series II Insurance Fund  
 Rand Advisors, LLC  
 Rand PE Fund I, L.P.  
 Rand PE Fund I, L.P. - Series 1  
 Rand PE Fund Management, LLC  
 Rand PE Holdco, LLC  
 Realdania  
 Red River CLO, Ltd.  
 Red River Investors Corp.  
 Riverview Partners SC, LLC  
 Rockwall CDO II Ltd.  
 Rockwall CDO II, Ltd.  
 Rockwall CDO, Ltd.  
 Rockwall Investors Corp.  
 Rothko, Ltd.  
 RTT Bella Solara, LLC  
 RTT Bloom, LLC  
 RTT Financial, Inc.  
 RTT Hollister, LLC  
 RTT Rockledge, LLC  
 RTT Torreyana, LLC  
 SALI Fund Partners, LLC  
 San Diego County Employees Retirement  
 Association  
 Sandstone Pasadena Apartments, LLC  
 Sandstone Pasadena, LLC  
 Santa Barbara Foundation (third party)  
 Saturn Oil & Gas LLC  
 SBC Master Pension Trust  
 Scott Matthew Siekielski  
 SE Battleground Park, LLC  
 SE Battleground Park, LLC  
 SE Glenview, LLC  
 SE Governors Green Holdings, L.L.C.

SE Governors Green Holdings, L.L.C.  
*(fka SCG Atlas Governors Green Holdings, L.L.C.)*  
 SE Governors Green I, LLC  
 SE Governors Green II, LLC  
 SE Governors Green II, LLC  
 SE Governors Green REIT, L.L.C.  
 SE Governors Green REIT, L.L.C.  
*(fka SCG Atlas Governors Green REIT, L.L.C.)*

SE Governors Green, LLC  
*(fka SCG Atlas Governors Green, L.L.C.)*  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles GP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Gulfstream Isles LP, LLC  
 SE Heights at Olde Towne, LLC  
 SE Heights at Olde Towne, LLC  
 SE Lakes at Renaissance Park GP I, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park GP II, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Lakes at Renaissance Park LP, LLC  
 SE Multifamily Holdings LLC  
 SE Multifamily Holdings, LLC  
 SE Multifamily REIT Holdings LLC  
 SE Myrtles at Olde Towne, LLC  
 SE Myrtles at Olde Towne, LLC  
 SE Oak Mill I Holdings, LLC  
 SE Oak Mill I Holdings, LLC *(fka SCG Atlas Oak Mill I Holdings, L.L.C.)*  
 SE Oak Mill I Owner, LLC *(fka SCG Atlas Oak Mill I, L.L.C.)*  
 SE Oak Mill I REIT, LLC  
 SE Oak Mill I REIT, LLC *(fka SCG Atlas Oak Mill I REIT, L.L.C.)*  
 SE Oak Mill I, LLC  
 SE Oak Mill I, LLC  
 SE Oak Mill II Holdings, LLC  
 SE Oak Mill II Holdings, LLC *(fka SCG Atlas Oak Mill II Holdings, L.L.C.)*  
 SE Oak Mill II Owner, LLC *(fka SCG Atlas Oak Mill II, L.L.C.)*

SE Oak Mill II REIT, LLC  
 SE Oak Mill II REIT, LLC *(fka SCG Atlas Oak Mill II REIT, L.L.C.)*  
 SE Oak Mill II, LLC  
 SE Oak Mill II, LLC  
 SE Quail Landing, LLC  
 SE River Walk, LLC  
 SE Riverwalk, LLC  
 SE SM, Inc.  
 SE Stoney Ridge Holdings, L.L.C. *(fka SCG Atlas Stoney Ridge Holdings, L.L.C.)*  
 SE Stoney Ridge Holdings, LLC  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge I, LLC  
 SE Stoney Ridge II, LLC  
 SE Stoney Ridge II, LLC  
 SE Stoney Ridge REIT, L.L.C. *(fka SCG Atlas Stoney Ridge REIT, L.L.C.)*  
 SE Stoney Ridge REIT, LLC  
 SE Stoney Ridge, LLC *(fka SCG Atlas Stoney Ridge, L.L.C.)*  
 SE Victoria Park, LLC  
 SE Victoria Park, LLC  
 Sentinel Re Holdings, Ltd.  
 Sentinel Reinsurance Ltd.  
 SFH1, LLC  
 SFR WLIF I, LLC  
*(fka NexPoint WLIF I, LLC)*  
 SFR WLIF II, LLC  
*(NexPoint WLIF II, LLC)*  
 SFR WLIF III, LLC  
*(NexPoint WLIF III, LLC)*  
 SFR WLIF Manager, LLC  
*(NexPoint WLIF Manager, LLC)*  
 SFR WLIF, LLC  
*(NexPoint WLIF, LLC)*  
 SFR WLIF, LLC Series I  
 SFR WLIF, LLC Series II  
 SFR WLIF, LLC Series III  
 SH Castle BioSciences, LLC  
 Small Cap Equity Sub, LLC  
 Socially Responsible Equity Sub, LLC  
 SOF Brandywine I Owner, L.P.



SOF Brandywine II Owner, L.P.  
SOF-X GS Owner, L.P.  
Southfork Cayman Holdings, Ltd.  
Southfork CLO, Ltd.  
Specialty Financial Products Designated  
Activity Company (*fka Specialty Financial  
Products Limited*)  
Spiritus Life, Inc.  
SRL Sponsor LLC  
SRL Whisperwod LLC  
SRL Whisperwood Member LLC  
SRL Whisperwood Venture LLC  
SSB Assets LLC  
Starck, Ltd.  
Stemmons Hospitality, LLC  
Steve Shin  
Stonebridge Capital, Inc.  
Stonebridge-Highland Healthcare Private  
Equity Fund  
Strand Advisors III, Inc.  
Strand Advisors IV, LLC  
Strand Advisors IX, LLC  
Strand Advisors V, LLC  
Strand Advisors XIII, LLC  
Strand Advisors XVI, Inc.  
Strand Advisors, Inc.  
Stratford CLO, Ltd.  
Summers Landing Apartment Investors, L.P.  
Term Loan B  
(10% cash contributions - profit participation  
only)  
The Dallas Foundation  
The Dallas Foundation (third party)  
The Dondero Insurance Rabbi Trust  
The Dugaboy Investment Trust  
The Dugaboy Investment Trust U/T/A Dated  
Nov 15, 2010  
The Get Good Non-Exempt Trust No. 1  
The Get Good Non-Exempt Trust No. 2  
The Get Good Trust  
The Mark and Pamela Okada Family Trust -  
Exempt Descendants' Trust

The Mark and Pamela Okada Family Trust -  
Exempt Trust #2  
The Ohio State Life Insurance Company  
The Okada Family Foundation, Inc.  
The Okada Insurance Rabbi Trust  
The SLHC Trust  
The Trustees of Columbia University in the  
City of New York  
The Twentysix Investment Trust  
(Third Party Investor)  
Thomas A. Neville  
Thread 55, LLC  
Tihany, Ltd.  
Todd Travers  
Tranquility Lake Apartments Investors, L.P.  
Tuscany Acquisition, LLC  
Uptown at Cityplace Condominium  
Association, Inc.  
US Gaming OpCo, LLC  
US Gaming SPV, LLC  
US Gaming, LLC  
Valhalla CLO, Ltd.  
VB GP LLC  
VB Holding, LLC  
VB One, LLC  
VB OP Holdings LLC  
VBAnnex C GP, LLC  
VBAnnex C Ohio, LLC  
VBAnnex C, LP  
Ventoux Capital, LLC  
(Matt Goetz)  
VineBrook Annex B, L.P.  
VineBrook Annex I, L.P.  
VineBrook Homes Merger Sub II LLC  
VineBrook Homes Merger Sub LLC  
VineBrook Homes OP GP, LLC  
VineBrook Homes Operating Partnership, L.P.  
VineBrook Homes Trust, Inc.  
VineBrook Partners I, L.P.  
VineBrook Partners II, L.P.  
VineBrook Properties, LLC  
Virginia Retirement System  
Vizcaya Investment, LLC

Wake LV Holdings II, Ltd.  
Wake LV Holdings, Ltd.  
Walter Holdco GP, LLC  
Walter Holdco I, Ltd.  
Walter Holdco, L.P.  
Warhol, Ltd.  
Warren Chang  
Westchester CLO, Ltd.  
William L. Britain  
Wright Ltd.  
Wright, Ltd.  
Yellow Metal Merchants, Inc.

004444

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES**

**AMENDED AND RESTATED  
MEMORANDUM AND ARTICLES OF ASSOCIATION**

**OF**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**



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004445

**THE COMPANIES LAW (2013 REVISION)**  
**OF THE CAYMAN ISLANDS**  
**COMPANY LIMITED BY SHARES**  
  
**AMENDED AND RESTATED**  
**MEMORANDUM OF ASSOCIATION**  
**OF**  
**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**  
**(As Adopted by Special Resolution on 1 November 2014)**

- 1 The name of the Company is **Highland Multi Strategy Credit Fund, Ltd.**
- 2 The Registered Office of the Company shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, or at such other place within the Cayman Islands as the Directors may decide.
- 3 The objects for which the Company is established are unrestricted and the Company shall have full power and authority to carry out any object not prohibited by the laws of the Cayman Islands.
- 4 The liability of each Member is limited to the amount unpaid on such Member's Shares.
- 5 The share capital of the Company is US\$50,000 divided into 100 Management Shares of US\$0.01 par value each and 49,999,000 Participating Shares of US\$0.001 par value each.
- 6 The Company has power to register by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.
- 7 Capitalised terms that are not defined in this Memorandum of Association bear the respective meanings given to them in the Articles of Association of the Company.



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004446

**THE COMPANIES LAW (2013 REVISION)  
OF THE CAYMAN ISLANDS  
COMPANY LIMITED BY SHARES  
  
AMENDED AND RESTATED  
ARTICLES OF ASSOCIATION  
OF  
HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.  
(As Adopted by Special Resolution on 1 November 2014)**

**1 Interpretation**

- 1.1 In these Articles, Table A in the First Schedule to the Statute does not apply and unless there is something in the subject or context inconsistent therewith:

<b>"Administrator"</b>	means the person, firm or corporation appointed and from time to time acting as administrator of the Company.
<b>"Articles"</b>	means these articles of association of the Company.
<b>"Auditor"</b>	means the person (if any) for the time being performing the duties of auditor of the Company.
<b>"Business Day"</b>	means any day normally treated as a business day in such places and/or on such markets as the Directors may from time to time determine.
<b>"Cayman Islands"</b>	means the British Overseas Territory of the Cayman Islands.
<b>"Class"</b>	means a separate class of Participating Share (and includes any sub-class of any such class).
<b>"Company"</b>	means the above-named Company.
<b>"Directors"</b>	means the directors for the time being of the Company.
<b>"Dollars" or "US\$"</b>	refers to the currency of the United States.
<b>"Electronic Record"</b>	has the same meaning as in the Electronic Transactions Law.





**"Electronic Transactions Law"** means the Electronic Transactions Law (2003 Revision) of the Cayman Islands.

**"Eligible Investor"** means a person eligible to hold Participating Shares, as determined from time to time by the Directors.

**"FATCA"** means:

- (i) sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated legislation, regulations or guidance, or similar legislation, regulations or guidance enacted in any jurisdiction which seeks to implement similar tax reporting and/or withholding tax regimes;
- (ii) any intergovernmental agreement, treaty, regulation, guidance or any other agreement between the Cayman Islands (or any Cayman Islands government body) and the US, the UK or any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations or guidance described in paragraph (i); and
- (iii) any legislation, regulations or guidance in the Cayman Islands that give effect to the matters outlined in the preceding paragraphs.

**"Gross Negligence"** shall have the meaning ascribed thereto under the laws of the State of Delaware, USA.

**"Investment Manager"** means the person, firm or corporation appointed and for the time being acting as the investment manager of the Company.

**"Management Share"** means a voting non participating Share in the capital of the Company of US\$0.01 par value designated as a Management Share and having the rights provided for in these Articles.

**"Master Fund"** means Highland Multi Strategy Credit Fund, L.P., or any other entity in which all, or substantially all, of the assets of the Company are invested.

**"Member"** means each person whose name is, from time to time and for the time being, entered in the Register of Members as the holder of one or more Shares.



<b>"Memorandum"</b>	means the memorandum of association of the Company.
<b>"Net Asset Value"</b>	means the value of the assets less the liabilities of the Company, or of a Separate Account (as the context may require), calculated in accordance with these Articles.
<b>"Net Asset Value per Participating Share"</b>	means the amount determined in accordance with these Articles as being the Net Asset Value per Participating Share of a particular Class and/or Series.
<b>"New Issue"</b>	has the meaning ascribed thereto by Rule 2790 adopted by the National Association of Securities Dealers, Inc.
<b>"New Issue Investment"</b>	means any New Issue acquired by the Company.
<b>"New Issue Shares"</b>	means a class of Participating Shares issued and designated as "New Issue Shares" and which may be issued in any one or more Series having the rights and restrictions set out in these Articles
<b>"Offering Memorandum"</b>	means an offering memorandum relating to Participating Shares of any Class and/or Series as amended or supplemented from time to time subject to and in accordance with these Articles.
<b>"Ordinary Resolution"</b>	means a resolution passed by a simple majority of the votes of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution.
<b>"Participating Share"</b>	means a participating redeemable Share in the capital of the Company of US\$0.001 par value and having the rights provided for in these Articles. Participating Shares may be divided into Classes in the discretion of the Directors in accordance with the provisions of these Articles and each Class may be further divided into different Series of Participating Shares and the term "Participating Share" shall include all such Classes and Series of Participating Share.
<b>"Prohibited Person"</b>	means any person who is restricted from participating in a New Issue pursuant to the Free-Riding and Withholding Interpretation adopted by the Board of Governors of the National Association of Securities Dealers Inc.
<b>"Redemption Date"</b>	means, in relation to any Class and/or Series of Participating Shares, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time, upon which a Member is entitled to require the redemption of Participating Shares



of that Class and/or Series.

<b>"Redemption Fee"</b>	means such fee (if any) payable by a Member to the Company on a redemption of Participating Shares, as the same may be determined by the Directors and disclosed to the Member at the time of its subscription for such Participating Shares.
<b>"Redemption Notice"</b>	means a notice in a form approved by the Directors by which a holder of Participating Shares is entitled to require the Company to redeem its Participating Shares.
<b>"Redemption Price"</b>	means the price determined in accordance with these Articles at which redeemable Participating Shares of the relevant Class and/or Series may be redeemed.
<b>"Register of Members"</b>	means the register of Members, which shall be maintained in accordance with the Statute and includes (except where otherwise stated) any branch or duplicate Register of Members.
<b>"Registered Office"</b>	means the registered office for the time being of the Company.
<b>"Sales Charge"</b>	means such sales charge (if any) determined by the Directors as being payable by a subscriber on a subscription for Participating Shares of any Class and/or Series.
<b>"Seal"</b>	means the common seal of the Company and includes every duplicate seal.
<b>"Separate Account"</b>	means a separate internal account of the Company which the Directors may establish and cause to be maintained in accordance with these Articles.
<b>"Series"</b>	means a separate series of Participating Share (and includes any sub-series of any such series).
<b>"Share" and "Shares"</b>	means a share or shares of any class or series in the Company, including a Management Share, a Participating Share or a New Issue Share, as well as any fraction of a Share.
<b>"Share Rights"</b>	means, with respect to the Participating Shares of any Class or Series in issue, the class rights for the time being applicable to such Participating Shares or other terms of offer for the time being applicable to such Participating Shares whether set out in the Offering Memorandum, any subscription agreement or otherwise (including any representations, warranties or other disclosure relating



to the offer or holding of such Participating Shares).

- "Special Resolution"** has the same meaning as in the Statute and includes a unanimous written resolution.
- "Statute"** means the Companies Law (2013 Revision) of the Cayman Islands.
- "Subscriber"** means the subscriber to the Memorandum.
- "Subscription Date"** means, in relation to Participating Shares of any Class and/or Series, such day or days as are set out in the Offering Memorandum or as may be specified by the Directors from time to time upon which a person may subscribe for Participating Shares of that Class and/or Series.
- "Subscription Price"** means the price determined in accordance with these Articles at which Participating Shares of the relevant Class and/or Series may be subscribed.
- "Suspension"** means a determination by the Directors to postpone or suspend (i) the calculation of the Net Asset Value of Participating Shares of any one or more Classes and/or Series (and the applicable Valuation Date) (a **"Calculation Suspension"**); (ii) the issue of Participating Shares of any one or more Classes and/or Series (and the applicable Subscription Date) (an **"Issue Suspension"**); (iii) the redemption by Members (in whole or in part) of Participating Shares of any one or more Classes and/or Series (and the applicable Redemption Date) (a **"Redemption Suspension"**); and/or (iv) the payment (in whole or in part) of any redemption proceeds (even if Valuation Dates and Redemption Dates are not postponed) (a **"Payment Suspension"**).
- "Transfer"** means, in respect of any Share, any sale, assignment, exchange, transfer, pledge, encumbrance or other disposition of that Share, and **"Transferred"** shall be construed accordingly.
- "Treasury Share"** means a Share held in the name of the Company as a treasury share in accordance with the Statute.
- "Valuation Date"** means, in relation to each Class and/or Series of Participating Shares, the day or days determined from time to time by the Directors to be the day or days on which the Net Asset Value per Participating Share of that Class and/or Series is calculated.
- "Valuation Point"** means, with respect to any Class and/or Series, the time or times on the Valuation Date of such Class and/or Series at which the Directors



determine that the Net Asset Value per Participating Share of that Class and/or Series shall be calculated.

1.2 In these Articles:

- (a) the singular number includes the plural number and vice versa;
- (b) the masculine gender includes the feminine gender;
- (c) persons includes corporations;
- (d) "written" and "in writing" include all modes of representing or reproducing words in visible form, including in the form of an Electronic Record;
- (e) "shall" shall be construed as imperative and "may" shall be construed as permissive;
- (f) references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) the term "and/or" is used herein to mean both "and" as well as "or." The use of "and/or" in certain contexts in no respects qualifies or modifies the use of the terms "and" or "or" in others. "Or" shall not be interpreted to be exclusive, and "and" shall not be interpreted to require the conjunctive — in each case, unless the context otherwise requires;
- (i) any reference to the powers of the Directors shall include, when the context admits, the service providers or any other person to whom the Directors may delegate their powers;
- (j) any requirements as to delivery under the Articles include delivery in the form of an Electronic Record;
- (k) any requirements as to execution or signature under the Articles including the execution of the Articles themselves can be satisfied in the form of an electronic signature as defined in the Electronic Transactions Law;
- (l) sections 8 and 19(3) of the Electronic Transactions Law shall not apply; and
- (m) headings are inserted for reference only and shall be ignored in construing these Articles.





## **2 Commencement of Business**

- 2.1 The business of the Company may be commenced as soon after incorporation as the Directors shall see fit.
- 2.2 The Directors may pay, out of the capital or any other monies of the Company, all expenses incurred in or about the formation and operation of the Company, including the expenses of registration and the initial offering of Participating Shares.

## **3 Service Providers**

- 3.1 The Directors may appoint any person, firm or corporation to act as a service provider to the Company (whether in general or in respect of any Class and/or Series of Shares) and may entrust to and confer upon any such service providers any of the functions, duties, powers and discretions exercisable by them as Directors, upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit. Without limiting the generality of the foregoing, such service providers may include managers, investment advisers, administrators, registrars, transfer agents, custodians and prime brokers.
- 3.2 Without prejudice to the generality of the preceding Article, the Directors may appoint any person, firm or corporation to act as the Investment Manager with respect to the assets of the Company (whether in general or in respect of any Class and/or Series of Shares). The Directors may entrust to and confer upon the Investment Manager any of the functions, duties, powers and discretions exercisable by them as Directors upon such terms and conditions (including as to remuneration payable by the Company) and with such powers of delegation, but subject to such restrictions, as they think fit.

## **4 Rights attaching to Shares**

- 4.1 The Management Shares shall have the following rights:
- (a) as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company; and
  - (b) as to capital: a Management Share shall confer upon the holder the right in a winding up to repayment of capital as provided in these Articles but shall confer no other right to participate in the profits or assets of the Company; and
  - (c) as to income: no dividends shall be payable on the Management Shares.
- 4.2 The Participating Shares shall have the following rights:



- (a) as to voting: the holder of a Participating Share shall not (in respect of such Participating Share) have the right to receive notice of, attend at or vote as a Member at any general meeting of the Company, but may vote at a separate Class meeting convened in accordance with these Articles; and
- (b) as to capital: a Participating Share shall confer upon the holder thereof the right in a winding up to participate in the surplus assets of the Company by reference to the Separate Account attributable to the relevant Class or Series of Participating Shares as provided in these Articles; and
- (c) as to income: the Participating Shares shall confer on the holders thereof the right to receive dividends as provided in these Articles.

4.3 Notwithstanding Articles 4.1(a) and 4.2(a), if the Company, in its capacity as a limited partner of the Master Fund, is called upon to approve, vote or consent to any matter to which it would be entitled to vote as a limited partner of the Master Fund and is required to seek the consent of the holders of Participating Shares in connection with any such approval, vote or consent pursuant to the constitutional documents of the Master Fund (a "**Master Fund Consent Transaction**"), each holder of a Participating Share shall have the right (in respect of such Participating Share), to the exclusion of the holders of the Management Shares (in respect of such Management Shares), to receive notice of, and vote on, the Master Fund Consent Transaction (the "**Special Voting Right**"). The voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote. For every Master Fund Consent Transaction, the Directors shall cause the Company to vote its limited partnership interest in the Master Fund proportionally for and against such matter in the same proportion that the Members holding Participating Shares voted for and against such matter pursuant to the Special Voting Right.

4.4 In relation to any Special Voting Right pursuant to Article 4.3, unless otherwise determined by the Directors in their sole discretion, the procedure in this Article 4.4 shall be invoked. The Directors shall provide written notice of the proposed Master Fund Consent Transaction to the Members holding Participating Shares and shall specify a deadline (the "**Consent Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written refusal to consent to the proposed Master Fund Consent Transaction. The holders of Participating Shares in respect of which an express written refusal to consent has not been received by the Consent Date shall be deemed to have consented in writing to the proposed Master Fund Consent Transaction.

## 5 Share Capital

5.1 Subject to these Articles, the Directors may allot, issue, grant options or warrants over, or otherwise dispose of Shares in separate classes and/or series with different terms, preferences, privileges or special rights including, without limitation, with respect to investment strategy and/or policy, participation in assets, profits and losses of the Company, voting, fees charged (including



management, performance and incentive fees), redemption privileges, allocation of costs and expenses (including, without limitation, the costs and expenses incurred in any hedging activities and any profits and losses arising therefrom) as they think proper. Subject to the Statute, these Articles and any applicable subscription agreement, any Share Rights (other than those set out in these Articles or set out in a Special Resolution) may be varied by either the Directors or by Ordinary Resolution. Notwithstanding the foregoing, the Subscriber shall have the power to:

- (a) issue one Share to itself;
- (b) transfer that Share by an instrument of transfer to any person; and
- (c) update the Register of Members in respect of the issue and transfer of that Share.

5.2 On or before the allotment of any Participating Share the Directors shall resolve the Class and/or Series to which such Participating Share shall be classified and may, prior to the issue of any Participating Share, reclassify such Participating Share. Each Class and/or Series shall be specifically identified. Subject to the Statute and these Articles, the Directors may at any time re-name any Participating Share.

5.3 Notwithstanding the currency in which the par value of the Participating Shares is denominated, the Directors may specify any currency as the currency in which the Subscription Price, Redemption Price and Net Asset Value of Participating Shares of a Class and/or Series is calculated.

5.4 The Company shall not issue Shares to bearer.

5.5 Fractional Shares may be issued.

5.6 Shares shall only be issued as fully paid-up.

5.7 No right of pre-emption or first refusal shall attach to any Shares.

5.8 New Issue Shares shall not be issued to a Prohibited Person.

## **6 Allotment and Issue of Participating Shares**

6.1 The Directors may from time to time allot and issue Participating Shares of any Class and/or Series. The Directors may, in their discretion, refuse to allot and issue any Participating Shares, and shall not issue any Participating Shares to or for the account of an investor who is not an Eligible Investor. If the Directors have declared a Calculation Suspension or Issue Suspension, no Participating Shares of that Class or Series (as appropriate) shall be issued until the relevant Suspension has ended.

6.2 The Directors shall determine the Subscription Price at the time of issue of the first issue of Participating Shares of any Class and/or Series. Thereafter, the Directors may allot and issue



Participating Shares of the same Class and/or Series on any Subscription Date provided that such additional Participating Shares are issued at a Subscription Price equal to not less than the Net Asset Value per Participating Share of such Class and/or Series calculated on the relevant Subscription Date (or if the Subscription Date is not also a Valuation Date then on the immediately preceding Valuation Date).

- 6.3 The Directors may add to the Subscription Price per Participating Share (before making any rounding adjustment) an amount which they consider to be an appropriate allowance to reflect fiscal and purchase charges which would be incurred for the account of the Company in investing an amount equal to the Subscription Price. The Directors may also add, in their discretion, a Sales Charge and/or an amount equal to any stamp duty and any other governmental taxes or charges payable by the Company with respect to the issue of such Participating Shares.
- 6.4 An applicant for Participating Shares shall pay for such Participating Shares in such currencies, in such manner, at such time, in such place and to such person acting on behalf of the Company as the Directors may from time to time determine.
- 6.5 Subject to the terms of any subscription agreement, an application for Participating Shares shall be irrevocable by an applicant for Participating Shares once it has been received by the Company. Participating Shares shall be treated as having been issued with effect from the relevant Subscription Date notwithstanding that the subscriber for those Participating Shares may not be entered in the Register of Members until after the Subscription Date.
- 6.6 Participating Shares shall be issued in such minimum numbers as the Directors may specify either generally or in any particular case; likewise the Directors may from time to time prescribe an amount as the minimum subscription amount.
- 6.7 The Directors may resolve to accept non-cash assets in satisfaction (in whole or in part) of the Subscription Price.
- 6.8 The Directors may require an applicant for Participating Shares to pay to the Company for the benefit of any selling agent such selling commissions or such organisational charges as may have been disclosed to such applicant. The Directors may differentiate between applicants as to the amount of such selling commissions or such organisational charges.
- 6.9 The Company may, in so far as the Statute permits, pay a commission to any person in consideration of that person subscribing or agreeing to subscribe whether absolutely or conditionally for any Participating Shares. Such commissions may be satisfied by the payment of cash and/or the issue of fully or partly paid-up Participating Shares. The Company may also on any issue of Participating Shares pay such brokerage as may be lawful.

## **7 Separate Accounts**

- 7.1 The Directors shall have the power to establish and maintain, with respect to Participating Shares of any Class and/or Series, a Separate Account, to record (purely as an internal accounting



matter) the allocation, on a differentiated basis, of the assets and liabilities of the Company to the holders of Participating Shares of any such Class and/or a Series in a manner consistent with the methodology set forth in the Offering Memorandum and the rights otherwise attaching to the Participating Shares.

- 7.2 The proceeds from the issue of Participating Shares of any Class and/or Series shall be applied in the books of the Company to the Separate Account established for Participating Shares of that Class and/or Series. The assets and liabilities and income and expenditure attributable to that Separate Account shall be applied to such Separate Account and, subject to the provisions of these Articles, to no other Separate Account. In the event that the assets of a Separate Account referable to any Class and/or Series are exhausted, any and all unsatisfied claims which any Members or former Members referable to that Class and/or Series have against the Company shall be extinguished. The Members or former Members referable to a Class and/or Series shall have no recourse against the assets of any other Separate Account established by the Company.
- 7.3 Where any asset is derived from another asset (whether cash or otherwise), such derivative asset shall be applied in the books of the Company to the same Separate Account as the asset from which it was derived, and on each revaluation of an asset the increase or diminution in value shall be applied to the same Separate Account and, subject to the provisions of these Articles, to no other Separate Account.
- 7.4 In the case of any asset or liability of the Company which the Directors do not consider is attributable to a particular Separate Account, the Directors shall have discretion to determine the basis upon which any such asset or liability shall be allocated between or among Separate Accounts.
- 7.5 The Directors may, in the books of the Company, allocate assets and liabilities to and from Separate Accounts if, as a result of a creditor proceeding against certain of the assets of the Company or otherwise, a liability would be borne in a different manner from that in which it would have been borne if applied under the foregoing Articles.
- 7.6 The Directors may from time to time transfer, allocate or exchange an asset or liability from one Separate Account to another Separate Account provided that at the time of such transfer, allocation or exchange the Directors form the opinion (in good faith) that the value in money or money's worth of each such asset or liability transferred, allocated or exchanged is not significantly less or more than the value in money or money's worth (referred to in these Articles as "proper value") received by the Separate Account from which such asset or liability is transferred, allocated or exchanged except only as is otherwise provided by these Articles.

## **8 Determination of Net Asset Value**

- 8.1 The Net Asset Value and Net Asset Value per Participating Share of each Class and/or Series shall be determined by or on behalf of the Directors as at the relevant Valuation Point on each relevant Valuation Date.





- 8.2 In calculating the Net Asset Value and the Net Asset Value per Participating Share, the Directors shall apply such generally accepted accounting principles as they may determine.
- 8.3 The assets and liabilities of the Company shall be valued in accordance with such policies as the Directors may determine. Absent bad faith or manifest error, any valuation made pursuant to these Articles shall be binding on all persons.
- 8.4 Unless otherwise determined by the Directors in any resolution creating a Class and/or Series of Participating Shares or as otherwise disclosed in any Offering Memorandum, the Net Asset Value per Participating Share of each Class (or Series) shall be determined by allocating *pro rata* the Net Asset Value, as at the relevant Valuation Point, of the Company and/or of the relevant Separate Account among each Class and/or Series, adjusting the amount so calculated to reflect any fees, costs, foreign exchange items or other assets or liabilities which are properly attributable to a specific Class and/or Series and then by dividing the resultant amount by the number of Participating Shares of such Class and/or Series then in issue.
- 8.5 The Directors may determine that the Net Asset Value of any Class and/or Series shall be definitively determined on the basis of estimates and that such determination shall not be modified to reflect final valuations.
- 8.6 Any expense or liability may be amortised over such period as the Directors may determine.
- 8.7 The Directors may establish such reserves as they deem reasonably necessary for Company expenses and any other contingent Company assets or liabilities, and may, upon the reversal or release of such reserves, apply any monies resulting therefrom in such manner as they may, in their absolute discretion, determine.
- 8.8 Net Asset Value per Participating Share shall be rounded to the nearest cent or such other amount as the Directors may determine and the benefit of any such roundings may be retained by the Company.
- 8.9 The Directors may cause the Company to issue new Participating Shares at par or to compulsorily redeem at par such number of Participating Shares as they consider necessary to address, in such manner as they consider equitable, any prior miscalculation of Net Asset Value or Net Asset Value per Participating Share. The Company shall not be required to pay to the holder the redemption proceeds of any such compulsorily redeemed Participating Shares, which proceeds shall be retained by the Company.

## **9 Suspensions**

- 9.1 The Directors may, from time to time, in the circumstances disclosed in the Offering Memorandum, declare a Suspension with respect to any one or more Classes and/or Series of Participating Shares.



- 9.2 The Directors shall promptly notify all affected Members of any such Suspension and shall promptly notify such Members upon termination of such Suspension.

## **10 Transfer of Shares**

- 10.1 Subject to Article 5.1, Shares may not be Transferred without the prior written approval of the Directors (which may be withheld for any or no reason) provided that the Directors may waive this requirement to the extent that they deem appropriate in connection with the listing of any Class or Series of Share on a stock exchange.
- 10.2 The Directors shall not register any Transfer of any Share to any person who is, in the opinion of the Directors, not an Eligible Investor.
- 10.3 Any proposed transferee shall provide to the Directors such information and documents as the Directors may request, including, without limitation, such documents or information as the Directors deem necessary or desirable:
- (a) to enable the Directors to determine that the proposed transferee is an Eligible Investor; and
  - (b) to enable the Company to comply with all applicable laws, including anti-money laundering laws.
- 10.4 The instrument of Transfer of any Share shall be in writing and shall be executed by or on behalf of the transferor (and, if the Directors so require, signed by or on behalf of the transferee). The transferor shall be deemed to remain the holder of a Share until the name of the transferee is entered in the Register of Members.

## **11 Transmission of Shares**

- 11.1 If a Member dies, the survivor or survivors (where the Member was a joint holder) or his or her legal personal representatives (where the Member was a sole holder) shall be the only persons recognised by the Company as having any title to the Member's interest in the Company. The death of any Member shall not operate to relieve, waive or reduce any liabilities attaching to the Member's Shares at the time of death and such liabilities shall continue to bind any survivor or survivors, or any personal representative, as the case may be.
- 11.2 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is an Eligible Investor may, upon delivery to the Directors of such evidence as may from time to time be required by them of:
- (a) such person's entitlement to such Shares; and/or
  - (b) such person's status as an Eligible Investor,



elect, either to become the holder of such Share or to have such Share Transferred to another Eligible Investor nominated by such person. If such person elects to become the holder of such Share, such person shall give notice in writing to the Directors to that effect, but the Directors shall, in either case, have the same right to decline registration of such person as a holder of such Share as they would have had in the case of a Transfer of the Share by that Member before his or her death or bankruptcy, or liquidation or dissolution, as the case may be.

- 11.3 Any person becoming entitled to a Share in consequence of the death or bankruptcy, or the liquidation or dissolution, of a Member (or in any other way than by Transfer) and who is not an Eligible Investor shall not be registered as the holder of such Share and shall promptly Transfer such Share to an Eligible Investor in accordance with these Articles.
- 11.4 A person becoming entitled to a Share by reason of the death or bankruptcy or liquidation or dissolution of the holder (or in any other case than by Transfer), and who is an Eligible Investor, shall be entitled to the same dividends and other advantages to which such person would be entitled if such person were the registered holder of such Share. However, the person shall not, before becoming a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company and the Directors may at any time give notice requiring any such person to elect either to be registered himself or to have some person nominated by him become the holder of the Share (but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the relevant Member before his death or bankruptcy or liquidation or dissolution or any other case than by transfer, as the case may be). If the notice is not complied with within ninety days the Directors may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the Share until the requirements of the notice have been complied with.

## **12 Redemption of Shares**

- 12.1 Subject to any provisions relating to a specific Class and/or Series as set out in the Offering Memorandum or these Articles or in any resolution constituting a Class and/or Series or otherwise forming part of the special rights of such Participating Shares, a Member may require the redemption of all or any of such Member's Participating Shares by serving a Redemption Notice on the Company. Unless timely receipt is waived by the Directors in a particular case, a Redemption Notice shall be required to be received on or before a Redemption Date with respect to such Participating Shares (or such number of days prior to such Redemption Date as may be determined by the Directors). Any Member redeeming Participating Shares shall submit to the Directors the share certificate (if any) issued in respect of those Participating Shares. The Company shall redeem such Participating Shares at the Redemption Price, being an amount equal to the Net Asset Value per Participating Share of the relevant Class and/or Series prevailing on the relevant Redemption Date (or if the Redemption Date is not a Valuation Date then on the immediately preceding Valuation Date) subject to any deductions, holdbacks or adjustments provided for in these Articles and/or the Offering Memorandum.



- 12.2 The Directors may deduct any Redemption Fee from the Redemption Price. The Directors may also deduct such amount which they consider to be an appropriate allowance to reflect fiscal and sale charges which would be incurred for the account of the Company in realising assets or closing out positions to provide funds to meet any redemption request.
- 12.3 A Member may not withdraw a Redemption Notice once submitted to the Company unless (a) the Directors shall have declared a Calculation Suspension or Redemption Suspension or (b) the Directors determine (in their sole discretion) to permit the withdrawal of such redemption request (which they may do in whole or in part). If a relevant Suspension has been declared by the Directors, the right of a Member to have its Participating Shares redeemed shall be suspended and during the period of Suspension the Member may withdraw its Redemption Notice. Any withdrawal of the Redemption Notice shall be made in writing and shall only be effective if actually received by the Company before the termination of the period of the Redemption Suspension or Calculation Suspension, as applicable. If the Redemption Notice is not withdrawn, any Participating Shares the redemption of which has been suspended shall be redeemed once the relevant Suspension has ended at the Redemption Price for Participating Shares of the relevant Class and/or Series calculated on the next Redemption Date following the end of the relevant Suspension.
- 12.4 The Directors may impose a gate the effect of which is to limit the redemptions of Participating Shares of any Class and/or Series or to limit the redemptions of Participating Shares held by any Member or Members as of any Redemption Date to such extent and in such manner as is disclosed in the Offering Memorandum. If the Directors determine to limit redemptions, the Directors may determine the manner in which such gated redemption requests will be dealt with on any subsequent Redemption Date.
- 12.5 If the Company is required by the laws of any relevant jurisdiction to make a withholding from any redemption monies payable to the holder of Participating Shares the amount of such withholding shall be deducted from the redemption monies otherwise payable to such person.
- 12.6 No redemption of part of a Member's holding of Participating Shares of any one Class and/or Series may be made if, as a result thereof, such Member would hold fewer Participating Shares of such Class and/or Series than such minimum number or value of Participating Shares of such Class and/or Series as may from time to time be specified (either generally or in any particular case or cases) by the Directors. If such partial redemption would reduce such Member's holding of Participating Shares to less than such minimum holding, the Directors may, in their discretion, elect to compulsorily redeem all of such Member's Participating Shares.
- 12.7 The Company may, in the absolute discretion of the Directors, refuse to make a redemption payment to a Member if the Directors suspect or are advised that the payment of any redemption proceeds to such Member may result in a breach or violation of any anti-money laundering law by any person in any relevant jurisdiction, or if such refusal is necessary to ensure the compliance by the Company, its Directors, the Administrator or any other service provider of the Company with any anti-money laundering law in any relevant jurisdiction.





- 12.8 Any amount payable to a Member for the redemption of Participating Shares shall be paid in such currency or currencies as the Directors may determine. Subject to any Payment Suspension, the Company shall remit redemption proceeds (net of the costs of remittance) by cheque or wire transfer within such period or periods as the Directors shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period or periods as the Directors shall determine. In the absence of directions as to payment the Company may remit redemption proceeds by cheque to the address of the Member appearing on the Register of Members or by wire transfer to such account as the Directors deem appropriate in the circumstances. The Company shall not be liable for any loss resulting from this procedure.
- 12.9 On any redemption of Participating Shares the Directors shall have the power to satisfy (in whole or in part) the Redemption Price (and any other sums payable on redemption as provided in these Articles) owing on the redemption of such Participating Shares by dividing *in specie* the whole or any part of the assets of the Company (including, without limitation, shares, debentures, or securities of any other company whether or not held by the Company on the Redemption Date in question) and either (i) distributing such assets directly to the redeeming shareholder, and/or (ii) distributing or allocating such assets to a liquidating account or other similar mechanism to be managed and/or liquidated at the discretion of the Directors.
- 12.10 Participating Shares shall be treated as having been redeemed with effect from the relevant Redemption Date irrespective of whether or not a Member has been removed from the Register of Members or the Redemption Price has been determined or remitted. Accordingly, on and from the relevant Redemption Date, Members in their capacity as such will not be entitled to or be capable of exercising any rights arising under these Articles with respect to Participating Shares being redeemed (including any right to receive notice of, attend or vote at any meeting of the Company) save the right to receive the Redemption Price and any dividend which has been declared prior to the relevant Redemption Date but not yet paid (in each case with respect to the Participating Shares being redeemed). Such Members will be treated as creditors of the Company with respect to the Redemption Price and will rank accordingly in the priority of the Company's creditors.
- 12.11 Once a Participating Share is redeemed it shall be available for re issue and, until re issue, shall form part of the authorised and unissued share capital of the Company.
- 12.12 Upon the written request of a Member or prospective Member in a form acceptable to the Directors, the Company may, in the discretion of the Directors, accept a standing redemption request from such Member or prospective Member pursuant to which the Company shall agree (without assuming any liability for failing to do so) to use its commercially reasonable efforts to redeem such Member's Participating Shares to the extent necessary to ensure that such Member does not own over a specified percentage of the outstanding Participating Shares of the Company or any Class and/or Series thereof; such percentage to be the percentage identified by such Member or prospective Member in such written request as being the percentage which such Member's or prospective Member's ownership cannot exceed without material risk of such





Member or prospective Member being in violation of applicable law or regulation. Any such written request may be revoked by notice in writing to the Company from the affected Member.

- 12.13 No amendment to these Articles made after a Redemption Date shall affect a Member with respect to Participating Shares of that Member which have been redeemed, or are being treated as redeemed, on or prior to that Redemption Date.
- 12.14 Unless otherwise provided in the Offering Memorandum, unremitted redemption proceeds shall not bear interest against the Company and redeemed Participating Shares shall not participate in the profits and losses of the Company with effect from the relevant Redemption Date.

### 13 Compulsory Redemption

- 13.1 The Directors may cause the Company to redeem any or all of the Participating Shares held by any person at the appropriate Redemption Price in the circumstances disclosed in the Offering Memorandum. If the Directors determine compulsorily to redeem any Participating Shares under this Article they shall give the holder of the Participating Shares such notice of the redemption as they shall have disclosed to the Member at the time of its subscription for Participating Shares or, in the absence of any such disclosure, within such period as the Directors shall determine.
- 13.2 The Directors may cause a compulsory redemption during any period for which a Redemption Suspension has been declared.
- 13.3 Without prejudice to the generality of the foregoing, the Company may (without notice) compulsorily redeem the Participating Shares of any Member and, on behalf of such Member, apply the proceeds of redemption in paying for new Participating Shares to give effect to any exchange, conversion or roll-up policy disclosed to Members pursuant to which Participating Shares of one Class or Series (the "**Old Shares**") may, at the option of the Company, be exchanged for Participating Shares of another Class or Series (the "**New Shares**") by means of the redemption of the Old Shares and the immediate re-subscription of the redemption proceeds in paying up the New Shares.

### 14 FATCA

- 14.1 Notwithstanding any other Article, in order to comply with FATCA, any Director shall be entitled to release and/or disclose on behalf of the Company to the Cayman Islands Tax Information Authority or equivalent authority (the "**TIA**") and any other foreign government body as required by FATCA, any information in its or its agents' or delegates' possession regarding a Member including, without limitation, financial information concerning the Member's investment in the Company, and any information relating to any shareholders, principals, partners, beneficial owners (direct or indirect) or controlling persons (direct or indirect) of such Member. Any such Director may also authorise any third party agent, including but not limited to, the Investment Manager or Administrator, to release and/or disclose such information on behalf of the Company.



- 14.2 In order to comply with FATCA and, if necessary, to reduce or eliminate any risk that the Company or its Members are subject to withholding taxes pursuant to FATCA or incur any costs or liabilities associated with FATCA, the Directors may cause the Company to undertake any of the following actions:
- (a) compulsorily redeem any or all of the Shares held by a Member either (i) where the Member fails to provide (in a timely manner) to the Company, or any agent or delegate of the Company, including but not limited to, the Investment Manager or the Administrator, any information requested by the Company or such agent or delegate pursuant to FATCA; or (ii) where there has otherwise been non-compliance by the Company with FATCA whether caused, directly or indirectly, by the action or inaction of such Member, or any related person, or otherwise;
  - (b) deduct from, or hold back, redemption or repurchase proceeds, dividend payments or any other distributions, in order to:
    - (i) comply with any requirement to apply and collect withholding tax pursuant to FATCA;
    - (ii) allocate to a Member an amount equal to any withholding tax imposed on the Company as a result of the Member's, or any related person's, action or inaction (direct or indirect), or where there has otherwise been non-compliance by the Company with FATCA;
    - (iii) ensure that any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) are recovered from the Member(s) whose action or inaction (directly or indirectly, including the action or inaction of any person related to such Member) gave rise or contributed to such costs or liabilities;
  - (c) in order to give effect to the requirements imposed upon the Company by FATCA, including the actions contemplated by articles 14.2(a) and 14.2(b), the Directors may:
    - (i) create separate classes and/or series of Shares ("**FATCA Shares**"), with such rights and terms as the Directors may in their sole discretion determine, and following the compulsory redemption of some or all of a Member's Shares may immediately apply such redemption proceeds in subscribing for such number of FATCA Shares as the Directors determine; and/or
    - (ii) may re-name any number of Shares (whether issued or unissued) as FATCA Shares, create a Separate Account with respect to such FATCA Shares and apply any FATCA related costs, debts, expenses, obligations or liabilities (whether external, or internal, to the Company) to such Separate Account; and/or



- (iii) allocate any FATCA costs, debts, expenses, obligations, liabilities or withholding tax among Separate Accounts on a basis determined solely by the Directors; and/or
- (iv) adjust the Net Asset Value per Share of any relevant Shares (including any FATCA Share).

## 15 Designated Investments

- 15.1 The Directors may, in their discretion, classify certain of the Company's investments which are deemed by the Directors or the Investment Manager to be illiquid or the value of which is not readily or reliably ascertainable or which may have a relatively long-term investment horizon as "**Designated Investments**". Once so classified, Designated Investments may, in the discretion of the Directors, be represented by a separate Class and/or Series of Participating Shares which, unless otherwise determined by the Directors, shall be allotted only to those Members who are holders of Participating Shares at the time of such designation. The gains and losses attributable to Designated Investments may, in the discretion of the Directors, be segregated and separately calculated and attributed amongst Members holding Shares of the relevant Class or Series in such manner as is consistent with the relevant provisions of the Offering Memorandum. Participating Shares of any such separate Class and/or Series may be issued by way of bonus or by way of conversion or exchange of all or part of a Member's holding of Participating Shares of another Class and/or Series. Similarly, Shares of a Designated Investment Class and/or Series may be converted or exchanged back into Participating Shares of the original Class and/or Series upon the Directors making a determination that the relevant investment no longer qualifies as a Designated Investment. The power to convert or exchange Participating Shares of one Class and/or Series into Participating Shares of another Class and/or Series may be effected by the Directors in any manner permitted by the Statute and the Articles, including the compulsory redemption of Participating Shares of one Class and/or Series and the application of the proceeds of redemption in subscribing for Participating Shares of the other Class and/or Series or by redesignating a portion of the Participating Shares of any existing Class and/or Series as thereafter belonging to a new Class and/or Series. Shares of a Class or Series of Shares which represent Designated Investments shall not, unless the Directors otherwise determine, be redeemable at the option of the Members holding such Participating Shares. Where investments are classified as Designated Investments and Participating Shares of a separate Class and/or Series are issued by way of bonus, the requirement of these Articles to ensure proper value is transferred to the Separate Account of the Participating Shares of the original Class and/or Series to which such investments were originally allocated shall not apply.

## 16 Purchase and Surrender of Shares

- 16.1 Subject to the provisions of the Statute and without prejudice to these Articles, the Company may purchase its own Shares (including any redeemable Shares) in such manner and on such other terms as the Directors may agree with the relevant Member.



16.2 The Company may make a payment in respect of the redemption or purchase of its own Shares in any manner permitted by the Statute, including out of capital.

16.3 The Directors may accept the surrender for no consideration of any fully paid Share.

## 17 Treasury Shares

17.1 The Directors may, prior to the purchase, redemption or surrender of any Share, determine that such Share shall be held as a Treasury Share.

17.2 The Directors may determine to cancel a Treasury Share or transfer a Treasury Share on such terms as they think proper (including, without limitation, for nil consideration).

## 18 Variation of Share Rights

18.1 Subject to the Statute, these Articles and any applicable subscription agreement, all or any of the Share Rights applicable to any Class or Series of Participating Shares in issue (unless otherwise provided by the terms of issue of those Participating Shares) may (whether or not the Company is being wound up) be varied without the consent of the holders of the issued Participating Shares of that Class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation may be made with the prior consent in writing of the holders of not less than two-thirds by Net Asset Value of such Participating Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Participating Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any such variation may not have a material adverse effect, to obtain consent from the holders of such Participating Shares. To any such meeting all the provisions of these Articles as to general meetings shall *mutatis mutandis* apply, but so that any holder of a Participating Share present in person or by proxy may demand a poll, and the quorum for any such meeting shall be Members holding not less than twenty per cent. by Net Asset Value of the issued Participating Shares of the relevant Class or Series. At any Class meeting, the voting rights attributable to each Participating Share shall be calculated by reference to the Net Asset Value per Participating Share (calculated as at the most recent Valuation Date) and not on the basis of one Participating Share, one vote.

18.2 For the purposes of a Class consent, the Directors may treat two or more or all the Classes or Series of Participating Shares as forming one Class or Series if the Directors consider that such Classes or Series would be affected in the same way by the proposals under consideration, but in any other case shall treat them as separate Classes or Series.

18.3 Where the Shares of any Class or Series (the "**First Class**") rank, or will on issue rank, *pari passu* with the Shares of another Class or Series (the "**Second Class**") with respect to participation in the same pool of profits or assets of the Company on a winding up, the rights of the First Class shall be deemed to be varied by any variation of or creation of rights in the Second





Class (including on initial issue) which gives the Second Class priority over the First Class on a winding up of the Company.

- 18.4 Subject to the foregoing Articles, the Share Rights applicable to any Class or Series of Shares in issue shall (unless otherwise expressly provided by the conditions of issue of such Shares) be deemed not to be varied by:
- (a) the creation, allotment or issue of further Shares ranking pari passu therewith and which may be issued with the benefit of the terms referred to below;
  - (b) the purchase or redemption of any Shares;
  - (c) the exercise of the powers to allocate assets and charge liabilities to the various Separate Accounts or any of them and to transfer the same to and from the various Separate Accounts or any of them, as provided for in these Articles;
  - (d) any reduction or waiver of any fees (including early redemption, management or performance fees) chargeable or allocable to any Class or Series of Shares;
  - (e) any reduction or waiver of any redemption notice, gate or lock-up period applicable to any Class or Series of Shares; or
  - (f) any variation or waiver contemplated by or provided for in the Offering Memorandum applicable to the relevant Class and/or Series.
- 18.5 In relation to any Class or Series consent required pursuant to Article 18.1, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice of the proposed variation (the "**Proposal**") to the Members of the affected Class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such Members may submit a written request for redemption of some or all of their Participating Shares of the affected Class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Participating Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under Article 18.1 with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favour of the Proposal on the Effective Date.





## 19 Variation of Terms

The Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a Member to waive or modify the terms applicable to such Member's subscription for Participating Shares (including those relating to management and performance fees and redemption terms) without obtaining the consent of any other Member; provided that such waiver or modification does not amount to a variation of the rights attaching to the Participating Shares of such other Members.

## 20 Certificates for Shares

- 20.1 A Member shall only be entitled to a share certificate if the Directors resolve that share certificates shall be issued. Share certificates representing Shares, if any, shall be in such form as the Directors may determine. Share certificates shall be signed by one or more Directors or another person authorised by the Directors. The Directors may authorise certificates to be issued with the authorised signature(s) affixed by mechanical process. All certificates for Shares shall be consecutively numbered or otherwise identified and shall specify the Shares to which they relate. All certificates surrendered to the Company for transfer shall be cancelled and, subject to these Articles, no new certificate shall be issued until the former certificate representing a like number of relevant Shares shall have been surrendered and cancelled.
- 20.2 The Company shall not be bound to issue more than one certificate for Shares held jointly by more than one person and delivery of a certificate to one joint holder shall be a sufficient delivery to all of them.
- 20.3 If a share certificate is defaced, worn out, lost or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and on the payment of such expenses reasonably incurred by the Company in investigating evidence, as the Directors may prescribe, and (in the case of defacement or wearing out) on delivery up of the old certificate.

## 21 Register of Members

- 21.1 The Company shall maintain or cause to be maintained the Register of Members.
- 21.2 The Directors may determine that the Company shall maintain one or more branch registers of Members in accordance with the Statute. The Directors may also determine which register of Members shall constitute the principal register and which shall constitute the branch register or registers, and to vary such determination from time to time.

## 22 Closing Register of Members and Fixing Record Date

- 22.1 For the purpose of determining Members entitled to notice of, or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any dividend, or in order to make a determination of Members for any other proper purpose, the Directors may provide that the Register of Members shall be closed for transfers for a stated period which shall not in any case exceed thirty days.



- 22.2 In lieu of, or apart from, closing the Register of Members, the Directors may fix in advance or arrears a date as the record date for any such determination of Members entitled to notice of, or to vote at any meeting of the Members or any adjournment thereof, or for the purpose of determining the Members entitled to receive payment of any dividend or in order to make a determination of Members for any other proper purpose.
- 22.3 If the Register of Members is not so closed and no record date is fixed for the determination of Members entitled to notice of, or to vote at, a meeting of Members or Members entitled to receive payment of a dividend, the date on which notice of the meeting is sent or the date on which the resolution of the Directors declaring such dividend is passed, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Article, such determination shall apply to any adjournment thereof.

### **23 Non Recognition of Trusts**

The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provided by these Articles or the Statute) any other rights in respect of any Share other than an absolute right to the entirety thereof in the registered holder.

- 23.1 if it is not paid all the provisions of these Articles shall apply as if that amount had become due and payable by virtue of a call.
- 23.2 The Directors may issue Shares with different terms as to the amount and times of payment of calls, or the interest to be paid.
- 23.3 The Directors may, if they think fit, receive an amount from any Member willing to advance all or any part of the monies uncalled and unpaid upon any Shares held by it, and may (until the amount would otherwise become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying such amount in advance.
- 23.4 No such amount paid in advance of calls shall entitle the Member paying such amount to any portion of a dividend declared in respect of any period prior to the date upon which such amount would, but for such payment, become payable.

### **24 Lien on Shares**

- 24.1 The Company shall have a first and paramount lien on all Shares (whether fully paid-up or not) registered in the name of a Member (whether solely or jointly with others) for all debts, liabilities or engagements to or with the Company (whether presently payable or not) by such Member or such Member's estate, either alone or jointly with any other person, whether a Member or not, but the Directors may at any time declare any Share to be wholly or in part exempt from the provisions of this Article. The registration of a Transfer of any such Share shall operate as a waiver of the Company's lien thereon. The Company's lien on a Share shall also extend to any amount payable in respect of that Share.



- 24.2 The Company may sell, in such manner as the Directors think fit, any Shares on which the Company has a lien, if a sum in respect of which the lien exists is presently payable, and is not paid within fourteen clear days after notice has been given to the holder of the Shares, or to the person entitled to it in consequence of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the Shares may be sold.
- 24.3 To give effect to any such sale the Directors may authorise any person to execute an instrument of Transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The purchaser or such purchaser's nominee shall be registered as the holder of the Shares comprised in any such Transfer, and the purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the sale or the exercise of the Company's power of sale under these Articles.
- 24.4 The net proceeds of such sale after payment of costs, shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and any balance shall (subject to a like lien for sums not presently payable as existed upon the Shares before the sale) be paid to the person entitled to the Shares at the date of the sale.

## **25 Amendments of Memorandum and Articles and Alteration of Capital**

- 25.1 The Company may, by Ordinary Resolution:
- (a) increase its share capital by such sum and with such rights, priorities and privileges annexed thereto, as the resolution shall prescribe;
  - (b) consolidate and divide all or any of its share capital into Shares of larger amount than its existing Shares;
  - (c) by subdivision of its existing Shares or any of them divide the whole or any part of its share capital into Shares of smaller amount than is fixed by the Memorandum; and
  - (d) cancel any Shares that at the date of the passing of the resolution have not been taken or agreed to be taken by any person.
- 25.2 All new Shares created in accordance with the provisions of the preceding Article shall be subject to the same provisions of these Articles with reference to liens, Transfer, transmission and otherwise as the Shares in the original share capital.
- 25.3 Subject to the provisions of the Statute and the provisions of these Articles as regards the matters to be dealt with by Ordinary Resolution the Company may, by Special Resolution:
- (a) change its name;
  - (b) alter or add to these Articles;



- (c) alter or add to the Memorandum with respect to any objects, powers or other matters specified therein; and
- (d) reduce its share capital or any capital redemption reserve fund.

## **26 Registered Office**

Subject to the provisions of the Statute, the Company may by resolution of the Directors change the location of its Registered Office. The Company may, in addition to its Registered Office, maintain such other offices or places of business as the Directors determine.

## **27 General Meetings**

- 27.1 All general meetings other than annual general meetings shall be called extraordinary general meetings. The Directors may call general meetings.
- 27.2 The Company may but shall not be obliged to hold a general meeting in each year as its annual general meeting, and shall specify the meeting as such in the notice calling it. Any annual general meeting shall be held at such time and place as the Directors shall determine.

## **28 Notice of General Meetings**

- 28.1 At least five Business Days' notice shall be given of any general meeting. Every notice shall be exclusive of the day on which it is given or deemed to be given and of the day on which the meeting is to be held and shall specify the place, the day and the hour of the meeting and the general nature of the business and shall be given in the manner hereinafter mentioned or in such other manner if any as may be prescribed by the Company, provided that a general meeting of the Company shall, whether or not the notice specified in this Article has been given and whether or not the provisions of these Articles regarding general meetings have been complied with, be deemed to have been duly convened if it is so agreed:
  - (a) in the case of an annual general meeting, by all the Members entitled to attend and vote thereat; and
  - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent. in par value of the Shares giving that right.
- 28.2 The accidental omission to give notice of a general meeting to, or the non receipt of notice of a meeting by, any person entitled to receive notice thereof shall not invalidate the proceedings of that meeting.

## **29 Proceedings at General Meetings**

- 29.1 No business shall be transacted at any general meeting unless a quorum is present. A quorum shall be one or more Members (present in person, by proxy or authorised corporate

representative, as the case may be) entitled to attend and vote and representing not less than twenty per cent. in par value of all of the Shares in issue and carrying the right to vote at the meeting.

- 29.2 A person may, with the consent of the Directors, participate at a general meeting by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other. Participation by a person in a general meeting in this manner is treated as presence in person at that meeting.
- 29.3 A resolution (including a Special Resolution) in writing (in one or more counterparts) signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or, being corporations or other non-natural persons, signed by their duly authorised representatives) shall be as valid and effective as if the resolution had been passed at a general meeting of the Company duly convened and held.
- 29.4 If a quorum is not present within half an hour from the time appointed for the meeting or if during such a meeting a quorum ceases to be present, the meeting, if convened upon the requisition of Members, shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time or such other place as the Directors may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
- 29.5 The chairman, if any, of the board of Directors shall preside as chairman at every general meeting of the Company, or if there is no such chairman, or if the chairman shall not be present within fifteen minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairman of the meeting.
- 29.6 If no Director is willing to act as chairman, or if no Director is present within fifteen minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairman of the meeting.
- 29.7 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a general meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Otherwise it shall not be necessary to give any such notice.
- 29.8 A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands, the chairman or any Member present in person or by proxy (or in the case of a non-natural person, by its duly authorised representative or by proxy) demands a poll.
- 29.9 Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost or not carried by a particular majority,





an entry to that effect in the minutes of the proceedings of the meeting shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 29.10 The demand for a poll may be withdrawn.
- 29.11 Except on a poll demanded on the election of a chairman or on a question of adjournment, a poll shall be taken as the chairman directs, and the result of the poll shall be deemed to be the resolution of the general meeting at which the poll was demanded.
- 29.12 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the general meeting directs, and any business other than that upon which a poll has been demanded or is contingent thereon may proceed pending the taking of the poll.
- 29.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall not be entitled to a second or casting vote.

### **30 Votes of Members**

- 30.1 Subject to any rights or restrictions attached to any Shares, on a show of hands every Member holding Shares carrying the right to vote on the matter in question who (being an individual) is present in person or by proxy or (if a corporation or other non-natural person) is present by its duly authorised representative or by proxy, shall have one vote and on a poll every such Member shall have one vote for every Share of which he is the holder.
- 30.2 In the case of joint holders of record, the vote of the senior holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders. Seniority among joint holders shall be determined by the order in which the names of the holders stand in the Register of Members.
- 30.3 A Member of unsound mind, or in respect of whom an order has been made by any court or authority having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the Member's committee, receiver, curator bonis, or other similar person appointed on such Member's behalf by that court or authority and any such committee, receiver, curator bonis or other similar person may vote by proxy.
- 30.4 No person shall be entitled to vote at any general meeting unless such person is registered as a Member on the record date for such meeting, nor unless all calls or other monies then payable by such person in respect of such Shares have been paid.
- 30.5 No objection shall be raised to the qualification of any voter except at the general meeting or adjourned general meeting at which the vote objected to is purported to be given or tendered and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.



- 30.6 On a poll or on a show of hands votes may be cast either personally or by proxy. A Member may appoint more than one proxy or the same proxy under one or more instruments to attend and vote at a meeting. Where a Member appoints more than one proxy the instrument of proxy shall state which proxy is entitled to vote on a show of hands.
- 30.7 A Member holding more than one Share need not cast the votes in respect of its Shares in the same way on any resolution and therefore may vote a Share or some or all such Shares either for or against a resolution and/or abstain (any such abstentions to count neither for nor against the resolution) from voting a Share or some or all of the Shares and, subject to the terms of the instrument appointing it, a proxy appointed under one or more instruments may vote a Share or some or all of the Shares in respect of which such proxy is appointed either for or against a resolution and/or abstain from voting.

### **31 Proxies**

- 31.1 The instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of such appointor's attorney duly authorised in writing or, if the appointor is a corporation or other non-natural person, under the hand of an officer or other person duly authorised for that purpose. A proxy need not be a Member of the Company.
- 31.2 The Directors may, in the notice convening any meeting or adjourned meeting, or in an instrument of proxy sent out by the Company, specify the place and the time (being not later than the time for holding the meeting or adjourned meeting to which the proxy relates) at which the instrument appointing a proxy shall be deposited. In the absence of any such direction from the Directors in the notice convening any meeting or adjourned meeting, the instrument appointing a proxy shall be deposited at the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 31.3 The chairman may in any event, at the chairman's discretion, declare that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted and which has not been declared to have been duly deposited by the chairman, shall be invalid.
- 31.4 The instrument appointing a proxy may be in any usual or common form and may be incorporated within any subscription agreement or other document signed by or on behalf of the Member. An instrument appointing a proxy may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked. An instrument appointing a proxy shall be deemed to include the power to demand or join or concur in demanding a poll.
- 31.5 Votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the Transfer of the Share in respect of which the proxy is given unless notice in writing of such death, insanity, revocation or Transfer was received by the



Company at the Registered Office before the commencement of the general meeting, or adjourned meeting at which it is sought to use the proxy.

### **32 Corporate Members**

Any corporation or other non-natural person which is a Member of the Company may in accordance with its constitutional documents, or in the absence of such provision by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Members, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as the corporation could exercise if it were an individual Member.

### **33 Shares Beneficially Owned by the Company**

Shares of the Company that are beneficially owned by the Company shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding Shares at any given time.

### **34 Directors**

There shall be a board of Directors consisting of not less than one person (exclusive of alternate Directors) provided however that the Company may from time to time by Ordinary Resolution increase or reduce the limits in the number of Directors. The first Directors of the Company shall be determined in writing by, or appointed by a resolution of, the Subscriber.

### **35 Powers of Directors**

- 35.1 Subject to the provisions of the Statute, the Memorandum and the Articles and to any directions given by Special Resolution, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company. No alteration of the Memorandum or these Articles and no such direction shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or that direction had not been given. A duly convened meeting of Directors at which a quorum is present may exercise all powers exercisable by the Directors.
- 35.2 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for monies paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the Directors shall determine by resolution.
- 35.3 The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital or any part thereof and to issue debentures, debenture stock, mortgages, bonds and other such securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. Notwithstanding the foregoing, the Directors shall not exercise the powers specified in this Article in breach of any limits or restrictions specified in the Offering Memorandum.



### **36 Appointment and Removal of Directors**

- 36.1 The Company may, by Ordinary Resolution, appoint any person to be a Director and may, by Ordinary Resolution, remove any Director.
- 36.2 The Directors may appoint any person to be a Director, either to fill a vacancy or as an additional Director provided that the appointment does not cause the number of Directors to exceed any number fixed by or in accordance with these Articles as the maximum number of Directors.

### **37 Vacation of Office of Director**

The office of a Director shall be vacated if:

- (a) the Director gives notice in writing to the Company that such Director resigns the office of Director;
- (b) the Director is absent (without being represented by proxy or an alternate Director appointed by such Director) from three consecutive meetings of the board of Directors without special leave of absence from the Directors, and they pass a resolution that such Director has by reason of such absence vacated office;
- (c) the Director dies, becomes bankrupt or makes any arrangement or composition with such Director's creditors generally;
- (d) the Director is or becomes of unsound mind;
- (e) the Director ceases to be a Director by virtue of, or is prohibited from being a Director by, an order made pursuant to any law or regulation binding on the Company; or
- (f) all the other Directors of the Company (being not less than two in number) resolve that such Director should be removed as a Director.

### **38 Proceedings of Directors**

- 38.1 The quorum for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall be two if there are two or more Directors, and shall be one if there is only one Director. A person who holds office as an alternate Director shall, if such person's appointor is not present, be counted in the quorum. A Director who also acts as an alternate Director shall, if such Director's appointor is not present, count twice towards the quorum.
- 38.2 Subject to the provisions of these Articles, the Directors may regulate their proceedings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall not have a second or casting vote. A Director who is also an alternate Director shall be entitled in the absence of such Director's appointor to a separate vote on behalf of such Director's appointor in addition to such Director's own vote.



- 38.3 A person may participate in a meeting of the Directors or any committee of Directors by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the Directors, the meeting shall be deemed to be held at the place where the chairman is located at the start of the meeting.
- 38.4 A resolution in writing (in one or more counterparts) signed by all the Directors or all the members of a committee of Directors (an alternate Director being entitled to sign such a resolution on behalf of such alternate Director's appointor) shall be as valid and effectual as if it had been passed at a meeting of the Directors, or committee of Directors as the case may be, duly convened and held.
- 38.5 A Director or alternate Director may, or other officer of the Company at the direction of a Director or alternate Director may call a meeting of the Directors by at least two days' notice in writing to every Director and alternate Director which notice shall set forth the general nature of the business to be considered unless notice is waived by all the Directors (or their alternates) either at, before or after the meeting is held.
- 38.6 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Articles as the necessary quorum of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number, or of summoning a general meeting of the Company, but for no other purpose.
- 38.7 The Directors may elect a chairman of their board and determine the period for which the chairman is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman of the meeting.
- 38.8 All acts done by any meeting of the Directors or of a committee of Directors (including any person acting as an alternate Director) shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or alternate Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and qualified to be a Director or alternate Director as the case may be.
- 38.9 A Director but not an alternate Director may be represented at any meetings of the board of Directors by a proxy appointed in writing by such Director. The proxy shall count towards the quorum and the vote of the proxy shall for all purposes be deemed to be that of the appointing Director.

### 39 Presumption of Assent

A Director who is present at a meeting of the board of Directors at which action on any Company matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless the Director shall file such





Director's written dissent from such action with the person acting as the chairman or secretary of the meeting before the close or adjournment thereof or shall forward such dissent by personal delivery, courier or registered post to such person immediately after the close or adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favour of such action.

#### **40 Directors' Interests**

- 40.1 A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with such Director's office of Director for such period and on such terms as to remuneration and otherwise as the Directors may determine.
- 40.2 A Director may act alone or by such Director's firm in a professional capacity for the Company and the Director or such Director's firm shall be entitled to remuneration for professional services as if such Director were not a Director or alternate Director.
- 40.3 A Director or alternate Director of the Company may be or become a director or other officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director or alternate Director shall be accountable to the Company for any remuneration or other benefits received by such Director or alternate Director as a director or officer of, or from such Director or alternate Director's interest in, such other company.
- 40.4 No person shall be disqualified from the office of Director or alternate Director or prevented by such office from contracting with the Company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or transaction entered into by or on behalf of the Company in which any Director or alternate Director shall be in any way interested be or be liable to be avoided, nor shall any Director or alternate Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or transaction by reason of such Director holding office or of the fiduciary relationship thereby established. A Director (or such Director's alternate Director in such Director's absence) shall be at liberty to vote in respect of any contract or transaction in which such Director is interested provided that the nature of the interest of any Director or alternate Director in any such contract or transaction shall be disclosed by such Director at or prior to such Director's consideration and any vote thereon.
- 40.5 A general notice that a Director or alternate Director is a shareholder, director, officer or employee of any specified firm or company and is to be regarded as interested in any transaction with such firm or company shall be sufficient disclosure for the purposes of voting on a resolution in respect of a contract or transaction in which such Director has an interest, and after such general notice it shall not be necessary to give special notice relating to any particular transaction.

#### **41 Minutes**

The Directors shall cause minutes to be made in books kept for the purpose of recording all appointments of officers made by the Directors, all proceedings at meetings of the Company or



the holders of any Class of Shares and of the Directors, and of committees of Directors including the names of the Directors or alternate Directors present at each meeting.

#### **42 Delegation of Directors' Powers**

- 42.1 The Directors may delegate any of their powers to any committee consisting of one or more Directors or such other persons as the Directors may designate. They may also delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by such managing director or any Director provided that an alternate Director may not act as managing director and the appointment of a managing director shall be revoked forthwith if such managing director ceases to be a Director. Any such appointment may be made subject to any conditions the Directors may impose, and either collaterally with or to the exclusion of their own powers, and may be revoked or altered. Subject to any such conditions, the proceedings of a committee of Directors shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.2 The Directors may establish any committees, local boards or agencies or appoint any person to be a manager or agent for managing the affairs of the Company and may appoint any person to be a member of such committees or local boards. Any such appointment may be made either collaterally with or to the exclusion of the Directors' powers, shall be subject to any conditions the Directors may impose, and may be revoked or altered. Subject to any such conditions, the proceedings of any such committee, local board or agency shall be governed by these Articles regulating the proceedings of Directors, so far as they are capable of applying.
- 42.3 The Directors may by power of attorney or otherwise appoint any company, firm, person or body of persons to be the attorney or authorised signatory of the Company for such purpose and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney or other appointment may contain such provisions for the protection and convenience of persons dealing with any such attorneys or authorised signatories as the Directors may think fit and may also authorise any such attorney or authorised person to delegate all or any of the powers, authorities and discretions vested in such attorney or authorised person.
- 42.4 The Directors may appoint such officers as they consider necessary on such terms, at such remuneration (if any) and to perform such duties, and subject to such provisions as to disqualification and removal as the Directors may think fit. Unless otherwise specified in the terms of such officer's appointment an officer may be removed by resolution of the Directors or Members.

#### **43 Alternate Directors**

- 43.1 Any Director (other than an alternate Director) may by written notice to the Company appoint any other Director, or any other person willing to act, to be an alternate Director and by written notice to the Company may remove from office an alternate Director so appointed by the Director.



- 43.2 An alternate Director shall be entitled to receive notice of all meetings of Directors and of meetings of committees of Directors of which such alternate Director's appointor is a member, to attend and vote at every such meeting at which the Director appointing such alternate Director is not personally present, and generally to perform all the functions of such alternate Director's appointor as a Director in such Director's absence.
- 43.3 An alternate Director shall cease to be an alternate Director if such alternate Director's appointor ceases to be a Director.
- 43.4 Any appointment or removal of an alternate Director shall be by notice to the Company signed by the Director making or revoking the appointment or in any other manner approved by the Directors.
- 43.5 Subject to the provisions of the Articles, an alternate Director shall be deemed for all purposes to be a Director and shall alone be responsible for such alternate Director's own acts and defaults and shall not be deemed to be the agent of the Director appointing such alternate Director.

#### **44 No Minimum Shareholding for Directors**

The Company in general meeting may fix a minimum shareholding required to be held by a Director, but unless and until such a shareholding qualification is fixed a Director shall not be required to hold Shares.

#### **45 Remuneration of Directors**

- 45.1 The remuneration to be paid to the Directors, if any, shall be such remuneration as the Directors shall determine. The Directors shall also be entitled to be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of Directors or committees of Directors, or general meetings of the Company, or separate meetings of the holders of any Class of Shares or debentures of the Company, or otherwise in connection with the business of the Company, or to receive a fixed allowance in respect thereof as may be determined by the Directors, or a combination partly of one such method and partly the other.
- 45.2 The Directors may by resolution approve additional remuneration to any Director for any services other than such Director's ordinary routine work as a Director. Any fees paid to a Director who is also counsel to the Company, or otherwise serves it in a professional capacity, shall be in addition to such Director's remuneration as a Director.

#### **46 Seal**

The Company may, if the Directors so determine, have a Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. Every instrument to which the Seal has been affixed shall be signed by at least one person who shall be either a Director or some officer or other person authorised by the Directors for the purpose.



#### **47 Dividends, Distributions and Reserves**

- 47.1 Subject to the Statute, these Articles, and the special rights attaching to Participating Shares of any Class and/or Series, the Directors may, in their absolute discretion, declare dividends and distributions on Participating Shares of any Class and/or Series in issue and authorise payment of the dividends or distributions out of the relevant Separate Account in respect of such Participating Shares. No dividend or distribution shall be paid except out of the realised or unrealised profits of the Company, or out of the share premium account attributable to Participating Shares of the Class and/or Series in respect of which the dividend or distribution is proposed to be paid, or as otherwise permitted by law.
- 47.2 Except as otherwise provided by the rights attached to Participating Shares, or as otherwise determined by the Directors, all dividends and distributions in respect of Participating Shares of a particular Class and/or Series shall be declared and paid according to Net Asset Value of the Participating Shares of the Class and/or Series that a Member holds. If any Participating Share is issued on terms providing that it shall rank for dividend or distribution as from a particular date, that Participating Share shall rank for dividend or distribution accordingly.
- 47.3 The Directors may deduct and withhold from any dividend or distribution otherwise payable to any Member all sums of money (if any) then payable by it to the Company on account of calls or otherwise or any monies which the Company is obliged by law to pay to any taxing or other authority.
- 47.4 Under no circumstances may the assets (or the income derived from such assets) attributed to a Separate Account in respect of any Class and/or Series be used to pay a dividend in respect of a Separate Account that is attributed to any other Class and/or Series.
- 47.5 The Directors may declare that any dividend or distribution be paid wholly or partly by the distribution of specific assets and in particular of shares, debentures or securities of any other company or in any one or more of such ways and, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and in particular may issue fractional Shares and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Members upon the basis of the value so fixed in order to adjust the rights of all Members and may vest any such specific assets in trustees as may seem expedient to the Directors.
- 47.6 Any dividend, distribution, interest or other monies payable in cash in respect of Participating Shares may be paid by wire transfer to the holder or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of the holder who is first named on the Register of Members or to such person and to such address as such holder or joint holders may in writing direct. Every such cheque or warrant shall (unless the Directors in their sole discretion otherwise determine) be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses, or other monies payable in respect of the Participating Share held by them as joint holders.





47.7 Any dividend or distribution which cannot be paid to a Member and/or which remains unclaimed after six months from the date of declaration of such dividend or distribution may, in the discretion of the Directors, be paid into a separate account in the Company's name, provided that the Company shall not be constituted as a trustee in respect of that account and the dividend or distribution shall remain as a debt due to the Member. Any dividend or distribution which remains unclaimed after a period of six years from the date of declaration of such dividend or distribution shall be forfeited and shall revert to the Company.

47.8 No dividend or distribution shall bear interest against the Company.

#### **48 Capitalisation**

The Directors may capitalise any sum standing to the credit of any of the Company's reserve accounts (including share premium account and capital redemption reserve) or any sum standing to the credit of profit and loss account or otherwise available for distribution and to appropriate such sum to Members of any Class and/or Series in the proportions in which such sum would have been divisible amongst them had the same been a distribution of profits by way of dividend and to apply such sum on their behalf in paying up in full unissued Participating Shares for allotment and distribution credited as fully paid-up to and amongst them in the proportion aforesaid. In such event the Directors shall do all acts and things required to give effect to such capitalisation, with full power to the Directors to make such provisions as they think fit for the case of Participating Shares becoming distributable in fractions (including provisions whereby the benefit of fractional entitlements accrue to the Company rather than to the Members concerned). The Directors may authorise any person to enter into an agreement with the Company, on behalf of all of the Members interested, providing for such capitalisation and matters incidental thereto and any agreement made under such authority shall be effective and binding on all concerned.

#### **49 Books of Account**

49.1 The Directors shall cause proper books of account (including, where applicable, material underlying documentation including contracts and invoices) to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place, all sales and purchases of goods by the Company and the assets and liabilities of the Company. Such books of account must be retained for a minimum period of five years from the date on which they are prepared. Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions.

49.2 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any account or book or document of the Company except as conferred by Statute, or authorised by the Directors or by the Company in general meeting.





- 49.3 The Directors may from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law.

## **50 Audit**

- 50.1 The Directors may appoint an Auditor of the Company who shall hold office on such terms as the Directors determine.
- 50.2 Every Auditor of the Company shall have a right of access at all times to the books and accounts and vouchers of the Company and shall be entitled to require from the Directors and officers of the Company such information and explanation as may be necessary for the performance of the duties of the Auditor.
- 50.3 Any Auditors of the Company shall, if so required by the Directors, make a report on the accounts of the Company during their tenure of office at the next annual general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an ordinary company, and at the next extraordinary general meeting following their appointment in the case of a company which is registered with the Registrar of Companies as an exempted company, and at any other time during their term of office, upon request of the Directors or any general meeting of the Members.

## **51 Notices**

- 51.1 Notices shall be in writing and may be given by the Company to any Member either personally or by sending it by courier, post, cable, telex, fax or e-mail to the Member or to the address as shown in the Register of Members (or where the notice is given by e-mail by sending it to the e-mail address provided by such Member). Any notice, if posted from one country to another, is to be sent airmail.
- 51.2 Where a notice is sent by courier, service of the notice shall be deemed to be effected by delivery of the notice to a courier company, and shall be deemed to have been received on the third day (not including Saturdays or Sundays or public holidays) following the day on which the notice was delivered to the courier. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre paying and posting a letter containing the notice, and shall be deemed to have been received on the fifth day (not including Saturdays or Sundays or public holidays in the Cayman Islands) following the day on which the notice was posted. Where a notice is sent by cable, telex or fax, service of the notice shall be deemed to be effected by properly addressing and sending such notice and shall be deemed to have been received on the same day that it was transmitted. Where a notice is given by e-mail service shall be deemed to be effected by transmitting the e-mail to the e-mail address provided by the intended recipient and shall be deemed to have been received on the same day that it was sent, and it shall not be necessary for the receipt of the e-mail to be acknowledged by the recipient.



- 51.3 A notice may be given by the Company to the person or persons which the Company has been advised are entitled to a Share or Shares in consequence of the death or bankruptcy of a Member in the same manner as other notices which are required to be given under these Articles and shall be addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description at the address supplied for that purpose by the persons claiming to be so entitled, or at the option of the Company by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 51.4 Notice of every general meeting shall be given in the manner authorised by these Articles to every person shown as holding Shares carrying an entitlement to receive such notice in the Register of Members on the record date for such meeting except that in the case of joint holders the notice shall be sufficient if given to the joint holder first named in the Register of Members and every person upon whom the ownership of a Share devolves by reason of such person being a legal personal representative or a trustee in bankruptcy of a Member where the Member but for such Member's death or bankruptcy would be entitled to receive notice of the meeting, and no other person shall be entitled to receive notices of general meetings.

## 52 Winding Up

- 52.1 If the Company shall be wound up the liquidator shall apply the assets of the Company in satisfaction of creditors' claims in such manner and order as such liquidator thinks fit. The liquidator shall in relation to the assets available for distribution among the Members make in the books of the Company such transfers thereof to and from Separate Accounts as may be necessary in order that the effective burden of such creditors' claims may be shared among the holders of Participating Shares of different Classes and/or Series in such proportions as the liquidator in such liquidator's absolute discretion may think equitable.
- 52.2 Subject to the special rights attaching to Participating Shares of any Class or Series, the balance shall then be applied in the following priority:
- (a) first, to the holders of Management Shares, an amount equal to the par value of such Management Shares; and
  - (b) second, the balance shall be paid to the holders of Participating Shares in proportion to the Net Asset Value of Participating Shares held, subject to a deduction from those Participating Shares in respect of which there are monies due, of all monies due to the Company for unpaid calls, or otherwise.
- 52.3 If the Company shall be wound up (whether the liquidation is voluntary or by or under the supervision of the Court) the liquidator may, with the authority of a resolution or resolutions passed by the holders of Participating Shares (whether as a whole or at separate Class meetings), divide among the Members in specie the whole or any part of the assets of the Company, and whether or not the assets shall consist of property of one kind or shall consist of property of different kinds, and may for such purposes set such value as the liquidator deems fair upon any one or more class or classes of property, and may determine how such division shall be



carried out as between the Members or different classes of Members. The liquidator may, with the like authority, vest any part of the assets in trustees upon such trusts for the benefit of Members as the liquidator, with the like authority, shall think fit, and the liquidation of the Company may be closed and the Company dissolved, but so that no Member shall be compelled to accept any shares or other property in respect of which there is a liability.

### 53 Indemnity and Insurance

- 53.1 Every Director and officer of the Company (which for the avoidance of doubt, shall not include any Auditor), together with every former Director and former officer of the Company (each an **"Indemnified Person"**) shall be indemnified out of the assets of the Company against any liability, action, proceeding, claim, demand, costs, damages or expenses, including legal expenses, whatsoever which they or any of them may incur as a result of any act or failure to act in carrying out their functions other than such liability (if any) that they may incur by reason of their own actual fraud, wilful default or Gross Negligence. No Indemnified Person shall be liable to the Company for any loss or damage incurred by the Company as a result (whether direct or indirect) of the carrying out of their functions unless that liability arises through the actual fraud, wilful default or Gross Negligence of such Indemnified Person. No person shall be found to have committed actual fraud, wilful default or Gross Negligence under this Article unless or until a court of competent jurisdiction shall have made a finding to that effect.
- 53.2 The Company shall advance to each Indemnified Person reasonable attorneys' fees and other costs and expenses incurred in connection with the defence of any action, suit, proceeding or investigation involving such Indemnified Person for which indemnity will or could be sought. In connection with any advance of any expenses hereunder, the Indemnified Person shall execute an undertaking to repay the advanced amount to the Company if it shall be determined by final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification pursuant to this Article. If it shall be determined by a final judgment or other final adjudication that such Indemnified Person was not entitled to indemnification with respect to such judgment, costs or expenses, then such party shall not be indemnified with respect to such judgment, costs or expenses and any advancement shall be returned to the Company (without interest) by the Indemnified Person.
- 53.3 The Directors, on behalf of the Company, may purchase and maintain insurance for the benefit of any Director or other officer of the Company against any liability which, by virtue of any rule of law, would otherwise attach to such person in respect of any negligence, default, breach of duty or breach of trust of which such person may be guilty in relation to the Company.
- 53.4 Pursuant to the foregoing provisions, the Company may enter into a service or other agreement with any Director (or any entity providing one or more persons to the Company to act as Directors) upon such terms and conditions (including as to indemnification and exculpation) as the Directors shall, in their absolute discretion, determine. Any such indemnification and exculpation provisions may be specified to a standard equal to or more favourable (but not less favourable) to the Company than any standard specified in these Articles.



**54 Disclosure**

If required to do so under the laws of any jurisdiction to which the Company, the Investment Manager, the Administrator or any other service provider is subject, or in compliance with the rules of any stock exchange upon which the Company's Shares are listed, or to ensure the compliance by any person with any anti-money laundering law in any relevant jurisdiction, any Director, Officer, the Investment Manager, the Administrator or Auditor of the Company shall be entitled to release or disclose any information in its possession regarding the affairs of the Company or a Member including, without limitation, any information contained in the Register of Members or subscription documentation of the Company relating to any Member.

**55 Financial Year**

Unless the Directors otherwise prescribe, the financial year of the Company shall end on 31st December in each year and, following the year of incorporation, shall begin on 1st January in each year.

**56 Transfer by way of Continuation**

The Company shall, subject to the provisions of the Statute and with the approval of a Special Resolution, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside the Cayman Islands and to be deregistered in the Cayman Islands.

**57 Mergers and Consolidations**

The Company shall, with the approval of a Special Resolution, have the power to merge or consolidate with one or more constituent companies (as defined in the Statute), upon such terms as the Directors may determine.



MC-156988

# *Certificate of Incorporation on Change of Name*

*I DO HEREBY CERTIFY that*

**HIGHLAND CREDIT OPPORTUNITIES FUND, LTD.**

*having by Special resolution dated 15th day of September Two Thousand Fourteen changed its name, is now incorporated under name of*

**Highland Multi Strategy Credit Fund, Ltd.**

*Given under my hand and Seal at George Town in the  
Island of Grand Cayman this 16th day of September  
Two Thousand Fourteen*



A handwritten signature in black ink, appearing to be "C. J. ...", written over a faint circular background.

**An Authorised Officer,  
Registry of Companies,  
Cayman Islands.**

Authorisation Code : 548631561378  
www.verify.gov.ky  
16 September 2014

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**THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**

**by and among**

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD. .**

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**and**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

**November 1, 2013**

**THIS THIRD AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT** (this “*Agreement*”), is dated effective as of November 1, 2014, by and among:

**HIGHLAND MULTI STRATEGY CREDIT FUND, LTD.**, a Cayman Islands exempted company (the “*Offshore Fund*”);

**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the “*Domestic Fund*,” and together with the Offshore Fund, the “*Clients*”) acting through its general partner, Highland Multi Strategy Credit Fund GP, L.P. a Delaware limited partnership (the “*General Partner*”); and

**HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership (the “*Investment Manager*”).

### **PRELIMINARY STATEMENTS**

A. The Domestic Fund previously retained the Investment Manager as its investment manager pursuant to an investment management agreement dated as of December 1, 2005, as amended and restated as of December 29, 2005 and as further amended and restated as of September 1, 2006 (the “*Original Agreement*”).

B. The Offshore Fund will invest all of its investable assets in the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and will serve merely as a steward thereof. The Investment Manager will conduct its investment activities at the Domestic Fund level as the investment manager to the Domestic Fund.

C. The Domestic Fund desires to continue to retain the Investment Manager and the Offshore Fund desires to retain the Investment Manager to provide certain discretionary advisory services relating to the assets and liabilities of the Domestic Fund and the Investment Manager desires to accept such appointment, all subject to the terms and conditions hereinafter set forth.

### **AGREEMENT**

This Agreement amends and restates in its entirety the Original Agreement as set forth below. For good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### **1. Appointment.**

The Clients hereby appoint the Investment Manager as investment manager with respect to the assets and liabilities of the Domestic Fund and the Investment Manager hereby accepts such appointment and agrees to perform its obligations in accordance with the terms hereof and of the Fourth Amended and Restated Limited Partnership Agreement of the Domestic Fund, dated effective as of November 1, 2014, as amended from time to time (the “*Domestic Fund Partnership Agreement*”), and the investment objectives, policies,

guidelines and restrictions that from time to time are set forth in the Governing Documents of the Clients as applicable. “**Governing Documents**” mean, with respect to:

- (a) the Offshore Fund: the Memorandum and Articles of Association of the Offshore Fund, as amended from time to time, and the Confidential Private Offering Memorandum dated November 2014, as may be supplemented from time to time (the “**POM**”);
- (b) the Domestic Fund: the Domestic Fund Partnership Agreement and the Private Placement Memorandum dated November 2014, as may be supplemented from time to time (the “**PPM**”).

**2. Authority and Duties of the Investment Manager.**

- (a) All of the investable assets of the Offshore Fund must be invested in, and the investment program of the Offshore Fund is to be conducted by the Investment Manager through, the Domestic Fund. The Investment Manager will exercise no discretion with respect to the investment of the assets of the Offshore Fund and the investment activities of the Investment Manager will be conducted at the Domestic Fund level as the investment manager to the Domestic Fund.
- (b) The Domestic Fund’s investment program will be conducted by the Investment Manager in accordance with the PPM.
- (c) The Investment Manager serves as the investment manager to the Domestic Fund and in that capacity has full discretion and authority, without obtaining the prior approval of any officer or other agent of the Domestic Fund:
  - (i) to continuously supervise the investment program of the Domestic Fund and the composition of its investment portfolio including, without limitation, determining from time to time what investments will be purchased, retained or sold, what contracts will be entered into by the Domestic Fund and what portion of its assets will be retained as cash, and to engage consultants and analysts in connection therewith; to cause the Domestic Fund to purchase or sell any asset, enter into any other investment-related transaction, including (directly or through subsidiaries or affiliates of the Domestic Fund) borrowing money, entering into swap transactions, lending securities, exercising control over a company, exercising voting or approval rights and selecting brokers and dealers for execution of portfolio transactions; and to undertake to do anything incidental to the foregoing to facilitate the performance of its obligations hereunder;
  - (ii) to invest within or outside the United States of America in “Investments” (as defined in, and subject to the provisions of, the Domestic Fund Limited Partnership Agreement);
  - (iii) to effect any and all transactions in Investments, including collateralized loan obligations, asset-backed securities, commodities, total return swaps,

credit default swaps, synthetic securities and other financial instruments and assets (and options and other contracts thereon), and everything connected therewith in the broadest sense, including, without limitation, the full discretion and authority to make short sales, to purchase or write options (including uncovered options) and to trade on margin ;

- (iv) to, on behalf of the Clients, exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the Investments and other property and funds held or owned by the Domestic Fund, including without limitation the right to possess, lend, transfer, mortgage, pledge or otherwise deal in, and to secure the payment of obligations of the Domestic Fund by mortgage upon, or hypothecation or pledge of, all or part of the property of the Domestic Fund, whether at the time owned or thereafter acquired, and to vote Investments, participate in arrangements with creditors, institute and settle or compromise suits and administrative proceedings and other similar matters;
- (v) to select brokers, dealers, banks and other intermediaries by or through whom such transactions will be executed or carried out and to open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to cause the Domestic Fund to pay, or authorize the payment and reimbursement of, brokerage commissions;
- (vi) to open, maintain and close bank accounts and authorize the drawing of checks or other orders for the payment of monies;
- (vii) to borrow or raise monies or utilize any other forms of leverage and to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness and otherwise to utilize any lines of credit, credit balances or overdraft privileges available to the Domestic Fund;
- (viii) to value the Client's assets as of the close of each fiscal period and any other date selected by the respective Client;
- (ix) to direct any administrator of the Clients, banks, brokers or other custodians to effect deliveries of funds or assets, but only in the course of effecting portfolio transactions for the account of the Clients;
- (x) to remove or replace any administrator of the Clients and/or any accountant of the Clients at any time; and
- (xi) to make and execute all such documents and to take all such other actions as the Investment Manager considers necessary or appropriate to carry out its investment management duties hereunder.

- (d) In furtherance of the foregoing, the Board of Directors, on behalf of the Offshore Fund, and the General Partner, on behalf of the Domestic Fund, has delegated certain rights and responsibilities with respect to the operation of their respective partnerships and funds to the Investment Manager, as more fully set forth in the Governing Documents.
- (e) Each Client hereby designates the Investment Manager as the commodity pool operator (the “CPO”) for such Client with complete authority and responsibility for compliance with the U.S. Commodity Exchange Act and the regulations promulgated thereunder, including to perform any and all duties required of a CPO (i) that is exempt from registration under the regulations of the U.S. Commodity Futures Trading Commission (the “CFTC”) and (ii) that is in compliance with CFTC Rule 4.13(a)(3), including the filing of a notice of exemption under said Rule 4.13(a)(3) with the CFTC.
- (f) Additionally, each of the Clients hereby designates and appoints the Investment Manager as its agent and attorney-in-fact, with full power and authority and without the need for further approval of the Clients (except as may be required by law) to complete and execute all such documents and to take any and all actions that the Investment Manager, in its discretion, may deem advisable to carry out the foregoing with respect to the assets of the Clients; provided, however, that the Investment Manager is not intended to have actual or constructive custody of any assets of the Clients. In connection with any of the foregoing, the Investment Manager is further authorized to transfer or tender for cash or exchange such assets. In all such purchases, sales or trades the Clients authorize the Investment Manager to act for the Clients, and at their risk, and in their name and on their behalf, in the same manner and with the same force and effect as the Clients might or could do with respect to such purchases, sales or trades without prior consultation with the Clients. The Clients also appoint the Investment Manager as their agent and attorney-in-fact to vote, and to execute proxies, waivers, consents and other instruments with respect to, the assets of the Clients.
- (g) At the request of a Client, in any wind down of such Client, the Investment Manager will manage the realization of the Client’s assets and the distribution thereof to investors.
- (h) In connection with the execution of transactions on behalf of the Domestic Fund, the Domestic Fund hereby acknowledges and agrees that in the course of selecting brokers, dealers, futures commission merchants, banks and financial intermediaries to effect transactions for the Domestic Fund’s account, the Investment Manager may agree to such commissions, fees and other charges on behalf of the Domestic Fund’s account as it may deem reasonable in the circumstances, taking into consideration all such factors as the Investment Manager deems relevant, including the following: the ability to effect prompt and reliable executions at favorable prices; the operational efficiency with which transactions are effected; the financial strength, integrity and stability of the broker; the quality, comprehensiveness and frequency of available research and other services considered to be of value; and



the competitiveness of commission rates in comparison with other brokers satisfying the Investment Manager's other selection criteria. It is understood that the costs of such services will not necessarily represent the lowest costs available and that the Investment Manager is under no obligation to combine or arrange orders so as to obtain reduced charges.

### **3. Fees and Expenses.**

- (a) For its services to the Domestic Fund, the Domestic Fund will pay the Investment Manager the Management Fee (as defined in the Domestic Fund Partnership Agreement), calculated and payable monthly in advance. The Investment Manager may waive or reduce the management fees with respect to capital account and capital sub-accounts of the Domestic Fund in its discretion.
- (b) The Clients will pay, or will reimburse the Investment Manager, for all costs and expenses arising in connection with their operations, including without limitation, with respect to the Domestic Fund, all costs and expenses directly related to portfolio investments or prospective investments (whether or not consummated) of the Domestic Fund.
- (c) The Clients will not have their own separate employees or office, and they will not reimburse the Investment Manager for salaries, office rent and other general overhead costs of the Investment Manager. The Investment Manager will pay all of its own operating and overhead costs (except liability insurance) without reimbursement by the Clients. The Investment Manager is entitled to reimbursement from the Clients for any expenses paid by it on behalf of the Clients; provided that, the Investment Manager in its sole discretion may absorb any or all of such expenses incurred on behalf of the Clients. If the Investment Manager incurs any such expenses for the account of the Clients and any Customers (as defined below), the Investment Manager will allocate such expenses among the Clients and each such Customer in proportion to the size of the investment made by each in the activity or entity to which the expense relates, or in such other manner as the Investment Manager in its sole discretion considers fair and reasonable.

### **4. Other Activities and Investments.**

- (a) The Investment Manager is not required to devote its full time to the affairs of the Clients, but must devote such of its time to the business and affairs of the Clients as it may determine, in its discretion exercised in good faith, to be necessary to conduct the affairs of the Clients for the benefit of the Clients, the shareholders of the Offshore Fund and the partners of the Domestic Fund. Subject to this limitation, the Investment Manager, its partners and principals and their affiliates are not precluded from engaging in or owning an interest in other business ventures or investment activities of any kind. It is expressly understood that the Investment Manager and its affiliates may effect investment transactions for their own accounts and for the accounts of other customers (generally, "*Customers*"), and the Clients further understand and agree that nothing herein restricts the ability of the

Investment Manager and its affiliates to engage in any such transactions notwithstanding the fact that the Clients may enter into or engage in such transactions so long as such transactions are in the best interests of the Clients .

- (b) The Investment Manager will act in a manner that it considers fair, reasonable and equitable in allocating investment opportunities to the Clients. It is understood that when the Investment Manager determines that it would be appropriate for the Clients and one or more of the Customers to participate in an investment opportunity, the Investment Manager will seek to execute orders for, or otherwise allocate such opportunities to, the Clients and such Customers on an equitable basis. In such situations, the Investment Manager may place orders for the Clients and each Customer simultaneously, and if all such orders are not filled at the same price, the Investment Manager may cause the Clients and each Customer to pay or receive the average of the prices at which such orders were filled for the Clients and all other Customers. If all such orders cannot be fully executed under prevailing market conditions, the Investment Manager may allocate among the Clients and the Customers the investments traded in a manner which the Investment Manager considers equitable, taking into account the size of the order placed for the Clients and each such Customer as well as any other factors which the Investment Manager deems relevant.

#### 5. Account and Other Information.

- (a) The Investment Manager must furnish such information concerning activities undertaken for the account of the Clients as the Clients may reasonably request.
- (b) The Clients agree to keep confidential and not to disclose to any person any information or matter relating to the Clients' investments (other than disclosure to the Clients' shareholders, partners, directors and employees, legal counsel, administrator, registrar and accountant in connection with the preparation and review of financial statements and with the filing of any tax returns or to any other person approved in writing by the Investment Manager (each such person being hereinafter referred to as an "***Authorized Representative***")); provided that the Clients and their Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by the Clients or Authorized Representative, (y) the information otherwise is or becomes legally known to the Clients other than through disclosure by the Investment Manager or (z) such disclosure is required by law or in response to any governmental agency request or in connection with an examination by any regulatory authorities, provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed. Prior to making any disclosure required by law, the Clients will use their best efforts to notify the Investment Manager of such disclosure. Prior to any disclosure to any Authorized Representative, the Clients must advise such Authorized Representative of the obligations set forth in this Section 5(b) and are responsible for any breach of these obligations made by an Authorized Representative.

- (c) The Investment Manager retains, or arranges for the retention of, for a period of at least 5 years, copies of any documents generated or received by the Investment Manager in the ordinary course of business pertaining to the financial condition of the account of the Clients or to the compensation payable to the Investment Manager. At the request of the Clients, the Investment Manager will afford to the Clients' independent auditors reasonable access to such documents during customary business hours and will permit the Clients' auditors to make copies thereof or extracts therefrom at the expense of the Clients.

**6. Custody.**

The assets of the Clients must be held in the custody of one or more custodians (or other independent institutions performing the functions of custodian, with respect to the assets which are held by such institutions) selected by the Investment Manager. The Investment Manager will notify the Clients promptly of the proposed selection of any custodians.

**7. Scope of Liability.**

The Clients agree that the Investment Manager is not liable to the Clients or any of their partners or shareholders for any losses, damages, expenses or claims occasioned by any act or omission of the Investment Manager in connection with the performance of its services hereunder, other than as a result of the Investment Manager's willful misconduct, fraud or gross negligence, or as otherwise prescribed by applicable law. The Clients explicitly recognize that the investment advisory opinions, recommendations and actions of the Investment Manager will be based on advice and information deemed to be reliable but not guaranteed by or to the Investment Manager.

**8. Indemnification.**

- (a) The Clients must indemnify and hold harmless the Investment Manager, each member, shareholder, partner, manager or director of, or any person who controls, the Investment Manager, each of the respective affiliates of the foregoing and each of the respective executors, heirs, assigns, successors or other legal representatives of the foregoing (each, an "*indemnatee*") from and against any expense, loss, liability or damage arising out of any claim asserted or threatened to be asserted against such indemnatee in connection with the Investment Manager's serving or having served as such pursuant to this Agreement; provided, however, that the indemnatee is not entitled to any such indemnification with respect to any expense, loss, liability or damage that was caused by the indemnatee's willful misconduct, fraud or gross negligence.
- (b) In the event that the Investment Manager or any other indemnatee entitled to indemnification pursuant to paragraph (a) above is or becomes a party to any action or proceeding in respect of which, or there otherwise exists a claim pursuant to which, it may be entitled to seek indemnification hereunder, the indemnatee must promptly notify the respective Client thereof. The respective Client is entitled to participate in any such suit or proceeding and, to the extent that it may wish, to

assume the defense thereof with counsel reasonably satisfactory to the indemnitee. After notice of an election by the Client so to assume the defense thereof, the Client will not be liable to the indemnitee hereunder for any legal or other expenses subsequently incurred by the indemnitee in connection with the defense thereof other than reasonable costs of investigation or reasonable legal expenses incurred as a result of (i) potential conflicts of interest between the indemnitee and the Client or (ii) the protection of proprietary or privacy interests of other clients of or parties in interest with the indemnitee. The Client must advance to the indemnitee the reasonable costs and expenses of investigating and/or defending such claim, subject to receiving a written undertaking from the indemnitee to repay such amounts if and to the extent of any subsequent determination by a court or other tribunal of competent jurisdiction that the indemnitee was not entitled to indemnification hereunder.

- (c) A Client is not liable hereunder for any settlement of any action or claim effected without its written consent thereto.

**9. Independent Contractor.**

For all purposes of this Agreement, the Investment Manager is an independent contractor and not an employee or dependent agent of any Client. Nothing herein is to be construed as making any Client a partner or co-venturer with the Investment Manager or any of its affiliates or Customers. Except as provided in this Agreement, the Investment Manager has no authority to bind, obligate or represent the Clients.

**10. Term; Termination; Renewal.**

- (a) This Agreement will remain in full force and effect for a period commencing on the date first above written and ending on December 31, 2014, and thereafter will renew automatically for successive one-year periods. This Agreement may be terminated by any party hereto, without penalty, upon 75 days' prior written notice to the other parties.
- (b) The termination of this Agreement does not extinguish the obligations of the Clients for the payment of fees and expenses in respect of services rendered by the Investment Manager prior to the effective date of such termination.

**11. Acknowledgement.**

Each of the Clients certifies and acknowledges to the Investment Manager that it:

- (i) has fully disclosed to potential investors the fee provisions and other arrangements relating to the Client's account with the Investment Manager and is satisfied that the potential investors have received sufficient information from the Investment Manager to enable them to evaluate the terms of this Agreement; and
- (ii) fully understands the method of compensation provided herein and its associated risks, including the risk that the performance compensation arrangements with

affiliates of the Investment Manager may create an incentive for the Investment Manager to engage in transactions that are riskier or more speculative than would be the case in the absence of performance compensation and that such risk has been disclosed to potential investors.

**12. Amendment; Modification; Waiver.**

Except as otherwise expressly provided herein, this Agreement may not be amended, nor may any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the party to be charged with such amendment, waiver or modification.

**13. Binding Effect; Assignment.**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations hereunder are not, except as otherwise expressly provided herein, assignable, transferable or delegable without the written consent of the other parties hereto and any attempted assignment, transfer or delegation thereof without such consent is null and void, except that the Investment Manager may assign its rights and obligations hereunder to an entity that controls, is controlled by or is under common control with the Investment Manager; provided, however, that such entity assumes the obligations of the Investment Manager hereunder.

**14. Governing Law.**

This Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware which are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder.

[SIGNATURE PAGE FOLLOWS]



The parties have executed this Agreement as of the day and year first above written.

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, LTD.**

By: 

Name: James Dondero

Title: Director

**HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT  
GP, LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT,  
L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By: 

Name: James Dondero

Title: President

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: STRAND ADVISORS, INC.

By: 

Name: James Dondero

Title: President

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## **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

### **Fourth Amended and Restated Limited Partnership Agreement**

November 1, 2014

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THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17 -101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;



(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

***“Advisers Act”*** means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

***“Advisory Committee”*** has the meaning set forth in Section 4.6.

***“Affiliate”*** means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

***“Affiliated Investor”*** means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

***“Agreement”*** means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

***“Alternative Investment Vehicle”*** has the meaning set forth in Section 4.7.

***“Arbitration Rules”*** has the meaning set forth in Section 8.7(b)(i).

***“Authorized Representative”*** has the meaning set forth in Section 7.5(a).

***“Bad Actor Limited Partner”*** means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

***“BHCA”*** means the U.S. Bank Holding Company Act of 1956, as amended.

***“BHCA Subject Person”*** means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

***“Business Day”*** means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

***“Calculation Period”*** means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation

Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

**"Capital Account"** means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

**"Carryforward Account"** means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

- (a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.
- (b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

**"Certificate"** means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

**"Code"** means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

**“Dispute”** has the meaning set forth in Section 8.7.

**“Effective Date”** means the date set forth above as the effective date of this Agreement.

**“Election Notice”** has the meaning set forth in Section 8.11(c).

**“FAA”** has the meaning set forth in Section 8.7(b)(ii)

**“FATCA”** means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

**“FINRA”** means the Financial Industry Regulatory Authority, Inc.

**“Fiscal Year”** means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, **“Fiscal Year”** means the portion of the calendar year ending on the date on which the Partnership is terminated.

**“GAAP”** means generally accepted accounting principles in the United States, as amended.

**“General Partner”** means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

**“Indemnified Person”** has the meaning set forth in Section 4.5(a).

**“Interest”** means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

**“Investment Company Act”** means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

**“Investment Management Agreement”** means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

**“Investment Manager”** means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

**“Investments”** means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

**“Limited Partners”** means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

**“Majority-in-Interest of Limited Partners”** means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

**“Management Fee”** means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

**“Negative Basis”** means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

**“Negative Basis Partner”** means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Net Assets”** means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;

(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

**“Net Loss”** means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

**“Net Profit”** means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

**“New Issue Rules”** has the meaning set forth in Section 3.8(b).

**“Nonrecourse Deductions”** has the meaning set forth in Regulations Section 1.704 -2(b)(1) and (c).

**“Non-Voting Interest”** means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

**“Offshore Fund”** means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

**“Orderly Realization”** has the meaning set forth in Section 6.1.

**“Other Account”** means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

**“Partner”** means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and **“Partners”** means the General Partner and all of the Limited Partners.

**“Partnership”** means the limited partnership governed by this Agreement.

**“Partnership Minimum Gain”** has the meaning set forth in Regulations Section 1.704 -2(b)(2) and (d).



**“Partnership Percentage”** means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

**“Performance Allocation”** means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

**“Performance Change”** means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a **“Positive Performance Change,”** and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a **“Negative Performance Change.”**

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).

**“Positive Basis”** means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

**“Positive Basis Partner”** means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Prior Agreement”** has the meaning set forth in the Preliminary Statements to this Agreement.

**“Realization Period”** has the meaning set forth in Section 6.1.

**“Recent Amendments”** means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

**“Regulations”** means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

**“Regulatory Allocations”** has the meaning set forth in Section 3.10(d).

**“Restricted Capital Accounts”** has the meaning set forth in Section 3.8(b).

**“Restricted Issues”** has the meaning set forth in Section 3.8(b).

**“Revocation Notice”** has the meaning set forth in Section 8.11(c).

**“RIC Limited Partner”** means a Limited Partner that is registered as an investment company under the Investment Company Act.

**“Schedule of Partners”** means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

**“Series”** means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

**“Series A Capital Account”** means the Capital Account attributable to a Limited Partner’s Series A Interest.

“**Series A Interests**” means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

“**Series A Lock-Up**” has the meaning set forth in Section 5.5(c)(i).

“**Series A Withdrawal Date**” has the meaning set forth in Section 5.5(c)(i).

“**Series B Capital Account**” means the Capital Account attributable to a Limited Partner’s Series B Interest.

“**Series B Interests**” means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

“**Series B Withdrawal Date**” has the meaning set forth in Section 5.5(c)(ii).

“**Series C Capital Account**” means the Capital Account attributable to a Limited Partner’s Series C Interest.

“**Series C Interests**” means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

“**Series C Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iii).

“**Series D Capital Account**” means the Capital Account attributable to a Limited Partner’s Series D Interest.

“**Series D Interests**” means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

“**Series D Withdrawal Date**” has the meaning set forth in Section 5.5(c)(iv).

“**Sub-Series of Shares**” refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

“**Suspension**” has the meaning set forth in Section 5.5(l).

“**Super-Majority-in-Interest of Limited Partners**” means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

“**Transfer**” means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

“**Withdrawal Date**” means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## Article II ORGANIZATION

### 2.1 Continuation of Limited Partnership

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided here in.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal, state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other

considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.



- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other

differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### **Article III CAPITAL**

#### **3.1 Contributions to Capital**

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely

conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.



- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("**New Issue Rules**"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("**Restricted Issues**") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("**Restricted Capital Accounts**") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items

of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### **3.9 Allocation to Avoid Capital Account Deficits**

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### **3.10 Regulatory Allocations**

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth in this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### 3.11 Allocations for Income Tax Purposes

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal

income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the



liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### 3.12 Individual Partner's Tax Treatment

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non -U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### 3.13 Distributions

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the



General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any

action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

## **4.2 Expenses**

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowings; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to

trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs

of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.



- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority - in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.

- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### 4.6 Advisory Committee

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “*Advisory Committee*”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### **4.7 Alternative Investment Vehicles**

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“*Alternative Investment Vehicles*”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### **Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS**

#### **5.1 Admission of Limited Partners**

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### **5.2 Admission of Additional General Partners**

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general

partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is



defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5 :
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of



the calendar month that immediately precedes the two -year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “*Series D Withdrawal Date*”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets :
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;

- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions ; or
  - (vi) automatically upon liquidation of the Partnership .
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "***Suspension***"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "**Orderly Realization**"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "**Realization Period**"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.



## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super-Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the



Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS

### 7.1 Accounting and Reports

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.

## **7.2 Valuation of Partnership Assets and Interests**

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## **7.3 Determinations by the General Partner**

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### 7.4 Books and Records

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### 7.5 Confidentiality

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "***Authorized Representative***")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.



- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## **Article VIII GENERAL PROVISIONS**

### **8.1 Amendment of Partnership Agreement**

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;

may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).

- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:



- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.

## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney -in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
  - (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
  - (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power -of-attorney,

regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

## 8.6 Not for Benefit of Creditors

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

## 8.7 Dispute Resolution

The following procedures shall be used to resolve any controversy or claim (“*Dispute*”) arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

### (a) Mediation

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

### (b) Arbitration

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney’s fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the

mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("**Arbitration Rules**"). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act ("**FAA**"), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly aut horizes



it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## 8.8 Consents and Voting

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited

Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

## **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

## **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

## **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non -Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]

The parties hereto have executed this Agreement as of the day and year first above written.

**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:  \_\_\_\_\_

Name: James Dondero

Title: President

**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:  \_\_\_\_\_

Name: James Dondero

Title: President

*Signature Page to the Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy  
Credit Fund, L.P.*

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Memorandum Number \_\_\_\_\_

## **Confidential Private Placement Memorandum**

*Series B, Series C and Series D Limited Partner Interests in*

### **Highland Multi Strategy Credit Fund, L.P.**

*General Partner*

Highland Multi Strategy Credit Fund GP, L.P.

*Investment Manager*

Highland Capital Management, L.P.

**November 2014**

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## NOTICE

This Confidential Private Placement Memorandum (this “*Memorandum*”) is being furnished on a confidential basis solely to selected qualified investors (or their respective authorized representatives) considering the purchase of limited partner interests (the “*Interests*”) in Highland Multi Strategy Credit Fund, L.P. (the “*Fund*”). This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of Highland Multi Strategy Credit Fund GP, L.P. (the “*General Partner*”) (other than to professional advisors and employees of the prospective investor receiving this Memorandum from the General Partner or its authorized representative or such prospective investor).

Each recipient agrees to keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment in the Fund. Notwithstanding anything herein to the contrary, each investor (and each employee, representative, or other agent of the investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment and tax structure. Acceptance of this Memorandum by prospective investors constitutes an agreement to be bound by the foregoing terms.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Interests other than the information contained in this Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund or the General Partner. Prospective investors should not construe the contents of this Memorandum as legal, tax or financial advice. Each prospective investor should consult its own professional advisors as to the legal, financial, tax, ERISA (as defined herein) or other related matters relevant to the suitability of an investment in the Fund for such investor. In making an investment decision, investors must rely on their own examination of the Fund and the terms of the offering contemplated by this Memorandum. The Interests have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

This Memorandum does not constitute an offer to sell, or the solicitation of an offer to buy, any Interests in any state or other jurisdiction where, or to or from any person to or from whom, such offer or solicitation is unlawful or not authorized. The Interests have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “*Securities Act*”), or the securities laws of any of the states of the United States. The offering and any potential sale contemplated by this Memorandum will be made in reliance upon an exemption from the registration requirements of the Securities Act for offers and sales of securities which do not involve any public offering and analogous exemptions under state securities laws. There will be no public market for the Interests, and there is no obligation on the part of any person to register the Interests under the Securities Act or any state securities laws. The Fund has not been and will not be registered under the U.S. Investment Company Act of 1940, as amended. Interests are suitable only for sophisticated investors who do not require immediate liquidity for their investments, for whom an investment in the Fund does not constitute a complete investment program and who fully understand and are willing to assume the risks involved in the Fund’s investment program. The Fund’s investment practices, by their nature, may be considered to involve a

substantial degree of risk. See “*Risk Factors and Potential Conflicts of Interest*” beginning at page 25. No assurance can be given that the Fund’s investment objectives will be achieved or that investors will receive a return of their capital.

The Interests are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and any applicable state or other securities laws, pursuant to registration or an exemption therefrom. The transferability of the Interests will be further restricted by the terms of the limited partnership agreement of the Fund. Investors should be aware that they will be required to bear the financial risks of an investment in the Interests for an extended period of time.

This Memorandum does not purport to be, and should not be construed as, a complete description of the limited partnership agreement of the Fund or the investment management agreement by and among the Fund’s investment manager, the General Partner and the Fund. Each prospective investor in the Fund is encouraged to review the Fund’s limited partnership agreement carefully, in addition to consulting appropriate legal and tax advisors. To the extent of any inconsistency between this Memorandum and the Fund’s limited partnership agreement, the terms of the Fund’s limited partnership agreement control.

Certain information contained in this Memorandum constitutes “forward -looking statements,” which can be identified by the use of forward-looking terminology such as “may,” “will,” “should,” “expect,” “anticipate,” “project,” “estimate,” “intend,” or “believe” or the negatives thereof or other variations thereon or comparable terminology. Due to various risks and uncertainties, including those described in “Risk Factors and Potential Conflicts of Interest,” actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in such forward -looking statements.

Pursuant to an exemption from the Commodity Futures Trading Commission, neither the General Partner nor the Investment Manager is registered with as a commodity pool operator and therefore, unlike a registered commodity pool operator, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund’s portfolio; or (b) the aggregate net notional value of the Fund’s commodity interest positions does not exceed 100% of the liquidation value of the Fund’s portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors.

All references herein to “\$” refer to U.S. dollars.

This Memorandum is accurate as of its date, and no representation or warranty is made as to its continued accuracy after such date.

## DIRECTORY

<b>General Partner</b>	<b>Highland Multi Strategy Credit Fund GP, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Investment Manager</b>	<b>Highland Capital Management, L.P.</b> 300 Crescent Court Suite 700 Dallas, Texas 75201
<b>Prime Broker</b>	<b>BNY Mellon Trust Company N.A.</b> 601 Travis Street, 16th FL (775-1700) Houston, Texas 77002
<b>Administrator</b>	<b>SEI Global Services, Inc.</b> One Freedom Valley Drive Oaks, Pennsylvania 19456
<b>Auditors</b>	<b>PricewaterhouseCoopers LLP</b> 2001 Ross Avenue, Suite 1800 Dallas, Texas 75201
<b>Legal Counsel</b>	<b>Akin Gump Strauss Hauer &amp; Feld LLP</b> 1700 Pacific Avenue, Suite 4100 Dallas, Texas 75201

\* \* \* \* \*

*This Memorandum does not purport to be and should not be construed as a complete description of the Fund's limited partnership agreement, a copy of which is attached hereto as Appendix A. Any potential investor in the Fund is encouraged to review the Fund's limited partnership agreement carefully, in addition to consulting appropriate legal and tax counselors.*



## EXECUTIVE SUMMARY OF PRINCIPAL TERMS

<b>The Fund</b>	Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “ <i>Fund</i> ”).
<b>General Partner</b>	Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “ <i>General Partner</i> ”).
<b>Investment Manager</b>	Highland Capital Management, L.P., a Delaware limited partnership (the “ <i>Investment Manager</i> ”).
<b>Investor Eligibility</b>	Investors must be both “accredited investors” and “qualified purchasers.”
<b>Offshore Feeder Fund</b>	In order to facilitate investments by non-U.S. and other tax-exempt investors, the Investment Manager has sponsored the formation of Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “ <i>Offshore Fund</i> ”). The Offshore Fund places all of its assets in and conducts all of its investment and trading activities through the Fund as a limited partner of the Fund.
<b>Investment Objective</b>	The Fund seeks attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management .
<b>Series of Interests</b>	The Fund has four series of Interests and is offering Series B Interests, Series C Interests and Series D Interests pursuant to this Memorandum.
<b>Minimum Investment</b>	The initial minimum investment is \$1,000,000.00, although the General Partner has the right to accept lesser amounts.
<b>Management Fee</b>	Annual rate of 1.5% for Series B Interests, 1.0% for Series C Interests, and 2.0% for Series D Interests, calculated and payable quarterly in advance.
<b>Performance Allocation</b>	Highland Capital Management, L.P., as a special limited partner of the Fund, is entitled to receive an annual performance-based profit allocation at the end of each year equal to 20% of the Fund’s net profits, subject to a “high water mark.”
<b>Withdrawals</b>	Withdrawal rights vary by Series and are subject to timing restrictions, reserves for contingencies, partial hold-back pending completion of an annual audit and suspension restrictions as further described in “ <i>Summary of Terms</i> .”
<b>Variation of Terms</b>	The General Partner and/or the Investment Manager (as applicable) may agree with certain limited partners to a variation of the terms set forth in this Memorandum or establish additional classes or series of limited partner interests that have terms that differ from those described herein, including different management fees, performance allocations and withdrawal rights.

## INVESTMENT PROGRAM

### Investment Objective

The Fund's investment objective is to seek attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management. No assurance can be given, however that the Fund will achieve this objective.

### Investment Strategy

#### *Investment Asset Classes*

The following is a description of the principal types of securities in which the Fund may invest and certain trading techniques the Fund may employ. The following description is merely a summary and the Investment Manager has discretion to cause the Fund to invest in other types of securities and to follow other investment criteria and guidelines. However, consistent with the investment strategy of the Fund, all new investments made by the Fund must, at the time of purchase, (i) trade over-the-counter or on an exchange, (ii) have a third-party quote or valuation available, and (iii) be considered a marketable investment in the reasonable opinion of the Investment Manager. An investment is a marketable investment if in the reasonable opinion of the Investment Manager it can be sold at the mark within 30 calendar days. Notwithstanding the foregoing, the Fund may invest up to 20% of its net asset value in non-marketable investments if and when the Fund's net asset value reaches \$1 billion.

*Debt and Debt-Like Securities.* The Investment Manager intends for debt securities to be the Fund's primary focus, with a target allocation of 40-60% of net asset value of the Fund, although this may vary depending on market conditions. The Fund may invest (both long and short) in debt securities of any kind, including debt securities of varying maturities, debt securities paying a fixed or fluctuating rate of interest, inflation-indexed bonds, structured notes, loan assignments, loan participations, asset-backed securities, collateralized loan obligation ("**CLO**") securities (including, rated and unrated, debt, equity and preference share instruments relating to collateralized loan obligations ("**CLO Securities**")), debt securities convertible into equity securities, and securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, by foreign governments or international agencies or supranational entities or by domestic or private issuers.

The Fund may invest in debt securities of any credit quality, including below investment grade securities (also known as "high yield securities" or "junk securities"). Such securities are rated below investment grade by a nationally recognized statistical rating organization ("**NRSRO**") or are unrated but deemed by the Investment Manager to be of comparable quality. The Fund may invest without limitation in below investment grade or unrated securities, including in insolvent borrowers or borrowers in default.

*Equity and Equity-Like Securities.* The Fund may invest (both long and short) in common stock, preferred stock, securities convertible into common stock, rights and warrants or securities or other instruments whose price is linked to the value of common stock. Although the equity securities in which the Fund invests may have any capitalization, may be dominated in any currency, and may be located in emerging markets without limit, the Fund will primarily invest in equity securities of large capitalization companies that are located in developed markets. Additionally, the Fund may invest in equity or subordinated tranches of asset-backed securities, including CLOs, and may also invest in life settlement

policies and other instruments that have equity-like characteristics that meet the investment objective of the Fund.

*Investment Themes*

The Investment Manager's investment philosophy is based on the belief that thorough, fundamental research and a disciplined research methodology increase the likelihood of producing attractive long-term results. The Investment Manager uses this research in an attempt to anticipate long-term secular trends and identify those investments that have the highest relative value characteristics across four primary investment themes.

- 1) Convergence – Investments in market sectors in which the Investment Manager believes are mispriced and will converge to historic norms over time.
- 2) Deep Value – Investments in companies that the Investment Manager believes the market has undervalued. Through thorough research the Investment Manager believes the current market value does not correspond with the company's long-term fundamentals.
- 3) Event Driven – The Investment Manager will generally focus on equity and debt investments with catalysts that could include, but are not limited to, asset sales, covenant violations, liability management, amend/extend, refinancing, tenders and mergers/acquisitions.
- 4) Activism – Material holdings or controlling interests in companies, including the potential to obtain representation on the company's board, with the goal of affecting a change in the company in order to drive future profitability and value realization.

The Investment Manager may also manage interest rate, default, currency and other risks through a variety of trading methods and market tools, including security shorting and derivative hedging instruments, as it deems appropriate.

Although the Investment Manager expects to maintain a diversified portfolio of investments, it does not intend to limit itself to any one particular investment theme or asset class. Rather, the Investment Manager intends to follow a flexible approach in order to place itself in the best position to capitalize on opportunities in the financial markets.

*The investment objectives and methods summarized above represent the General Partner's and Investment Manager's current intentions. Depending on conditions and trends in the securities markets and the economy in general, the General Partner and the Investment Manager may pursue any objectives, employ any investment techniques or purchase any type of security that they consider appropriate and in the best interests of the Fund whether or not described in this section. The foregoing discussion includes and is based upon numerous assumptions and opinions of the General Partner and Investment Manager concerning world financial markets and other matters, the accuracy of which cannot be assured. **There can be no assurance that the Fund's investment strategy will achieve profitable results.***

## MANAGEMENT

### The General Partner and the Investment Manager

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “*General Partner*”), serves as the general partner of the Fund. Highland Capital Management, L.P., a Delaware partnership (the “*Investment Manager*” or “*Highland*”), serves as the investment manager of the Fund and has responsibility for the Fund’s investment program. James D. Dondero ultimately controls the General Partner and the Investment Manager.

The General Partner has the full authority of a general partner under Delaware law. The powers of the General Partner described in this Memorandum and the Partnership Agreement are not exhaustive and are not limited to the specific authorities described therein. Thus, subject to applicable law, the General Partner may make certain decisions or take certain actions even where those decisions or actions are not expressly granted in the Partnership Agreement or described in this Memorandum.

### The Investment Management Agreement

The Investment Manager serves pursuant to an investment management agreement with the Fund, the Offshore Fund and the General Partner (the “*Investment Management Agreement*”). Under the Investment Management Agreement, the Investment Manager has full discretion to invest the assets of the Fund in pursuit of the investment objective and strategy described in this Memorandum.

The Investment Management Agreement provides that, in the absence of willful misconduct, fraud or gross negligence, each of the Investment Manager, its principals, shareholders, managers, employees and affiliates will be indemnified by the Fund and/or the Offshore Fund, to the extent permitted by law, against any loss or liability incurred by any of such persons in performing their duties under the Investment Management Agreement. For its services the Investment Manager is entitled to the Management Fee and reimbursement of any expenses incurred on behalf of the Fund or the Offshore Fund.

### Investment Personnel

The key investment professionals of the Investment Manager who will be responsible for the Fund’s investments are described below.

#### James Dondero, CFA, Co-Founder, President

James Dondero is Co-founder and President of Highland Capital Management, L.P. (an alternative asset manager specializing in high-yield fixed income investments). Jim has over 30 years of experience in the credit markets. Prior to founding Highland in 1993, Jim served as Chief Investment Officer of Protective Life’s GIC subsidiary and helped grow the business from concept to over \$2 billion between 1989 and 1993. His portfolio management experience includes mortgage-backed securities, investment grade corporates, leveraged bank loans, high-yield bonds, emerging market debt, derivatives, preferred stocks and common stocks. From 1985 to 1989, he managed approximately \$1 billion in fixed income funds for American Express. Prior to American Express, he completed the financial training program at JP Morgan. Jim received a BS in Commerce (Accounting and Finance) from the University of Virginia. Jim is a Certified Public Accountant, a Certified Managerial Accountant, and a Chartered Financial Analyst. He currently serves as Chairman for CCS Medical and NexBank and serves on the



Board of Directors of American Banknote Corporation, Cornerstone Healthcare Group and Metro - Goldwyn-Mayer.

**Mark Okada, CFA, Co-Founder, Chief Investment Officer**

Mr. Okada is Chief Investment Officer of Highland Capital Management, L.P. and is responsible for overseeing Highland's investment activities for its various strategies. Mr. Okada is a pioneer in the development of the bank loan market and has over 30 years of credit experience. He is responsible for structuring one of the industry's first arbitrage CLOs and was actively involved in the development of Highland's bank loan separate account and mutual fund platforms. Mr. Okada received a BA in Economics and a BA in Psychology, cum laude, from the University of California, Los Angeles. He has earned the right to use the Chartered Financial Analyst designation. Mr. Okada is a Director of NexBank, Chairman of the Board of Directors of Common Grace Ministries, Inc., is on the Board of Directors for Education is Freedom, and also serves on the GrowSouth Fund Advisory board.

**Josh Terry, CFA, Head of Structured Products and Trading**

Mr. Terry is Head of Structured Products and Trading at Highland Capital Management, L.P. He leads the trading desk, structured products and CLO fund management teams. Since joining Highland in July 2005, Mr. Terry has served in various roles, including Senior Portfolio Analyst on the Distressed & Special Situations investment team, trading loans, bonds and equities on Highland's trading desk, and leading the sector rotation and fund management process for Highland's par credit funds. Prior to joining Highland in July 2005, Mr. Terry worked as an Investment Banking Analyst at Stephens Inc., where he focused on M&A transactions and equity financings for public and private middle-market companies. Mr. Terry serves as Chairman of the Finance Committee on the Board of Governors of Uplift Education, a network of charter schools in the Dallas-Fort Worth area. He received a BBA in Finance and Economics, summa cum laude, from Baylor University. Mr. Terry has earned the right to use the Chartered Financial Analyst designation.

**Trey Parker, Managing Director**

Mr. Parker is Managing Director and Head of Credit Research at Highland Capital Management, L.P. Mr. Parker is responsible for managing the Credit Research Team/Platform. Prior to his current role, Mr. Parker was a Portfolio Manager covering a number of the industrial verticals, as well as parts of Tech, Media and Telecom; he also worked as a Senior Portfolio Analyst on the Distressed & Special Situations investment team. Prior to joining Highland in March 2007, Mr. Parker was a Senior Associate at Hunt Special Situations Group, L.P., a Private Equity group focused on distressed and special situation investing. Mr. Parker was responsible for sourcing, executing and monitoring control Private Equity investments across a variety of industries. Prior to joining Hunt in 2004, Mr. Parker was an analyst at BMO Merchant Banking, a Private Equity group affiliated with the Bank of Montreal. While at BMO, Mr. Parker completed a number of LBO and mezzanine investment transactions. Prior to joining BMO, Mr. Parker worked in sales and trading for First Union Securities and Morgan Stanley. Mr. Parker received an MBA with concentrations in Finance, Strategy and Entrepreneurship from the University of Chicago Booth School of Business and a BA in Economics and Business from the Virginia Military Institute. Mr. Parker serves on the Board of Directors of Euramax Holdings, Inc., TerreStar Corporation, JHT Holdings, Inc., and a non-profit organization, the Juvenile Diabetes Research Foundation (Dallas chapter).



### **Advisory Committee**

The General Partner and/or the Investment Manager may appoint, or cause to be appointed, a committee (the “**Advisory Committee**”) consisting of one or more individuals selected by the General Partner and/or the Investment Manager, none of whom is affiliated with the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in the Fund or an affiliate thereof). If established, the Advisory Committee will have the authority, at the request of the General Partner and/or the Investment Manager, to consult with the General Partner and/or the Investment Manager on any matters that may involve a conflict of interest between the General Partner and/or the Investment Manager (or their affiliates) on the one hand and the Limited Partners (or shareholders of the Offshore Fund) and the Fund on the other. Any consent given by a majority of the Advisory Committee on behalf of the Fund in good faith after consultation with the General Partner and/or the Investment Manager is binding on the Fund and the Limited Partners or shareholders of the Offshore Fund (so long as such majority consists of persons independent of the General Partner and/or the Investment Manager and their affiliates). The Fund will have the authority to agree to reimburse members of the Advisory Committee for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

### **Administrator**

SEI Investments is a leading global provider of investment processing, investment management and investment operations solutions for institutional and personal wealth management. For more than 40 years, SEI has helped corporations, financial institutions, financial advisors and ultra-high-net-worth families create and manage wealth by providing comprehensive, innovative, investment and investment - business solutions. SEI manages or administers \$601.9 billion in funds and separately managed assets. SEI is a public company and is listed on the NASDAQ exchange under the symbol SEIC. SEI has been retained to perform certain administrative, accounting and investor services for the Fund and the Offshore Fund (in such capacity, the “**Administrator**”). In its capacity as Administrator, it will receive customary fees that will be paid out of the assets of the Fund. The Administrator will also be reimbursed for all reasonable out-of-pocket expenses.

The Fund will enter into an administration agreement (the “**Administration Agreement**”) with the Administrator. The Administrator will be under no duty to take any action on behalf of the Fund except as specifically set forth in the Administration Agreement or as may be specifically agreed to by the Administrator and the Fund in a written amendment thereto.

The Administrator will act as liaison with the Fund’s accountants and auditors and will provide account analyses, fiscal year summaries, and other audit-related schedules with respect to the Fund. The Administrator will take all reasonable action in the performance of its duties under the Administration Agreement to assure that the necessary information is made available to such accountants and auditors for the expression of their opinion, as required by the Fund.

The Administrator will enter into and will maintain in effect with appropriate parties one or more agreements making reasonable provisions for emergency use of electronic data processing equipment to the extent appropriate equipment is available. In the event of equipment failures, the Administrator will, at no additional expense to the Fund, take reasonable steps to minimize service interruptions. The Administrator will have no liability with respect to the loss of data or service interruptions caused by equipment failure, provided such loss or interruption is not caused by the Administrator’s own willful misfeasance, bad faith, gross negligence or reckless disregard of its duties or obligations under the Administration Agreement.

Subject to the terms of the Administration Agreement, the Administrator will be liable to the Fund (or any person or entity claiming through the Fund) for damages only to the extent caused by the Administrator's own fraud or willful misconduct under the Administration Agreement ("***Standard of Care***"). The Administrator will not be liable for damages (including, without limitation, damages caused by delays, failure, errors, interruption or loss of data) occurring directly or indirectly by reason of circumstances beyond its reasonable control. The Administrator will not be under any duty or obligation to inquire into and will not be liable for the validity or invalidity, authority or lack thereof, or truthfulness or accuracy or lack thereof, of any instruction, direction, notice, instrument or other information which the Administrator reasonably believes to be genuine. The Administrator will not be liable for any damages that are caused by actions or omissions taken by the Administrator in accordance with written instructions by authorized persons of the Fund or advice of counsel. The Administrator will not be liable for any damages arising out of any action or omission to act by any prior service provider of the Fund or for any failure to discover any such error or omission. Neither the Administrator nor its affiliates will be liable for any consequential, incidental, exemplary, punitive, special or indirect damages, whether or not the likelihood of such damages was known by the Administrator or its affiliates. Both the Fund and the Administrator will have a duty to mitigate damages for which the other party may become responsible.

Absent the Administrator's failure to meet its Standard of Care, the Fund agrees to indemnify, defend and hold harmless the Administrator and its affiliates and their respective directors, trustees, officers, agents and employees from certain claims, suits, actions, damages, losses, liabilities, obligations, costs and reasonable expenses (including attorneys' fees and court costs, travel costs and other reasonable out-of-pocket costs related to dispute resolution) arising directly or indirectly from any actions taken or omitted to be taken by the Administrator in connection with the provision of services to the Fund.

The Offshore Fund will also enter into an administration agreement with the Administrator, under which the terms will be substantially as above.

## SUMMARY OF TERMS

*The following Summary of Terms summarizes the principal terms of an investment in the Fund, and is subject, and qualified in its entirety by reference, to the limited partnership agreement of the Fund, as amended (the “**Partnership Agreement**”) and the subscription documents (the “**Subscription Documents**”). This summary is intended to be brief and does not purport to provide a comprehensive explanation of the Partnership Agreement and the Subscription Documents. Accordingly, statements made in this Memorandum are subject to the detailed provisions of those agreements. Prospective investors are urged to review those agreements in their entirety prior to determining whether to invest in the Fund.*

### **The Fund**

The Fund is a limited partnership formed on December 1, 2005 under the laws of the State of Delaware with the name “Highland Credit Opportunities CDO, L.P.” The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”

### **Recent Amendments; Series of Interests**

The General Partner and the existing Limited Partners of the Fund adopted the Fourth Amended and Restated Limited Partnership Agreement of the Fund, effective November 1, 2014 (the “**Effective Date**”), whereby all existing limited partner interests were re-designated as “Series A Interests” and three new series of limited partner interests were created – “Series B Interests,” “Series C Interests” and “Series D Interests” (the “**Amendments**”).

As of the Effective Date, all existing Limited Partners will hold Series A Interests, the terms of which are set forth in a supplement to this Memorandum. The Fund is currently offering for subscription Series B Interests, Series C Interests and Series D Interests pursuant to this Memorandum.

The Fund may issue additional series of Interests over time (each, a “**Series**”). Not all Series of Interests will be available for subscription at the same time and the terms among the Series of Interests will vary. New Series of Interests may be established by the General Partner without notice to or approval of the Limited Partners.

Except with respect to management fees, performance-based profit allocations and withdrawal rights (each as discussed below), the rights and privileges attributable to Series A Interests, Series B Interests, Series C Interests and Series D Interests are identical.

References herein to “Interests” or “Limited Partners” shall include all Series of Interests and Limited Partners unless otherwise specified or context so requires.

**General Partner** Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership. The general partner of the General Partner is Highland Multi Strategy Credit GP, LLC, a Delaware limited liability company of which the Investment Manager is currently the sole member.

**Investment Manager** Highland Capital Management, L.P., a Delaware limited partnership.

**Eligible Investors** Limited partner interests (“*Interests*”) may be purchased by investors who are “accredited investors” and “qualified purchasers,” as defined in the Fund’s Subscription Documents. Subscribers will be required to complete the Fund’s Subscription Documents consisting of the subscription agreement and the subscriber information form to determine their eligibility. The General Partner reserves the right to reject any investor for any reason or for no reason in its sole discretion.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

**Subscriptions** Subscriptions for Interests may be accepted as of the first Business Day of each calendar month and/or such other days as the General Partner may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. The initial minimum investment is \$1,000,000, although the General Partner may accept investments in a lesser amount. Capital contributions may be made in cash or, with the consent of the General Partner, in securities or partly in cash and partly in securities.

“*Business Day*” means any day other than Saturdays, Sundays or any other day banks located in New York, New York are required or authorized to be closed.

A subscriber admitted to the Fund (a “*Limited Partner*”) receives, in exchange for its initial capital contribution and any subsequent capital contribution, an Interest representing a proportionate share of the net assets of the Fund at that time.

There is no minimum aggregate amount of subscriptions that is required for the initial acceptance of subscriptions, nor has the General Partner established any maximum aggregate amount of subscriptions that may be accepted.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and



Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107 - 56) and other applicable anti-money laundering regulations as further described in the Subscription Documents.

#### **Offshore Feeder Fund**

In order to facilitate investments by non-U.S. and other tax-exempt investors, the Investment Manager has sponsored the formation of Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company (the “*Offshore Fund*”). The Offshore Fund places all of its assets in and conducts all of its investment and trading activities through the Fund as a limited partner of the Fund.

Investors in the Offshore Fund will be issued participating non-voting shares of the Offshore Fund; provided that in the event that the Fund seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a limited partner of the Fund under the Partnership Agreement, the Offshore Fund: (i) shall submit such matter for the consent of the holders of shares in the Offshore Fund and (ii) shall cause the Offshore Fund to vote its Interest proportionally for and against such matter in the same proportion that the shareholders in the Offshore Fund voted for and against such matter.

The Investment Manager may establish one or more additional feeder vehicles to invest in the Fund.

#### **Capital Accounts**

The Fund will maintain a book capital account (a “*Capital Account*”) for the General Partner and each Limited Partner (each, a “*Partner*” and collectively, the “*Partners*”) to reflect contributions, withdrawals, distributions and allocations of net profit and net loss. The initial balance of each Partner’s Capital Account will be equal to the amount of cash or net value of any property contributed to the Fund by such Partner.

If a Partner invests in more than one Series of Interests, the Fund will maintain a separate Capital Account on behalf of such Partner with respect to each such Series and each Capital Account will be treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights applicable to each Series Capital Account.

If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights applicable to each capital sub-account. References herein to a Partner’s “Capital Account” include any such separately maintained capital sub-accounts.



The Fund will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares (as defined in the Partnership Agreement) and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

**Alternative Investment Vehicles**

The General Partner will have the right, in connection with any investment, to direct the capital contributions of some or all of the subscribers to be made through one or more alternative investment vehicles (each an “*Alternative Investment Vehicle*”), and, in the case of an existing investment, transfer all or a portion of such investment to an Alternative Investment Vehicle, if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Fund to overcome legal or regulatory constraints, invest in a more tax-efficient manner or would facilitate participation in certain types of investments. Any Alternative Investment Vehicle will be subject to terms and conditions substantially similar to those of the Fund (including Management Fees and the Performance Allocation defined below) and will be managed by the Investment Manager or an affiliate thereof.

**Affiliated Investors**

Interests in the Fund held by the Investment Manager or its affiliates (collectively, “*Affiliated Investors*”) may not be assessed the management fees or the performance allocations that are applicable to other investors in the Fund, but share pro rata in other applicable expenses of the Fund (as more fully described in the Partnership Agreement).

**Borrowing and Leverage**

The Fund may buy securities on margin and arrange with banks, brokers and others to borrow money against a pledge of securities in order to employ leverage when the Investment Manager deems such action appropriate.

**Management Fee**

For its services to the Fund, the Investment Manager is entitled to a management fee (the “*Management Fee*”), calculated and payable quarterly in advance, equal to: (i) 1.5% (per annum) of each Capital Account attributable to a Series B Interest, (ii) 1.0% (per annum) of each Capital Account attributable to a Series C Interest and (iii) 2.0% (per annum) of each Capital Account attributable to a Series D Interest.

Management Fees will be appropriately adjusted for any partial quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Limited Partner (or Capital Account) in its sole discretion.

**Other Fees and Expenses**

The Fund bears the reasonable, out-of-pocket expenses of the offering of the Interests contemplated hereunder and the recent Amendments, described above, including expenses associated with obtaining any requisite investor consent to such Amendments. To the extent the General Partner deems appropriate, expenses related to the

Amendments may be capitalized and amortized by the Fund over a 36-month period from the Effective Date, even though such capitalization and amortization may be a divergence from U.S. generally accepted accounting principles (“GAAP”). Amortization of such expenses over a 36-month period may, in certain circumstances, result in a qualification of the Fund’s annual audited financial statements. In such instances, the General Partner may decide to (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP conforming changes for financial reporting purposes, but amortize expenses for purposes of calculating the Fund’s net asset value. There will be a divergence in the Fund’s fiscal year-end net asset value and in the net asset value reported in the Fund’s financial statements in any year where, pursuant to clause (ii), GAAP conforming changes are made only to the Fund’s financial statements for financial reporting purposes.

If the Fund is terminated within 36 months of the Effective Date, any unamortized expenses will be recognized.

Investment and Operational Expenses. The Fund bears all reasonable costs and expenses directly related to its investment program, including expenses related to research, due diligence, proxies, underwriting and private placements, brokerage commissions, interest on debt balances or borrowings, custody fees, travel fees and expenses related to the Fund’s offering and any withholding or transfer taxes imposed on the Fund. The Fund also bears all reasonable, out-of-pocket costs of the administration of the Fund, including (i) accounting, audit and legal expenses (including those incurred for the Fund, the General Partner or the Investment Manager to comply with applicable law, rule or regulation), (ii) costs of any litigation or investigation involving the Fund’s activities, (iii) the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Fund’s investments and (iv) costs associated with reporting and providing information to existing and prospective Limited Partners. However, the General Partner or the Investment Manager may, in its sole discretion, choose to absorb any such expenses incurred on behalf of the Fund.

The Fund does not have its own separate employees or office. Except as described above and provided for in the Partnership Agreement, the Fund generally does not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment Manager. However, a portion of the commissions generated on the Fund’s brokerage transactions may generate “soft dollar” credits that the General Partner and the Investment Manager are authorized to use to pay for research and research-related services and products used by the General Partner or the Investment Manager. In the event that the Investment Manager elects to use soft dollars, it intends to limit such use to services that fall

within the safe harbor afforded by Section 28(e) of the United States Securities Exchange Act of 1934, as amended. See “*Brokerage and Custody*.”

#### **Allocation of Net Profit and Loss**

Net profit or net loss of the Fund (including unrealized gains or losses and Fund expenses) is allocated among the Capital Accounts of the General Partner and the Limited Partners (collectively, the “*Partners*”) as of the close of each calendar month, at such times as the Fund receives an additional capital contribution or effects a withdrawal or distribution, or at such other times as the General Partner may determine.

Profit and loss attributable and any Restricted New Issues (as described below) and are determined and allocated among the Partners separately and are not reflected in the determinations and allocations of net profit or net loss attributable to the remainder of the Fund’s net assets.

As of the close of each accounting period, the net profit or net loss (other than any profit or loss attributable to Restricted New Issues, which are allocated as per below) will be allocated *pro rata* among the Capital Accounts of the Partners in proportion to their percentage interests in the Fund as of the commencement of the period. Each Partner’s percentage interest in the Fund as of the commencement of any period is based on the value of the Partner’s Capital Account at such time (excluding any amount attributable to such Partner’s share of Restricted New Issues), in relation to the total value of the Fund’s net assets at such time (excluding the aggregate amount of net assets attributable to Restricted New Issues).

If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Limited Partner may agree such Limited Partner should not participate (or should receive a reduced participation) in the net profit or net loss with respect to any investment, the General Partner may allocate net profit or net loss, if any, with respect to the investment to Limited Partners to the extent to which the above restrictions do not apply.

The Management Fee is calculated based on the Capital Account balance of each Limited Partner and is debited from each Limited Partner’s Capital Account. Allocations to each Partner of net profit or net loss of the Fund will be subject to periodic adjustment to give effect to the Performance Allocation, as described below.

#### **Restricted New Issues**

The Fund may from time to time purchase securities in public offerings made through member firms of the Financial Industry Regulatory Authority, Inc. (“*FINRA*”). FINRA member firms are not permitted to sell certain new issues (“*Restricted New Issues*”) to accounts in which certain persons have a significant beneficial interest that are involved in the securities industry or to executive officers or directors

of companies that are current, recent, or prospective investment banking clients of the relevant underwriters (“***Restricted Persons***”). In order to enable the Fund to participate in Restricted New Issues, the Fund will require each Limited Partner to provide information to enable the Fund to determine whether the Limited Partner is a Restricted Person. When the Fund invests in a Restricted New Issue, the profits and losses associated with the investment will specifically be allocated to those Partners who are permitted by the FINRA rules to have a beneficial interest therein.

The FINRA rules permit Restricted Persons that are involved in the securities industry to have in the aggregate up to a 10% participation in Restricted New Issues and Restricted Persons affiliated with a FINRA member’s investment banking clients to have up to 25% participation in Restricted New Issues. If the ownership of the Fund by Restricted Persons exceeds the maximum percentage, the General Partner will allocate such excess amount *pro rata* among the Capital Accounts of Partners who are not Restricted Persons or on such other basis that the General Partner reasonably determines ensures compliance with the FINRA Rules.

If a Restricted New Issue in which participation by Restricted Person s has been capped is not promptly sold, the investment may be reallocated among all Partners on a *pro rata* basis (including all Restricted Persons) after a secondary market develops at such secondary market price.

#### **Performance Allocation**

The Investment Manager, in its capacity as a special limited partner in the Fund, is entitled to a performance allocation at the end of each calendar year (the “***Performance Allocation***”), which is calculated and charged separately with respect to each Capital Account of each Limited Partner, equal to 20% of the amount by which the Capital Account’s “Performance Change Amount” (if positive) for the current calendar year exceeds the Capital Account’s “Loss Carryforward Amount.”

A Capital Account’s “***Performance Change Amount***” for any calendar year equals such Capital Account’s *pro rata* allocation of net profit or net loss (including Management Fees, Restricted New Issues and/or other items of income or expense specially allocable to the Capital Account).

The “***Loss Carryforward Amount***” for any calendar year equals the aggregate Performance Change Amounts, if negative, allocated to a Capital Account during any preceding calendar year, minus any subsequent positive Performance Change Amounts on which no Performance Allocation was charged. If a Limited Partner makes a withdrawal from its Capital Account at a time when there is a Loss Carryforward Amount, such Loss Carryforward Amount will be reduced in the same proportion that the withdrawal amount bears to the



Limited Partner's total Capital Account balance immediately prior to the withdrawal.

The Performance Allocation is calculated and charged to each Capital Account as of the last day of each calendar year. The Performance Allocation is also calculated and charged with respect to any Capital Account from which there is a permitted or required withdrawal as of any time other than the last day of a calendar year on the basis of net profits allocated to such Capital Account through the applicable date of withdrawal. In the case of a partial withdrawal, the Performance Allocation is calculated and charged only with respect to the portion of the Capital Account being withdrawn.

The Performance Allocation and Loss Carryforward Amount will be computed separately for each Capital Account (and each separately maintained capital sub-account reflecting additional contributions by a Limited Partner). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Allocation and Loss Carryforward will be computed separately for each Capital Account, and the Capital Accounts will not be netted against one another for purposes of calculating the Performance Allocation. Accordingly, Limited Partners with multiple Capital Accounts may be charged a Performance Allocation in respect of one or more Capital Accounts for a year in which the aggregate net profits allocated to all of such Limited Partner's Capital Accounts do not exceed the aggregate Loss Carryforward Amount allocated to all of such Limited Partner's Capital Accounts.

The Performance Allocation with respect to any Limited Partner may be waived or altered by the Investment Manager in its sole discretion.

**Distributions**

Subject to the withdrawal privilege described below, all earnings of the Fund are ordinarily retained for investment. Other than distributions made pursuant to a withdrawal described below, Limited Partners should not expect the Fund to make any distributions.

**Withdrawals Generally**

Withdrawal rights vary by Series. For the purposes of establishing the withdrawal privileges below, withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable) of a Limited Partner.

**Series Withdrawal Dates**

Subject to certain withdrawal restrictions described below, Limited Partners have the following withdrawal rights:

Series B Interests: Annual Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series B Interests upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The "*Series B Withdrawal Date*" means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of



the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (i.e., if capital was contributed to the Fund on November 1, 2014, such capital would be eligible for withdrawal on October 31, 2015 and every year thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series C Interests: Two Year Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series C Interests upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “*Series C Withdrawal Date*” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the two-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (i.e., if capital was contributed to the Fund on November 1, 2014, such capital would be eligible for withdrawal on October 31, 2016 and every two years thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series D Interests: One Year Hard Lock-Up; Quarterly Liquidity. A Limited Partner is permitted to make complete or partial withdrawals of its Series D Interest as of the last Business Day of each calendar quarter (and/or such other days as the General Partner may determine in its sole discretion) (each, a “*Series D Withdrawal Date*”) following the one-year anniversary of the contribution of the capital to be withdrawn. Notice of any withdrawal of Series D Interests must be provided in writing to the General Partner at least 90 calendar days prior to the requested Series D Withdrawal Date.

The General Partner may, at any time and in its sole discretion, waive or modify the foregoing withdrawal and distribution restrictions with respect to any Limited Partner.

**Settlement of Withdrawal Proceeds**

With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Fund or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable date of withdrawal, and withdrawn amounts will be fixed as of the effective date of withdrawal, except as otherwise provided in the Partnership Agreement with respect to reserves for contingencies.

At least 90% of the estimated amount due with respect to the Fund’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Fund, within 30 Business Days after the date of withdrawal, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Fund or the remaining Capital Accounts. The General Partner is entitled to deduct from such

settlement an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Fund's financial statements for such fiscal year, or sooner in the General Partner's discretion.

In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner's interest in the Fund's marketable investments, no settlements occur with respect to any of such Limited Partner's interest in the Fund's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, in its sole discretion, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Fund. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

The General Partner may withhold for the benefit of the Fund from any distribution to a withdrawing Limited Partner an amount representing the actual or estimated costs incurred by the Fund with respect to such withdrawal.

#### **Withdrawal Conditions**

The General Partner may refuse to accept a withdrawal request if it is not accompanied by such additional information as the General Partner or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where withdrawal proceeds are requested to be remitted to an account which is not in the name of the investor, the General Partner and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the withdrawal proceeds will be paid. The withdrawal proceeds will not

be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

**Compulsory Withdrawals**

The General Partner reserves the right, in its sole discretion, to compel the withdrawal of any Limited Partner's Interest, in part or in its entirety, on not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Fund may cause the Fund, the Investment Manager or the General Partner to violate any applicable law). Settlements are made in the same manner as voluntary withdrawals.

**Suspension of Valuations, Withdrawals and Withdrawal Payments**

The General Partner may suspend the issuance of Interests, the Partners' withdrawal privileges, the payment of withdrawal proceeds and the valuation of the Fund's net assets:

- (i) during any period when any stock exchange or over-the-counter market on which the Fund's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;
- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of investments by the Fund, or the determination of the value of the assets of the Fund, would not be reasonably practicable;
- (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Fund's assets or liabilities, or of current prices in any stock market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Fund cannot reasonably be accurately ascertained within a reasonable time frame;
- (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
- (v) in other circumstances where the General Partner is unable to fairly value the Fund's assets due to extreme market conditions; or
- (vi) automatically upon liquidation of the Fund.

Upon the reasonable determination by the General Partner that conditions leading to suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be

honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.

#### **Soft Wind Down**

It is anticipated that any suspension in the circumstances described above in “Suspension of Valuations, Withdrawals and Withdrawal Payments” (each, a “***Suspension***”) would ordinarily be temporary (other than in connection with a decision to proceed with the liquidation of the Fund). However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the General Partner, in consultation with the Investment Manager, considers it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the General Partner to cause the Fund to return the Fund’s assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Fund) (an “***Orderly Realization***”). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Fund as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund’s portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the Limited Partners. The General Partner will notify Limited Partners of any decision to proceed with an Orderly Realization of the Fund. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Fund as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the “***Realization Period***”). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime. The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. Management Fees shall be payable and Performance Allocations shall



be made during an Orderly Realization on the same basis as described herein.

**Transfers**

Interests are not transferable except with the prior written consent of the General Partner, which consent may be withheld in the General Partner's sole discretion. The General Partner in its sole discretion may require any transferee or assignee of any Limited Partner to agree in writing to be bound by the Partnership Agreement. Interests of any Affiliated Investors may be transferred to other affiliates thereof without restriction.

**Duty of Care;  
Indemnification**

The Partnership Agreement provides that the General Partner, the Investment Manager and each of their affiliates are not liable to the Fund or the Limited Partners for any loss or damage arising by reason of being or having been the General Partner or the Investment Manager or from any acts or omissions in the performance of its services as General Partner or Investment Manager, as applicable, in the absence of willful misconduct, fraud or gross negligence or as otherwise required by law, and contains provisions for the indemnification of the General Partner, the Investment Manager and each of their affiliates by the Fund (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been the General Partner or the Investment Manager or in connection with the Partnership Agreement or the Fund's business or affairs to the fullest extent permitted by law. The General Partner is not personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the federal or state income tax laws applicable to the Fund or its investors.

**Valuations**

In general, the Fund's financial statements will be prepared in accordance with GAAP. The General Partner has delegated the valuation of the Fund's assets to the Investment Manager who values the Fund's assets as of the close of each accounting period in accordance with its valuation policies and procedures. Valuations may be suspended as set forth above in "Suspension of Valuations, Withdrawals and Withdrawal Payments."

**Reserves**

Appropriate reserves may be accrued and charged against net assets and proportionately against the Capital Accounts of the Partners for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the General Partner in its sole discretion deems necessary or appropriate. In the sole discretion of the General Partner, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Capital Accounts of those investors who are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were



Partners at the time of the act or omission giving rise to the contingent liability for which the reserve was established.

If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were Partners during any such prior period.

**Fiscal Year**

The Fund has a fiscal year ending on December 31 of each calendar year.

**Reports to Partners**

The Fund furnishes to its Partners as soon as practicable after the end of each taxable year (or as otherwise required by law) annual reports containing financial statements examined by the Fund's independent auditors as well as such tax information as is necessary for each Partner to complete federal and state income tax or information returns, along with any other tax information required by law. The Fund also furnishes monthly reports reviewing the Fund's performance for such calendar month. The General Partner selects the Fund's independent accountants in its sole discretion.

**Advisory Committee**

The General Partner and/or the Investment Manager may appoint, or cause to be appointed, a committee (the "**Advisory Committee**") consisting of one or more individuals selected by the General Partner and/or the Investment Manager, none of whom is affiliated with the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in the Fund or an affiliate thereof). If established, the Advisory Committee will have the authority, at the request of the General Partner and/or the Investment Manager, to consult with the General Partner and/or the Investment Manager on any matters that may involve a conflict of interest between the General Partner and/or the Investment Manager (or their affiliates) on the one hand and the Limited Partners (or shareholders of the Offshore Fund) and the Fund on the other. Any consent given by a majority of the Advisory Committee on behalf of the Fund in good faith after consultation with the General Partner and/or the Investment Manager is binding on the Fund and the Limited Partners or shareholders of the Offshore Fund (so long as such majority consists of persons independent of the General Partner and/or the Investment Manager and their affiliates). The Fund will have the authority to agree to reimburse members of the Advisory Committee for their out-of-pocket expenses and to indemnify them to the maximum extent permitted by law.

## **Dissolution and Liquidation**

In the event an Orderly Realization lasts longer than three years, Limited Partners with a combined percentage interest in the Fund of at least 75% may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Fund. The Limited Partners will not have any other right to bring an action in court to dissolve the Fund.

Dissolution of the Fund may also occur upon the General Partner's election, in its sole discretion, to dissolve the Fund or upon the occurrence of any event which results in the General Partner (or a successor to its business) ceasing to be the general partner of the Fund. Upon the occurrence of any such event, the General Partner (or a liquidator elected by a majority in interest of the Limited Partners, if the General Partner is unable to perform this function) is charged with winding up the affairs of the Fund, liquidating its assets to the extent feasible and making liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with each Partner's Capital Account balance.

## **Placement Agents**

The Investment Manager may engage third parties to solicit investors and act as placement agents for the Fund. Placement agents may charge a placement fee directly to investors solicited by any such placement agent, but such fees will not affect the subscription amount and will not be collected by or from the Fund. The placement agent may be reimbursed for its expenses and indemnified by the Fund.

Furthermore, placement agents may be paid a portion of the Management Fee or Performance Allocation attributable to such investors solicited by them, thereby reducing the Management Fee or Performance Allocation received by the Investment Manager. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent must comply with the legal requirements of the jurisdictions within which it offers and sells Interests.

## **Tax Status**

The General Partner believes that the Fund should be treated as a partnership for U.S. federal income tax purposes and that it should not itself be subject to U.S. federal income taxation. Each Limited Partner otherwise subject to U.S. federal income tax is required to include in such Limited Partner's taxable income such Limited Partner's share of the Fund's income and gains, when realized by the Fund (regardless of cash distributions from the Fund to such investor), and may claim, to the extent allowable, such Limited Partner's share of the Fund's losses and deductions. Due to the nature of the Fund's activities, the Fund's income or loss for U.S. federal income tax purposes for a particular taxable period may differ from its financial or economic results. The

deductibility of a Limited Partner's share of any Fund losses or deductions may be limited. See "*Tax Considerations*."

#### **ERISA**

The General Partner intends to limit investment in the Fund by "benefit plan investors" so that the assets of the Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"). See "*ERISA and Other Regulatory Considerations*."

#### **Amendment of the Limited Partnership Agreement**

The Partnership Agreement may be amended by the General Partner with the consent of a majority in interest of the Limited Partners, which consent may be obtained through negative consent. However, the Fund may not: (a) increase the obligation of a Limited Partner to make any contribution to the capital of the Fund; (b) reduce the Capital Account of any Limited Partner other than as contemplated by the Partnership Agreement; or (c) reduce any Limited Partner's right to share in net profits or assets of the Fund without the consent of each Limited Partner adversely affected thereby. The above consent may be obtained by negative consent (affording the Limited Partners not ice and opportunity to object).

Notwithstanding the foregoing, the General Partner may amend the Partnership Agreement at any time without the consent of any Limited Partner: (a) to comply with applicable laws and regulations; (b) to make changes that do not adversely affect the rights or obligations of any Limited Partner; (c) to cure any ambiguity or correct or supplement any conflicting provisions of the Partnership Agreement; or (d) with respect to any other amendment, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Fund as of a date that is not less than 30 days after the General Partner has furnished written notice of such amendment to each Limited Partner and that is prior to the effective date of the amendment.

#### **Variation of Terms**

The General Partner, in its sole discretion, may enter into a side letter or similar agreement to or with one or more Limited Partners that has the effect of establishing rights under, or altering or supplementing the terms of the Partnership Agreement or the Subscription Documents (including those relating to Management Fees, the Performance Allocation, transparency, and withdrawals) with respect to such Limited Partner. The General Partner generally grants waivers of the Management Fees, Performance Allocation and withdrawal restrictions to principals and employees of the Investment Manager and its affiliates, as well as their related family members and affiliates.

#### **Dispute Resolution**

Any controversy or claim ("*Dispute*") out of or relating to or in connection with the Partnership Agreement or otherwise involving the Fund, its Partners and/or any Indemnified Party (as defined in the Partnership Agreement) shall be submitted to mediation in accordance

with the Partnership Agreement and if such dispute has not been resolved within 90 days, will be resolved by binding arbitration in accordance with the Partnership Agreement. Mediation and arbitration shall be held in Dallas, Texas and Delaware law shall apply to any dispute, except as otherwise provided in the Partnership Agreement.

## RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST

*Investment in the Fund is speculative and involves certain risks. Certain of these risks are summarized below. The Fund may not be suitable for all investors and is intended for sophisticated investors who can accept the risks associated with its investments. An investment in the Fund does not constitute a complete investment program. Investors will not have recourse except with respect to the assets of the Fund. Prospective investors should consider, among others, the risk factors and potential conflicts of interest described in this section. All investors in the Fund should consult their own legal, tax and financial advisors prior to investing in the Fund.*

### Fund Risks

*Investment Judgment; Market Risk.* The profitability of a significant portion of the Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Fund, there is always some, and occasionally a significant, degree of market risk.

*Reliance on Key Persons.* The Fund will be substantially dependent on the services of James Dondero, Mark Okada and Joshua Terry (the "**Key Man Group**"). In the event of the death, disability, departure or insolvency of a member of the Key Man Group, or the complete transfer of a member's interest in the Investment Manager, the business of the Fund may be adversely affected. Each member of the Key Man Group will devote such time and effort as he deems necessary for the management and administration of the Fund's business. However, the members of the Key Man Group may engage in various other business activities in addition to managing the Fund, and consequently may not devote all time to Fund business.

*Investment Authority.* Substantially all decisions with respect to the management of the Fund are made by the General Partner and the Investment Manager. Limited Partners have no right or power to take part in the management of the Fund. The Investment Manager also makes all of the trading and investment decisions of the Fund. In the event of the withdrawal or bankruptcy of the General Partner, generally the Fund will be liquidated.

*Performance Allocation.* The Performance Allocation made to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

*Withdrawal Restrictions.* There are severe restrictions on withdrawals from the Fund (which may be settled in securities rather than cash) and on transfers of Interests. The prior written consent of the General Partner is required for a transfer of the Interest of any Limited Partner and the General Partner, in its sole discretion, may require any transferee or assignee of any Limited Partner to agree in writing to be bound by the Partnership Agreement. Because of the restrictions on withdrawals and transfers, an investment in the Fund is a relatively illiquid investment and involves a high degree of risk. There is no independent market for the purchase or sale of Interests and none is expected to develop. Limited Partners must represent that they are purchasing Interests for investment. A subscription for Interests should be considered only by persons financially able to maintain their investment and who can accept a loss of all of their investment.



*No Distributions.* Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current distributions of income. Moreover, an investor is required to report and pay taxes on its allocable share of income from the Fund, even though no cash is distributed by the Fund.

*In-Kind Distributions.* The Partnership Agreement authorizes the General Partner to make distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Diversification.* Since the Fund's portfolio will not necessarily be widely diversified, the investment portfolio of the Fund may be subject to more rapid changes in value than would be the case if the Fund were required to maintain a wide diversification among companies, securities and types of securities.

*Valuations.* From time to time, certain situations affecting the valuation of the Fund's investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Fund) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or withdrawal transactions or Management Fees or Performance Allocations based on subsequent valuation data.

*Non-Public Information.* From time to time, the Investment Manager may come into possession of non-public information concerning specific companies. Under applicable securities laws, this may limit the Investment Manager's flexibility to buy or sell portfolio securities issued by such companies. The Fund's investment flexibility may be constrained as a consequence of the Investment Manager's inability to use such information for investment purposes.

*Soft Dollars.* The Investment Manager may enter into "soft dollar" arrangements with one or more broker-dealers whereby the Investment Manager will direct securities transactions to the broker-dealer in return for research products and services from the broker-dealer. Although the Investment Manager will use the research and services in making investment decisions for the Fund, the Investment Manager may use such research or services for other accounts and the Fund will generally pay more than the lowest available commissions for execution of these transactions. The Investment Manager may also enter into "soft dollar" arrangements to cover Fund expenses or costs and expenses of the Investment Manager to the extent such arrangements are permitted by law and described in this Memorandum. See "*Brokerage and Custody.*"

*Absence of Registration.* The Fund has not and will not register under the Investment Company Act. Accordingly, the provisions of the Investment Company Act which, among other things, require that a fund's board of directors, including a majority of disinterested directors, approve certain of the fund's activities and contractual relationships, prohibit certain trading and investment activities and prohibit the fund from engaging in certain transactions with its affiliates, will not be applicable. Neither the General Partner nor the Investment Manager is registered as a CPO or a CTA with the NFA in reliance on an exemption from registration pursuant to CFTC Regulation 4.13(a)(3). Accordingly, the provisions of the Commodity Exchange Act and the regulations promulgated thereunder applicable to registered persons will not be applicable to the General Partner or the Investment Manager.

*Recent Developments in the Financial Services Industry.* Recent developments in the U.S. financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty for the financial services industry. In July of 2010, the Dodd-Frank Financial Reform Act was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. The implications of the passage of the Dodd-Frank Financial Reform Act for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Fund's business, operations and performance.

## **Investment Strategy Risks**

### Risks Associated With Investing in CLOs

*Risks of Investment Focus.* The Fund's portfolio may consist of CLO Securities. A cash flow CLO is generally analogous to a special purpose finance company. The CLO owns a portfolio consisting of corporate loans and other investments typically from which it receives interest income, together with capital gains and losses. The CLO is often financed with equity, which may be in the form of preference shares or income notes ("**CLO Equity**") and several levels of long-term debt ("**CLO Debt**"). CLO Debt is typically rated by the rating agencies based on the deal structure as well as outstanding principal amount of portfolio securities and, in most cases, is not contingent on the market value of the underlying portfolio. CLO Equity is almost always unrated.

CLO Securities are subject to, among other risks, credit, liquidity and interest rate risks. The CLO Equity that the Fund may purchase may be unrated or non-investment grade. In addition, as a holder of CLO Equity, the Fund may have limited remedies available upon the default of the CLO.

The value of the CLO Securities that the Fund may own generally will fluctuate with, among other things, the financial condition of the obligors or issuers of the CLO Securities' underlying portfolio of assets ("**CLO Collateral**"), general economic conditions, the condition of certain financial markets, political events, developments or trends in any particular industry and changes in prevailing interest rates. CLO Securities are issued on a non-recourse basis and holders of CLO Securities must rely solely on distributions on the CLO Collateral or proceeds thereof for payment in respect thereof. If distributions on the CLO Collateral are insufficient to make payments on the CLO Securities, no other assets will be available for payment of the deficiency and following realization of the CLO Securities, the obligations of such issuer to pay such deficiency generally will be extinguished.

Issuers of CLO Securities may acquire interests in loans and other debt obligations by way of sale, assignment or participation. The purchaser of an assignment typically succeeds to all the rights and obligations of the assigning institution and becomes a lender under the credit agreement with respect to the loan or debt obligation; however, its rights can be more restricted than those of the assigning institution.

CLO Collateral may consist of corporate loans, leveraged loans and other instruments, which often are rated below investment grade (or of equivalent credit quality). Loans may be unsecured and may be subordinated to certain other obligations of the issuer thereof. The lower ratings of below

investment grade loans reflect a greater possibility that adverse changes in the financial condition of an issuer or in general economic conditions or both may impair the ability of the related issuer or obligor to make payments of principal or interest. Such investments may be speculative.

*Dependence Upon Other Unrelated Managers.* The success of a CLO may depend on the management talents and efforts of one person or a small group of persons whose management could adversely affect the CLO and, accordingly, the Fund as an investor in such CLO. Given that the Investment Manager will not have an active role in the management of these CLOs, the return on the Fund's investments in such CLOs will depend on the performance of unrelated managers.

*Investments in CLOs Managed by the Investment Manager or its Affiliates.* The Fund may invest a significant portion of its capital in structured investments, including CLO tranches originated and managed by third parties and CLO tranches managed by the Investment Manager or its affiliates (the "*Affiliated CLOs*"). If the Fund invests in Affiliated CLOs, the Limited Partners will indirectly pay the fees (senior and subordinated) (but only if such investment is in the equity tranche of such Affiliated CLO), expenses and any carried interest at primary issuance. The Investment Manager or its affiliates will receive senior and subordinated management fees and, in some cases, a performance-based allocation or fee with respect to its role as general partner and/or manager of the Affiliated CLOs. If the Fund provides all of the equity for an Affiliated CLO, there may be no third party with whom the amount of such fees, expenses and carried interest can be negotiated on an arm's-length basis. The Investment Manager will have conflicting division of loyalties and responsibilities regarding the Fund and an Affiliated CLO, and certain other conflicts of interest would be inherent in the situation. There can be no assurance that the interests of the Fund would not be subordinated to those of an Affiliated CLO or to other interests of the Investment Manager.

*Multiple Levels of Fees.* The Fund and the CLOs (including Affiliated CLOs) are expected to impose management fees, other administrative fees, carried interest and other performance allocations on realized and unrealized appreciation in the value of the assets managed and other income. This may result in greater expense than if Limited Partners were able to invest directly in the CLOs or underlying investments. Limited Partners should take into account that the return on their investment will be reduced to the extent of both levels of fees. The general partner or manager of a CLO (including a member of the Highland Group (defined below)) may receive the economic benefit of certain fees from its portfolio companies for services and in connection with unconsummated transactions (e.g., break-up, placement, monitoring, directors', organizational and set-up fees and financial advisory fees). Additionally, some of the CLOs may invest themselves in underlying hedge funds or CLOs. In such case, additional management costs and other administrative expenses may be incurred.

*Limited Diversification.* CLOs may invest in concentrated portfolios of assets. The concentration of an underlying portfolio in any one obligor would subject the related CLO Securities (the related CLO Equity in particular) to a greater degree of risk with respect to defaults by such obligor and the concentration of a portfolio in any one industry would subject the related CLOs (the related CLO Equity in particular) to a greater degree of risk with respect to economic downturns relating to such industry. The Fund may have a concentrated exposure to CLOs of a particular type of CLO.

*CLO Embedded Leverage Risk.* The Fund's participation in CLOs involves varying amounts of leverage. Leverage is embedded in all classes of a CLO other than the most senior tranche. If the Fund retains either the most or one of the most subordinate tranches of the CLO's securities, it will hold the most leveraged investment in the CLO. While leverage presents opportunities for increasing the Fund's total return, it has the effect of potentially increasing losses as well. Accordingly, any event which



adversely affects the value of an investment in a CLO would be magnified to the extent such CLO is leveraged. The cumulative effect of the use of leverage by a CLO in a market that moves adversely to the CLO's investments could result in a substantial loss to the CLO which would be greater than if the CLO were not leveraged. The borrowing arrangements of CLOs will contain events of default that, under certain circumstances, could result in early amortization or in the acceleration of the maturities of these obligations. In the event of acceleration of the borrowing arrangements of a CLO, in whole or in part, it may be required to dispose of all or a significant portion of its investments. Such a forced disposal of securities could result in realization of value of such investments significantly below the anticipated market values for such securities. When the Fund invests in derivative transactions, it may also gain leverage through such derivative transactions, which will expose the Fund to a greater risk of loss.

*Interest Rate Mismatch.* CLOs may be subject to interest rate risk. The CLO Collateral of an issuer of a CLO may bear interest at a fixed or floating rate, while the CLO Debt may bear interest at a floating or fixed rate. As a result, there could be a floating/fixed rate or basis mismatch between such CLO Debt and the CLO Collateral which bears interest at a fixed rate ("*Fixed Rate Assets*"), and there may be a timing mismatch between such CLO Debt and the assets that are not Fixed Rate Assets ("*Floating Rate Assets*"). In addition, the interest rate on Floating Rate Assets may adjust more frequently or less frequently, on different dates and based on different indices than the interest rates on the CLO Debt. As a result of such mismatches, an increase or decrease in the level of the floating rate indices could adversely impact the ability to make payments on such CLO Debt or Equity. Although many CLOs attempt to hedge this interest rate risk, the hedges may not eliminate this risk and payments by the CLO under the hedges may significantly reduce the distributions on the CLO securities. In addition, these hedges may have additional risks, such as counterparty risk, that are not present without these hedges.

*Lower Credit Quality Securities.* There are no restrictions on the credit quality of the investments of the Fund. CLO Securities in which the Fund will invest may have no ratings or may be deemed by rating agencies to have substantial vulnerability to default in payment of interest and/or principal and have the lowest quality ratings. The Fund may purchase CLO Securities which have ratings that have been downgraded or placed on "credit watch" for future downgrading. Lower rated and unrated securities in which the Fund may invest have large uncertainties or major risk exposures to adverse conditions and are considered to be predominantly speculative and may become a defaulted asset for a variety of reasons. Generally, such securities offer a higher return potential than higher rated securities, but involve greater volatility of price and greater risk of loss of income and principal.

The market values of certain of these securities (such as subordinated securities) also tend to be more sensitive to changes in economic conditions than higher rated securities. The value of leveraged loans and other assets underlying a CLO may also be affected by changes in the market's perception of the entity issuing or guaranteeing them, or by changes in government regulations and tax policies. Additionally, loans and interests in loans have significant liquidity and market value risks since they are not generally traded in organized exchange markets but are traded by banks and other institutional investors engaged in loan syndications. Because loans are privately syndicated and loan agreements are privately negotiated and customized, loans are not purchased or sold as easily as publicly traded securities. In addition, historically the trading volume in the loan market has been small relative to the high-yield debt securities market, and such illiquidity has been exacerbated during the current liquidity crisis.

Leveraged loans have historically experienced greater default rates than has been the case for investment grade securities. There can be no assurance as to the levels of defaults and/or recoveries that may be experienced on the assets underlying CLO Securities .

In general, the ratings of nationally recognized rating organizations represent the opinions of such agencies as to the quality of securities that they rate. Such ratings may be used by the Investment Manager as an initial basis for the selection of portfolio securities. Such ratings, however, are relative and subjective; they are not absolute standards of quality and do not evaluate the market value risk of the securities. Such ratings also do not reflect macroeconomic or systematic risk, including the risk of increased illiquidity in the credit markets. It is also possible that a rating agency might not change its rating of a particular issue on a timely basis to reflect subsequent events.

*Defaulted Assets Underlying CLO Securities.* If the assets underlying a CLO Security become defaulted assets, such defaulted assets may become subject to either substantial workout negotiations or restructuring, which may entail, among other things, a substantial reduction in the interest rate, a substantial write-down of principal, and a substantial change in the terms, conditions and covenants with respect to such defaulted asset. In addition, such negotiations or restructuring may be quite extensive and protracted over time, and therefore may result in substantial uncertainty with respect to the ultimate recovery on such defaulted asset. The liquidity for defaulted assets may be limited, and to the extent that defaulted assets are sold, it is highly unlikely that the proceeds from such sale will be equal to the amount of unpaid principal and interest thereon. Furthermore, there can be no assurance that the ultimate recovery on any defaulted assets will be at least equal to either the minimum recovery rate assumed by any rating agency that rates the notes of the CLO security. Therefore, if any CLO security has defaulted assets which correspond to the exposure of the Fund's interest in the CLO security, the Fund may be adversely affected.

There exist significant additional risks for CLO Securities and investors in such securities as a result of the current liquidity crisis. Those risks include, among others, (i) the likelihood that the issuer of the CLO Security will find it harder to sell any of its assets in the secondary market, thus rendering it more difficult to dispose of assets which it has the discretion to manage, including credit risk obligations, credit improved obligations or defaulted obligations, (ii) the possibility that the price at which assets can be sold by the issuer of the CLO Security will have deteriorated from their effective purchase price and (iii) the increased illiquidity of the notes issued by the CLO Security. These additional risks may affect the returns on the investments in the Fund's portfolio.

*Subordination of CLO Debt and CLO Equity.* The Fund's portfolio may consist of CLO Equity and subordinate CLO Debt. Subordinate CLO Debt generally is fully subordinated to the related CLO senior tranches. CLO Equity generally is fully subordinated to any related CLO Debt. Thus, some of the investments of the Fund in a CLO may rank behind other creditors of the CLO and an investment by the Fund in the equity tranche of a CLO may rank behind all creditors of the CLO. To the extent that any losses are incurred by a CLO in respect of its related CLO Collateral, such losses are likely to be borne first by the holders of the related CLO Equity, next by the holders of any related subordinated CLO debt and finally by the holders of the related CLO senior tranches. In addition, if an event of default occurs under the governing instrument or underlying investment, as long as any CLO senior tranches are outstanding, the holders thereof generally are likely to be entitled to determine the remedies to be exercised under the instrument governing the CLO. Remedies pursued by such holders could be adverse to the interests of the holders of any related subordinated CLO Debt and/or the holders of the related CLO Equity, as applicable. Investments of the Fund may be the first to absorb any losses by the



CLO on its underlying portfolio. This may result in losses on the invested proceeds of the Fund and could result in the complete loss of invested proceeds.

*Mandatory Redemption of CLO Senior Tranches and CLO Debt.* Under certain circumstances, cash flows from CLO Collateral that otherwise would have been paid to the holders of any related CLO Debt and the related CLO Equity will be used to redeem the related CLO senior tranches. This could result in an elimination, deferral or reduction in the interest payments, principal repayments or other payments made to the holders of such CLO Debt or such CLO Equity, which could adversely impact the returns to the holders of such CLO Debt or such CLO Equity.

*Optional Redemption of CLO Senior Tranches and CLO Debt.* An optional redemption by a CLO of its securities and, in particular, the exercise of rights by the holders of one or more classes of its securities (or the requisite percentages thereof) so as to effect any such optional redemption, could require the collateral or portfolio manager of the related CLO to liquidate positions more rapidly than would otherwise be desirable, which is likely to materially and adversely affect the realized value of the items of CLO Collateral sold (and which in turn is likely to materially and adversely impact the holders of any related CLO securities, including the Fund). As a result of any such rapid liquidation of a CLO, a holder of the related CLO securities (including the Fund) could lose all or a substantial portion of its investment in such CLO securities.

*Insolvency Risks.* Various laws enacted for the protection of creditors may apply to the issuers of the CLO Collateral (solely for purposes of this risk factor, an “*Insolvent Company*”). The information in this paragraph and the following paragraph is applicable with respect to U.S. issuers of CLO Collateral. Insolvency considerations may differ with respect to non-U.S. issuers of CLO Collateral. If a court in a lawsuit brought by an unpaid creditor or representative of creditors of an Insolvent Company, such as a trustee in bankruptcy, were to find that the issuer did not receive fair consideration or reasonably equivalent value for incurring the indebtedness constituting the CLO or CLO Collateral (as applicable) and, after giving effect to such indebtedness, the Insolvent Company (i) was insolvent, (ii) was engaged in a business for which the remaining assets of the Insolvent Company constituted unreasonably small capital or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they mature, such court could determine to invalidate, in whole or in part, such indebtedness as a fraudulent conveyance, to subordinate such indebtedness to existing or future creditors of the Insolvent Company or to recover amounts previously paid by such issuer in satisfaction of such indebtedness. The measure of insolvency for purposes of the foregoing will vary. Generally, an Insolvent Company would be considered insolvent at a particular time if the sum of its debts were then greater than all of its property at a fair valuation or if the present fair saleable value of its assets were then less than the amount that would be required to pay its probable liabilities on its existing debts as they became absolute and matured. There can be no assurance as to what standard a court would apply in order to determine whether the Insolvent Company was “insolvent” after giving effect to the incurrence of the indebtedness constituting the CLO or CLO Collateral (as applicable) or that, regardless of the method of valuation, a court would not determine that the Insolvent Company was “insolvent” upon giving effect to such incurrence. In addition, in the event of the insolvency of an Insolvent Company, payments made on such CLO or CLO Collateral (as applicable) could be subject to avoidance as a “preference” if made within a certain period of time (which may be as long as one year) before insolvency.

In general, if payments on a CLO or CLO Collateral (as applicable) are avoidable, whether as fraudulent conveyances or preferences, such payments can be recaptured either from the initial recipient (such as the Fund) or from subsequent transferees of such payments (such as the Limited Partners).

However, a court in a bankruptcy or insolvency proceeding would be able to direct the recapture of any such payment from a Limited Partner only to the extent that such court has jurisdiction over such holder or its assets. Moreover, it is likely that avoidable payments could not be recaptured directly from a holder that has given value in exchange for its interest, in good faith and without knowledge that the payments were avoidable. Nevertheless, there can be no assurance that a Limited Partner will be able to avoid recapture on this or any other basis.

The preceding discussion is based upon principles of United States Federal and state laws. Insofar as the Fund's portfolio consists of the obligations of non-United States obligors, the laws of certain foreign jurisdictions may provide for avoidance remedies under factual circumstances similar to those described above or under different circumstances, with consequences that may or may not be analogous to those described above under United States Federal and state laws.

*"Widening" Risk.* For reasons not necessarily attributable to any of the risks set forth herein (for example, supply/demand imbalances or other market forces), the prices of the CLO Securities in which the Fund invests may decline substantially. In particular, purchasing assets at what may appear to be "undervalued" levels is no guarantee that these assets will not be trading at even lower levels at a time of valuation or at the time of sale. It may not be possible to predict, or to hedge against, such "spread widening" risk.

*There Is Limited Disclosure About the CLO Securities and the Underlying CLO Collateral in this Memorandum.* The Investment Manager will not be required to provide the investors in the Fund with financial or other information (which may include material non-public information) it receives related to the CLO Securities. The Investment Manager also may not disclose to investors notices the Investment Manager receives and it will not have any obligation to keep investors informed as to defaults in the CLO Securities, failure by the Fund to receive any payment of principal, interest, or other amounts or to disclose the portfolio or the decisions of which CLO Securities were not purchased in general to any investor. In addition, the investors will not have any right to inspect any records relating to the CLO Securities, and the Investment Manager will not be obligated to disclose any further information or evidence regarding the existence or terms of, or the identity of any obligor on, any CLO Securities.

*Impact of the Volcker Rule on the Liquidity of the Notes.* Section 619 of the Dodd-Frank Act added a provision, commonly referred to (together with the final regulations with respect thereto adopted on December 10, 2013) as the Volcker Rule, to federal banking laws to generally prohibit various covered banking entities from engaging in proprietary trading or acquiring or retaining an ownership interest in "covered funds" which generally include, sponsoring or having certain relationships with a hedge fund or private equity fund (defined in final regulations adopted on December 10, 2013 as any entity relying on Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act to be exempt from registration under the Investment Company Act), subject to certain exemptions. The Volcker Rule also provides for certain supervised nonbank financial companies that engage in such activities or have such interests or relationships to be subject to additional capital requirements, quantitative limits or other restrictions. The conformance period for the Volcker Rule has been extended to July 21, 2015, and to July 21, 2017 for CLOs. Certain CLOs may be considered "covered funds" under the Volcker rule and therefore the most senior tranche of the CLO may be a restricted security for various banking and nonbanking entities. This may restrict the liquidity of certain non-Volcker compliant CLOs in the future and may affect the Fund's ability to liquidate these positions on a timely basis.

### Investment Strategy and Investment Risks

*General Economic and Market Conditions.* The success of the Fund's activities will be affected by general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws (including laws relating to taxation of the Fund's investments), trade barriers, currency exchange controls, and national and international political circumstances (including wars, terrorist acts or security operations). These factors may affect the level and volatility of securities prices and the liquidity of the Fund's investments. Volatility or illiquidity could impair the Fund's profitability or result in losses. The Fund may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets; the larger the positions, the greater the potential for loss.

Unpredictable or unstable market conditions may result in reduced opportunities to find suitable investments to deploy capital or make it more difficult to exit and realize value (or avoid significant losses) from the Fund's existing investments. It is important to understand that the Fund can incur material losses even if it reacts quickly to difficult market conditions and there can be no assurance that the Fund will not suffer material adverse effects from broad and rapid changes in market conditions.

*Recent Developments in Global Credit Markets.* Recently, declines in the market value of asset-backed securities, especially securities backed by subprime mortgages, have been concomitant with significant market events. Increasing credit and valuation problems in the subprime mortgage market have generated extreme volatility and illiquidity in the markets for securities directly or indirectly exposed to subprime mortgage loans. This volatility and illiquidity has extended to the global credit and equity markets generally, and, in particular, to the high-yield bond and loan markets, exacerbated by, among other things, growing uncertainty regarding the extent of the problems in the mortgage industry and the degree of exposure of financial institutions and others, decreased risk tolerance by investors and significantly tightened availability of credit. The duration and ultimate effect of current market conditions cannot be predicted, nor is it known whether or the degree to which such conditions may worsen. However, the continuation of current market conditions, uncertainty or further deterioration could result in further declines in the market values of potential Fund investments or declines in the market values of subsequently purchased Fund investments. Such declines could lead to diminished investment opportunities for the Fund, prevent the Fund from successfully executing its investment strategies or require the Fund to dispose of investments at a loss while such adverse market conditions prevail.

*Illiquidity.* The investments made by the Fund may be or become very illiquid, and consequently the Fund may not be able to sell such investments at prices that reflect the Investment Manager's assessment of their value or the amount paid for such investments by the Fund. Illiquidity may result from the absence of an established market for the investments as well as legal, contractual or other restrictions on their resale by the Fund and other factors. Furthermore, the nature of the Fund's investments, especially those in financially distressed companies, may require a long holding period prior to profitability. The Partnership Agreement authorizes the General Partner to make distributions in kind (including interests in affiliated liquidating vehicles) of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Short Sales.* The Fund may enter into transactions, known as "short sales," in which it sells a security it does not own in anticipation of a decline in the market value of the security. Short sales by the Fund that are not made "against the box" theoretically involve unlimited loss potential since the



market price of securities sold short may continuously increase. The Fund may mitigate such losses by replacing the securities sold short before the market price has increased significantly. Under adverse market conditions, the Fund might have difficulty purchasing securities to meet its short sale delivery obligations, and might have to sell portfolio securities to raise the capital necessary to meet its short sale obligations at a time when fundamental investment considerations would not favor such sales.

*Derivatives.* Derivative instruments, or “derivatives,” include futures, options, swaps, structured securities and other instruments and contracts that are derived from, or the value of which is related to, one or more underlying securities, financial benchmarks, currencies or indices. Derivatives allow an investor to hedge or speculate upon the price movements of a particular security, financial benchmark currency or index at a fraction of the cost of investing in the underlying asset. The value of a derivative depends largely upon price movements in the underlying asset. Therefore, many of the risks applicable to trading the underlying asset are also applicable to derivatives of such asset. However, there are a number of other risks associated with derivatives trading. For example, because many derivatives are “leveraged,” and thus provide significantly more market exposure than the money paid or deposited when the transaction is entered into, a relatively small adverse market movement can not only result in the loss of the entire investment, but may also expose the Fund to the possibility of a loss exceeding the original amount invested. Derivatives may also expose investors to liquidity risk, as there may not be a liquid market within which to close or dispose of outstanding derivatives contracts, and to counterparty risk. The counterparty risk lies with each party with whom the Fund contracts for the purpose of making derivative investments (the “*Counterparty*”). In the event of the Counterparty’s default, the Fund will only rank as an unsecured creditor and risks the loss of all or a portion of the amounts it is contractually entitled to receive.

*Life Settlement Investments.* The Fund may invest in life settlements or own companies that may invest in life settlements, which are the transfers of the beneficial interest in a life insurance policy by the underlying insured person to a third party. The Fund will generally purchase the beneficial interest in a life insurance policy for more than its cash surrender value but at a discount to its face value (i.e., the payment amount set forth in the life insurance policy that is payable on the death of the insured or upon maturity of the life insurance policy). After purchase the Fund will be responsible for premiums payable on the life insurance policy and will be entitled to receive the full face value from the insurance company upon maturation (i.e., upon the death of the insured). Accordingly, if the Fund is unable to make premium payments on a purchased life insurance policy due to liquidity issues or for any other reason, the policy will lapse, and the Fund will lose its ownership interest in the policy. In addition, the Fund’s investments in life settlement policies involve certain additional risks, including inaccurate estimations of life expectancy of the insured individuals, liquidity risk, credit risk of the insurance company, risks of any policies purchased being unenforceable and risks of adverse regulatory and legal changes.

The actual rate of return on a life settlement policy cannot be calculated before the insured dies and the longer the insured lives, the lower the rate of return on the related life settlement policy will be. Current privacy laws may limit the information available to the Fund about insureds and may cause the Fund to inaccurately estimate the value of particular policies. The Fund’s inability to predict with certainty the life expectancies of the pool of underlying insured persons tied to purchased life settlement policies may cause unanticipated delays in the collection of a substantial number of life settlement policies. Life settlements are also generally considered illiquid because there is a limited secondary market for such policies to be bought and sold. Accordingly, the Fund may be limited in its ability to sell policies in its portfolio in a timely fashion and/or at a favorable price. In addition, if a life insurance company declares bankruptcy or otherwise is insolvent, there may not be sufficient funds for it to pay

its liability, and while many states have an insurance guarantee fund to provide payments to beneficiaries of insurance companies that declare bankruptcy, the collection process can be prolonged and complicated, and collection may not be possible in all circumstances.

Life settlement policies may also be subject to contest by the issuing life insurance company. If the insurance company successfully contests a policy, the policy will be rescinded and declared void. For example, insurers may refuse to pay benefits on certain life insurance policies on the basis that there was no “insurable interest” on the part of the purchaser of a life insurance policy at the time such policy was issued. Recently the issue of a lack of insurable interest has been raised by insurers and beneficiaries of irrevocable life insurance trusts, in the context of so-called “stranger originated life insurance” policies. It is possible that courts may void certain life settlement policies for these or other reasons. The market for life settlement policies may also be subject to new government regulation that may impact the ability of the Fund to obtain life settlement policies. Insurance companies may seek regulation or changes of law restricting or otherwise encumbering the transfer of life insurance policies in life settlement policy transactions. No assurance can be made that insurance companies will not be successful in limiting the supply of life insurance policies available for purchase in life settlement policy transactions.

Any or all of the risks described above could have a material adverse effect on the Fund’s investment returns and, therefore, on its ability to make distributions to its shareholders. In addition, it is unclear under a variety of federal income tax principles whether the income from life settlements or the Fund’s ownership in a non-U.S. company that makes distributions resulting from such life settlement investments is qualifying income for purposes of the IRS 90% gross income test the Fund must satisfy each year to qualify as a regulated investment company (“*RIC*”). Further, the Fund’s ownership in a non-U.S. company that invests in life settlements, it is unclear whether the U.S. will respect the non-U.S. company reliance on the applicable U.S. tax treaty for purposes of the avoidance of certain withholding tax or whether the non-U.S. company is deemed to be engaged in a U.S. trade or business within the U.S. If any such was the case, the Fund could be materially adversely effected by such determination on the non-U.S. company with respect to the Fund’s investments returns and its ability to make distributions to its shareholders. The Fund intends to monitor its investments to ensure that the Fund remains qualified as a RIC.

*Foreign Securities.* Investments in foreign securities involve certain factors not typically associated with investing in U.S. securities, such as risks relating to (i) currency exchange matters, including fluctuations in the rate of exchange between the U.S. dollar (the currency in which the books of the Fund are maintained) and the various foreign currencies in which the Fund’s portfolio securities will be denominated and costs associated with conversion of investment principal and income from one currency into another; (ii) differences between the U.S. and foreign securities markets, including the absence of uniform accounting, auditing and financial reporting standards and practices and disclosure requirements, and less government supervision and regulation; (iii) political, social or economic instability; (iv) imposition of foreign income, withholding or other taxes; and (v) the extension of credit, especially in the case of sovereign debt.

*Commodities and Futures.* The Fund may trade on a limited basis in commodities and futures. Such trading activity is regulated by the Commodity Futures Trading Commission (the “*CFTC*”). Pursuant to an exemption from registration under CFTC regulations, neither the General Partner nor the Investment Manager is required to register, and neither is registered, with the CFTC or the National Futures Association (“*NFA*”) as a commodity pool operator (a “*CPO*”) or as a commodity trading advisor (“*CTA*”). To comply with the exemption, the Investment Manager is subject to specific



limitations on the amount of commodities and futures that it can trade on behalf of the Fund. Should the Fund's investments in commodities or futures instruments exceed the limits provided by the applicable exemption from registration, the Investment Manager will either have to register with the NFA or cease providing commodity interest trading advice to the Fund and liquidate the Fund's holdings of commodities and futures which could result in losses and additional costs to the Fund.

*Leverage.* Subject to applicable margin and other limitations, the Fund may borrow funds in order to make additional investments and thereby increase both the possibility of gain and risk of loss. Consequently, the effect of fluctuations in the market value of the Fund's portfolio would be amplified. Interest on borrowings will be a portfolio expense of the Fund and will affect the operating results of the Fund. Also, the Fund could potentially create leverage via the use of instruments such as options and other derivative instruments.

*Options.* Investing in options can provide a greater potential for profit or loss than an equivalent investment in the underlying asset. The value of an option may decline because of a change in the value of the underlying asset relative to the strike price, the passage of time, changes in the market's perception as to the future price behavior of the underlying asset, or any combination thereof. In the case of the purchase of an option, the risk of loss of an investor's entire investment (*i.e.*, the premium paid plus transaction charges) reflects the nature of an option as a wasting asset that may become worthless when the option expires. Where an option is written or granted (*i.e.*, sold) uncovered, the seller may be liable to pay substantial additional margin, and the risk of loss is unlimited, as the seller will be obligated to deliver, or take delivery of, an asset at a predetermined price which may, upon exercise of the option, be significantly different from the market value.

*Currency Exposure.* The Interests will be issued and generally withdrawal proceeds will be paid in U.S. Dollars. A limited amount of the assets of the Fund may, however, be invested in securities and other investments which are denominated in currencies other than U.S. Dollars. Accordingly, the value of such assets may be affected favorably or unfavorably by fluctuations in currency rates. The Investment Manager may hedge the non-U.S. currency exposure of the Fund using Currency Hedging Instruments, as described in "Investment Program" above. However, the assets of the Fund will necessarily be subject to foreign exchange risks. In addition, prospective investors whose assets and liabilities are predominately in other currencies should take into account the potential risk of loss arising from fluctuations in value between the U.S. Dollar and other currencies.

To the extent unhedged, the value of the Fund's positions in non-U.S. investments will fluctuate with U.S. Dollar exchange rates as well as with the price changes of the investments in the various local markets and currencies. In such cases, an increase in the value of the U.S. Dollar compared to the other currencies in which the Fund makes investments will reduce the effect of any increases and magnify the effect of any decreases in the prices of the Fund's financial instruments in their local markets and may result in a loss to the Fund. Conversely, a decrease in the value of the U.S. Dollar will have the opposite effect on the Fund's non-U.S. Dollar investments.

*Concentration of the Fund's Portfolio.* The Fund may be highly concentrated in CLO Securities. The concentration of the Fund's portfolio in CLO Securities subjects the Fund to a greater degree of risk than if the Fund's portfolio was diversified with respect to several investment strategies. Also, the concentration of the Fund's portfolio in any one obligor would subject the Fund to a greater degree of risk with respect to defaults by such obligor.

*Volatility Risk.* The Fund's investment program may involve the purchase and sale of relatively volatile instruments such as derivatives, which are frequently valued based on implied volatilities of such derivatives compared to the historical volatility of underlying financial instruments. Fluctuations or prolonged changes in the volatility of such instruments, therefore, can adversely affect the value of investments held by the Fund. In addition, many non-U.S. financial markets are not as developed or as efficient as those in the U.S., and as a result, price volatility may be higher for the Fund's investments.

*Long-Biased Investment Program.* The Fund expects that its strategy will have a long bias. Therefore, any decline in the overall market may result in a decline in the value of the Fund's assets.

*Leverage.* Leverage may take a variety of forms, including but not limited to the following: long-term loans, convertible notes and repurchase arrangements. Leverage arrangements used by the Fund when financing is contingent on the market value of the financed assets may include those which may be subject to mark to market collateral or margin calls.

While leverage presents the opportunity for increasing the total return on investments, it has the effect of potentially increasing losses as well. Accordingly, any event that adversely affects the value of an investment could be magnified to the extent leverage is utilized. The cumulative effect of the use of leverage with respect to investments in a market that moves adversely to such investments could result in a substantial loss, which would be greater than if the investments were not leveraged.

In the futures markets, margin deposits are typically low relative to the value of the futures contracts purchased or sold. Such low margin deposits are indicative of the fact that any commodity futures contract trading is typically accompanied by a high degree of leverage. Low margin deposits mean that a relatively small price movement in a futures contract may result in immediate and substantial losses to the investor. For example, if at the time of purchase 10 percent of the price of a futures contract is deposited as margin, a 10 percent decrease in the price of the futures contract would, if the contract is then closed out, result in a total loss of the margin deposit before any deduction for the brokerage commission. Thus, like other leveraged investments, any purchase or sale of a commodity contract may result in losses in excess of the amount invested.

The use of short-term margin borrowings results in certain additional risks to the Fund. For example, should the securities pledged to brokers to secure the Fund's margin accounts decline in value, the Fund could be subject to a "margin call," pursuant to which the Fund must either deposit additional funds or securities with the broker, or suffer mandatory liquidation of the pledged securities to compensate for the decline in value. In the event of a sudden drop in the value of the Fund's assets, the Fund might not be able to liquidate assets quickly enough to satisfy its margin requirements.

The Fund may borrow by entering into reverse repurchase agreements. Under a reverse repurchase agreement, the Fund sells securities and agrees to repurchase them at a mutually agreed date and price. Reverse repurchase agreements may involve the risk that the market value of the securities retained in lieu of sale by the Fund may decline below the price of the securities the Fund has sold but is obligated to repurchase. In the event the buyer of securities under a reverse repurchase agreement files for bankruptcy or becomes insolvent, such buyer or its trustee or receiver may receive an extension of time to determine whether to enforce the Fund's obligation to repurchase the securities and the Fund's use of the proceeds of the reverse repurchase agreement may effectively be restricted pending such decision. To the extent that, in the meantime, the value of the securities that the Fund has purchased has decreased, the Fund could experience a loss.

The financing used by the Fund to leverage its portfolio include those extended by securities brokers and dealers in the marketplace in which the Fund will invest. While the Fund attempts to negotiate the terms of these financing arrangements with such brokers and dealers, its ability to do so is limited. The Fund is therefore subject to changes in the value that the broker-dealer ascribes to a given security or position, the amount of margin required to support such security or position, the borrowing rate to finance such security or position and/or such broker-dealer's willingness to continue to provide any such credit to the Fund. In addition, the Fund could be forced to liquidate its portfolio on short notice to meet its financing obligations. The forced liquidation of all or a portion of the Fund's portfolio at distressed prices could result in significant losses to the Fund.

*Market Liquidity and Leverage.* The Fund may be adversely affected by a decrease in market liquidity for the instruments in which it invests which may impair the Fund's ability to adjust its positions. The size of the Fund's positions may magnify the effect of a decrease in market liquidity for such instruments. Changes in overall market leverage, deleveraging as a consequence of a decision by the prime brokers and custodians, or other counterparties with which the Fund enters into repurchase/reverse repurchase agreements or derivative transactions, to reduce the level of leverage available, or the liquidation by other market participants of the same or similar positions, may also adversely affect the Fund's portfolio.

*Risks Associated with Bankruptcies.* Many of the events within a bankruptcy case are adversarial and often beyond the control of the creditors. While creditors generally are afforded an opportunity to object to significant actions, there can be no assurance that a bankruptcy court would not approve actions which may be contrary to the interests of the Fund. Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such if they are considered to have taken over management and functional operating control of a debtor.

Generally, the duration of a bankruptcy case can only be roughly estimated. The reorganization of a company usually involves the development and negotiation of a plan of reorganization, plan approval by creditors and confirmation by the bankruptcy court. This process can involve substantial legal, professional and administrative costs to the company and the Fund; it is subject to unpredictable and lengthy delays; and during the process the company's competitive position may erode, key management may depart and the company may not be able to invest adequately. In some cases, the company may not be able to reorganize and may be required to liquidate assets. Although the Fund intends to invest primarily in debt, the debt of companies in financial reorganization will, in most cases, not pay current interest, may not accrue interest during reorganization and may be adversely affected by an erosion of the issuer's fundamental value. Such investments can result in a total loss of principal.

U.S. bankruptcy law permits the classification of "substantially similar" claims in determining the classification of claims in a reorganization for purpose of voting on a plan of reorganization. Because the standard for classification is vague, there exists a significant risk that the Fund's influence with respect to a class of securities can be lost by the inflation of the number and the amount of claims in, or other gerrymandering of, the class. In addition, certain administrative costs and claims that have priority by law over the claims of certain creditors (for example, claims for taxes) may be quite high.

Furthermore, there are instances where creditors and equity holders lose their ranking and priority as such when they take over management and functional operating control of a debtor. In those cases where the Fund, by virtue of such action, is found to exercise "domination and control" of a debtor, the Fund may lose its priority if the debtor can demonstrate that its business was adversely impacted or other creditors and equity holders were harmed by the Fund.



The Fund may invest in companies based outside the United States. Investment in the debt of financially distressed companies domiciled outside the United States involves additional risks. Bankruptcy law and process may differ substantially from that in the United States, resulting in greater uncertainty as to the rights of creditors, the enforceability of such rights, reorganization timing and the classification, seniority and treatment of claims. In certain developing countries, although bankruptcy laws have been enacted, the process for reorganization remains highly uncertain.

The General Partner, on behalf of the Fund, may elect to serve on creditors' committees, equity holders' committees or other groups to ensure preservation or enhancement of the Fund position as a creditor or equity holder. A member of any such committee or group may owe certain obligations generally to all parties similarly situated that the committee represents. If the General Partner concludes that its obligations owed to the other parties as a committee or group member conflict with its duties owed to the Fund, it will resign from that committee or group, and the Fund may not realize the benefits, if any, of participation on the committee or group. In addition, and also as discussed above, if the Fund is represented on a committee or group, it may be restricted or prohibited under applicable law from disposing of or increasing its investments in such company while it continues to be represented on such committee or group.

The Fund may purchase creditor claims subsequent to the commencement of a bankruptcy case. Under judicial decisions, it is possible that such purchase may be disallowed by the bankruptcy court if the court determines that the purchaser has taken unfair advantage of an unsophisticated seller, which may result in the rescission of the transaction (presumably at the original purchase price) or forfeiture by the purchaser.

*Equitable Subordination.* Under common law principles that in some cases form the basis for lender liability claims, if a lender (a) intentionally takes an action that results in the undercapitalization of a borrower or issuer to the detriment of other creditors of such borrower or issuer, (b) engages in other inequitable conduct to the detriment of such other creditors, (c) engages in fraud with respect to, or makes misrepresentations to, such other creditors or (d) uses its influence as a stockholder to dominate or control a borrower or issuer to the detriment of other creditors of such borrower or issuer, a court may elect to subordinate the claim of the offending lender or bondholder to the claims of the disadvantaged creditor or creditors (a remedy called "*equitable subordination*"). The Fund does not intend to engage in conduct that would form the basis for a successful cause of action based upon the equitable subordination doctrine; however, because of the nature of the debt obligations, the Fund may be subject to claims from creditors of an obligor that debt obligations of such obligor which are held by the issuer should be equitably subordinated.

*Fraud.* Of paramount concern in lending is the possibility of material misrepresentation or omission on the part of the borrower. Such inaccuracy or incompleteness may adversely affect the valuation of the collateral underlying the loans or may adversely affect the ability of the Fund to perfect or effectuate a lien on the collateral securing the loan. The Fund will rely upon the accuracy and completeness of representations made by borrowers to the extent reasonable, but cannot guarantee such accuracy or completeness. Under certain circumstances, payments to the Fund may be reclaimed if any such payment or distribution is later determined to have been a fraudulent conveyance or a preferential payment.

*Interest Rate Risk.* The value of the fixed rate securities in which the Fund may invest generally will have an inverse relationship with interest rates. Accordingly, if interest rates rise the value of such securities may decline. In addition, to the extent that the receivables or loans underlying specific

securities are prepayable without penalty or premium, the value of such securities may be negatively affected by increasing prepayments, which generally occur when interest rates decline.

*Reinvestment Risk.* The Fund reinvests the cash flows received from a security. The additional income from such reinvestment, sometimes called interest -on-interest, is reliant on the prevailing interest rate levels at the time of reinvestment. There is a risk that the interest rate at which interim cash flows can be reinvested will fall. Reinvestment risk is greater for longer holding periods and for securities with large, early cash flows such as high-coupon bonds. Reinvestment risk also applies generally to the reinvestment of the proceeds the Fund receives upon the maturity or sale of a portfolio security.

The amount and timing of the addition of investments will affect the cash flows available to make payments on the Interests. Reduced liquidity and lower volumes of trading in certain investments, in addition to restrictions on investment represented by the Fund's investment criteria, could result in periods of time during which the Fund has not been able to maximize its exposure to investments. The longer the period before reinvestment of cash in investments, the greater the adverse impact may be on aggregate interest collected and distributed by the Fund, thereby resulting in lower yield than could have been obtained if the net proceeds associated with the offering of the Interests were immediately reinvested. In addition, the timing of the addition of investments, the scheduled interest payment dates of the investments and the amount of the net proceeds associated with the offering of the Interests invested in lower-yielding alternate short-term investments until applied to the addition of investments, may have a material impact on the amount of interest payments collected during any accrual period, which could affect payments on the Interests.

Further, obligors of investments may be more likely to exercise any rights they may have to prepay such obligations when interest rates or credit spreads are declining. Any decrease in the yield on the investments will have the effect of reducing the amounts available to make payments on the Interests.

*Timing Risk.* Many agency, corporate and municipal bonds, and all mortgage -backed securities, contain a provision that allows the issuer to "call" all or part of the issue before the bond's maturity date. The issuer usually retains the right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Fund is exposed to reinvestment rate risk, *i.e.*, the Fund will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

*Maturity Risk.* In certain situations, the Fund may purchase a bond of a given maturity as an alternative to another bond of a different maturity. Ordinarily, under these circumstances, the Fund will make an adjustment to account for the differential interest rate risks in the two bonds. This adjustment, however, makes an assumption about how the interest rates at different maturities will move. To the extent that the yield movements deviate from this assumption, there is a yield -curve or maturity risk. Another situation where yield-curve risk should be considered is in the analysis of bond swap transactions where the potential incremental returns are dependent entirely on the parallel shift assumption for the yield curve.

*Inflation Risk.* Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Fund purchases a five



(5) year bond in which it can realize a coupon rate of five percent (5%), but the rate of inflation is six percent (6%), then the purchasing power of the cash flow has declined. For all but adjustable bonds or floating rate bonds, the Fund is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security. To the extent that interest rates reflect the expected inflation rate, floating rate bonds have a lower level of inflation risk.

*Over-the-Counter-Trading.* Financial instruments that may be purchased or sold by the Fund may include instruments not traded on an exchange, including, but not limited to, swap transactions, and forward foreign currency transactions. Over-the-counter options, unlike exchange-traded options, are two-party contracts with price and other terms negotiated by the buyer and seller. The risk of nonperformance by the obligor on such an instrument may be greater and the ease with which the Fund can dispose of or enter into closing transactions with respect to such an instrument may be less than in the case of an exchange-traded instrument. In addition, significant disparities may exist between “bid” and “asked” prices for financial instruments that are not traded on an exchange. Financial instruments not traded on exchanges are also not subject to the same type of government regulation as exchange traded instruments, and many of the protections afforded to participants in a regulated environment may not be available in connection with such transactions.

To the extent that the Fund engages in these transactions, the Fund must rely on the creditworthiness of its counterparty. In certain instances, counterparty or credit risk is affected by the lack of a central clearinghouse for foreign exchange trades. To reduce their credit risk exposure, the Fund may trade in the forward foreign currency market through money center banks and leading brokerage firms.

*Position Limits.* “Position limits” imposed by various regulators or regulations may also limit the Fund’s ability to effect desired trades. Position limits are the maximum amounts of gross, net long or net short positions that any one person or entity may own or control in a particular financial instrument. All positions owned or controlled by the same person or entity, even if in different accounts, may be aggregated for purposes of determining whether the applicable position limits have been exceeded. Thus, even if the Fund does not intend to exceed applicable position limits, it is possible that different accounts managed by the General Partner or its affiliates may be aggregated. If at any time positions managed by the General Partner were to exceed applicable position limits, the General Partner would be required to liquidate positions, which might include positions of the Fund, to the extent necessary to come within those limits. Further, to avoid exceeding the position limits, the Fund might have to forego or modify certain of its contemplated trades.

*Material, Nonpublic Information.* From time to time, certain personnel of the Investment Manager may come into possession of material, nonpublic information (including in connection with other investments or proposed investments not intended to benefit the Fund) that would limit the Investment Manager’s ability to buy and sell investments. The Fund’s investment flexibility may be constrained as a consequence of the Investment Manager’s inability to take certain actions because of such information. The Fund may experience losses if it is unable to sell an investment that it holds because certain personnel of the Investment Manager have obtained material, nonpublic information about such investment.

*Co-Investments with Third Parties.* The Fund may co-invest with third parties through joint ventures or other entities. Such investments may involve risks in connection with such third-party involvement, including the possibility that a third-party co-venturer may have financial difficulties resulting in a negative impact on such investment, economic or business interests or goals that are

inconsistent with those of the Fund or be in a position to take (or block) action in a manner contrary to the Fund's investment objectives. In those circumstances where such third parties involve a management group, such third parties may enter into compensation arrangements relating to such investments, including incentive compensation arrangements. Such compensation arrangements will reduce the returns to participants in the investments.

*Other Investment Vehicles.* The Investment Manager may allocate a portion of the Fund's assets to pooled investment vehicles that may be managed by the Investment Manager or its affiliates or unaffiliated managers. Since the Fund may not have full transparency with respect to the trading activities of such investment vehicles, it may be limited in its ability to hedge its exposure or to prevent concentration of its assets within the same issuer, asset or asset class, industry, section, strategy, currency, country or geographic region. Further, the Investment Manager may be limited with respect to its ability to monitor unaffiliated managers, including their adherence to their respective trading and risk guidelines (if such guidelines exist). Even in the event that such information may be available to the Fund, the Fund's investment in such investment vehicles may be "locked up" and subject to limitations on withdrawals, and in light of the broad exculpation and indemnification provisions typically contained in the governing documents of such investment vehicles, may have limited recourse against the managers of such investment vehicles.

The managers of pooled investment vehicles with which the Fund may invest may be subject to asset-based fees and performance-based compensation. Such fees or compensation may be higher than the fees or compensation of comparable investment vehicles.

Performance-based compensation is typically paid or allocated at the investment vehicle level on the basis of the performance of each individual investment vehicle, not on the basis of the overall performance of the Fund. Consequently, performance-based compensation could be payable to a particular investment vehicle in respect of its performance during periods when the Fund as a whole incurs losses. The existence of performance-based compensation also could cause the manager of such investment vehicle to trade in a more aggressive manner than it otherwise might.

*Futures Contracts.* The value of futures depends upon the price of the financial instruments, such as commodities, underlying them. The prices of futures are highly volatile, and price movements of futures contracts can be influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. In addition, investments in futures are also subject to the risk of the failure of any of the exchanges on which the Fund's positions trade or of its clearing houses or counterparties.

Futures positions may be illiquid because certain commodity exchanges limit fluctuations in certain futures contract prices during a single day by regulations referred to as "daily price fluctuation limits" or "daily limits." Under such daily limits, during a single trading day no trades may be executed at prices beyond the daily limits. Once the price of a particular futures contract has increased or decreased by an amount equal to the daily limit, positions in that contract can neither be taken nor liquidated unless traders are willing to effect trades at or within the limit. This could prevent the Fund from promptly liquidating unfavorable positions and subject the Fund to substantial losses or prevent it from entering into desired trades. In extraordinary circumstances, a futures exchange or the Commodities Futures Trading Commission could suspend trading in a particular futures contract, or order liquidation or settlement of all open positions in such contract.

*Forward Trading.* Forward contracts and options thereon, unlike futures contracts, are not traded on exchanges and are not standardized; rather, banks and dealers act as principals in these markets, negotiating each transaction on an individual basis. Forward and “cash” trading is substantially unregulated; there is no limitation on daily price movements and speculative position limits are not applicable. The principals who deal in the forward markets are not required to continue to make markets in the currencies or commodities they trade and these markets can experience periods of illiquidity, sometimes of significant duration. There have been periods during which certain participants in these markets have refused to quote prices for certain currencies or commodities or have quoted prices with an unusually wide spread between the price at which they were prepared to buy and that at which they were prepared to sell. Disruptions can occur in any market traded by the Fund due to unusual trading volume, political intervention or other factors. The imposition of controls by governmental authorities might also limit such forward trading to less than that which the General Partner would otherwise recommend, to the possible detriment of the Fund. Market illiquidity or disruption could result in major losses to the Fund.

*Hedging Transactions.* The Fund may (but is not required to) utilize financial instruments both for investment purposes and for risk management purposes in order to (i) protect against possible changes in the market value of the Fund’s investment portfolios resulting from fluctuations in the markets and changes in interest rates; (ii) protect the Fund’s unrealized gains in the value of its investment portfolio; (iii) facilitate the sale of any such investments; (iv) enhance or preserve returns, spreads or gains on any investment in the Fund’s portfolios; (v) hedge against a directional trade; (vi) hedge the interest rate, credit or currency exchange rate on any of the Fund’s financial instruments; (vii) protect against any increase in the price of any financial instruments the Fund anticipates purchasing at a later date; or (viii) act for any other reason that the Investment Manager deems appropriate. The Fund will not be required to hedge any particular risk in connection with a particular transaction or its portfolios generally.

The success of the Fund’s hedging strategy will be subject to the Investment Manager’s ability to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the investments in the portfolio being hedged. Since the characteristics of many securities change as markets change or time passes, the success of the Fund’s hedging strategy will also be subject to the Investment Manager’s ability to continually recalculate, readjust, and execute hedges in an efficient and timely manner. While the Fund may enter into hedging transactions to seek to reduce risk, such transactions may result in a poorer overall performance for the Fund than if it had not engaged in any such hedging transactions. For a variety of reasons, the Investment Manager may not seek to establish a perfect correlation between such hedging instruments and the portfolio holdings being hedged. Such imperfect correlation may prevent the Fund from achieving the intended hedge or expose the Fund to risk of loss. The successful utilization of hedging and risk management transactions requires skills complementary to those needed in the selection of the Fund’s portfolio holdings. Moreover, it should be noted that the portfolio will always be exposed to certain risks that cannot be hedged.

*Use of Derivatives and Other Specialized Techniques.* The Fund may engage in a variety of swaps and related derivative transactions including, but not limited to, total return swaps, interest rate swaps, credit derivative swaps, the use of forward contracts, put and call options, floors, collars or other similar arrangements and derivative transactions. While some swaps will be required to be cleared and entered into through exchanges once the U.S. Commodity Futures Trading Commission (the “CFTC”) makes its final clearing determination, swap contracts excluded from the clearing determination will not be traded on exchanges and will not be subject to margin and clearing requirements or the same type of



government regulation as exchange markets. As a result, many of the protections afforded to participants on organized exchanges and in a regulated environment are not available in connection with these transactions. The swap markets with respect to noncleared swaps are “principals’ markets”, in which performance with respect to a swap contract is the responsibility only of the counterparty to the contract, and not of any exchange or clearinghouse. As a result, the Fund will be subject to the risk of the inability or refusal to perform with respect to non-cleared swap contracts on the part of the counterparties with whom the Fund will trade.

There are no limitations on daily price movements in swap transactions. Speculative position limits are not currently applicable to swap transactions, although the Fund’s swap counterparties may limit the size or duration of positions available to the Fund as a consequence of credit considerations. In addition, the CFTC has sought to impose federal speculative position limits on futures, swaps that reference those futures and contracts on non-U.S. boards of trade that settle against those contracts. While the CFTC adopted final position limits, the rulemaking was vacated due to the CFTC’s failure to perform proper cost benefit analysis. If the CFTC re-adopts rules or the above referenced discussion is overturned on appeal, the Fund may be limited in its ability to concentrate its positions in certain swaps. Furthermore, the Fund may also be subject to position limits pursuant to current or pending non -U.S. regulations.

Participants in the swap markets are not required to make continuous markets in the swap contracts in which they trade. Participants could refuse to quote prices for swap contracts or quote prices with an unusually wide spread between the price at which they are prepared to buy and the price at which they are prepared to sell. If an event of default or an additional termination event were to occur with respect to the Fund under an ISDA master agreement governing the Fund’s swap transactions, the relevant swap counterparty and other swap counterparties may terminate all transactions with the Fund at significant losses to the Fund.

In addition to the foregoing, the investment techniques related to derivative instruments are highly specialized and may be considered speculative. Such techniques often involve forecasts and complex judgments regarding relative price movements and other economic developments. The success or failure of these investment techniques may turn on small changes in exogenous factors not within the control of any of the Investment Manager. For all the foregoing reasons, the use of derivatives and related techniques can expose the Fund to significant risk of loss.

Moreover, trading in swaps and other derivative instruments offers scope for a high degree of synthetic leverage. Accordingly, the leverage offered by trading in derivative instruments may magnify the gains and losses experienced by the Fund. Thus, like other leveraged investments, a derivatives trade may result in losses in excess of the amount invested. Any increase in the amount of leverage applied will increase the risk of loss due to the amount of additional leverage applied. Also, swap agreements tend to shift the investment exposure from one type of investment to an other. Depending on how they are used, swap agreements may increase or decrease the overall volatility of the Fund. The most significant factor in the performance of swap agreements is the change in the specific factors that determine the amounts of payments due to and from the Fund. If a swap agreement calls for payments by the Fund, the Fund must be prepared to make such payments when due. In addition, if a counterparty’s creditworthiness declines, the value of swap agreements with such counterparty can be expected to decline, potentially resulting in losses to the Fund.

Finally, counterparties to the Fund may be subject to capital and other requirements as a “swap dealer” or “major swap participant” which may increase their costs of doing of business, a portion of which increase may be passed on to the Fund. If a person is deemed to (i) enter into swaps as its ordinary course of business, (ii) be a market maker for any type of swaps, (iii) maintain a “substantial position” in any type of swap for speculative purposes, (iv) otherwise create counterparty risk that could have serious adverse consequences on the financial stability of the United States, or (v) be a financial entity that is highly leveraged relevant to its capital, the person may be deemed to be a swap dealer (in the case of (i) or (ii)) or a major swap participant (in the case of (iii), (iv) or (v)). Persons deemed to be swap dealers or major swap participants are required to register with the CFTC as such and would be subject to a number of regulatory requirements, such as specific recordkeeping, back-office and reporting requirements, margin collection requirements for swaps that are not cleared, capital requirements, disclosure obligations, specific compliance obligations and special obligations to governmental entities. While it is unlikely that the Fund would be subject to these requirements, the requirements will likely apply to many of the Fund’s counterparties which may increase the cost of trading swaps through increased fees to offset the counterparties’ trading and compliance costs.

*Counterparty Insolvency.* The Fund’s assets may be held in one or more accounts maintained for the Fund by counterparties, including its prime brokers. There is a risk that any of such counterparties could become insolvent. In September 2008, Lehman Brothers Holdings Inc., a major investment bank based in the United States, filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. While none of its U.S. broker-dealer subsidiaries was included in the Chapter 11 filing and all of its U.S. registered broker-dealer subsidiaries currently continue to operate, certain of Lehman Brothers subsidiaries, including Lehman Brothers International (Europe) (“*LBIE*”) have been placed under the administration chartered to wind down their respective business. To date, it is uncertain what percentage of the assets custodied with LBIE by its trading counterparties (including hedge funds) will ultimately be recovered and when. The insolvency of the Fund’s counterparties is likely to impair the operational capabilities or the assets of the Fund. Although the Investment Manager regularly monitors the financial condition of the counterparties it uses, if one or more of the Fund’s counterparties were to become insolvent or the subject of liquidation proceedings in the United States (either under the Securities Investor Protection Act or the United States Bankruptcy Code), there exists the risk that the recovery of the Fund’s securities and other assets from such prime broker or broker-dealer will be delayed or be of a value less than the value of the securities or assets originally entrusted to such prime broker or broker-dealer.

In addition, the Fund may use counterparties located in various jurisdictions outside the United States like LBIE. Such local counterparties are subject to various laws and regulations in various jurisdictions that are designed to protect their customers in the event of their insolvency. However, the practical effect of these laws and their application to the Fund’s assets are subject to substantial limitations and uncertainties. Because of the large number of entities and jurisdictions involved and the range of possible factual scenarios involving the insolvency of a counterparty, it is impossible to generalize about the effect of their insolvency on the Fund and its assets. Investors should assume that the insolvency of any counterparty would result in a loss to the Fund and the Fund, which could be material.

*Counterparty Risk.* Some of the markets in which the Fund may effect transactions are “over-the-counter” or “interdealer” markets. The participants in such markets are typically not subject to credit evaluation and regulatory oversight as are members of “exchange-based” markets. This exposes the Fund to the risk that a counterparty will not settle a transaction in accordance with its terms and conditions because of a dispute over the terms of the contract (whether or not *bona fide*) or because of a



credit or liquidity problem, thus causing the Fund to suffer a loss. Such “counterparty risk” is accentuated for contracts with longer maturities where events may intervene to prevent settlement, or where the Fund has concentrated its transactions with a single or small group of counterparties. The Fund is not restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty. Moreover, the Fund’s internal credit function which evaluates the creditworthiness of its counterparties may prove insufficient. The lack of a complete and “foolproof” evaluation of the financial capabilities of the Fund’s counterparties and the absence of a regulated market to facilitate settlement may increase the potential for losses by the Fund.

*Exchange-Traded Funds.* The Fund may invest in exchange-traded funds (“*ETFs*”), which are shares of publicly-traded unit investment trusts, open-end funds, or depository receipts that seek to track the performance and dividend yield of specific indices or companies in related industries. These indices may be either broad-based, sector, or international. ETF shareholders are generally subject to the same risk as holders of the underlying securities they are designed to track. ETFs are also subject to certain additional risks, including, without limitation, the risk that their prices may not correlate perfectly with changes in the prices of the underlying securities they are designed to track, and the risk of trading in an ETF halting due to market conditions or other reasons, based on the policies of the exchange upon which the ETF trades. In addition, the Fund may bear, along with other shareholders of an ETF, its *pro rata* portion of the ETF’s expenses, including management fees. Accordingly, in addition to bearing their proportionate share of the Fund’s expenses (e.g., Management Fees and operating expenses), Partners may also indirectly bear similar expenses of an ETF, which may have a material adverse effect on the performance of the Fund.

*Non-U.S. Investments and Emerging Markets.* Investing in the securities of companies located outside the U.S. (including, western countries, “emerging market” countries and underdeveloped countries) involves certain considerations not usually associated with investing in securities of U.S. companies, including political and economic considerations, such as greater risks of expropriation and nationalization, confiscatory taxation, the potential difficulty of repatriating funds, general social, political and economic instability and adverse diplomatic developments; the possibility of imposition of withholding or other taxes on dividends, interest, capital gain or other income; the small size of the securities markets in such countries and the low volume of trading, resulting in potential lack of liquidity and in price volatility; fluctuations in the rate of exchange between currencies and costs associated with currency conversion; and certain government policies that may restrict the Fund’s investment opportunities.

In addition, accounting and financial reporting standards that prevail in non-U.S. countries generally are not equivalent to U.S. standards and, consequently, less information is available to shareholders of companies located in such countries than is available to shareholders of companies located in the U.S. Moreover, an issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are not expected to be highly correlated with each other and may behave in unpredictable ways. There is also less regulation, generally, of the securities markets in non-U.S. countries.

The Fund may be subject to additional risks which include possible adverse political and economic developments, possible seizure or nationalization of non-U.S. deposits and possible adoption of governmental restrictions which might adversely affect the payment of principal and interest to investors located outside the country of the issuer, whether from currency blockage or otherwise. Furthermore, some of the securities may be subject to brokerage, stamp or other taxes levied by

governments, which has the effect of increasing the cost of such investment and reducing the realized gain or increasing the realized loss on such securities at the time of sale. Furthermore, a non-U.S. issuer of debt or the non-U.S. governmental authorities that control the repayment of the debt may be unable or unwilling to repay principal or interest when due, and the Fund may have limited recourse in the event of a default. Some of these risks do not apply equally to issuers in larger, more developed countries. These risks are more pronounced in investments in issuers in countries with emerging markets or if the Fund invests significantly in a particular country.

Investment in emerging market securities and underdeveloped markets involves a greater degree of risk than an investment in securities of issuers based in developed countries. Among other things, emerging market securities investments may carry the risks of less publicly available information, more volatile markets, less strict securities market regulation, less favorable tax provisions and a greater likelihood of severe inflation, unstable currency, war and expropriation of personal property than investments in securities of issuers based in developed countries. In addition, the Fund's investment opportunities in certain emerging markets may be restricted by legal limits on foreign investment in local securities.

Emerging markets generally are not as efficient as those in developed countries. In some cases, a market for the security may not exist locally, and transactions will need to be made on a neighboring exchange. Volume and liquidity levels in emerging markets are lower than in developed countries. When seeking to sell emerging market securities, little or no market may exist for the securities. In addition, issuers based in emerging markets are not generally subject to uniform accounting and financial reporting standards, practices and requirements comparable to those applicable to issuers based in developed countries, thereby potentially increasing the risk of fraud or other deceptive practices. Furthermore, the quality and reliability of official data published by the government or securities exchanges in emerging markets may not accurately reflect the actual circumstances being reported.

The issuers of some non-U.S. securities, such as banks and other financial institutions, may be subject to less stringent regulations in emerging markets than would be the case for issuers in developed countries and therefore potentially carry greater risk. Custodial expenses for a portfolio of emerging markets securities generally are higher than for a portfolio of securities of issuers based in developed countries.

While the General Partner will take these factors into consideration in making investment decisions for the Fund, no assurance can be given that they will be able to fully avoid these risks.

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

## **Tax Related Risks**

*Tax Uncertainty.* The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

*Uncertainty and Complexity of Tax Treatment.* The tax aspects of an investment in a partnership are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative

regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles.

*Risk of Adverse Determination.* There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the Internal Revenue Service (the "*Service*"), or significantly modified by new legislation, changes in the Service's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the General Partner with respect to the federal income tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund, and a Limited Partner might be found to have a different tax liability for that year than that reported on its income tax returns.

*Risk of Tax Audit.* An audit of the Fund by the Service or another taxing authority could result in adjustments to the tax consequences initially reported by the Fund and may result in an audit of the returns of some or all of the Limited Partners, which examination could affect items not related to a Limited Partner's investment in the Fund. If audit adjustments result in an increase in a Limited Partner's income tax liability for any year, such Limited Partner may also be liable for interest and penalties with respect to the amount of underpayment. The legal and accounting costs incurred in connection with any audit of the Fund's tax returns will be borne by the Fund. The cost of any audit of a Limited Partner's tax return will be borne solely by that Limited Partner.

*Tax Considerations Taken into Account.* The General Partner may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

*Tax Liabilities Without Distributions.* If the Fund has taxable income in a fiscal year, each Limited Partner will be taxed on that income in accordance with its distributive share of the Fund's profits, whether or not such profits have been distributed. Because the General Partner anticipates that there will be no cash distributions to the Limited Partners, an investor may incur tax liability with respect to activities of the Fund without receiving sufficient distributions from the Fund to defray such tax liabilities. In order to satisfy its tax liability in such a case, a Limited Partner would need sufficient funds from sources other than the Fund. Furthermore, the Fund may make investments with respect to which the Fund recognizes income for U.S. federal income tax purposes prior to receiving the cash or realizing the income as an economic matter. In addition, the Fund may recognize income for U.S. federal income tax purposes that does not reflect income as an economic matter. Such recognition of income prior to receipt of an economic benefit, if any, may result in increased tax liability for the Partners.

*Delayed Schedules K-1.* The Fund will provide Schedules K-1 as soon as practical after receipt of all of the necessary information. However, the Fund may be unable to provide final Schedules K-1 to Limited Partners for any given tax year until significantly after April 15 of the following year. The



General Partner will endeavor to provide Limited Partners with estimates of the taxable income or loss allocated to their investment in the Fund on or before such date, but final Schedules K -1 may not be available until completion of the Fund's annual audit. Limited Partners should be prepared to obtain extensions of the filing date for their income tax returns at the federal, state and local levels.

*Unrelated Business Taxable Income.* The Fund may make investments or engage in activities that will give rise to unrelated business taxable income (“*UBTI*”). Thus, an investment in the Fund may not be desirable for certain tax-exempt investors. The Fund may participate in investments that give rise to UBTI through entities that are treated as partnerships for U.S. federal income tax purposes. Because of the “flow-through” principles applicable to partnerships, if UBTI is earned by the Fund, a tax-exempt investor in the Fund will realize UBTI. Because of the Investment Manager’s objective of maximizing the pre-tax returns of all the Limited Partners, the Investment Manager may be required to make certain decisions to maximize pre-tax returns that result in Tax-Exempt U.S. Investors (as defined below) recognizing more UBTI than might otherwise be the case. In some cases, the Investment Manager may forego actions with regard to the acquisition, financing, management and disposition of assets that would reduce UBTI because such actions would reduce the overall pre-tax returns to all the Limited Partners.

*Tax Changes.* Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Internal Revenue Code of 1986, as amended (the “*Code*”) may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or the Limited Partners. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

***The foregoing is not intended to be an exhaustive analysis or listing of the tax risks associated with an investment in the Fund. Many of the relevant tax considerations will vary depending on a prospective Limited Partner's individual circumstances. The tax aspects associated with such an investment are complex and complicated and are subject to a variety of interpretations. Prospective investors are strongly urged to review the discussions below under “Tax Considerations” and “ERISA and Other Regulatory Considerations” for a more complete discussion of certain of the tax risks inherent in the acquisition of Interests, and to seek and rely upon the advice of their own tax advisor who is qualified to discuss the foregoing and other possible tax risks.***

In view of the foregoing considerations, an investment in Interests is suitable only for investors who are capable of bearing the relevant investment risks.

#### **Potential Conflicts of Interest**

The scope of the activities of the Investment Manager, its affiliates, and the funds and clients managed or advised by the Investment Manager or any of its affiliates may give rise to conflicts of interest or other restrictions and/or limitations imposed on the Fund in the future that cannot be foreseen

or mitigated at this time. The following briefly summarizes some of these conflicts, but is not intended to be an exhaustive list of all such conflicts.

None of the Investment Manager, its affiliates and their respective officers, directors, shareholders, members, partners, personnel and employees (collectively, the “**Highland Group**”) is precluded from engaging in or owning an interest in other business ventures or investment activities of any kind, whether or not such ventures are competitive with the Fund. The Investment Manager is permitted to manage other client accounts, some of which may have objectives similar or identical to those of the Fund, including other collective investment vehicles that may be managed by the Highland Group and in which the Investment Manager or any of its affiliates may have an equity interest.

The Fund will be subject to a number of actual and potential conflicts of interest involving the Highland Group including, among other things, the fact that: (i) the Highland Group conducts substantial investment activities for accounts, funds, collateralized debt obligations that invest in leveraged loans (collectively, “**CDOs**”) and other vehicles managed by members of the Highland Group (“**Highland Accounts**”) in which the Fund has no interest; (ii) the Highland Group advises Highland Accounts, which utilize the same, similar or different methodologies as the Fund and may have financial incentives (including, without limitation, as it relates to the composition of investors in such funds and accounts or to the Highland Group’s compensation arrangements) to favor certain Highland Accounts over the Fund; (iii) the Highland Group may use the strategy described herein in certain Highland Accounts; (iv) the Investment Manager may give advice and recommend securities to, or buy or sell securities for, the Fund, which advice or securities may differ from advice given to, or securities recommended or bought or sold for, Highland Accounts; (v) the Investment Manager has the discretion, to the extent permitted under applicable law, to use its affiliates as service providers to the Fund and its portfolio investments; (vi) Affiliated Investors may choose to personally invest only in certain funds advised by the Highland Group and the amounts invested by them in such funds is expected to vary significantly; (vii) the Highland Group and Highland Accounts may actively engage in transactions in the same securities sought by the Fund and, therefore, may compete with the Fund for investment opportunities or may hold positions opposite to positions maintained on behalf of the Fund; (viii) the Fund may invest in CDOs and Highland Accounts managed by members of the Highland Group; and (ix) the Investment Manager will devote to the Fund only as much time as the Investment Manager deems necessary and appropriate to manage the Fund’s business.

The Investment Manager undertakes to resolve conflicts in a fair and equitable basis, which in some instances may mean a resolution that would not maximize the benefit to the Fund’s investors.

It is the policy of the Investment Manager to allocate investment opportunities fairly and equitably over time. This means that such opportunities will be allocated among those accounts for which participation in the respective opportunity is considered appropriate, taking into account, among other considerations: (i) whether the risk-return profile of the proposed investment is consistent with the account’s objectives and program, whether such objectives are considered in light of the specific investment under consideration or in the context of the portfolio’s overall holdings; (ii) the potential for the proposed investment to create an imbalance in the account’s portfolio (taking into account expected inflows and outflows of capital); (iii) liquidity requirements of the account; (iv) potentially adverse tax consequences; (v) regulatory and other restrictions that would or could limit an account’s ability to participate in a proposed investment; and (vi) the need to re-size risk in the account’s portfolio. The Investment Manager has the authority to allocate trades to multiple Highland Accounts on an average price basis or on another basis it deems fair and equitable. Similarly, if an order on behalf of any accounts cannot be fully allocated under prevailing market conditions, the Investment Manager may



allocate the trades among different accounts on a basis it considers fair and equitable over time. One or more of the foregoing considerations may (and are often expected to) result in allocations among the Fund and one or more Highland Accounts on other than a *pari passu* basis.

The General Partner and/or its affiliates may open “average price” accounts with brokers. In an “average price” account, purchase and sale orders placed during a trading day on behalf of the Fund, the Highland Accounts or affiliates of the General Partner are combined, and securities bought and sold pursuant to such orders are allocated among such accounts on an average price basis.

As part of their regular business, the members of the Highland Group hold, purchase, sell, trade or take other related actions both for their respective accounts and for the accounts of their respective clients, on a principal or agency basis, with respect to loans, securities and other investments and financial instruments of all types. The members of the Highland Group also provide investment advisory services, among other services, and engage in private equity, real estate and capital markets - oriented investment activities. The members of the Highland Group will not be restricted in their performance of any such services or in the types of debt or equity investments which they may make. The members of the Highland Group may have economic interests in or other relationships with obligors or issuers in whose obligations or securities or credit exposures the Fund may invest. In particular, such persons may make and/or hold an investment in an obligor’s or issuer’s securities that may be *pari passu*, senior or junior in ranking to an investment in such obligor’s or issuer’s securities made and/or held by the Fund or in which partners, security holders, members, officers, directors, agents, personnel or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities by the Fund and otherwise create conflicts of interest for the Fund. In such instances, the members of the Highland Group may in their discretion make investment recommendations and decisions that may be the same as or different from those made with respect to the Fund’s investments. In connection with any such activities described above, the members of the Highland Group may hold, purchase, sell, trade or take other related actions in securities or investments of a type that may be suitable to investments for the Fund. The members of the Highland Group will not be required to offer such securities or investments to the Fund or provide notice of such activities to the Fund. In addition, in managing the Fund’s portfolio, the Investment Manager may take into account its relationship or the relationships of its affiliates with obligors and their respective affiliates, which may create conflicts of interest. Furthermore, in connection with actions taken in the ordinary course of business of the Investment Manager in accordance with its fiduciary duties to its other clients, the Investment Manager may take, or be required to take, actions which adversely affect the interests of the Fund.

In connection with the foregoing activities the Highland Group may from time to time come into possession of material nonpublic information that limits the ability of the Investment Manager to effect a transaction for the Fund, and the Fund’s investments may be constrained as a consequence of the Investment Manager’s inability to use such information for advisory purposes or otherwise to effect transactions that otherwise may have been initiated on behalf of its clients, including the Fund.

Although the professional staff of the Investment Manager will devote as much time to the Fund as the Investment Manager deems appropriate to perform its duties in accordance with the Investment Management Agreement and in accordance with reasonable commercial standards, the staff may have conflicts in allocating its time and services among the Fund and the Investment Manager’s other accounts.

The directors, officers, personnel, employees and agents of the Investment Manager and its affiliates may, subject to applicable law, serve as directors (whether supervisory or managing), officers, personnel, employees, partners, agents, nominees or signatories, and receive arm's length fees in connection with such service, for the Fund or other entities that operate in the same or a related line of business as the Fund, for other clients managed by the Investment Manager or its affiliates, or for any obligor or issuer in respect of the CLOs, to the extent permitted by their governing instruments, or by any resolutions duly adopted by the Fund, such affiliated entities or any obligor or issuer in respect of any of the CLOs pursuant to their respective governing instruments, and the Fund shall have no right to any such fees. In serving in these multiple capacities, they may have obligations to such other clients or investors in those entities, the fulfillment of which may not be in the best interests of the Fund.

There is no limitation or restriction on the Investment Manager or any of its affiliates with regard to acting as investment adviser or collateral manager (or in a similar role) to other parties or persons. This and other future activities of the Investment Manager and/or its affiliates may give rise to additional conflicts of interest. Such conflicts may relate to obligations that the Investment Manager's investment committee, the Investment Manager or its affiliates have to other clients.

The Investment Manager and/or its affiliates may act as an underwriter, arranger or placement agent, or otherwise participate in the origination, structuring, negotiation, syndication or offering of CLOs and Highland Accounts purchased by the Fund. Such transactions are on an arm's-length basis and shall be subject to fees that are no greater than arm's-length fees. There is no expectation for preferential access to transactions involving CLOs and Highland Accounts that are underwritten, originated, arranged or placed by the Investment Manager and/or its affiliates and the Fund shall not have any right to any such fees.

As further described below, the Investment Manager may effect client cross-transactions where the Investment Manager causes a transaction to be effected between the Fund and another client advised by it or any of its affiliates. The Investment Manager may engage in a client cross-transaction involving the Fund any time that the Investment Manager believes such transaction to be fair to the Fund and such other client. By purchasing an Interest in the Fund, a Limited Partner is deemed to have consented to such client cross-transactions between the Fund and another client of the Investment Manager or one of its affiliates.

As further described below, the Investment Manager may effect principal transactions where the Fund acquires securities from or sells securities to the Investment Manager and/or its affiliates, in each case in accordance with applicable law, which may include the Investment Manager obtaining the consent and approval of the Advisory Committee prior to engaging in any such principal transaction between the Fund and the Investment Manager or its affiliates. By subscribing for Interests, the Limited Partners are deemed to have consented to such procedures relating to principal transactions between the Fund and the Investment Manager or its affiliates.

The Investment Manager may direct the Fund to acquire or dispose of securities in cross trades between the Fund and other clients of the Investment Manager or its affiliates in accordance with applicable legal and regulatory requirements. In addition, the Fund may invest in securities of obligors or issuers in which the Investment Manager and/or its affiliates have a debt, equity or participation interest, and the holding and sale of such investments by the Fund may enhance the profitability of the Investment Manager's own investments in such companies. Moreover, the Fund may invest in assets originated by the Investment Manager or its affiliates. In each such case, the Investment Manager and such affiliates may have a potentially conflicting division of loyalties and responsibilities regarding the

Fund and the other parties to such trade. Under certain circumstances, the Investment Manager and its affiliates may determine that it is appropriate to avoid such conflicts by selling a security at a fair value that has been calculated pursuant to the Investment Manager's valuation procedures to another client managed or advised by the Investment Manager or such affiliates. In addition, the Investment Manager may enter into agency cross-transactions where it or any of its affiliates acts as broker for the Fund and for the other party to the transaction, to the extent permitted under applicable law. The Investment Manager may obtain the Fund's written consent through the Advisory Committee if any such transaction requires the consent of the Fund under Section 206(3) of the Advisers Act.

There are generally no ethical screens or information barriers among the Investment Manager and certain of its affiliates of the type that many firms implement to separate persons who make investment decisions from others who might possess material, non-public information that could influence such decisions. If the Investment Manager, any of its personnel or its affiliates were to receive material non-public information about a particular obligor, issuer or CLO, or have an interest in causing the Fund to acquire a particular CLO Security, the Investment Manager may be prevented from causing the Fund to purchase or sell such asset due to internal restrictions imposed on the Investment Manager. Notwithstanding the maintenance of certain internal controls relating to the management of material non-public information, it is possible that such controls could fail and result in the Investment Manager, or one of its investment professionals, buying or selling an asset while, at least constructively, in possession of material non-public information. Inadvertent trading on material non-public information could have adverse effects on the Investment Manager's reputation, result in the imposition of regulatory or financial sanctions, and as a consequence, negatively impact the Investment Manager's ability to perform its portfolio management services to the Fund. In addition, while the Investment Manager and certain of its affiliates currently operate without information barriers on an integrated basis, such entities could be required by certain regulations, or decide that it is advisable, to establish information barriers. In such event, the Investment Manager's ability to operate as an integrated platform could also be impaired, which would limit the Investment Manager's access to personnel of its affiliates and potentially impair its ability to manage the Fund's investments.

Akin Gump Strauss Hauer & Feld LLP ("*Akin Gump*") serves as counsel to the Fund, the Investment Manager, the General Partner and certain of their Affiliates (the "*Clients*") in connection with the formation of the Fund and certain other Clients, the offering of Interests as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any Limited Partners nor does it purport to represent their interests. No independent counsel has been retained to represent the Limited Partners. In assisting in the preparation of this Memorandum, Akin Gump has relied on information provided by the Fund, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the principal's biographical data, summaries of market conditions, the planned investment strategy of the Fund and the performance of the Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.



## BROKERAGE AND CUSTODY

### Portfolio Transactions

Substantially all of the Fund's investments in marketable securities, as well as its cash and cash equivalents, are expected to be held at The Bank of New York Mellon ("**BNY Mellon**").

BNY Mellon and other prime brokers or their affiliates may provide capital introduction or other placement services to the Fund and the Investment Manager (with or without separate charges for such other services). In determining which broker-dealer generally provides the best available price and most favorable execution, the Investment Manager considers a totality of circumstances, including the broker-dealer's research capabilities and the success of prior research recommendations, ability to efficiently execute difficult trades (such as those in illiquid markets or trades of substantial size), the broker's risk in positioning a block of securities, commitment of capital, access to new issues, nature and frequency of sales coverage, depth of services provided, including economic or political coverage, arbitrage and option operations, back office and processing capabilities, financial strength, stability and responsibility, efficiency, reputation, access to markets, confidentiality, commission rate, responsiveness to the Investment Manager and the value of research and brokerage and research products and services provided by such brokers.

The Investment Manager may also execute trades with brokers and dealers with whom the Fund or the Investment Manager has other business relationships, including prime brokerage, credit relationships and capital introduction or investments by affiliates of the broker-dealers in the Fund or other entities managed by the Investment Manager. However, the Investment Manager does not believe that these other relationships will influence the choice of brokers and dealers who execute trades for the Fund.

Broker-dealers may provide research that may include written or oral proprietary research. Broker-dealers may also provide research products that include software and related support services for use in research and trading, quotation boards, computer databases and quotation equipment, in each case to access research or which provide research directly. Research services may include, among other things, research concerning market, economic and financial data, statistical information, data on pricing and availability of securities, financial publications, attendance at conferences and meetings, electronic market quotations, performance measurement services, analyses and/or due diligence concerning specific securities, companies or sectors, including due diligence on specific aspects of a company's operations or finances, analyses on issues raised in proxy statements and market, economic and financial studies and forecasts. Research services may be in written or oral form or on-line and may be produced by broker-dealers or third parties such as attorneys, accountants or consultants. Brokerage products and services may include certain order management system components and order routing.

The receipt of brokerage and research products from broker-dealers through client commission payments is commonly referred to as "soft dollars." Broker-dealers may provide products and services paid for through soft dollars either directly or through credits deposited into an account that may be used for research developed by the broker-dealer, third-party research and brokerage services. Section 28(e) of the Exchange Act provides a safe harbor from liability for breach of fiduciary duties relating to the purchase of limited research or brokerage services using soft dollars so long as the products and services received constitute lawful and appropriate assistance and the amount indirectly paid for those products or services is reasonable. If the Investment Manager uses research or

brokerage products or services, it intends to limit research and brokerage to those services included in the safe harbor under Section 28(e) of the Exchange Act.

In selecting broker-dealers on the basis of the foregoing factors, the Investment Manager may pay a brokerage commission in excess of that which another broker might have charged for effecting the same transaction. In connection therewith, the Investment Manager will make a good faith determination that the amount of commission is reasonable in relation to the value of the research or brokerage services received, viewed in terms of either the specific transaction or the Investment Manager's overall responsibility to its clients. The Investment Manager will regularly evaluate the placement of brokerage services and the reasonableness of commissions paid. Research received from brokers will be supplemental to the Investment Manager's own research efforts. While the receipt of research will not reduce the Investment Manager's normal research activities, the Investment Manager's expenses could increase materially if it attempted to generate such additional research or brokerage services through its own staff, and the Management Fee will not be reduced as a consequence of the receipt of such research or brokerage services or products. As such, the Investment Manager's arrangements for the receipt of research and brokerage services from brokers may create a conflict of interest, in that the Investment Manager may have an incentive to choose a broker-dealer that provides research and brokerage services, instead of one that does not but charges a lower commission rate. In some instances, the Investment Manager receives products and services that may be used for both research and non-research purposes. In such instances, the Investment Manager will make a good faith effort to determine the relative proportion of the products and services used to assist the Investment Manager in carrying out its investment decision-making responsibilities or order execution, including research and brokerage, and the relative proportion used for administrative or other non-research purposes. The proportionate amount of the research attributable to assisting the Investment Manager in carrying out its investment decision-making responsibilities or order execution will be paid through brokerage commissions generated by the Fund's and other client's transactions; the proportionate amount attributable to administrative or other non-research purposes will be paid for by the Investment Manager from its own resources. The receipt of "mixed-use" research and the determination of the appropriate allocation may result in a potential conflict of interest between the Investment Manager and its clients.

The Investment Manager will be responsible for the placement of the portfolio transactions of the Fund and the negotiation of any commissions or spreads paid on such transactions. Portfolio transactions normally will be effected through brokers on securities exchanges or directly with the issuer, or through an underwriter, or market maker or other dealer for the investments. Portfolio transactions through brokers involve a commission to the broker. Portfolio transactions with dealers typically are priced to include a spread between the bid and the asked price to compensate the dealer. Portfolio transactions will be executed by brokers selected solely by the Investment Manager in its absolute discretion.

### **Custody**

Custody of the Fund's assets is maintained by brokers and banks selected by the Investment Manager in its sole discretion. The custodian or custodians may be changed at any time and from time to time by the Investment Manager without the consent of the Fund. Currently, the custodian is BNY Mellon. The Fund is eligible for insurance coverage against loss with respect to assets held in the custody of BNY Mellon in the event of the bankruptcy or liquidation of BNY Mellon to the same extent BNY Mellon's other customers.



## TAX CONSIDERATIONS

### Introduction

The following is a summary of certain aspects of the taxation of the Fund and its Limited Partners arising from the purchase, ownership and disposition of an Interest that should be considered by a prospective Limited Partner. The Fund has not sought a ruling from the Service or any similar state, local or foreign authority with respect to any of the tax issues affecting Limited Partners or the Fund, nor has it obtained an opinion of counsel with respect to any U.S. federal, state, local or foreign tax issues.

This summary is based on the Code, the Treasury regulations promulgated under the Code (the “**Treasury Regulations**”), judicial decisions, administrative rulings, and state and local tax laws in force on the date of this Memorandum, all of which are subject to change (possibly with retroactive effect). Changes in existing laws or regulations and their interpretation may occur after the date of this Memorandum and could alter the income tax consequences of an investment in the Fund. This discussion does not address all of the tax consequences that may be relevant to a particular investor, nor does it address, unless specifically indicated, the tax consequences to, among others (i) persons that may be subject to special treatment under U.S. federal income tax law, including, but not limited to, banks, insurance companies, thrift institutions, regulated investment companies, real estate investment trusts and dealers in securities or currencies, (ii) persons that will hold Interests as part of a position in a “straddle” or as part of a “hedging,” “conversion” or other integrated investment transaction for U.S. federal income tax purposes, (iii) persons whose functional currency is not the U.S. dollar or (iv) persons that do not hold Interests as capital assets within the meaning of Code section 1221.

Further, this discussion assumes that all non-U.S. persons will invest in the Offshore Fund and will not invest in the Fund and, therefore, does not address the tax considerations relevant to an investment in the Fund by a non-U.S. person.

If a partnership holds an Interest in the Fund, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. Prospective investors who are partners of a partnership should consult their own tax advisors.

Unless otherwise expressly provided herein, this discussion does not address possible state, local or non-U.S. tax consequences of the purchase, ownership or disposition of Interests, some or all of which may be material to particular investors. This discussion also does not address the potential application of the U.S. federal alternative minimum tax (“**AMT**”) to the Limited Partners. There is uncertainty concerning certain tax aspects of the Fund, and there can be no assurance that the Service will not challenge the positions taken by the Fund.

*The tax consequences of an investment in the Fund are particularly complex. Accordingly, prospective investors should not consider this discussion as a substitute for careful tax planning. Prospective investors should consult with their own tax advisors, attorneys or accountants on matters relating to an investment in the Fund with special references to such investor’s particular situation.*

## Certain United States Taxation Matters

### Classification of the Fund

The General Partner believes that, under the provisions of the Code and the Treasury Regulations as currently in effect, the Fund should be treated for U.S. federal income tax purposes as a partnership and not as an association taxable as a corporation.

Certain “publicly traded partnerships” are treated as associations that are taxable as corporations for U.S. federal income tax purposes. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). Interests in the Fund are not and will not be traded on an established securities market. Treasury Regulations concerning the classification of partnerships as publicly traded partnerships provide certain safe harbors under which interests in a partnership will not be considered readily tradable on a secondary market (or the substantial equivalent thereof). Depending on the number of Partners, the Fund may qualify for a safe harbor exemption for partnerships that are offered to investors in a private placement.

The remainder of this discussion assumes that the Fund will be treated, for U.S. federal income tax purposes, as a partnership and not as a publicly traded partnership treated as an association that is taxable as a corporation.

### U.S. Federal Income Taxation of the Fund and Partners Generally

As a partnership, the Fund will not be subject to U.S. federal income tax. Each Limited Partner will be required to report separately on its income tax return its distributive share of the Fund’s net long-term capital gain or loss, net short-term capital gain or loss, and net ordinary income and deductions and credits in accordance with the allocations set forth in the Partnership Agreement. Each Limited Partner will be liable for any taxes owed upon its distributive share of the income or gains realized by the Fund, and may claim deductions for its distributive share of the Fund’s losses and deductions and credits for its distributive share of the Fund’s credits, to the extent allowed under the Code. Each Limited Partner will be taxed on its distributive share of the Fund’s taxable income and gain regardless of whether it has received or will receive a distribution from the Fund. Consequently, a Limited Partner may be subject to tax with respect to its share of the taxable income of the Fund for a taxable year and may not receive a corresponding distribution of cash from the Fund in such year with which to satisfy its tax liability in respect of such taxable income.

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund’s items of income, gain, loss, deduction or credit. The General Partner will have the authority to decide how to report these items on the Fund’s tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. An audit by the Service of the tax treatment of the Fund’s income and deductions generally will be determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. In this regard, the General Partner, as the “*Tax Matters Partner*,” will have the authority to bind certain Limited Partners to settlement agreements and the right on behalf of all Limited Partners to extend the statute of limitations relating to the Limited Partners’ tax liabilities with respect to Fund items.

Under the Partnership Agreement, for U.S. federal income tax purposes, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deduction) to a withdrawing Partner to the extent that the Partner's Capital Account differs either positively or negatively from its U.S. federal income tax basis in its interest. There can be no assurance that, if the General Partner makes such a special allocation, the Service will accept such allocation. If such allocation is successfully challenged by the Service, the Fund's allocations to the remaining Partners would be affected as well.

The Fund expects to act as a trader or investor, and not as a dealer, with respect to its securities transactions. Generally, the gains and losses realized by a trader or investor on the sale of securities are capital gains and losses. Thus, in general, the Fund expects that its gains and losses from its securities transactions typically will be capital gains and capital losses. These capital gains and losses may be long-term or short-term depending, in general, upon the length of time the Fund maintains a particular investment position and, in some cases, upon the nature of the transaction. Property held for more than 12 months generally will be eligible for long-term capital gain or loss treatment. Long term capital gains may be eligible for favorable tax rates in the hands of non-corporate U.S. Limited Partners. Limited Partners should consult with their own tax advisors to determine the tax rates applicable to them in their particular tax situations.

In addition, individuals who are U.S. persons with "modified adjusted gross income" that exceeds certain thresholds (for example, \$250,000 for married individuals filing jointly, \$200,000 for single individuals) are subject to a Medicare tax of 3.8% on the lesser of (i) their investment income, net of deductions properly allocable to such income, and (ii) the excess of their "modified adjusted gross income" above the applicable threshold. The General Partner expects that most or all of the Fund's income will be treated as investment income for this purpose, and as a result Limited Partners receiving allocations of income from the Fund for these taxable years will be subject to this tax. This tax will be in addition to any U.S. federal income tax imposed on such Limited Partners with respect to their allocable share of income of the Fund. Trusts and estates also may be subject to this additional tax.

The Fund may be involved in a variety of hedging transactions to reduce the risk of changes in value in the Fund's investments. Special rules may apply to determine the tax treatment of such hedging transactions, which may affect the Fund's holding period attributable to such property, the characterization of gain or loss as ordinary or capital and, if capital, as long-term or short-term, and the timing of the realization of gains or losses on the actual or deemed sale of the property, including, in some cases, property owned by a Limited Partner outside of the Fund. For instance, gain or loss from a short sale of property generally will be considered as capital gain or loss to the extent the property used to close the short sale constitutes a capital asset in the Fund's hands. Except with respect to certain situations where the property used by the Fund to close a short sale has a long-term holding period on the date of the short sale, gains on short sales will be treated as short-term capital gains. These rules also may terminate the running of the holding period of "substantially identical property" held by the Fund. Moreover, a loss on a short sale will be treated as a long-term capital loss if, on the date of the short sale, "substantially identical property" has been held by the Fund for more than one year. Certain hedging transactions also may cause a constructive sale of the Fund's long position that is the subject of the hedge.

The Fund may derive ordinary interest income and dividends on securities, and may be required to recognize income in respect of certain securities prior to receipt of any payment in respect of such securities. For instance, the Fund may hold debt obligations with "original issue discount." In such case, the Fund will be required to include a portion of such discount in its taxable income on a current



basis, and the Fund must allocate such income to the Limited Partners, even though receipt of such amounts by the Fund may occur in a subsequent tax year. The Fund also may acquire debt obligations with “market discount.” Upon disposition of such an obligation, which might include the receipt of securities of the issuer in a recapitalization exchange, the Fund generally will be required to treat any gain realized (and required to be recognized) as ordinary interest income to the extent of the market discount that accrued during the period the debt obligation was held by the Fund. Recapitalization exchanges involving securities held by the Fund also may result in the recognition of taxable gains prior to the receipt of cash or readily tradable property.

If the Fund is treated as a trader, it may, in its discretion, make an election under Code section 475(f) to apply a mark to market system of recognizing unrealized gains and losses on securities as if the securities were sold for fair market value at the close of any taxable year of the Fund. The amount recognized when gain or loss is subsequently realized would be adjusted for amounts recognized in marking to market. The election would apply with respect to securities held in connection with the Fund’s trade or business as a trader in securities. The election would not apply to any securities with respect to which the Fund could demonstrate, to the satisfaction of the Service, that they are held for investment. Once a Code section 475(f) election is made, it can be revoked only with the consent of the Service. In the event that the Fund makes such an election, the Fund’s gains and losses from marking securities to market (and gain or loss recognized before the end of the taxable year with respect to any security that would have been marked to market) would be treated as ordinary income and losses. The rules relating to appreciated financial positions under Code section 1259 and wash sales under Code section 1091 would not apply to the securities to which the election applies and the Code section 1092 straddle rules would not have any effect where all the offsetting positions of a straddle are marked to market.

The Fund may be required to purchase foreign currency with which to make its investments and may receive foreign currency when a security is sold or when an interest payment is made on a security. These transactions may give rise to gains and losses because of fluctuations in the value of the foreign currency relative to the U.S. dollar during the Fund’s holding period of an investment. Foreign currency gain or loss in respect of certain types of transactions must be accounted for separately, apart from any gain or loss on the underlying transaction, and the Code contains special rules which treat, in most circumstances, such gains and losses as ordinary income or losses rather than capital gains or losses.

The U.S. federal income tax treatment of the Fund’s investment in swaps or other derivatives is subject to significant uncertainty and depends in large part on the terms of the specific swap or other derivative. In particular, it is possible that the Fund may enter into so-called “bullet swaps” or other swaps that provide for non-periodic payments. In certain circumstances, income from a swap can be treated as ordinary income and not capital gain if the swap is treated as a “constructive ownership transaction” under Code section 1260. The Fund intends to take positions that are reasonable under the law that provide for optimal tax treatment of the Limited Partners. However, there can be no assurance that the Service or a court would agree with the Fund’s position. Moreover, the Service might take the contrary position that the Fund is subject to U.S. federal income tax in respect of some or all of the income earned from the swap investments on the theory that the Fund should be treated as the owner for U.S. federal income tax purposes of the property underlying certain swaps, in which case the after-tax return on the swap investments could be significantly reduced.

Pursuant to various “anti-deferral” provisions of the Code (e.g., the “Subpart F” and “passive foreign investment company” provisions), any investments by the Fund in certain foreign corporations may cause a Limited Partner to (i) recognize taxable income prior to the Fund’s receipt of distributable

proceeds, (ii) pay an interest charge on receipts that are deemed as having been deferred or (iii) recognize ordinary income that, but for the “anti-deferral” provisions, would have been treated as long-term or short-term capital gain.

Under the Partnership Agreement, the General Partner has the authority to elect on behalf of the Fund, under Code section 754, to adjust the tax basis of the Fund’s assets in connection with certain distributions to Limited Partners or certain transfers of Interests. Such an election, if made, could affect the amount of a Limited Partner’s distributive share of the gain or loss recognized by the Fund upon the disposition of its assets. Because of the complexity and additional expense involved in making a section 754 election, the General Partner has no present intention to make such election on behalf of the Fund.

Prospective investors that are subject to the AMT should consider the tax consequences of an investment in the Fund in view of their AMT position, taking into account the special rules that apply in computing the AMT.

#### Taxation of Distributions and Withdrawals

Cash non-liquidating distributions and withdrawals, to the extent they do not exceed a Limited Partner’s basis in its Interest, will not result in taxable income to that Limited Partner, but will reduce its tax basis in its Interest by the amount distributed or withdrawn. Cash distributed to a Limited Partner in excess of the basis of its Interest is generally taxable as capital gain.

Prospective Limited Partners should be aware that a Limited Partner’s share of the taxable income of the Fund for any year may exceed the amount of cash distributed to such Limited Partner for that year, which may require that the Limited Partner make an out-of-pocket expenditure to cover its tax liability. Conversely, if the cash distributed by the Fund to a Partner for any year exceeds the taxable income of the Fund allocated to such Partner for that year, the excess will be treated as a return of capital for U.S. federal income tax purposes to the extent of a Limited Partner’s tax basis of its Interest. To the extent that cash distributions are treated as a return of capital and to the extent that any tax losses are allocated to the Limited Partners, the tax bases of the Limited Partners in their Interests will be reduced (but not below zero). Because of such basis adjustments, any tax that is avoided in the early years of a Limited Partner’s investment in the Fund may become due later through the realization of gain upon the sale of assets of the Fund, the liquidation of the Fund or the sale of Interests.

The Fund’s ability to make cash distributions to a withdrawing Limited Partner or to the Partners, if applicable, may be limited by, among other things, the terms of the investment leverage entered into by the Fund for the purpose of making portfolio investments on a leveraged basis.

Upon the withdrawal of a Limited Partner receiving a cash liquidating distribution from the Fund, such Limited Partner generally will recognize capital gain or loss to the extent of the difference between the proceeds received by the withdrawing Limited Partner and such Partner’s adjusted tax basis in its Interest. Such capital gain or loss will be short-term or long-term depending upon the Partner’s holding period (or holding periods) for its Interest. However, a withdrawing Limited Partner will recognize ordinary income to the extent such Partner’s allocable share of the Fund’s “unrealized receivables” exceeds the Partner’s basis in such unrealized receivables (as determined pursuant to the Treasury Regulations). For these purposes, accrued but untaxed market discount, if any, on securities held by the Fund will be treated as an unrealized receivable, with respect to which a withdrawing Partner would recognize ordinary income.



Distributions of property other than cash, whether in complete or partial liquidation of a Limited Partner's Interest, generally will not result in the recognition of taxable income or loss to the Limited Partner (except to the extent such distribution is treated as made in exchange for such Limited Partner's share of the Fund's unrealized receivables). However, a distribution of marketable securities will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient Limited Partner), unless the distributing partnership is an "investment partnership" and the recipient is an "eligible partner" as defined in Code section 731(c). Although the General Partner cannot provide any assurances of whether the Fund is an "investment partnership" for these purposes, the General Partner anticipates that the Fund should qualify as an "investment partnership." Thus, if a Limited Partner is an "eligible partner," which term should include a Limited Partner whose sole contributions to the Fund consisted of cash, a distribution of marketable securities to such Limited Partner should not require the recognition of gain by such Limited Partner.

As discussed above, under the Partnership Agreement, the General Partner has the discretion to allocate specially an amount of the Fund's net gains or net losses (or items of gross income or losses or deductions) for U.S. federal income tax purposes to a withdrawing Partner to the extent that the Partner's capital account differs from its U.S. federal income tax basis in its Interest. Such a special allocation may result in the withdrawing Partner recognizing more or less taxable income, which may include short-term gain, in the Partner's last taxable year in the Fund, thereby reducing, or increasing, as applicable, the amount of long-term capital gain recognized during the tax year in which it receives its liquidating distribution upon withdrawal. In certain circumstances, special allocations of net gains (or items of income or gain) to a withdrawing Partner may result in a greater allocation of losses, or a lower allocation of taxable income or gain, to the remaining Partners. Likewise, special allocations of net losses (or items of expense, loss or deduction) to a withdrawing Partner may result in a greater allocation of taxable income or gain, or a lower allocation of losses, to the remaining Partners.

Assuming the Fund has not made an election pursuant to Code section 754 and the General Partner does not exercise its discretion to specially allocate losses to a withdrawing Limited Partner, distributions of property or cash by the Fund to a Limited Partner in redemption of its Interest in certain circumstances where the Fund has a substantial built-in loss may require the Fund to reduce the tax basis of its remaining property.

#### Limitations on Losses and Deductions

Limited Partners that are individuals or certain types of corporations may be limited in their ability to deduct expenses or losses of the Fund. For instance, if or to the extent that the Fund's operations do not constitute a "trade or business" within the meaning of Code section 162 and other provisions of the Code, an individual Limited Partner's distributive share of the Fund's expenses (including any amounts that are treated for tax purposes as expenses of the Fund) would be deductible only as itemized deductions, subject to the limitations of Code sections 67 and 68. In this regard, if all or a portion of the Performance Allocation to the General Partner were re-characterized for tax purposes as an expense of the Fund, each non-corporate Limited Partner's share of such expense could be subject to such limitations. Itemized deductions are non-deductible in computing such Limited Partner's alternative minimum taxable income and alternative minimum tax liability.

Further, income, gains and losses of the Fund generally will not be treated as passive income or losses for purposes of the passive activity loss limitations of Code section 469. Accordingly, individuals, personal service corporations and certain closely-held corporations that have passive activity

losses from other activities are restricted in their ability to use such losses to offset income and gains from the Fund, although losses of the Fund will not be subject to the passive activity loss limitation.

The ability of a non-corporate Limited Partner to deduct its share of the Fund's ordinary losses attributable to interest and certain short sale expenses may be subject to the "investment interest limitation" under Section 163(d) of the Code. In general, a non-corporate taxpayer's investment interest (including interest and certain short sale expenses) in the current year is not deductible to the extent it exceeds its "net investment income," consisting of net gain and ordinary income derived from investments in the current year less certain directly connected expenses (other than interest or short sale expenses). For this purpose, any long-term capital gain and qualified dividend income is excluded from net investment income unless the taxpayer elects to pay tax on such amount at ordinary income tax rates. The Fund's activities are expected to be treated as giving rise to investment income for a Limited Partner, and the investment interest limitation would apply to a non-corporate Limited Partner's share of the interest and short sale expenses attributable to the Fund's operation. Accordingly, a non-corporate Limited Partner would be denied a deduction for all or a part of its distributive share of the Fund's ordinary losses attributable to interest and short sale expenses unless it has sufficient investment income from all sources including the Fund. Any amount not deducted as a result of the application of the investment interest limitation may be carried forward to future years, subject to certain limitations. The Fund may incur certain expenses in connection with its organization and the marketing of its interests. Amounts paid or incurred to organize a partnership are not deductible, but may, by election of the Fund, be capitalized and amortized over a period of not less than 180 months. Amounts paid or incurred to market interests in the Fund that qualify as "syndication expenses" are not deductible or amortizable.

#### Tax Consequences for Tax-Exempt U.S. Investors

A Limited Partner that is an organization exempt from tax under Code section 501(a) (a "***Tax-Exempt U.S. Investor***") will be subject to tax on its allocable share of the Fund's income that is considered to be "unrelated business taxable income" ("***UBTI***") as defined in Code section 512, and may be subject to the AMT with respect to items of tax preference which enter into the computation of UBTI. Code section 512(b) provides that UBTI generally does not include dividends, interest, and gain or loss from the disposition of property other than stock in trade or property held for sale in the ordinary course of the unrelated trade or business. The Fund may invest in entities that are treated as partnerships or other pass-through entities. UBTI generated by such entities would generally flow up to Tax-Exempt U.S. Investors, causing the realization of UBTI by such investors. Therefore, in light of the Fund's investment program, a Tax-Exempt U.S. Investor should not realize UBTI to the extent that its distributive share of the Fund's income consists of dividends, interest, capital gains and certain other items which are excluded from UBTI under Code section 512(b) (except to the extent any such income constitutes "UDFI," as discussed in the next paragraph).

A Tax-Exempt U.S. Investor is also subject to tax with respect to its, and its allocable share of the Fund's, "unrelated debt-financed income" pursuant to Code section 514 ("***UDFI***"). In general, UDFI consists of (i) income derived by a tax-exempt organization (directly or through a partnership) from income-producing property with respect to which there is "acquisition indebtedness" at any time during the taxable year and (ii) gains derived by a tax-exempt organization (directly or through a partnership) from the disposition of property with respect to which there is "acquisition indebtedness." In addition, a tax-exempt organization that borrows money to finance its investment in the Fund would be subject to tax on the portion of its income that is UDFI. Income and gains derived by a tax-exempt organization from the ownership and sale of debt-financed property is taxable in the

proportion to which such property is financed by acquisition indebtedness during the relevant period of time.

The Fund expects to generate income attributable to debt-financed property which will be attributed to the Partners, including any Tax-Exempt U.S. Investors. A Tax-Exempt U.S. Investor's share of the Fund's income that is treated as UBTI will vary depending upon the degree of leverage utilized by the Fund and could be significant. In addition to other relevant considerations, fiduciaries of employee pension trusts and other prospective tax-exempt investors should consider the consequences of realizing UBTI in making a decision whether to invest in the Fund.

***We urge prospective Tax-Exempt U.S. Investors that are sensitive to UBTI or UDFI to consult their tax advisors as to the tax consequences of investing in the Fund and as to the comparative tax treatment of an investment in the Offshore Fund.***

#### Investor Tax Filings and Record Retention.

The U.S. Treasury Department has adopted Treasury Regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, these Treasury Regulations require investors in specified transactions (including partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties (in addition to penalties that generally may be applicable as a result of a failure to comply with the applicable Treasury Regulations) may be imposed for failure to comply with these tax filing and record retention rules.

These Treasury Regulations are broad in scope, and it is conceivable that the Fund may enter into transactions that will subject the Fund and certain investors to the special tax filing and record retention rules. Additionally, under these Treasury Regulations, an investor's recognition of loss upon its disposition of its Interest could cause the investor to become subject to special tax filing and record retention rules. The General Partner intends to use its reasonable efforts to provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Fund.

#### Reporting under FATCA

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement ("**IGA**") and related statutes, regulations, rules and other guidance thereunder, "**FATCA**") impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution ("**FFI**"), unless such FFI enters into an agreement with the IRS (an "**FFI Agreement**"), and/or complies with an IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources since July 1, 2014, and will apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends after December 31, 2016.



The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. Additional guidance is forthcoming.

It is possible that a lower-tier non-U.S. entity in which the Fund invests may be considered an FFI. The Fund intends to assist lower-tier non-U.S. entities in complying with FATCA, but can give no assurance that it will be able to provide such assistance or that such an entity will be able to avoid the imposition of this withholding tax on it.

Further, the Fund may be required to act as a withholding agent for the Service under FATCA and therefore be required to withhold on income and proceeds paid or allocated to an investor that fails to comply with FATCA, which could occur if an investor that is an FFI does not enter into an FFI Agreement, is not otherwise exempt from such withholding, and/or does not provide the appropriate information and documentation (including the prescribed forms) to the Fund or its agents showing its exemption from such withholding or compliance with FATCA. The General Partner intends to collect the appropriate documentation from all investors in the Fund in order to determine whether it is required to withhold under FATCA with respect to distributions or allocations of income and gains made to investors.

The General Partner and the Fund reserve the right to take any action and/or pursue all remedies at their disposal to avoid withholding requirements or otherwise to mitigate the consequences of an investor's failure to comply with FATCA, including compulsory redemption or withdrawal of the investor concerned. In this regard, the General Partner and the Fund have certain rights to request, and the investors have certain obligations to provide, information and documentation that may be used by the General Partner and the Fund in complying with their obligations under FATCA. In addition, no investor affected by any action or remedy by the Fund shall have any claim against the Fund, the General Partner, and the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

*Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests of the Fund.*

#### State and Local Taxes

In addition to the U.S. federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Fund. State and local laws often differ from U.S. federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Partner's distributive share of the taxable income or loss of the Fund generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which it is a resident.

Limited Partners or the Fund may be subject to state and/or local franchise, withholding, income, capital gain or other tax payment obligations and filing requirements in those jurisdictions where the Fund owns real estate assets or is otherwise regarded as doing business or earning income. Credits for these taxes may not be available (or may be subject to limitations) in the jurisdictions in which Limited Partners, or the Fund, as applicable, are residents. Each potential investor is urged to consult with its own tax advisor in this regard.

**Each prospective Limited Partner should consult its own tax advisor with respect to its state and local tax consequences and filing obligations as a result of an investment in the Fund.**

**Other Taxes**

The Fund and its Limited Partners may be subject to other taxes, such as the AMT, and estate, inheritance or intangible property taxes that may be imposed by various domestic jurisdictions, as well as foreign withholding or gains taxes. Each prospective investor should consider the potential consequences of such taxes on an investment in the Fund. It is the responsibility of each prospective investor to satisfy itself as to, among other things, the legal and tax consequences of an investment in the Fund, under the laws of the various jurisdictions of its domicile and its residence, by obtaining advice from its own tax counsel or other advisor, and to file all appropriate tax returns that may be required.

**Tax Returns; Tax Audits**

The Fund will file an annual partnership information return with the Service that reports the results of its operations for the taxable year, and will distribute annually to each Limited Partner a form showing its distributive share of the Fund's items of income, gain, loss, deduction or credit. The General Partner has the authority to decide how to report these items on the Fund's tax returns, and all Limited Partners will be required under the Partnership Agreement to treat the items consistently on their own returns. If the income tax returns of the Fund are audited by the Service, the tax treatment of the Fund's income and deductions is generally determined at the Fund level in a single proceeding rather than by individual audits of the Limited Partners. In this regard, the General Partner, as the "Tax Matters Partner," has considerable authority to make decisions affecting the tax treatment and procedural rights of all Limited Partners. In addition, the Tax Matters Partner has the authority to bind certain Limited Partners to settlement agreements and the right on behalf of all Limited Partners to extend the statute of limitations relating to the Limited Partners' tax liabilities with respect to Fund items.

In certain cases, the Fund may be required to file a statement with the Service, disclosing one or more positions taken on its tax return, generally where the tax law is uncertain or a position lacks clear authority. All Partners are required under the Code to treat the partnership items consistently on their own returns, unless they file a statement with the Service disclosing the inconsistency. Given the uncertainty and complexity of the tax laws, it is possible that the Service may not agree with the manner in which the Fund's items have been reported.

**Other Income Taxation**

Although there can be no assurance, it is intended that the affairs of the Fund will be conducted such that the Fund will not be subject to regular income taxation in any foreign jurisdiction. However, income and gains from investments held by the Fund may be subject to withholding taxes or taxes in jurisdictions other than those described herein, subject to the possibility of reduction under applicable tax treaties. Limited Partners generally may be entitled, subject to applicable limitations, to a credit against U.S. income tax for creditable foreign income taxes paid on the foreign source income and gains of the Fund (which may not include all of the Fund's gains). The foreign tax credit rules are complex, and may, depending on each Limited Partner's particular circumstances, limit the availability or use of foreign tax credits. Prospective investors are advised to consult their own tax advisors regarding the application of the foreign tax credit rules.



### **Future Tax Legislation; Necessity of Obtaining Professional Advice**

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Service or judicial decisions may adversely affect the U.S. federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on Limited Partners will vary with the particular circumstances of each Limited Partner and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

Accordingly, each prospective investor must consult with and rely solely on its professional tax advisors with respect to the tax results of its investment in the Fund. In no event will the Fund, the General Partner, the Investment Manager, or their Affiliates, counsel or other professional advisors be liable to any Limited Partner for any U.S. federal, state, local or foreign tax consequences of an investment in the Fund, whether or not such consequences are as described above.

*The foregoing is a summary of some of the important tax rules and considerations affecting the Limited Partners, the Fund, and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each Limited Partner, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding an Interest. The foregoing does not address tax considerations affecting investors that are not U.S. persons. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any foreign tax consequences of such an investment in its particular situation.*

## ERISA AND OTHER REGULATORY CONSIDERATIONS

### ERISA Considerations

#### General

Fiduciaries and other persons who are proposing to invest in Interests on behalf of retirement plans, IRAs and other employee benefit plans (“**Plans**”) covered by the U.S. Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or the Code must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan’s portfolio, taking into consideration whether the investment is designed to reasonably further the Plan’s purposes, the investment’s risk and return factors, the portfolio’s composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan’s objectives, the limited right of Limited Partners to withdraw all or any part of their capital or to transfer their Interests and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

#### Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor (“**DOL**”) has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as “plan assets” for purposes of Title I of ERISA and Section 4975 of the Code (“**Plan Assets**”). Section 3(42) of ERISA defines the term “Plan Assets” to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by “Benefit Plan Investors” (the “**significant participation test**”). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term “**Benefit Plan Investors**” means any employee benefit plan subject to part 4 of Title I of ERISA (i.e., plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan’s investment in such entity (a “**Plan Asset Entity**”).

In order to prevent the assets of the Fund from being considered Plan Assets under ERISA, it is the intention of the Fund to monitor the investments in the Fund and prohibit the acquisition, withdrawal or transfer of any Interests by any Limited Partner, including a Benefit Plan Investor, unless, after giving effect to such an acquisition, withdrawal or transfer, the total proportion of Interests of any class owned by Benefit Plan Investors would be less than 25% of the aggregate value of the class of Interests (determined, as described above, by excluding certain Interests held by the General Partner, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in any class of Interests by Benefit Plan Investors to less than 25%, the Fund may require the compulsory withdrawal of Interests of any class. Each Limited Partner that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires

Interests the maximum percentage of such general account or Plan Asset Entity that will constitute Plan Assets (the “**Maximum Percentage**”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Fund. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Interests, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the General Partner of that occurrence and shall, if and as directed by the General Partner, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Interests held in its general account or Plan Asset Entity by the end of the next following calendar month (or such earlier period directed by the General Partner).

If the Fund’s assets were considered Plan Assets, then, under ERISA and the Code, the General Partner would be a fiduciary, and certain employees, partners and officers of the General Partner as well as certain affiliates would become “parties in interest” and “disqualified persons,” with respect to the investing Plans, with the result that the rendering of services to certain related parties, the lending of money or other extensions of credit, the sale, exchange or leasing of property by the Fund or certain related parties or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in Interests by persons who are fiduciaries, and/or parties-in-interest and disqualified persons, to a Plan might be deemed to constitute prohibited transactions under such circumstances.

#### Representation by Plans

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund’s investment objectives, policies and strategies and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. By its purchase, each investor will be deemed to have represented that either (a) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (b) it is not an entity whose assets include Plan Assets or (c) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

#### Ineligible Purchasers

Interests may not be purchased with Plan Assets if the General Partner, any selling agent, finder, any of their respective affiliates or any of their respective employees: (a) has investment discretion with respect to the investment of such Plan Assets; (b) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (c) is an employer maintaining or contributing to such Plan. A party that is described in clause (a) or (b) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a “prohibited transaction” under ERISA and the Code.

#### Plans’ Reporting Obligations

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting obligation for “eligible indirect compensation” on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

*Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non -U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non -U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.*

## **Other Regulatory Matters**

### Securities Act of 1933

Interests are not registered under the U.S. Securities Act of 1933, as amended, or any other securities law, including state securities or blue sky laws. Interests are offered without registration in reliance upon the exemption contained in Regulation D of this act and/or rules and regulations of the Securities and Exchange Commission applicable to transactions not involving a public offering. Each investor is required, in the Fund's Subscription Documents pursuant to which such investor subscribes for an Interest, to make customary Regulation D representations.

### Investment Company Act of 1940

The Fund is not registered under the U.S. Investment Company Act of 1940, as amended, in reliance upon relief from registration afforded to collective investment vehicles whose outstanding securities are not publicly offered and are beneficially owned exclusively by investors that are considered "qualified purchasers" within the meaning of the Investment Company Act. "Qualified purchasers" generally include individuals and certain family-owned companies owning total investments in excess of \$5 million and entities owning total investments in excess of \$25 million. Each investor will be required to complete the Fund's Subscription Documents to enable the Fund to determine its eligibility.

### Investment Adviser Registration

The Investment Manager is registered as an investment adviser with the Securities and Exchange Commission under the U.S. Investment Advisers Act of 1940, as amended (the "*Advisers Act*"). Each prospective investor will be required to make a representation to indicate that it is a "qualified client" as defined in the Advisers Act.

### Commodity Exchange Act

Neither the General Partner nor the Investment Manager is required to register as a commodity pool operator or commodity trading adviser under the U.S. Commodity Exchange Act because the Fund is limiting participation to certain qualified investors, is restricting the Fund's commodity interest trading, and the Investment Manager only provides commodity trading advice to the Fund (or other pools for which it is an exempt commodity pool operator). Therefore, unlike a registered commodity pool operator, there is no requirement to deliver this Memorandum or other disclosure document or any certified annual report to the Fund's investors.



Anti-Money Laundering Regulations

All subscriptions for Interests will be subject to applicable anti-money laundering regulations. Investors will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107-56).

As part of the Fund's responsibility to comply with regulations aimed at the prevention of money laundering, the General Partner or its delegate may require verification of identity from all prospective investors. Depending on the circumstances of each subscription, it may not be necessary to obtain full documentary evidence of identity.

The General Partner reserves the right to request such information as is necessary to verify the identity of a prospective investor. The General Partner also reserves the right to request such identification evidence in respect of a transferee of Interests. In the event of delay or failure by the prospective investor or transferee to produce any information required for verification purposes, the General Partner may refuse to accept the application or (as the case may be) to register the relevant transfer and (in the case of a subscription of Interests) any funds received will be returned without interest to the account from which the monies were originally debited.

The General Partner also reserves the right to refuse to make any withdrawal payment or distribution to a Limited Partner, if the General Partner suspects or is advised that the payment of any withdrawal or distribution moneys to such Limited Partner might result in a breach or violation of any applicable anti-money laundering or other laws or regulations by any person in any relevant jurisdiction, or such refusal is considered necessary or appropriate to ensure the compliance by the Fund, the General Partner and the Investment Manager with any such laws or regulations in any relevant jurisdiction.



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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 20**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit



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005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMLP, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.  
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*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

Memorandum Number \_\_\_\_\_

## **Confidential Private Offering Memorandum**

*Series B, Series C and Series D Shares of*

### **Highland Multi Strategy Credit Fund, Ltd.**

*A Cayman Islands Exempted Company*

*Investment Manager*

Highland Capital Management, L.P.

**November 2014**

***This Confidential Private Offering Memorandum must be read in conjunction with the Confidential Private Placement Memorandum of Highland Multi Strategy Credit Fund, L.P.***

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### NOTICE

This Private Offering Memorandum (this “**Memorandum**”) is confidential and intended solely for the use of the person to whom it has been delivered by Highland Multi Strategy Credit Fund, Ltd. (the “**Fund**”) for the purpose of enabling the recipient to evaluate an investment in the Fund. The purpose of the Fund is to invest all of its assets in, and carry out its investment program through, Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “**Partnership**”). Accordingly, this Memorandum must be read in conjunction with the Partnership’s Confidential Private Placement Memorandum, as amended and supplemented from time to time (the “**Partnership Memorandum**”).

This Memorandum is not to be reproduced or distributed to others, at any time, without the prior written consent of the Fund (other than to professional advisors and employees of the investor receiving this Memorandum from the Fund or its authorized representative or such investor) and all recipients agree they will keep confidential all information contained herein not already in the public domain and will use this Memorandum for the sole purpose of evaluating a possible investment and monitoring a subsequent investment in the Fund. Notwithstanding the foregoing, each investor (and each employee, representative or other agent of each investor) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of an investment in the Fund and all materials of any kind (including opinions or other tax analyses) that are provided to the investor relating to such tax treatment or tax structure. Acceptance of this Memorandum and the Partnership Memorandum by a recipient constitutes an agreement to be bound by the foregoing terms. No person is authorized to make any representations concerning the Fund which are inconsistent with those contained in this Memorandum.

Prospective investors are not to construe the contents of this Memorandum or the Partnership Memorandum as legal, tax, investment or other advice. Each prospective investor should consult its own advisors as to legal, financial, tax, ERISA and other related matters concerning an investment in the Fund.

In making an investment decision, investors must review both this Memorandum and the Partnership Memorandum and must rely on their own examination of the Fund and the Partnership and the terms of the offering, including the merits and risks involved. The shares in the Fund (the “**Shares**”) have not been recommended by any U.S. federal or state, or any non-U.S., securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

Neither this Memorandum nor the Shares described herein have been qualified for offer, sale or distribution under the laws of any jurisdiction governing the offer or sale of mutual fund shares or other securities, and this Memorandum shall not constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of Shares in any jurisdiction in which such offer, solicitation or sale is not authorized or to any person to whom it is unlawful to make such offer, solicitation or sale.

In each member state of the European Economic Area (each a “**Relevant Member State**”) that has implemented EU Directive 2011/61/EU on Alternative Investment Fund Managers (the “**AIFM Directive**”), the Fund may only be offered to investors in accordance with local measures implementing



the AIFM Directive. Investors in a Relevant Member State where the Fund is not being offered pursuant to private placement rules implementing the AIFM Directive may invest in the Fund, but only in circumstances where they do so at their own initiative.

No person has been authorized to give any information or to make any representation concerning the Fund or the offering of the Shares other than the information contained in the Memorandum and the Partnership Memorandum and, if given or made, such information or representation must not be relied upon as having been authorized by the Fund.

The Shares have not been, and will not, be registered under the United States Securities Act of 1933, as amended, or the securities laws of any of the states of the United States, and the Fund has not been and will not be registered under the United States Investment Company Act of 1940, as amended. Direct or indirect acquisition or ownership of Shares by “*U.S. Persons*” (as defined herein) without compliance with applicable U.S. securities laws or in contravention of the relevant provisions of the constituent documents of the Fund is prohibited.

The Fund is not a recognized collective investment scheme for the purposes of Section 264 of the Financial Services and Markets Act 2000 of the United Kingdom (the “*Act*”). The promotion of the Fund and the distribution of this Memorandum in the United Kingdom are accordingly restricted by law. This Memorandum is directed at persons to whom it may lawfully be issued or directed at under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001, including persons who are authorized under the Act, certain persons having professional experience in matters relating to investments, high net worth companies, high net worth unincorporated associations or partnerships, trustees of high value trusts and persons who qualify as certified sophisticated investors. The Shares are only available to such persons in the United Kingdom and this Memorandum must not be relied or acted upon by any other persons in the United Kingdom. In order to qualify as a certified sophisticated investor a person must (i) have a certificate in writing or other legible form signed by an authorized person to the effect that he or she is sufficiently knowledgeable to understand the risks associated with participating in unrecognized collective investment schemes and (ii) have signed, within the last 12 months, a statement in a prescribed form declaring, amongst other things, that he or she qualifies as a sophisticated investor in relation to such investments. This Memorandum is exempt from the general restriction in Section 21 of the Act on the communication of invitations or inducements to engage in investment activity on the grounds that it is being issued to and/or directed at only the types of persons referred to above. The content of this Memorandum has not been approved by an authorized person and such approval is, save where this Memorandum is directed at or issued to the types of persons referred to above, required by Section 21 of the Act.

The Shares described in this Memorandum are not the subject of a public offering in the Cayman Islands. No offer or invitation to subscribe for Shares may be made to the public in the Cayman Islands.

Any information forwarded to the Fund by any potential shareholder will be treated on a confidential basis except that such information may be passed on to a relevant third party by the Fund where so required by law or regulation and each shareholder upon subscribing for Shares shall be deemed to have consented to such release of such confidential information pursuant to the terms of the Confidential Relationships (Preservation) Law (as amended) of the Cayman Islands (or any amendment thereto).

An investment in the Shares involves significant risks. Prospective investors should pay particular attention to the risk factors disclosed in this Memorandum and the Partnership Memorandum. Investment in the Fund is suitable only for sophisticated investors and requires the financial ability and willingness to accept the high risks inherent in an investment in the Fund. No assurance can be given that the Fund's investment objective will be achieved.

Each prospective investor is invited to meet with representatives of the Fund and to discuss with, ask questions of and receive answers from such representatives concerning the terms and conditions of this offering and to obtain any additional information, to the extent that such representatives possess such information or can acquire it without unreasonable effort or expense, necessary to verify the information contained herein.

The Fund is a registered mutual fund for the purposes of the Mutual Funds Law (2013 Revision) of the Cayman Islands. The Fund is registered with the Cayman Islands Monetary Authority pursuant to Section 4(3) of that law and the prescribed details in respect of this Memorandum have been filed with the Cayman Islands Monetary Authority. Such registration does not imply that the Cayman Islands Monetary Authority has approved this Memorandum or the offering of Shares hereunder.

This Memorandum does not purport to be, and should not be construed as, a complete description of the memorandum of association and articles of association of the Fund (the "*Articles*") or the Partnership's limited partnership agreement, as amended and supplemented from time to time (the "*Partnership Agreement*"), copies of which will be provided to each prospective investor upon request. Each prospective investor in the Fund is encouraged to review the Articles and the Partnership Agreement carefully, in addition to consulting appropriate legal and tax counselors. To the extent of any inconsistency between this Memorandum, the Articles and the Partnership Agreement, the terms of the Articles and the Partnership Agreement control.

Pursuant to an exemption from the Commodity Futures Trading Commission (the "*CFTC*"), neither the General Partner nor the Investment Manager (each as defined herein) is registered with the CFTC as a commodity pool operator ("*CPO*") or as a commodity trading advisor and therefore, unlike a registered CPO, is not required to deliver a disclosure document or a certified annual report to participants in this pool. Among other things, the exemption requires the filing of a claim of exemption with the National Futures Association. It is also required that at all times either: (a) the aggregate initial margin and premiums required to establish commodity interest positions does not exceed 5% of the liquidation value of the Fund's portfolio; or (b) the aggregate net notional value of the Fund's commodity interest positions does not exceed 100% of the liquidation value of the Fund's portfolio and further that all pool participants are required to be accredited investors or certain other qualified investors.

The delivery of this Memorandum does not, under any circumstances, create any implication that there has been no change in the circumstances affecting the Fund since the date hereof. An amended or updated Memorandum will be provided to reflect any material changes to the information contained herein.

Except as otherwise noted, all monetary amounts set forth herein are expressed in United States ("*U.S.*") dollars.

**DIRECTORY**

**Registered Office**                      **Highland Multi Strategy Credit Fund, Ltd.**  
c/o Maples Corporate Services Limited  
PO Box 309, Ugland House  
Grand Cayman, KY-1109  
Cayman Islands

**Investment Manager**                **Highland Capital Management, L.P.**  
300 Crescent Court  
Suite 700  
Dallas, Texas 75201

**Directors**                                James D. Dondero  
Mark K. Okada

**Administrator**                        **SEI Global Services, Inc.**  
One Freedom Valley Drive  
Oaks, Pennsylvania 19456

**Auditors**                                **PricewaterhouseCoopers LLP**  
P.O. Box 258  
Strathvale House, George Town  
Grand Cayman KY1-1104  
Cayman Islands

**Legal Counsel**                        *In the United States*  
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1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
  
*In the Cayman Islands*  
**Maples and Calder**  
PO Box 309  
Ugland House  
Grand Cayman, KY-1104  
Cayman Islands

## INTRODUCTION

Highland Multi Strategy Credit Fund, Ltd. (the “*Fund*”) is a Cayman Islands exempted company offering participating shares of the Fund (“*Shares*”) for the purpose of enabling qualified non-U.S. investors and U.S. tax-exempt investors to participate in the investment program of Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership (the “*Partnership*”), on a more tax efficient basis. The Partnership seeks attractive risk-adjusted returns, consistent with the preservation of capital and prudent investment management.

Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership (the “*General Partner*”), serves as the general partner of the Partnership. Highland Capital Management, L.P., a Delaware partnership (the “*Investment Manager*”), serves as the investment manager of the Partnership and has responsibility for the Partnership’s investment program. James D. Dondero ultimately controls the General Partner and the Investment Manager.

The Fund is a limited partner in the Partnership and invests all of its investible assets in, and conducts all of its operations through, the Partnership. Therefore, to be fully informed about an investment in the Fund, an investor must first understand the terms of an investment in the Partnership. Prospective investors are therefore urged to carefully review the current Confidential Private Placement Memorandum of the Partnership, as amended and supplemented from time to time (the “*Partnership Memorandum*”), the Limited Partnership Agreement of the Partnership, as amended and supplemented from time to time (the “*Partnership Agreement*”) and the Investment Management Agreement by and among the Partnership, the General Partner, the Fund and the Investment Manager, as amended and supplemented from time to time (the “*Investment Management Agreement*”). A copy of the Partnership Memorandum is being provided to investors with this Memorandum. Copies of the Partnership Agreement and the Investment Management Agreement will be provided to investors upon request. The Partnership Memorandum, together with the Partnership Agreement and the Investment Management Agreement, describe the material terms of an investment in the Partnership. Aside from the differences described in this Memorandum, an investment in the Fund will have substantially similar terms and risks to an investment in the Partnership, as described in the Partnership Memorandum.

The Fund is seeking subscriptions from non-U.S. investors and U.S. tax-exempt investors that qualify as “accredited investors” and “qualified purchasers” (as defined in the Fund’s subscription materials), generally in minimum amounts of at least \$1,000,000. The Fund generally accepts subscriptions on the first business day of each calendar month.

Pursuant to recent amendments adopted by the Fund, as further explained in this Memorandum and the Partnership Memorandum, all outstanding Shares held as of the effective date of the amendments were, notwithstanding their designation prior to the amendments, re-designated as “Series A Shares.” Additionally, under these amendments, the Fund created three additional series of Shares – “Series B Shares,” “Series C Shares” and “Series D Shares.” The Fund is offering Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum. The terms applicable to the Series A Shares are set forth in a Supplement to this Memorandum.

This Memorandum describes the principal terms that apply to an investment in the Fund in Series B, Series C and Series D Shares and certain other information that relates specifically to the offering of Shares. **This is not an offering of limited partner interests in the Partnership, although an investor should be fully informed about the Partnership in making an investment decision.**

## MANAGEMENT

### Board of Directors

The Fund's board of directors (the "***Board of Directors***") consists of two (2) directors (collectively, the "***Directors***"). The members of the Board of Directors are James D. Dondero and Mark K. Okada. The biographies of the Directors are set forth in the Partnership Memorandum.

The Fund's Board of Directors does not currently consist of any directors that are not affiliated with the Investment Manager, and thus the Fund's management, as well as investment decisions at the Partnership level, are effectively controlled by the Investment Manager or its affiliates.

The Board of Directors has the full authority of a board under Cayman law. The powers of the Board of Directors described in this Memorandum and the Articles are not exhaustive and are not limited to the specific authorities described therein. Thus, subject to applicable law, the Board of Directors may take certain decisions or actions even where those decisions or actions are not expressly granted in the Articles or described in this Memorandum.

It is anticipated that the Board of Directors will meet, in person or by conference telephone, at least once a year to review the investment and administrative affairs of the Fund. The Directors will delegate investment of the Fund's assets to the Investment Manager, and the Directors are not responsible for the day to day conduct of the Fund's trading program. The Directors will also delegate certain day to day administrative and clerical affairs of the Fund to the Administrator or others.

The Directors each serve in a non-executive capacity. Any Director may hold any other office in connection with the Fund (other than the office of the Fund's independent auditors) in conjunction with his office of Director on such terms as to tenure of office and otherwise as the Directors may determine. Any Director may also act in a professional capacity (other than as the Fund's independent auditors) and he or its firm will be entitled to remuneration for such services as if he were not a Director. A Director may contract with the Fund provided that the Director declares his or its interest or gives notice of his or its interest as soon as practicable after the Director obtains such interest.

Each of the Directors has been duly registered, as applicable, under the Cayman Islands Directors Registration and Licensing Law, 2014.

A Director may vote at, or be counted in the quorum of, any meeting of the Board of Directors to consider any contract in which the Director is interested other than as a shareholder, provided that such Director declares such interest prior to the taking of the vote at such meeting.

Independent, third-party Directors, if any, will be entitled to remuneration for their services at such rate not exceeding the customary rate for the provision of services of a director as may be approved by the Fund. The Directors will be reimbursed for all out of pocket costs and expenses properly incurred by them, including in connection with attending meetings of the Directors or any committee of the Directors or any general meeting or any meeting held in connection with the business of the Fund. The Fund will indemnify the Directors for all liabilities, costs or expenses of



whatsoever kind incurred or suffered by them (other than those arising by reason of fraud, willful neglect or willful default on the part of a Director or servant or agent thereof).

#### **Administrator**

SEI Investments is a leading global provider of investment processing, investment management and investment operations solutions for institutional and personal wealth management. For more than 40 years, SEI has helped corporations, financial institutions, financial advisors and ultra-high-net-worth families create and manage wealth by providing comprehensive, innovative, investment and investment-business solutions. SEI manages or administers \$601.9 billion in funds and separately managed assets. SEI is a public company and is listed on the NASDAQ exchange under the symbol SEIC. SEI has been retained to perform certain administrative, accounting and investor services for the Fund and the Partnership (in such capacity, the “*Administrator*”). In its capacity as Administrator, it will receive customary fees that will be paid out of the assets of the Fund. The Administrator will also be reimbursed for all reasonable out-of-pocket expenses.

The Fund will enter into an administration agreement (the “*Administration Agreement*”) with the Administrator. The Administrator will be under no duty to take any action on behalf of the Fund except as specifically set forth in the Administration Agreement or as may be specifically agreed to by the Administrator and the Fund in a written amendment thereto.

The Administrator will act as liaison with the Fund’s accountants and auditors and will provide account analyses, fiscal year summaries, and other audit-related schedules with respect to the Fund. The Administrator will take all reasonable action in the performance of its duties under the Administration Agreement to assure that the necessary information is made available to such accountants and auditors for the expression of their opinion, as required by the Fund.

The Administrator will enter into and will maintain in effect with appropriate parties one or more agreements making reasonable provisions for emergency use of electronic data processing equipment to the extent appropriate equipment is available. In the event of equipment failures, the Administrator will, at no additional expense to the Fund, take reasonable steps to minimize service interruptions. The Administrator will have no liability with respect to the loss of data or service interruptions caused by equipment failure, provided such loss or interruption is not caused by the Administrator’s own willful misfeasance, bad faith, gross negligence or reckless disregard of its duties or obligations under the Administration Agreement.

Subject to the terms of the Administration Agreement, the Administrator will be liable to the Fund (or any person or entity claiming through the Fund) for damages only to the extent caused by the Administrator’s own fraud or willful misconduct under the Administration Agreement ( “*Standard of Care*”). The Administrator will not be liable for damages (including, without limitation, damages caused by delays, failure, errors, interruption or loss of data) occurring directly or indirectly by reason of circumstances beyond its reasonable control. The Administrator will not be under any duty or obligation to inquire into and will not be liable for the validity or invalidity, authority or lack thereof, or truthfulness or accuracy or lack thereof, of any instruction, direction, notice, instrument or other information which the Administrator reasonably believes to be genuine. The Administrator will not be liable for any damages that are caused by actions or omissions taken by the Administrator in accordance with written instructions by authorized persons of the Fund or advice of counsel. The Administrator will not be liable for any damages arising out of any action or omission to act by any prior service provider of the Fund or for any failure to discover any such error or omission. Neither the

Administrator nor its affiliates will be liable for any consequential, incidental, exemplary, punitive, special or indirect damages, whether or not the likelihood of such damages was known by the Administrator or its affiliates. Both the Fund and the Administrator will have a duty to mitigate damages for which the other party may become responsible.

Absent the Administrator's failure to meet its Standard of Care, the Fund agrees to indemnify, defend and hold harmless the Administrator and its affiliates and their respective directors, trustees, officers, agents and employees from certain claims, suits, actions, damages, losses, liabilities, obligations, costs and reasonable expenses (including attorneys' fees and court costs, travel costs and other reasonable out-of-pocket costs related to dispute resolution) arising directly or indirectly from any actions taken or omitted to be taken by the Administrator in connection with the provision of services to the Fund.

The Partnership will also enter into an administration agreement with the Administrator, under which the terms will be substantially as above.

**SUMMARY OF TERMS**

*To understand this investment opportunity, a prospective investor should read both the Partnership Memorandum and the following summary. The information in the Partnership Memorandum is important to a prospective investor's investment decision because: (i) the purpose of the Fund is to invest in the Partnership and therefore the underlying investment opportunity is in the Partnership; (ii) an investment in the Fund will (aside from the differences described below) have substantially similar terms to those applicable to a direct investment in the Partnership; and (iii) many terms relevant to an investment in the Fund, including the information concerning compensation, expenses, distributions, risk factors and conflicts of interest, are set forth in the Partnership Memorandum and not in this Memorandum.*

*The following summary highlights certain differences from the terms that would apply were the investor to hold a limited partner interest in the Partnership directly, and does not purport to provide a summary of the investment terms or risks of an investment in the Partnership, which is provided in the Partnership Memorandum. The summary of differences does not purport to be, and should not be construed as, a complete description of the Fund's Articles. To the extent of any inconsistency between this Memorandum and the Articles, the terms of the Articles control. Moreover, this summary and the summary set forth in the Partnership Memorandum are subject to the detailed provisions of the Partnership Agreement and are qualified in their entirety by the terms of the Partnership Agreement. Capitalized terms used but not defined herein have the meanings ascribed to them in the Partnership Memorandum.*

<b>The Fund</b>	Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company.
<b>The Partnership</b>	Highland Multi Strategy Credit Fund, L.P., a Delaware limited partnership. The Fund is a limited partner in the Partnership and invests all of its investible assets in, and conducts all of its investment activities through, the Partnership. As a limited partner of the Partnership, the Fund is subject to all of the terms and conditions of the Partnership applicable to limited partners of the Partnership. The Partnership will issue to the Fund an Interest in the Partnership and maintain capital sub-accounts that correspond to each Sub-Series of Shares (defined below).
<b>General Partner of the Partnership</b>	Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership. The general partner of the General Partner is Highland Multi Strategy Credit GP, LLC, a Delaware limited liability company of which the Investment Manager is currently the sole member.
<b>Investment Manager</b>	Highland Capital Management, L.P., a Delaware limited partnership.
<b>Recent Amendments; Series of Shares</b>	Effective November 1, 2014, the Board of Directors amended the terms of the Fund, whereby all outstanding Shares in the Fund were re-designated as "Series A Shares" and three new series of Shares were created – "Series B Shares," "Series C Shares" and "Series D Shares" (the " <i>Amendments</i> "). The General Partner and limited partners of the Partnership adopted similar amendments.

As of the effective date of the Amendments (the “**Effective Date**”), all existing shareholders will hold Series A Shares, the terms of which are set forth in a supplement to this Memorandum. The Fund is currently offering for subscription Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum.

The Fund may issue additional series (each, a “**Series**”) of Shares over time. Not all Series of Shares will be available for subscription at the same time and the terms among the Series of Shares will vary. New Series of Shares may be established by the Fund without notice to or approval of the shareholders.

Except with respect to management fees, performance-based profit allocations and redemption rights (each as discussed below), the rights and privileges attributable to Series A Shares, Series B Shares, Series C Shares and Series D Shares are identical.

References herein to “Shares” or “shareholders” shall include all Series of Shares and shareholders unless otherwise specified or context so requires.

#### **Eligible Investors**

Participating, redeemable, non-voting shares of the Fund (the “**Shares**”) are being offered to investors that are not U.S. Persons and to selected U.S. investors that are tax-exempt persons who qualify both as “accredited investors” and as “qualified purchasers,” as defined in the Fund’s subscription application materials. The Fund reserves the right to reject any investor for any reason or for no reason in its discretion.

No Shares may be offered to the public in the Cayman Islands (which shall not include an exempted or ordinary non-resident company incorporated in the Cayman Islands). Shares of the Fund may be purchased only by eligible investors who are sophisticated individual or institutional investors. Each subscriber for Shares of the Fund must certify that the beneficial owner of such Shares will not be a “**U.S. Person**” as defined in Annex A attached to this Memorandum; provided, however, that subscriptions for Shares of the Fund may also be accepted from certain qualified U.S. tax-exempt organizations. The Fund reserves the right to reject subscriptions in its sole discretion.

Shares of the Fund will not be registered under the U.S. Securities Act of 1933, as amended, any state “blue sky” laws, or the securities laws of any other jurisdiction. Shares may be offered privately (i) outside the United States of America, its territories or possessions, or areas subject to its jurisdiction (the “**United States**”), or to or for the benefit of an investor that is not a U.S. Person, only in accordance with relevant laws of the jurisdiction where the offer is made, or (ii) within the United States or to a U.S. Person only in a transaction that does not require the registration of the Shares or the Fund under applicable U.S. federal or state securities laws.

More detailed information concerning the applicable suitability criteria is set forth in the Fund's subscription application materials (the "**Subscription Documents**").

The Fund or the Administrator reserves the right to request such information as is necessary to verify the identity and the source of funds of an applicant. To ensure compliance with statutory and other requirements relating to anti-money laundering, the Fund or the Administrator may require verification of identity and/or source of funds from any person submitting completed Subscription Documents. Pending the provision of evidence satisfactory to the Fund or the Administrator as to identity, the evidence of title in respect of Shares may be retained at the absolute discretion of the Fund or the Administrator. If within a reasonable period of time following a request for verification of identity, the Fund or the Administrator has not received evidence satisfactory to it as aforesaid, it may, in its absolute discretion, refuse to allot the Shares applied for in which event subscription monies will be returned without interest to the account from which such monies were originally debited. Subscription monies may be rejected by the Fund or the Administrator if the remitting bank or financial institution is unknown to the Fund or the Administrator.

An investment in the Fund is suitable only for persons that have adequate means of providing for their current needs and personal contingencies and have no need for liquidity in their investments. An investment in the Fund should not be made by any person that (a) cannot afford a total loss of its principal, or (b) has not carefully read or does not understand this Memorandum and the Partnership Memorandum, including the portions concerning the risks and the income tax consequences of an investment in the Fund.

## Subscriptions

Subscriptions for Shares are accepted on the first Business Day of each calendar month and/or such other days as the Board of Directors may determine from time to time, generally subject to the receipt of cleared funds on or before the acceptance date. Each investor will be required to invest a minimum of US\$1,000,000 in the Fund, although the Fund may accept investments of a lesser amount in its discretion, subject to compliance with the applicable Cayman Islands Mutual Funds Law (2013 Revision) ("**Mutual Funds Law**"). Subscription payments may be made in cash or, with the consent of the Fund, in securities or partly in cash and partly in securities. The Fund reserves the right to reject subscriptions in its sole discretion.

"**Business Day**" means any day other than Saturdays, Sundays or any other day banks located in New York, New York are required or authorized to be closed.

A subscriber admitted to the Fund (a "**shareholder**") receives, in exchange for the initial capital contribution and any subsequent capital



contribution, Shares representing a proportionate share of the net assets of the Fund at that time.

Where a subscription for Shares is accepted, the Shares will be treated as having been issued with effect from the relevant subscription date notwithstanding that the subscriber for those Shares may not be entered in the Fund's register of members until after the relevant subscription date. The subscription monies paid by a subscriber for Shares will accordingly be subject to investment risk in the Fund from the relevant subscription date.

There is no minimum aggregate amount of subscriptions that is required for the initial acceptance of subscriptions, nor has the Fund established any maximum aggregate amount of subscriptions that may be accepted.

All subscribers will be required to comply with such anti-money laundering procedures as are required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Pub. L. No. 107 - 56) and other applicable anti-money laundering regulations as further described in the Subscription Documents.

#### **Share Sub-Series**

The Fund may issue Shares as a separate sub-series of the relevant Series on each subscription date (each, a "***Sub-Series***") at \$1,000 per Share. The Fund may issue Shares as a separate Sub-Series for purposes of, among others, accounting for any profits and losses attributable to each individual shareholder and for the purpose of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received at different times. Each separate Sub-Series will be identified and referable to each shareholder and by its date of issue. In general, each Sub-Series will participate in the Fund's profits and losses in the same manner as all other Sub-Series of Shares, except that the Performance Allocation to be charged to each Sub-Series of Shares will be calculated separately on the basis of the performance of the Sub-Series.

The Partnership maintains capital sub-accounts that correspond to each Sub-Series of Shares issued to shareholders of the Fund and each such capital sub-account is treated separately for purposes of determining Management Fees, Performance Allocations and redemption rights and restrictions (each as described in the Partnership Memorandum).

#### **Alternative Investment Vehicles**

The Directors will have the right, in connection with any investment, to direct the capital contributions of some or all of the subscribers to be made through one or more alternative investment vehicles (each an "***Alternative Investment Vehicle***"), and, in the case of an existing investment, transfer all or a portion of such investment to an Alternative Investment Vehicle, if, in the judgment of the Directors, the use of such vehicle or vehicles would allow the Fund to overcome legal or regulatory

constraints, invest in a more tax-efficient manner or would facilitate participation in certain types of investments. Any Alternative Investment Vehicle will be subject to terms and conditions substantially similar to those of the Fund and will be managed by the Investment Manager or an affiliate thereof.

**Affiliated Investors**

Shares held by the Investment Manager or its affiliates (collectively, “*Affiliated Investors*”) may not be assessed the Management Fee or the Performance Allocations that are applicable to other investors in the Fund, but share pro rata in other applicable expenses of the Fund (as more fully described in the Partnership Agreement).

**Management Fee**

Although the Fund will not pay an asset-based fee directly to the Investment Manager, it will, as a limited partner in the Partnership, bear its pro rata share of the Management Fee paid by the Partnership to the Investment Manager in its capacity as investment manager of the Partnership. Accordingly, the Management Fee will be paid at the Partnership level by assessing such fee to the appropriate capital sub-account. The Management Fee is calculated and payable quarterly in advance at an annual rate of (i) 1.5% of the net asset value of each Series B Share, (ii) 1.0% of the net asset value of each Series C Share and (iii) 2.0% of the net asset value of each Series D Share. The Management Fee may be waived or reduced by the Investment Manager in its sole discretion.

**Other Fees and Expenses**

The Fund bears the reasonable, out-of-pocket expenses of the offering of the Shares contemplated hereunder and the recent Amendments, described above, including expenses associated with obtaining any requisite investor consent to such Amendments. To the extent the Directors deem appropriate, these expenses may be capitalized and amortized by the Fund over a 36-month period from the Effective Date, even though such capitalization and amortization may be a divergence from U.S. generally accepted accounting principles (“*GAAP*”). Amortization of such expenses over a 36-month period may, in certain circumstances, result in a qualification of the Fund’s annual audited financial statements. In such instances, the Directors may decide to (i) avoid the qualification by recognizing the unamortized expenses or (ii) make GAAP conforming changes for financial reporting purposes, but amortize expenses for purposes of calculating the Fund’s net asset value. There will be a divergence in the Fund’s fiscal year-end net asset value and in the net asset value reported in the Fund’s financial statements in any year where, pursuant to clause (ii), GAAP conforming changes are made only to the Fund’s financial statements for financial reporting purposes.

If the Fund is terminated within 36 months of the Effective Date, any unamortized expenses will be recognized.

Investment and Operational Expenses. The Fund bears all reasonable costs and expenses directly related to its operations, including its pro rata share of all Partnership expenses, including the Management Fee paid by the Partnership to the Investment Manager. The Fund also bears all reasonable, out-of-pocket costs of the administration of the Fund, including accounting, audit and legal expenses, costs of any litigation or investigation involving the Fund's activities, and costs associated with reporting and providing information to existing and prospective investors. However, the General Partner or the Investment Manager may, in its sole discretion, choose to absorb any such expenses incurred on behalf of the Fund.

The Fund does not have its own separate employees or office. Except as described above and provided for in the Partnership Agreement, the Fund generally does not reimburse the General Partner or the Investment Manager for salaries, office rent and other general overhead costs of the General Partner or the Investment Manager.

#### **Restricted New Issues**

The Partnership may from time to time purchase securities in public offerings made through member firms of the Financial Industry Regulatory Authority, Inc. ("**FINRA**"). FINRA member firms are not permitted to sell certain new issues ("**Restricted New Issues**") to accounts in which certain persons have a significant beneficial interest that are involved in the securities industry or to executive officers or directors of companies that are current, recent or prospective investment banking client of the relevant underwriters ("**Restricted Persons**"). In order to enable the Partnership to participate in Restricted New Issues, the Fund will require each shareholder to provide information to enable the Fund to determine whether the shareholder is a Restricted Person. When the Partnership invests in a Restricted New Issue, the profits and losses associated with the investment will be specially allocated exclusively to those shareholders who are permitted by the FINRA rules to have a beneficial interest therein.

The FINRA rules permit Restricted Persons that are involved in the securities industry to have in the aggregate up to a 10% participation in Restricted New Issues and Restricted Persons affiliated with a particular investment banking client to have up to 25% participation in Restricted New Issues. If the ownership of the Partnership by Restricted Persons exceeds the maximum percentage, the Investment Manager will allocate such excess amount pro rata among the shareholders and the Partners of the Partnership who are not Restricted Persons or on such other basis that the Investment Manager reasonably determines ensures compliance with the FINRA rules.

If a Restricted New Issue in which participation by Restricted Persons has been capped is not promptly sold, the investment may be reallocated among all shareholders and the Partners of the Partnership on a pro rata

basis (including all Restricted Persons) after a secondary market develops at such secondary market price.

**Performance Allocation**

As further described in the Partnership Agreement, the Investment Manager, in its capacity as a special limited partner of the Partnership, is entitled to receive an annual performance-based profit allocation at the end of each year equal to 20% of the Partnership's net profits attributable to the Limited Partners of the Partnership, subject to a "high water mark" limitation.

The Performance Allocation is made at the Partnership level by deducting the Performance Allocation from the capital sub-account relating to each Sub-Series of Shares. The Performance Change (as defined in the Partnership Agreement) of each Sub-Series will not be netted against one another for purposes of determining the applicability of the "high water mark."

**Distributions**

Subject to the redemption privilege described below, all earnings of the Fund are ordinarily retained for investment. Other than distributions made pursuant to a redemption described below, shareholders should not expect the Fund to make any distributions.

**Redemptions Generally**

Redemptions from the Fund are subject to the withdrawal restrictions contained in the Partnership Agreement, whereby the Series A Interests in the Partnership correspond to the Series A Shares of the Fund, Series B Interests in the Partnership correspond to the Series B Shares of the Fund, the Series C Interests in the Partnership correspond to the Series C Shares of the Fund and the Series D Interests in the Partnership correspond to the Series D Shares of the Fund.

**Series Redemption Dates**

Subject to certain redemption restrictions described below, shareholders have the following redemption rights:

Series B Shares: Annual Liquidity. A shareholder is permitted to make complete or partial redemptions of its Series B Shares upon written notice to the Administrator at least 180 days prior to the applicable Series B Redemption Date. The "**Series B Redemption Date**" means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of date of the issuance of the Shares being redeemed; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Redemption Date (i.e., if Shares were issued on November 1, 2014, such Shares would be eligible for redemption on October 31, 2015 and every one year thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series C Shares: Two Year Liquidity. A shareholder is permitted to make complete or partial redemptions of its Series C Shares upon written notice to the Administrator at least 180 days prior to the applicable Series C Redemption Date. The "**Series C Redemption Date**" means: (i) the end

of the day on the last Business Day of the calendar month that immediately precedes the two-year anniversary of the date of issuance of the Shares being redeemed; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Redemption Date (or the last Business Day of that month) (i.e., if Shares were issued on November 1, 2014, such Shares would be eligible for redemption on October 31, 2016 and every two years thereafter on October 31<sup>st</sup>, or the last Business Day of that month).

Series D Shares: One Year Hard Lock-Up: Quarterly Liquidity. A shareholder is permitted to make complete or partial redemptions of Series D Shares as of the last Business Day of each calendar quarter (each, a “*Series D Redemption Date*”) following the one-year anniversary of the date of issuance of the Shares being redeemed. Notice of any redemption of Series D Shares must be provided in writing to the Administrator at least 90 calendar days prior to the requested Series D Redemption Date.

The Board of Directors may, at any time and in its sole discretion, waive or modify the foregoing redemption and distribution restrictions with respect to any shareholder.

**Settlement of  
Redemption Proceeds**

Redemption proceeds will be paid promptly following receipt by the Fund of the withdrawal proceeds from the Partnership in accordance with the Partnership Agreement.

**Redemption Conditions**

The Fund may refuse to accept a redemption request if it is not accompanied by such additional information as the Fund or the Administrator may reasonably require. This power may, without limitation to the generality of the foregoing, be exercised where proper information has not been provided for money laundering verification purposes. In addition, where redemption proceeds are requested to be remitted to an account which is not in the name of the investor, each of the Fund and the Administrator reserve the right to request such information as may be reasonably necessary in order to verify the identity of the investor and the owner of the account to which the redemption proceeds will be paid. The redemption proceeds will not be paid to a third-party account if the investor and/or owner of the account fails to provide such information.

**Compulsory  
Redemptions**

The Board of Directors reserves the right, in its sole discretion, to compel the redemption of any shareholder’s Shares for any or no reason, in part or in their entirety, on not less than five days’ prior written notice (or immediately if the Board of Directors determines in its sole discretion that such shareholder’s continued participation in the Fund may cause the Fund, the Partnership, the General Partner or the Investment Manager to violate any applicable law). Settlements are made in the same manner as voluntary redemptions.



**Suspension of Valuations, Redemption and Redemption Payments**

The Board of Directors may suspend the issuance of Shares, the shareholders' redemption privileges, the payment of redemption proceeds and the valuation of the Fund's net assets in the same circumstances as described in the Partnership Memorandum and set forth in the Partnership Agreement with respect to the suspension of valuations or of withdrawal privileges.

Upon the reasonable determination by the Board of Directors that conditions leading to suspension no longer apply, redemption rights for all shareholders shall be promptly reinstated, and any pending redemption requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which redemptions have recommenced, subject to the application of the redemption limitations described herein.

**Soft Wind Down**

It is anticipated that any suspension in the circumstances described above in "Suspension of Valuations, Redemptions and Redemption Payments" (each, a "***Suspension***") would ordinarily be temporary. However, there may be situations in which the circumstances giving rise to the Suspension continue to be present for a considerable period of time with the result that the Board of Directors, in consultation with the Investment Manager, considers it appropriate to keep the Suspension in place indefinitely. In certain circumstances, even where a Suspension has not been declared, the Directors may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued. During any such period of Suspension or having made such determination that the investment strategy should no longer be continued, the Investment Manager may recommend to the Board of Directors that the Fund be managed with the objective of returning the Fund's assets to shareholders in an orderly manner (an "***Orderly Realisation***"). The Board of Directors may, in such circumstances, resolve to effect an Orderly Realisation should they determine that doing so is in the best interests of the shareholders. Such Orderly Realisation shall not constitute a dissolution or winding up of the Fund for any purposes, but rather only the continued management of the Fund's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Fund to the shareholders. The Board of Directors shall promptly communicate to shareholders any resolution to proceed with an Orderly Realisation of the Fund. During an Orderly Realisation, the Investment Manager may, in consultation with the Board of Directors, take such steps as are considered appropriate in the best interests of the Fund's shareholders to effect the Orderly Realisation. The Board of Directors, in consultation with the Investment Manager shall establish what they consider to be a reasonable time by which the Orderly Realisation should be effected (the "***Realisation Period***"). Any resolution to undertake an Orderly Realisation and the process thereof shall be deemed to be integral to the business of the Fund and may be carried out without recourse to a formal process of liquidation under the

Companies Law or any other applicable bankruptcy or insolvency regime. The Board of Directors, in consultation with the Investment Manager, may resolve to cease the Orderly Realisation within the Realisation Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued. Management Fees shall be payable and Performance Allocations shall be made during an Orderly Realisation on the same basis as described herein.

#### **Transfers**

Shares may not be transferred without the prior written consent of the Board of Directors, which consent may be withheld in the sole discretion of the Board of Directors. Any transferee or assignee of any investor will be required to execute a subscription agreement in the same form as required to be completed and executed by a subscriber for Shares in the Fund.

#### **Duty of Care; Indemnification**

The Partnership Agreement provides that the General Partner, the Investment Manager and each of their affiliates are not liable to the Partnership and the Limited Partners (including the Fund) for any loss or damage arising by reason of being or having been the General Partner or the Investment Manager or from any acts or omissions in the performance of its services as General Partner or Investment Manager, as applicable, in the absence of willful misconduct, fraud or gross negligence (as construed in accordance with the laws of the state of Delaware) or as otherwise required by law, and contains provisions for the indemnification of the General Partner, the Investment Manager and each of their affiliates by the Partnership (but not by the Limited Partners individually) against any liabilities arising by reason of being or having been the General Partner or the Investment Manager or in connection with the Partnership Agreement or the Partnership's business or affairs to the fullest extent permitted by law. The General Partner is not personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Fund or by reason of any change in the federal or state income tax laws applicable to the Fund or its investors.

Neither the Board of Directors of the Fund nor the Administrator shall be liable to the Fund or its shareholders for any loss or damage occasioned by any acts or omissions in the performance of its services on behalf of the Fund, except under certain limited circumstances. In addition, the Board of Directors and the Administrator and their respective affiliates will be indemnified by the Fund (but not by the shareholders individually) against any liabilities arising in connection with the performance of their activities on behalf of the Fund to the extent permitted by the Articles.

<b>Valuations</b>	The Fund's assets are valued based on the value of the Partnership's assets as set forth in the Partnership Memorandum.
<b>Reserves</b>	<p>Appropriate reserves may be accrued and charged against net assets and proportionately against the Shares of the shareholders for contingent liabilities, such reserves to be in the amounts (subject to increase or reduction) that the Board of Directors in its sole discretion deems necessary or appropriate. At the sole discretion of the Board of Directors, the amount of any such reserve (or any increase or decrease therein) may be charged or credited, as appropriate, to the Shares of those investors who are shareholders at the time when such reserve is created, increased, or decreased, as the case may be, or alternatively may be charged or credited to those investors who were shareholders at the time of the act or omission giving rise to the contingent liability for which the reserve was established.</p> <p>If the Board of Directors determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then such amount may be proportionately charged or credited, as appropriate, to those persons who were shareholders during any such prior period.</p>
<b>Fiscal Year</b>	The Fund has a fiscal year ending on December 31 of each calendar year.
<b>Reports to Partners</b>	The Fund furnishes to its shareholders as soon as practicable after the end of each taxable year (or as otherwise required by law) annual reports containing financial statements examined by the Fund's independent auditors as well as such tax information as is necessary for each shareholder to complete federal and state income tax or information returns, along with any other tax information required by law. The Fund also furnishes monthly reports reviewing the Fund's performance for such calendar month. The Board of Directors selects the Fund's independent accountants in its sole discretion.
<b>Dissolution and Liquidation</b>	<p>In the event an Orderly Realization lasts longer than three years, shareholders holding Shares with a combined net asset value equal to at least 75% of the total net asset value of the Fund may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Fund.</p> <p>Wind down and liquidation of the Fund shall occur as set forth in the Articles.</p>
<b>Placement Agents</b>	The Investment Manager may engage third parties to solicit investors and act as placement agents for the Fund. Placement agents may charge a placement fee directly to investors solicited by any such placement agent, but such fees will not affect the subscription amount and will not

be collected by or from the Fund. The placement agent may be reimbursed for its expenses and indemnified by the Fund.

Furthermore, placement agents may be paid a portion of the Management Fee or Performance Allocation attributable to such investors solicited by them, thereby reducing the Management Fee or Performance Allocation received by the Investment Manager. Accordingly, investors should recognize that a placement agent's or distributor's participation in this offering may be influenced by its interest in such current or future fees and compensation. Investors should consider these potential conflicts of interest in making their investment decisions.

Each placement agent must comply with the legal requirements of the jurisdictions within which it offers and sells Shares.

#### **Certain Tax Considerations**

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or the shareholders. The Cayman Islands are not party to a double tax treaty with any country that is applicable to any payments made to or by the Fund.

The Fund has applied for and received an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from July 10, 2012 (being the date of the undertaking), no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the shares, debentures or other obligations of the Fund or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Fund to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

The Investment Manager believes that the Fund will be treated as a non-U.S. corporation for U.S. federal income tax purposes. The Fund does not intend to be subject to U.S. federal income tax on its capital gains from securities trading. Dividends and certain interest received by the Fund may be subject to withholding at the source. See "*Tax Considerations*."

#### **ERISA**

The Fund intends to limit investment in the Fund by "benefit plan investors" so that the assets of the Fund will not be considered "plan assets" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"). See "*ERISA Considerations*."

**Voting**

Shares in the Fund are participating non-voting shares; provided that in the event the Partnership seeks the approval, vote or consent of the Fund with respect to any matter to which it would be entitled to vote as a Limited Partner of the Partnership under the Partnership Agreement, the Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall cause the Fund to vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

**Variation of Terms**

The Board of Directors, with the consent of the Investment Manager, shall have the absolute discretion to agree with a shareholder to waive or modify the terms applicable to such shareholder's subscription for Shares (including those relating to Management Fees, the Performance Allocation, transparency and redemptions) without obtaining the consent of any other shareholder; provided that such waiver or modification does not amount to a variation of the rights attaching to the Shares of such other shareholders. The Fund generally grants waivers of the Management Fees and Performance Allocation to the Affiliated Investors.



**RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST**

*Investment in the Fund, and in turn, the Partnership, is speculative and involves certain risks. There can be no assurance that the Partnership's investment objective will be achieved, or that an investor will receive a return of its Capital. Certain of these risks are summarized below. The Fund may not be suitable for all investors, and is intended for sophisticated investors who can accept the risks associated with its investments. Investors will not have recourse except with respect to the assets of the Fund. Prospective investors should consider, among others, the risk factors described in this section.*

*This discussion must be read in conjunction with the risk factors and potential conflicts of interest of the Partnership set forth in the Partnership Memorandum. The following is not meant to be an exhaustive listing of all potential risks associated with investing in the Fund. Investment-specific risk factors associated with the Partnership's investment strategy should be read in their entirety.*

***Illiquidity of Shares.*** Shares are not transferable without the approval of the Board of Directors, and there will be no secondary market for Shares. Consequently, investors may not be able to dispose of their Shares prior to the liquidation of the Fund or as described in this Memorandum and the Partnership Memorandum, and may receive securities rather than cash in exchange for their Shares.

***Side Letters.*** The Board of Directors may from time to time, with the consent of the Partnership, enter into letter agreements or other similar agreements (collectively, "**Side Letters**") with one or more investors which provide such investor(s) with additional and/or different rights than such investor(s) have pursuant to this Memorandum or the Partnership Memorandum. As a result of such Side Letters, certain investors may receive additional benefits (including, but not limited to, reduced fee/allocation obligations and/or expanded informational rights) which other investors will not receive. The Fund is not required to notify any or all of the other investors of any such Side Letters or any of the rights and/or terms or provisions thereof, nor will the Fund be required to offer such additional and/or different rights and/or terms to any or all of the other investors. The Fund may enter into such Side Letters with any party as the Board of Directors may determine in its discretion at any time. The other investors will have no recourse against the Fund, the Board of Directors and/or any of their affiliates in the event that certain investors receive additional and/or different rights and/or terms as a result of such Side Letters.

***Authority.*** Investors in the Fund have no right or power to take part in the management of the Fund. The Board of Directors control the Fund and the General Partner controls the Partnership. The Investment Manager is responsible for all investment decisions of the Partnership.

***Absence of Regulatory Oversight.*** The Fund is not registered under the Cayman Islands Mutual Funds Law (as amended). Neither the Cayman Islands Monetary Authority nor any other governmental authority in the Cayman Islands has commented on or approved the terms or merits of this Memorandum. There is no financial obligation or compensation scheme imposed on or by the government of the Cayman Islands in favor of or available to the investors in the Fund.

***Investment Judgment; Market Risk.*** The profitability of a significant portion of the Fund's investment program depends to a great extent upon correctly assessing the future course of the price movements of securities and other investments. There can be no assurance that the Investment Manager will be able to predict accurately these price movements. With respect to the investment strategy utilized by the Fund, there is always some, and occasionally a significant, degree of market risk.

*Performance Allocation.* The Performance Allocation made to the Investment Manager may create an incentive for the Investment Manager to make investments that are riskier or more speculative than would be the case in the absence of such Performance Allocation.

*Redemption Restrictions.* There are severe restrictions on redemptions from the Fund (which may be settled in securities rather than cash) and on transfers of Shares. Because of the restrictions on redemptions, an investment in the Fund is a relatively illiquid investment and involves a high degree of risk. There is no independent market for the purchase or sale of Shares and none is expected to develop. Shareholders must represent that they are purchasing Shares for investment. A subscription for Shares should be considered only by persons financially able to maintain their investment and who can accept a loss of all of their investment.

*No Distributions.* Since the Fund does not generally intend to pay distributions, an investment in the Fund is not suitable for investors seeking current distributions of income. Moreover, an investor is required to report and pay taxes on its allocable share of income from the Fund, even though no cash is distributed by the Fund.

*In-Kind Distributions.* The Partnership Agreement authorizes the General Partner to make distributions in kind of securities in lieu of or in addition to cash. In the event the General Partner makes distributions of securities in kind, such securities could be illiquid or subject to legal, contractual and other restrictions on transfer.

*Diversification.* Since the Partnership's portfolio will not necessarily be widely diversified, the investment portfolio of the Partnership (and thus the Fund) may be subject to more rapid changes in value than would be the case if the Partnership were required to maintain a wide diversification among companies, securities and types of securities.

*Valuations.* From time to time, certain situations affecting the valuation of the Partnership's (and thus the Fund's) investments (such as limited liquidity, unavailability or unreliability of third-party pricing information and acts or omissions of service providers to the Partnership) could have an impact on the net asset value of the Fund, particularly if prior judgments as to the appropriate valuation of an investment should later prove to be incorrect after a net asset value-related calculation or transaction is completed. The Fund is not required to make retroactive adjustments to prior subscription or redemption transactions or Management Fees or Performance Allocations based on subsequent valuation data.

*Contagion.* The Fund has the power to issue Shares in different series. The Articles provide for the manner in which the liabilities are to be attributed across the various series (liabilities are to be attributed to the specific series in respect of which the liability was incurred). However, the Fund is a single legal entity and there is no limited recourse protection for any series. Accordingly, all of the assets of the Fund will be available to meet all of its liabilities regardless of the series to which such assets or liabilities are attributable. In practice, cross-series liability is only expected to arise where liabilities referable to one series are in excess of the assets referable to such series and it is unable to meet all liabilities attributed to it. In such a case, the assets of the Fund attributable to other series may be applied to cover such liability excess and the value of the contributing classes or series will be reduced as a result.

*Handling of mail.* Mail addressed to the Fund and received at its registered office will be forwarded unopened to the Investment Manager to be dealt with. None of the Fund, its Directors,

officers, advisors or service providers (including the organization which provides registered office services in the Cayman Islands) will bear any responsibility for any delay howsoever caused in mail reaching the Investment Manager. In particular the Directors will only receive, open or deal directly with mail addressed to them personally (as opposed to mail which is addressed to just the Fund).

*Recent Developments in the Financial Services Industry.* Recent developments in the U.S. financial markets illustrate that the current environment is one of extraordinary and possibly unprecedented uncertainty for the financial services industry. In July of 2010, the Dodd-Frank Financial Reform Act was passed which imposes many new requirements and restrictions on the financial services industry that may likely affect the business, operations and performance of hedge funds, such as increased reporting requirements, limitations on certain trading activity and regulatory oversight by different agencies, such as the newly created Financial Stability Oversight Counsel. The implications of the passage of the Dodd-Frank Financial Reform Act for the hedge fund industry as a whole still remain somewhat unclear. The hedge fund industry may continue to be adversely affected by the recent developments in the financial markets in the U.S. and abroad, and any future legal, regulatory or governmental action and developments in such financial markets and the broader U.S. economy could have an adverse effect on the Fund's business, operations and performance.

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

#### **Tax Related Risks**

*Uncertainty and Complexity of Tax Treatment.* The tax aspects of an investment in the Fund are complicated and complex and, in many cases, uncertain. Statutory provisions and administrative regulations have been interpreted inconsistently by the courts. Additionally, some statutory provisions remain to be interpreted by administrative regulations. Investors will thus be subject to the risk caused by the uncertainty of the tax consequences with respect to an investment in the Fund. Each prospective investor should have the tax aspects of an investment in the Fund reviewed by professional advisors familiar with such investor's personal tax situation and with the tax laws and regulations applicable to the investor and private investment vehicles. Prospective investors are strongly urged to review the discussion below under "*Tax Considerations*" and "*ERISA Considerations*" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares and to consult their own independent tax advisors.

*Risk of Adverse Determination.* There can be no assurance that the conclusions set forth in this Memorandum will not be challenged successfully by the Internal Revenue Service (the "*Service*") or other applicable taxing authority, or significantly modified by new legislation, changes in a taxing authority's positions or court decisions. The Fund has not applied for, nor does it expect to apply for, any advance rulings from the Service with respect to any of the U.S. federal income tax consequences described in this Memorandum. No representation or warranty of any kind is made by the Investment Manager with respect to the U.S. federal income tax consequences relating to an investment in the Fund. The Fund may take positions with respect to certain tax issues which depend on legal conclusions not yet resolved by the courts. Should any such positions be successfully challenged by the Service or other applicable taxing authority, there could be a materially adverse effect on the Fund.

*Tax Considerations Taken into Account.* The Fund will attempt to minimize the tax burden of the Fund over the long-term. However, the Investment Manager will not overlook short-term trading opportunities. Therefore, shareholders should not expect that the Fund will make tax-efficiency a



priority. However, the Investment Manager may take tax considerations into account in determining when the Fund's investments should be sold or otherwise disposed of, and may assume certain market risk and incur certain expenses in this regard to achieve favorable tax treatment of a transaction.

*Tax-Exempt Entities.* Certain prospective investors that are tax-exempt for U.S. income tax purposes may be subject to U.S. federal and state laws, rules and regulations that regulate their participation in the Fund, or their engaging directly or indirectly through an investment in the Fund, in certain investment strategies that the Partnership may utilize from time-to-time (e.g., short-sales of securities and the use of leverage, the purchase and sale of options and limited diversification). While the Fund believes its investment program is generally appropriate for U.S. tax -exempt investors for which an investment in the Fund would otherwise be suitable, each type of tax -exempt organization may be subject to different laws, rules and regulations, and prospective investors should consult with their own advisers as to the advisability and tax consequences of an investment in the Fund. Investments in the Fund by entities subject to ERISA, and other tax -exempt entities, require special consideration. Trustees or administrators of such entities are urged to review carefully the matters discussed in this Memorandum.

*Non-U.S. Taxation.* With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

*Tax Changes.* Investors will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Fund. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Fund. Certain provisions of the Internal Revenue Code of 1986, as amended (the "*Code*"), may be further amended or interpreted in a manner adverse to the Fund, in which event any benefits derived from an investment in the Fund may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the U.S. federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Fund and/or its shareholders. Enactment of such legislation, or similar legislation, could require significant restructuring of the Fund in order to mitigate such effects.

*The foregoing is not intended to be an exhaustive analysis or listing of the tax risks associated with an investment in the Fund. Many of the relevant tax considerations will vary depending on a prospective shareholder's individual circumstances. The tax aspects associated with such an investment are complex and complicated and are subject to a variety of interpretations. Prospective investors are strongly urged to review the discussions below under "Tax Considerations" and "ERISA Considerations" for a more complete discussion of certain of the tax risks inherent in the acquisition of Shares, and to seek and rely upon the advice of their own tax advisor who is qualified to discuss the foregoing and other possible tax risks.*

In view of the foregoing considerations, an investment in Shares is suitable only for investors who are capable of bearing the relevant investment risks.

**Potential Conflicts of Interest**

*No Independent Directors.* The Fund's Board of Directors does not currently consist of any directors that are not affiliated with the Investment Manager, and thus the Fund's management, as well as the investment decisions at the Partnership level, are effectively controlled by the Investment Manager or its affiliates. However, the Fund may establish an Advisory Committee with respect to matters in which it seeks to resolve certain conflicts of interest that may arise. See "*Management—Advisory Committee*" in the Partnership Memorandum.

*No Separate Counsel.* Akin Gump Strauss Hauer & Feld LLP ("*Akin Gump*") serves as counsel to the Fund, the Partnership, the Investment Manager, the General Partner and certain of their affiliates (the "*Clients*") in connection with the operation of the Fund and certain other Clients, the offering of Shares as well as certain other matters for which the Clients may engage Akin Gump from time to time. Akin Gump disclaims any obligation to verify the Clients' compliance with their obligations either under applicable law or the governing documents of the Fund. In acting as counsel to the Clients, Akin Gump has not represented and will not represent any shareholders nor does it purport to represent their interests. No independent counsel has been retained to represent the shareholders. In assisting in the preparation of the Partnership Memorandum and this Memorandum (as well as any supplements thereto), Akin Gump has relied on information provided by the Fund, the Partnership, the Investment Manager and the General Partner and certain of the Fund's other service providers (including, without limitation, the biographical data of key investment personnel, summaries of market conditions, the planned investment strategy of the Fund and the performance of the Fund, its investments or any predecessor Fund) without verification and does not express a view as to whether such information is accurate or complete.

Maples and Calder, PO Box 309, Ugland House, Grand Cayman, KY1 -1104, Cayman Islands, acts as Cayman Islands legal counsel to the Fund. In connection with the Fund's offering of Shares and subsequent advice to the Fund, Maples and Calder will not be representing shareholders. No independent legal counsel has been retained to represent the shareholders. Maples and Calder's representation of the Fund is limited to specific matters as to which it has been consulted by the Fund. There may exist other matters that could have a bearing on the Fund as to which Maples and Calder has not been consulted. In addition, Maples and Calder does not undertake to monitor compliance by the Investment Manager and its affiliates with the investment program, valuation procedures and other guidelines set forth herein, nor does Maples and Calder monitor ongoing compliance with applicable laws. In connection with the preparation of this Memorandum, Maples and Calder's responsibility is limited to matters of Cayman Islands law and it does not accept responsibility in relation to any other matters referred to or disclosed in this Memorandum. In the course of advising the Fund, there are times when the interests of shareholders may differ from those of the Fund. Maples and Calder does not represent the shareholders' interests in resolving these issues. In reviewing this Memorandum, Maples and Calder has relied upon information furnished to it by the Fund and has not investigated or verified the accuracy and completeness of information set forth herein concerning the Fund.

*The Partnership Memorandum contains further disclosures concerning potential conflicts of interests. Such disclosures are incorporated herein by reference and should be read in their entirety prior to making a decision to invest in the Fund.*

*In view of the foregoing considerations, an investment in Shares is only suitable for investors who are capable of bearing the relevant risks and who understand the potential conflicts of interest.*



## SHARES OF THE FUND

### The Fund's Share Capital

The Fund has an authorized share capital of U.S.\$50,000 divided into 100 management shares (“*Management Shares*”) of a par value of U.S.\$1.00 each and 4,990,000 participating non-voting shares (the “*Shares*”) of a par value of U.S.\$0.01. The Directors may by resolution divide the Shares into separate series (each, a “*Series*”) which may be subject to different rights, restrictions, preferences, privileges and payment obligations as between the different Series and further into separate sub-series (each, a “*Sub-Series*”) within such Series (for example, a Sub-Series of Shares which will participate in Restricted New Issues and a Sub-Series of Shares which will not participate in such Restricted New Issues). The different Series and Sub-Series thereof shall be established and designated, and the variations in the relative rights and preferences as between the different Series and Sub-Series thereof shall be fixed and determined by the Board of Directors. Sub-Series of Shares are issued for the purposes, among others, of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately to reflect different returns achieved as a result of subscriptions received at different times.

The Fund previously issued Series A Shares and currently offers Series B Shares, Series C Shares and Series D Shares, all of which generally have identical rights and privileges except for purposes of calculating Management Fees and redemption rights. The Fund is offering Series B Shares, Series C Shares and Series D Shares pursuant to this Memorandum. Certain terms that specifically apply to Series A Shares are set forth in a Supplement to this Memorandum.

Each separate Sub-Series of Shares is identified by the investor to whom it was issued and its date of issue. Shares are issued to shareholders in Sub-Series at \$1,000 per Share. Immediately following the close of any fiscal year in which a Performance Allocation is charged at the Partnership level with respect to a Sub-Series of Shares of a Series, each such Sub-Series of Shares may be compulsorily redeemed and the proceeds immediately applied to the subscription for an earlier Sub-Series of Shares of such Series; provided that such earlier Sub-Series of Shares has also been assessed as having a Performance Allocation payable at the Partnership level.

The Management Shares will carry all the voting rights but will have no right to participate in the assets of the Fund (other than to a return of the par value on a winding up). The Management Shares will be held by the Investment Manager or an affiliate, and will be voted in accordance with the instructions of the Investment Manager.

The Articles provide that, subject to the Companies Law (2013 Revision) of the Cayman Islands and the other provisions of the Articles, all or any of the class rights or other terms of offer, whether set out in this Memorandum, the Subscription Documents or otherwise (including any representations, warranties or other disclosure relating to the offer or holding of Shares) (collectively referred to as “*Share Rights*”), for the time being applicable to any class or Series of Shares in issue (unless otherwise provided by the terms of issue of those Shares) may (whether or not the Fund is being wound up) be varied without the consent of the holders of the issued Shares of that class or Series where such variation is considered by the Directors not to have a material adverse effect upon such holders' Share Rights; otherwise, any such variation shall be made only with the prior consent in writing of the holders of not less than two-thirds by net asset value of such Shares, or with the sanction of a resolution passed by a majority of at least two-thirds of the votes cast in person or by proxy at a separate meeting of the holders of such Shares. For the avoidance of doubt, the Directors reserve the right, notwithstanding that any

such variation might not have a material adverse effect, to obtain consent from the holders of such Shares. Each subscriber for Shares will be required to agree that the terms of offer set out in the Subscription Documents and the rights attaching to the Shares can be varied in accordance with the provisions of the Articles.

The Articles further provide that, in relation to any class or Series consent required pursuant to the "Variation of Share Rights" Article, the Directors in their discretion may invoke the following procedure (the "**Negative Consent Procedure**"). The Directors shall provide written notice in respect of the proposed variation (the "**Proposal**") to the shareholders of the affected class or Series and shall specify a deadline (the "**Redemption Request Date**"), which shall be no earlier than 30 days after the date of giving such notice, by which date such shareholders may submit a written request for redemption of some or all of their Shares of the affected class and/or Series on the Redemption Date (the "**Specified Redemption Date**") specified by the Directors in such notice. The terms of the Proposal shall be such that its specified effective date (the "**Effective Date**") shall not be on or prior to the Specified Redemption Date. Such notice shall further provide that the holders of any Shares in respect of which a request for redemption has not been received by the Redemption Request Date (the "**Affected Shares**") shall, in the absence of express written refusal to consent, be deemed to have consented in writing to the Proposal (such Affected Shares being the "**Negative Consent Shares**"). In the event that the Negative Consent Procedure is followed, only the Affected Shares shall be considered for the purposes of determining whether the written consent majority has been obtained under the "Variation of Share Rights" Article with the holders of the Negative Consent Shares being deemed to have submitted a written consent in favor of the Proposal on the Effective Date.

The rights conferred upon the holders of the Shares of any class issued with preferred or other rights shall not, subject to any rights or restrictions for the time being attached to the Shares, be deemed to be materially adversely varied or abrogated by, inter alia, the creation, allotment or issue of further Shares ranking *pari passu* with or subsequent to them, the redemption or purchase of any Shares or by the passing of any Directors' resolution to change or vary any investment objective, investment technique and strategy and/or investment policy in relation to the Shares or any modification of the fees payable to any service provider to the Fund.

In general, each Share will participate in the Fund's profits and losses attributable to the relevant class in the same manner, except that the Performance Allocation to be charged (at the Partnership level) to Shares of a Sub-Series held by each shareholder will be calculated separately on the basis of the performance of such Shares of a Sub-Series. The Performance Allocation is calculated and charged at the Partnership level through the use of separate capital sub-accounts within the Fund's capital account in the Partnership that correspond to the Shares of a Sub-Series of each shareholder in the Fund. Subject to the foregoing, each of the Shares will participate ratably with all other outstanding Shares in the Fund's assets and earnings and will have the redemption rights discussed above.

The Directors may impose such restrictions as they think necessary for the purpose of ensuring that no Shares in the Fund are held by (i) any person in breach of the laws or requirements of any country or governmental authority or (ii) any person or persons in circumstances which, in the opinion of the Directors, might result in the Fund incurring any liability of taxation or suffering any other pecuniary disadvantage which the Fund might not otherwise have incurred or suffered. A person who becomes aware that he or she is holding or owning Shares in breach of any restriction mentioned in the Articles shall promptly either deliver to the Fund a written request for redemption of his or her Shares or deliver to the Fund a written request to transfer the same to a person who would not thereby be a non-qualified person.

**Management Shares**

General meetings of the holders of Management Shares may be held to vote on various matters including to elect the Directors, to select the Fund's auditors and to attend to such other business as may properly be placed before the meeting. At any such general meeting, the favorable vote of a majority of the Management Shares present generally is sufficient for the approval of any action, unless such action is a matter requiring a special resolution, in which case two-thirds of the Management Shares shall be required, in each case as further detailed in the Articles.

**Registration of Management Shares and Shares and Share Certificates**

Management Shares and Shares of the Fund are issued only in registered form. A current register of the names and addresses of the Fund's shareholders and their shareholdings is maintained at the office of the Administrator. No share certificates have been or will be issued.

**Other Rights and Liabilities**

Under the terms of the Articles, the liability of the shareholders of the Fund is limited, and shareholders will not be liable for any debt, obligation or default of the Fund in excess of the amounts unpaid on their Shares.

The Fund and the Investment Manager may agree with certain investors to a fee structure, redemption rights or other terms that differ from the fee structure, redemption rights and other terms that are set forth in this Memorandum. Such different rights may, subject to applicable law, be effected by issuance of a separate Series of Shares or any other permissible means. Such rights may not be offered to all investors.

**Calculation of Fund Net Asset Value**

The Directors have delegated to the Administrator the calculation of the net asset value of the Fund and the net asset value per Share of each Series and, if applicable, Sub-Series, subject to the overall supervision and direction of the Investment Manager and the Board of Directors. Net asset valuations of the Fund and each Series of Shares will be calculated as of the close of business on the last day of each fiscal period and any other date selected by the Board of Directors, in consultation with the Investment Manager, no less than quarterly, which shall, to avoid doubt, include each Redemption Date (each, a "*Valuation Date*").

The Fund's assets are valued based on the value of the Partnership's assets. The net asset value of the Fund is determined by taking the amount of all cash and credit balances plus the market value of all securities, commodities and other assets comprising the Fund's assets (including any interest and dividends receivable, but excluding any subscription amounts committed to the Fund from time to time to the extent such amounts are not held by or on behalf of the Fund), as calculated by the Administrator, minus all debit balances and other liabilities and obligations of the Fund. Net asset value in respect of any Series or Sub-Series of Shares is calculated by dividing the value of the account relating to that Series or Sub-Series of Shares by the number of Shares of that Series in issue. For the sole purpose of determining the number of Shares of a Series in issue, Shares of that Series which are to be redeemed on the relevant Valuation Date shall be deemed to be in issue until and including the close of business on the applicable Valuation Date. The principal amounts of the investments, cash balances and other assets of the Fund, the value of which is expressed in a currency other than that of the United States,

shall be valued after taking into account the market rate or rates of exchange in force on the Valuation Date in question.



## TAX CONSIDERATIONS

### General

The following is a general discussion of certain of the anticipated U.S. federal and Cayman Islands income tax considerations applicable to the Fund's activities and those relevant to non-U.S. persons (as defined below) and U.S. tax-exempt entities arising from the purchase, ownership and disposition of Shares. Prospective investors should consult their own tax advisors to determine the application and effect of tax laws with respect to their own particular circumstances. This discussion is based on laws and regulations currently in effect, which may change or be subject to differing interpretations (possibly on a retroactive basis). The Fund does not intend to seek a ruling from the Service, or any similar state or local authority, with respect to any of the tax issues affecting the Fund.

In view of the number of different jurisdictions where local laws may apply to shareholders, the discussion below does not address the local tax consequences to prospective investors of the purchase, ownership and disposition of Shares. Prospective investors are urged to consult their own tax advisors in determining the possible tax, exchange control or other consequences to them under the laws of the jurisdictions of which they are citizens, residents or domiciliaries or in which they conduct business.

The summary assumes that no U.S. taxable investors will invest in the Fund and, therefore, does not address the U.S. tax consequences to such investors. Potential U.S. taxable investors should be aware that the Fund does not intend to provide information to any U.S. Person for purposes of such person qualifying to make an election to treat the Fund as a "qualifying electing fund" for U.S. federal income tax purposes. Accordingly, potential U.S. shareholders are urged to consult their tax advisors in this regard.

### United States Taxation Matters

The Fund will be treated as a corporation for U.S. federal income tax purposes. For U.S. federal income tax purposes, the Partnership is expected to be treated as a partnership. The Fund and the Partnership will make any necessary entity classification elections for U.S. tax purposes consistent with such respective treatment. Because the Fund is organized under the laws of the Cayman Islands, it will be considered a non-U.S. person for purposes of U.S. tax laws. As such, the U.S. federal income tax treatment of the Fund will vary depending on whether the Fund derives income or gains that are effectively connected with the conduct of a trade or business in the United States. The Fund intends to structure its operations (including those conducted through the Partnership) in order to minimize to the extent consistent with its investment strategy the possibility that the Fund will be treated as being engaged in a U.S. trade or business for U.S. federal income tax purposes, although there can be no certainty that the Fund will be successful minimizing such a possibility. It is also intended that the Fund's affairs will be conducted such that no income realized by the Fund will be effectively connected with the conduct of a U.S. trade or business or otherwise subject to regular U.S. federal income taxation on a net basis.

Pursuant to a safe harbor in the Code, trading in securities or commodities on an organized commodities exchange for the Fund's own account (including through the Partnership) is not considered a U.S. trade or business. It is not certain whether this safe harbor would apply to the trading of physical commodities. Although no assurances can be given that the Service will not successfully assert an



alternative position, the Fund intends to take the position that the Partnership's trading of physical commodities is within the prescribed safe harbor and does not constitute a trade or business and as such the Fund anticipates generally that its income will not be subject to U.S. corporate income tax, except as described below. However, the Fund will be subject to a 30% U.S. withholding tax on its allocable share of certain types of the Partnership's non-effectively connected income. As described below, the types of income (to the extent not constituting effectively connected income) on which a U.S. withholding tax will be imposed generally consist of dividends, interest and certain types of investment income, but not capital gains derived from the sale of stock or other capital assets (unless such capital gains are derived from the sale of stock of a "United States Real Property Holding Company" within the meaning of Section 897 of the Code and certain other interests in real property).

In general, a non-U.S. partner, such as the Fund, that is a partner of a partnership, such as the Partnership, is subject to U.S. federal income taxation on a net basis on its allocable share of the partnership's "effectively connected income." The Fund's allocable share of the Partnership's income will constitute "effectively connected income," and thus will be subject to U.S. federal income taxation, to the extent such income is derived by the Partnership from a trade or business carried on in the United States by the Partnership. Although there can be no assurances, the Partnership does not itself expect to engage directly in activities that would constitute a U.S. trade or business.

If the Fund were treated as being engaged in a U.S. trade or business as a result of activities conducted by the Partnership, then all or a portion of the Fund's allocable share of the Partnership's income would be treated as effectively connected income subject to U.S. federal income tax on a net basis at corporate tax rates. In such a case, the Fund would be required to file a U.S. federal income tax return to report its share of such income and pay U.S. federal income tax at regular U.S. rates on this income. In addition, the Partnership would be required (and would be legally liable) to withhold and pay over to the Service on behalf of the Fund an amount equal to 35% percent of the Fund's share of the Partnership's effectively connected income. Any amount so withheld would be creditable against the Fund's ultimate U.S. federal income tax liability, and the Fund would be entitled to a refund to the extent that the amount withheld exceeded the Fund's U.S. federal income tax liability for the taxable year. Furthermore, in such event, the Fund's allocable share of any effectively connected income of the Partnership would also be subject to a 30% U.S. branch profits tax, and possibly could be subject to state and/or local taxation in the United States. Such taxation of the Fund's activities could have a material adverse effect on the Fund's returns. Prospective investors are advised to consult their tax advisors regarding the risk of the Fund being treated as engaged in a trade or business in the United States.

Because the Fund is organized under the laws of the Cayman Islands, it is considered a non-U.S. person for purposes of the U.S. tax laws. As a result, dividends received by the Fund through the Partnership from U.S. sources will be subjected to U.S. withholding tax at a 30% rate. U.S. source interest income received by the Fund through the Partnership generally will be exempt from U.S. federal income and withholding tax under the exemption for "portfolio interest" or under another statutory exemption. Interest on corporate obligations will not qualify as "portfolio interest" to a non-U.S. person that owns (directly and under certain constructive ownership rules) 10% or more of the total combined voting power of the corporation paying the interest, or, with respect to certain obligations issued after April 7, 1993, if and to the extent the interest is determined by reference to certain economic attributes of the debtor (or a person related thereto) or the underlying obligations are not in "registered form" for U.S. tax purposes. In addition, interest on U.S. bank deposits, certificates of deposit and certain obligations with maturities of 183 days or less (from original issuance) will not be subject to

withholding tax. Interest (including original issue discount) derived by the Fund or the Partnership from U.S. sources not qualifying as “portfolio interest” or not otherwise exempt under U.S. law will be subject to U.S. withholding tax at a rate of 30%. In addition, based on recent legislation, income from certain swaps directly or indirectly over certain stocks (e.g., U.S. stocks) are subject to U.S. withholding tax.

#### **Taxation of Non-U.S. shareholders**

For U.S. federal income tax purposes, a shareholder of the Fund who is a non-U.S. person will not be subject to U.S. federal income taxation on amounts paid by the Fund in respect of the Shares or gains recognized on the sale, exchange or redemption of Shares, provided that such income and gains are not considered to be effectively connected with the conduct of a trade or business by the shareholder in the United States. In limited circumstances, an individual shareholder who is present in the United States for 183 days or more during a taxable year may be subject to U.S. income tax at a flat rate of 30% on gains realized on a disposition of Shares in such year. Individual shareholders who at the time of their death are not citizens, former citizens or residents of the United States should not be subject, by reason of the ownership of Shares, to any U.S. federal gift or estate taxes.

For these purposes the term “*non-U.S. person*” means any person that is not a U.S. Person for U.S. federal income tax purposes. A “*U.S. Person*” means a citizen or resident of the United States, a partnership or corporation created or organized in the United States or under the laws of the United States or any state (other than a partnership that is not treated as a U.S. Person under any applicable Treasury Regulations), an estate whose income is includable in gross income for federal income tax purposes regardless of its source or a trust if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have the authority to control all substantial decisions of the trust. In addition, to the extent provided in Treasury Regulations, certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, which elect to continue to be treated as U.S. Persons will also be U.S. Persons for these purposes.

Special rules may apply in the case of non-U.S. persons that (i) conduct a trade or business in the United States or that have an office or fixed place of business in the United States, (ii) have a tax home in the United States, (iii) are former citizens or long-term residents of the United States or (iv) are controlled foreign corporations, passive foreign investment companies, foreign insurance companies that hold Shares in connection with their U.S. business or corporations which accumulate earnings to avoid U.S. federal income tax. Such persons are urged to consult their U.S. tax advisors before investing in the Fund.

In the case of Shares held in the United States by a custodian or nominee for a non-U.S. person, U.S. “backup” withholding taxes may apply to distributions in respect of Shares held by such shareholder unless such shareholder properly certifies as to its non-U.S. status or otherwise establishes an exemption from “backup” withholding. Back-up withholding is not an additional tax. Rather, the U.S. federal income tax liability of non-U.S. persons subject to back-up withholding will be reduced by the amount of tax withheld. If back-up withholding results in an overpayment of U.S. federal income taxes, a refund may be obtained, provided the required documents are filed with the Service.

#### **Taxation of U.S. Tax-Exempt shareholders**

In general, U.S. tax-exempt shareholders should not be subject to the tax on “unrelated business taxable income” (“*UBTI*”), as defined in Code section 512, in respect of income and gains from the

Shares. In general, UBTI is the excess of gross income from any unrelated trade or business conducted by a U.S. tax-exempt entity over the deductions attributable to such trade or business, with certain modifications. These modifications provide that UBTI generally does not include interest, dividends or gains from the sale of securities not held as either inventory or primarily for sale to customers in the ordinary course of business, except to the extent that any such item of income is deemed to constitute “unrelated debt-financed income” (“*UDFI*”) within the meaning of Code section 514 and the Treasury Regulations. Income that a U.S. tax-exempt shareholder derives from an investment in Shares should not give rise to UBTI under Code section 511, except to the extent that such entity’s acquisition of Shares is financed with acquisition indebtedness within the meaning of Code section 514. In addition to UBTI that may arise when a tax-exempt investor uses leverage to finance the acquisition of Shares, the United States Congress from time to time has considered legislation that could result in a tax-exempt investor realizing UBTI in respect of an investment in a foreign investment company that leverages its investments.

The Fund is expected to constitute a “passive foreign investment company” (a “*PFIC*”) for U.S. federal income tax purposes. Under the Treasury Regulations, a U.S. tax-exempt shareholder is not considered to be a shareholder in a PFIC, and thus will not be subject to the PFIC tax rules, except to the extent that a “dividend” from the PFIC would be taxable under subchapter F of the Code, for example, as UDFI. Hence, under the Treasury Regulations, a U.S. tax-exempt shareholder would be subject to tax under the PFIC regime in respect of an excess distribution from, or any gain realized on the sale of the shares of, a PFIC only under limited circumstances. Moreover, different rules may apply to certain types of tax-exempt entities, such as charitable remainder trusts. Accordingly, potential U.S. tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of an investment in the Fund.

**Prospective U.S. tax-exempt investors are urged to consult their own tax advisors regarding the tax consequences of the purchase, ownership and disposition of the Shares.**

#### **Information Reporting Requirements and FATCA**

Sections 1471 through 1474 of the Code, known as the U.S. Foreign Account Tax Compliance Act (together with any regulations, rules and other guidance implementing such Code sections and any applicable intergovernmental agreement (“*IGA*”) and related statutes, regulations, rules and other guidance thereunder, “*FATCA*”) impose a withholding tax of 30% on (i) certain U.S. source interest, dividends and other types of income, and (ii) the gross proceeds from the sale or disposition of certain assets of a type that can produce U.S. source interest and dividends, which are received by a foreign financial institution (“*FFI*”), unless such FFI enters into an agreement with the Service, and/or complies with an applicable IGA, to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. These rules generally apply to payments of U.S. source interest, dividends and certain other types of income from U.S. sources since July 1, 2014, and will apply to payments of gross proceeds from the sale or disposition of assets of a type that can produce U.S. source interest or dividends after December 31, 2016.

The Service has released temporary and final Treasury Regulations and other guidance that will be used in implementing FATCA, which contain a number of phase-in dates for FATCA compliance. In addition, the Cayman Islands has entered into a Model 1 IGA with the United States (the “*Cayman IGA*”), which came into force on April 14, 2014, and has issued the Tax Information Authority



(International Tax Compliance) (United States of America) Regulations 2014, as updated from time to time, and draft guidance notes thereunder. Additional guidance is forthcoming. In addition, the Cayman Islands have signed a similar inter-governmental agreement with the United Kingdom (the “*UK IGA*”). The UK IGA imposes similar requirements to the Cayman IGA, so that the Fund will be required to identify accounts held directly or indirectly by “Specified United Kingdom Persons” and report information on such Specified United Kingdom Persons to the Cayman Islands authorities, which will exchange such information annually with HM Revenue & Customs (“*HMRC*”), the United Kingdom tax authority. It is anticipated that further inter-governmental agreements (“*future IGAs*”) similar to the Cayman IGA and the UK IGA may be entered into with other third countries by the Cayman Islands Government to introduce similar regimes for reporting to such third countries fiscal authorities (“*foreign fiscal authorities*”).

The Fund is likely to be considered an FFI for FATCA purposes. In order to avoid U.S. withholding tax under FATCA on amounts paid to the Fund, the Fund is generally required to register with the Service and to comply with the Cayman IGA and any Cayman Islands legislation or guidance implementing the Cayman IGA. The Fund intends to register with the Service and, therefore, generally does not expect to become subject to U.S. withholding under FATCA. The Fund also expects that it will be required to identify and report on certain direct and indirect U.S. owners or investors in order to comply with the Cayman IGA in the future. An investor will be required to provide to the Fund information which identifies its direct and indirect ownership. Any such information provided to the Fund will ultimately be shared with the Cayman Islands government and transmitted to the Service and, potentially, certain other authorities and withholding agents, as applicable.

Further, it is possible that a lower-tier non-U.S. entity in which the Partnership invests also may be considered an FFI. The Fund intends to assist lower-tier non-U.S. entities in which the Partnership invests in complying with FATCA, but the Fund can give no assurance that it will be able to provide such assistance or that such an entity will be able to avoid the imposition of this withholding tax on it.

By investing (or continuing to invest) in the Fund (and indirectly investing in the Partnership), investors will be deemed to have acknowledged, and to have given their consent to, the following:

- (i) the Fund (or its agent) may be required to disclose to the Cayman Islands authorities and withholding agents certain information (which could otherwise be deemed to be confidential) in relation to the investor or its direct or indirect owners, including the investor’s name, address, tax identification number (if any), social security number (if any) and certain additional information or documentation relating to the investor’s investment or identity, and the investor may be required to provide any such information or documentation;
- (ii) the Cayman Islands authorities may be required to automatically exchange information with, among other authorities, the Service, and to provide additional information to such authorities should they have further inquiries, and the Fund (or its agent) may be required to disclose certain information (including information that could otherwise be deemed to be confidential) when registering with such authorities and in response to a request by any such authority for further information;
- (iii) in the event an investor’s failure to comply with any FATCA related reporting requirements gives rise to any withholding tax, the Fund reserves the right to ensure that any such withholding tax and any related cost, interest, penalties and other losses or

liabilities suffered by the Fund, the Partnership, the General Partner, the Investment Manager, the Administrator or any other investor, or any agent, delegate, employee, director, officer or affiliate of any of the foregoing persons, arising from such investor's failure to provide information to the Fund, is economically borne by such investor;

- (iv) in the event an investor does not provide the information and/or documentation necessary for the Fund's (or the Partnership's) satisfaction of its FATCA related reporting requirements, whether or not that actually leads to compliance failures by the Fund, or a risk of the Fund (or the Partnership) or its investors being subject to withholding tax under the relevant FATCA regime, the Fund reserves the right to take any action and/or pursue all remedies at its disposal to mitigate the consequences of the investor's failure to comply with the requirements described above, including compulsory redemption of such investor; and
- (v) no investor affected by any such action or remedy shall have any claim against the Fund, the Partnership, the General Partner, the Investment Manager, the Administrator (or their agents, delegates, employees, directors, officers or affiliates) for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Fund in order to comply with FATCA.

***Investors should consult their tax advisors as to the withholding, filing and information reporting requirements that may be imposed on them in respect of their ownership of Interests of the Fund.***

#### **Investor Tax Filings and Record Retention**

The United States Treasury Department has adopted regulations designed to assist the Service in identifying abusive tax shelter transactions. In general, the regulations require investors in specified transactions (including certain shareholders in foreign corporations and partners in partnerships that engage in such transactions) to satisfy certain special tax filing and record retention requirements. Significant monetary penalties may be imposed (in addition to penalties that generally may be applicable as a result of a failure to comply with applicable Treasury regulations) for failure to comply with these tax filing and record retention rules.

The regulations are broad in scope and it is conceivable that the Fund or the Partnership may enter into transactions that will subject the Fund and certain investors in the Fund to the special tax filing and record retention rules. The Fund and the Investment Manager intend to use reasonable efforts to obtain and provide information to investors necessary to enable investors to satisfy any tax filing and record retention requirements that may arise as a result of any transactions entered into by the Fund or the Partnership.

#### **Transfer Reporting Requirements**

A U.S. Person (including in certain circumstances a U.S. tax-exempt entity) that transfers property (including cash) to the Fund in exchange for Shares will be required to file a Form 926 or a similar form with the Service. In the event a U.S. shareholder fails to file any required form, such holder could be subject to a penalty of up to 10% of the value of the property transferred, subject to a \$100,000 limit so long as the failure was not due to intentional disregard.



**Cayman Islands Taxation**

The Government of the Cayman Islands will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Fund or its shareholders. The Cayman Islands are not party to any double taxation treaties.

The Fund has applied for and expects to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (2011 Revision) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Fund or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on or in respect of the Shares, debentures or other obligations of the Fund or (ii) by way of the withholding, in whole or in part, of a payment of dividend or other distribution of income or capital by the Fund to its shareholders or a payment of principal or interest or other sums due under a debenture or other obligation of the Fund.

**European Union Savings Directive**

Dividends and other distributions of income made by the Administrator on behalf of the Fund, together with payment of the proceeds of sale and/or redemption of Shares ( "**Payments**") are not subject to any reporting or withholding requirements that may arise as a result of the applicable legislation which implements the EU Council Directive 2003/48/EC of June 3, 2003 on taxation of savings income in the form of interest payments (the "**EUSD**") as the Administrator is not located in the European Union (or a country that has implemented measures similar or equivalent to the EUSD).

If an investor in the Fund is based in the European Union or certain states which have similar or equivalent measures to the EUSD (including Switzerland, Channel Islands, Monaco and the Cayman Islands) and is making investments on behalf of other underlying investors who are individuals or certain unincorporated entities resident in the European Union or certain of the states which have similar equivalent measures to the EUSD, then the provisions of the EUSD or similar or equivalent measures may apply. In such circumstances such an investor may become a "paying agent" and may be required to obtain all relevant documentation relating to its underlying investors and make returns to the appropriate tax authorities or withhold tax at applicable rates from any redemption proceeds in accordance with the applicable legislation that implements the EUSD or similar or equivalent measures.

Such investors to whom the EUSD may be relevant should also be aware that on 24 March 2014, the Council of the European Union adopted a directive amending the EUSD to extend its scope to cover additional types of savings income and products that generate interest or equivalent income (including certain types of life insurance contracts) as well as a broader range of investment funds. In addition, a "look through" procedure will be established to limit the opportunities for circumventing the application of the EUSD by the use of certain intermediaries. Member States of the European Union have until 1 January 2016 to adopt domestic legislation to give effect to these changes, which must be applied from 1 January 2017. It is not yet clear as to whether those states which have similar or equivalent measures to the EUSD (including Switzerland, Channel Islands, Monaco and the Cayman Islands) will adopt such changes and if so by what date.

**Future Changes in Applicable Law**

The foregoing description of United States and Cayman Islands income tax consequences of an investment in, and the operations of, the Fund are based on laws and regulations that are subject to change through legislative, judicial or administrative action. Other legislation could be enacted that would subject the Fund to income taxes or subject shareholders to increased income taxes.

**Other Taxation**

A portion of the Fund's investments may be made in non-U.S. jurisdictions. With respect to certain countries, there is a possibility of expropriation, confiscatory taxation, imposition of withholding or other taxes on dividends, interest, capital gains or other income, limitations on the removal of funds or other assets of the Fund, political or social instability or diplomatic developments that could affect investments in those countries. An issuer of securities may be domiciled in a country other than the country in whose currency the instrument is denominated. The values and relative yields of investments in the securities markets of different countries, and their associated risks, are expected to change independently of each other.

**Future Tax Legislation, Necessity of Obtaining Professional Advice**

Future amendments to the Code, other legislation, new or amended Treasury Regulations, administrative rulings or decisions by the Internal Revenue Service or judicial decisions may adversely affect the federal income tax aspects of an investment in the Fund, with or without advance notice, retroactively or prospectively. The foregoing analysis is not intended as a substitute for careful tax planning. The tax matters relating to the Fund are complex and are subject to varying interpretations. There can be no assurance that the Internal Revenue Service will agree with each position taken by the Fund with respect to the tax treatment of Fund items and transactions. Moreover, the effect of existing income tax laws and of proposed changes in income tax laws on shareholders will vary with the particular circumstances of each shareholder and, in reviewing this Memorandum and any exhibits hereto, these matters should be considered.

It is the responsibility of all persons interested in purchasing Shares to inform themselves as to any tax consequences from their investing in the Fund and the Fund's operations or management, as well as any foreign exchange or other fiscal or legal restrictions, which are relevant to their particular circumstances in connection with the acquisition, holding or disposition of Shares. Accordingly, each prospective shareholder should therefore seek their own separate tax advice in relation to their holding of Shares. In no event will the Fund, the Partnership, the Principals or the Investment Manager, or their affiliates, counsel or other professional advisers, be liable to any shareholder for any tax consequences of an investment in the Fund, whether or not such consequences are as described above.

*The foregoing is a summary of the important tax rules and considerations affecting the shareholders, the Fund and the Fund's proposed operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each shareholder, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Shares. Each prospective investor in the Fund is urged to consult its own tax advisor in order to understand fully the U.S. federal, state, local and any non-U.S. tax consequences of such an investment in its particular situation.*

## ERISA CONSIDERATIONS

## CIRCULAR 230 NOTICE

The tax discussion contained in this Memorandum is not in the form of a covered opinion , within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon the summary contained in this Memorandum for the purpose of avoiding U.S. federal tax penalties. The following summary was written to support the promotion or marketing of the transactions or matters described in this Memorandum. Each prospective investor should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

## General

Fiduciaries and other persons who are proposing to invest in Shares on behalf of retirement plans, IRAs and other employee benefit plans (“*Plans*”) covered by ERISA or the Code must give appropriate consideration to, among other things, the role that an investment in the Fund plays in the Plan’s portfolio, taking into consideration whether the investment is designed to reasonably further the Plan’s purposes, the investment’s risk and return factors, the portfolio’s composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the projected return of the total portfolio relative to the Plan’s objectives, the limited right of shareholders to redeem all or any part of their capital or to transfer their Shares and whether investment in the Fund constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

## Plan Asset Regulations and Benefit Plan Investors

The United States Department of Labor (“*DOL*”) has adopted regulations that treat the assets of certain pooled investment vehicles, such as the Fund, as “plan assets” for purposes of Title I of ERISA and Section 4975 of the Code (“*Plan Assets*”). Section 3(42) of ERISA defines the term “Plan Assets” to mean plan assets as defined by such regulations as the DOL may prescribe, except that under such regulations the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than twenty-five percent (25%) of the total value of each class of equity interest in the entity is held by “Benefit Plan Investors” (the “*significant participation test*”). For purposes of this determination, the value of any equity interest held by a person (other than a Benefit Plan Investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term “*Benefit Plan Investors*” means any employee benefit plan subject to part 4 of subtitle B of Title I of ERISA (*i.e.*, plans subject to the fiduciary provisions of ERISA), any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (*e.g.*, IRAs) and any entity whose underlying assets include Plan Assets by reason of a plan’s investment in such entity (a “*Plan Asset Entity*”).

In order to prevent the assets of the Partnership from being considered Plan Assets under ERISA, it is the intention of the Partnership to monitor the investments in the Fund and prohibit the acquisition, redemption or transfer of any Shares by any investor, including a Benefit Plan Investor, unless, after

giving effect to such an acquisition, redemption or transfer, the total proportion of each class of equity interests of the Partnership owned by Benefit Plan Investors would be less than 25% of the aggregate value of such class (determined, as described above, by excluding certain Shares held by the Investment Manager, other fiduciaries and affiliates).

Without limiting the generality of the foregoing, in order to limit equity participation in each class of equity interests of the Partnership by Benefit Plan Investors to less than 25%, the Partnership may require the compulsory redemption of Shares of any Series. Each shareholder that is an insurance company acting on behalf of its general account or a Plan Asset Entity will be required to represent and warrant as of the date it acquires Shares or equity interests of the Partnership the maximum percentage of such general account or Plan Asset Entity (as reasonably determined by such insurance company or Plan Asset Entity) that will constitute Plan Assets (the “*Maximum Percentage*”) so such percentage can be calculated in determining the percentage of Plan Assets invested in the Partnership. Further, each such insurance company and Plan Asset Entity will be required to covenant that if, after its initial acquisition of Shares or equity interests of the Partnership, the Maximum Percentage is exceeded at any time, then such insurance company or Plan Asset Entity shall immediately notify the Investment Manager of that occurrence and shall, if and as directed by the Investment Manager, in a manner consistent with the restrictions on transfer set forth herein, redeem or dispose of some or all of the Shares held in its general account or Plan Asset Entity.

If the Partnership’s assets were considered Plan Assets, then, under ERISA and the Code, the Investment Manager would be a fiduciary, and certain employees, partners and officers of the Investment Manager, as well as certain affiliates, would become “parties in interest” and “disqualified persons,” with respect to the investing Plans, with the result that the rendering of services to certain related parties or the lending of money or other extensions of credit, or the sale, exchange or leasing of property by the Partnership or certain related parties, or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in equity interests of the Partnership by persons who are fiduciaries and/or parties-in-interest and disqualified persons to a Plan might be deemed to constitute prohibited transactions under such circumstances.

It is anticipated that investment in the Fund by Benefit Plan Investors may be “significant” for purposes of the DOL regulations. In such event, the underlying assets of the Fund would be deemed to constitute Plan Assets. As a general rule, if the assets of the Fund were regarded as Plan Assets of a Benefit Plan Investor, the Investment Manager would be deemed to be a fiduciary with respect to each Plan investing in the Fund. However, the Investment Manager believes that, given the limited purpose and role of the Fund and the requirement that the Investment Manager follow the directions of the fiduciaries of each Benefit Plan Investor investing in the Fund, as set forth in each such investor’s Subscription Documents, with respect to the investment by the Fund in the Partnership, neither the Investment Manager nor any other entity providing services to the Fund would be exercising any discretionary authority or control with respect to the Fund. Accordingly, the Investment Manager believes that neither the Investment Manager nor any other entity providing services to the Fund will act as a fiduciary (as defined in Section 3(21) of ERISA) with respect to the assets of the Fund or any Benefit Plan Investor. Rather, the Investment Manager believes that, given the limited purpose and role of the Fund and the requirement that the Investment Manager follow the directions of the fiduciary of each Benefit Plan Investor investing in the Fund, as set forth in each such investor’s Subscription Documents, with respect to the investment by the Fund in the Partnership, the fiduciary of each such Benefit Plan Investor has retained the fiduciary authority and responsibility with respect to the Benefit



Plan Investor's initial and continuing investment in the Fund as though the Benefit Plan Investor is investing directly in the Partnership.

### **Representation by Plans**

The fiduciaries of each Plan proposing to invest in the Fund will be required to represent that they have been informed of and understand the Fund's investment objectives, policies and strategies, and that the decision to invest Plan Assets in the Fund is consistent with the provisions of ERISA and/or the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. In particular, exempt organizations should consider the applicability to them of the provisions relating to UBTI. By its purchase, each investor will be deemed to have represented that either (i) it is not a Plan that is subject to the prohibited transaction rules of ERISA or the Code, (ii) it is not an entity whose assets include Plan Assets or (iii) its investment in the Fund will not constitute a non-exempt prohibited transaction under ERISA or the Code.

### **Ineligible Purchasers**

Shares may not be purchased with Plan Assets if the Investment Manager, any selling agent, finder, any of their respective affiliates or any of their respective employees: (i) has investment discretion with respect to the investment of such Plan Assets; (ii) has authority or responsibility to give or regularly gives investment advice with respect to such Plan Assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (iii) is an employer maintaining or contributing to such Plan. A party that is described in clause (i) or (ii) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a "prohibited transaction" under ERISA and the Code.

### **Plans' Reporting Obligations**

The information contained herein and in the other documentation provided to investors in connection with an investment in the Fund is intended to satisfy the alternative reporting option for "eligible indirect compensation" on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

*Whether or not the underlying assets of the Fund are deemed Plan Assets, an investment in the Fund by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Fund. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the impact of their respective laws and regulations on an investment in the Fund.*



### CAYMAN ISLANDS MUTUAL FUND LAW

The Fund is regulated as a mutual fund under the Mutual Funds Law (2013 Revision) of the Cayman Islands (“*Mutual Funds Law*”). The Cayman Islands Monetary Authority (the “*Authority*”) has supervisory and enforcement powers to ensure compliance with the Mutual Funds Law. Regulation under the Mutual Funds Law entails the filing of prescribed details and audited accounts annually with the Authority. As a regulated mutual fund, the Authority may at any time instruct the Fund to have its accounts audited and to submit them to the Authority within such time as the Authority specifies. Failure to comply with these requests by the Authority may result in substantial fines on the part of the Directors and may result in the Authority applying to the court to have the Fund wound up.

The Fund will not, however, be subject to supervision in respect of its investment activities or the constitution of the Fund’s portfolio by the Authority or any other governmental authority in the Cayman Islands, although the Authority does have power to investigate the activities of the Fund in certain circumstances. Neither the Authority nor any other governmental authority in the Cayman Islands has commented upon or approved the terms or merits of this document. There is no investment compensation scheme available to investors in the Cayman Islands.

The Authority may take certain actions if it is satisfied that a regulated mutual fund is or is likely to become unable to meet its obligations as they fall due or is carrying on or is attempting to carry on business or is winding up its business voluntarily in a manner that is prejudicial to its investors or creditors. The powers of the Authority include the power to require the substitution of Directors, to appoint a person to advise the Fund on the proper conduct of its affairs or to appoint a person to assume control of the affairs of the Fund. There are other remedies available to the Authority including the ability to apply to court for approval of other actions.

The Fund, or any directors or agents domiciled in the Cayman Islands, may be compelled to provide information, subject to a request for information made by a regulatory or governmental authority or agency under applicable law; e.g. by the Authority, either for itself or for a recognised overseas regulatory authority, under the Monetary Authority Law (2013 Revision), or by the Tax Information Authority, under the Tax Information Authority Law (2013 Revision) or Reporting of Savings Income information (European Union) Law (2007 Revision) and associated regulations, agreements, arrangements and memoranda of understanding. Disclosure of confidential information under such laws shall not be regarded as a breach of any duty of confidentiality and, in certain circumstances, the Fund, director or agent, may be prohibited from disclosing that the request has been made.

**ANTI-MONEY LAUNDERING COMPLIANCE****Cayman Islands**

In order to comply with legislation or regulations aimed at the prevention of money laundering the Fund is required to adopt and maintain anti-money laundering procedures, and may require subscribers to provide evidence to verify their identity and source of funds. Where permitted, and subject to certain conditions, the Fund may also delegate the maintenance of its anti-money laundering procedures (including the acquisition of due diligence information) to a suitable person.

The Fund, and the Administrator on the Fund's behalf, reserve the right to request such information as is necessary to verify the identity of a shareholder (i.e. a subscriber or a transferee). Where the circumstances permit, the Fund, or the Administrator on the Fund's behalf, may be satisfied that full due diligence may not be required where an exemption applies under the Money Laundering Regulations (2013 Revision) of the Cayman Islands, as amended and revised from time to time or any other applicable law.

In the event of delay or failure on the part of the subscriber in producing any information required for verification purposes, the Fund, or the Administrator on the Fund's behalf, may refuse to accept the application, in which case any funds received will be returned without interest to the account from which they were originally debited.

The Fund, and the Administrator on the Fund's behalf, also reserve the right to refuse to make any redemption or dividend payment to a shareholder if the Board of Directors or the Administrator suspect or are advised that the payment of redemption or dividend proceeds to such shareholder may be non-compliant with applicable laws or regulations, or if such refusal is considered necessary or appropriate to ensure the compliance by the Fund or the Administrator with any applicable laws or regulations.

If any person resident in the Cayman Islands knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct or is involved with terrorism or terrorist property and the information for that knowledge or suspicion came to their attention in the course of business in the regulated sector, or other trade, profession, business or employment, the person will be required to report such knowledge or suspicion to (i) the Financial Reporting Authority of the Cayman Islands, pursuant to the Proceeds of Crime Law, 2008 of the Cayman Islands if the disclosure relates to criminal conduct or money laundering, or (ii) a police officer of the rank of constable or higher, or the Financial Reporting Authority, pursuant to the Terrorism Law (2011 Revision) of the Cayman Islands, if the disclosure relates to involvement with terrorism or terrorist financing and property. Such a report shall not be treated as a breach of confidence or of any restriction upon the disclosure of information imposed by any enactment or otherwise.

**United States**

In response to increased regulatory concerns with respect to the identification of sources of funds used to make an investment in the Fund, the Investment Manager and/or its affiliates have implemented policies and procedures ("**AML Program**") designed to guard against and identify money laundering activities. Pursuant to the Fund's AML Program, the Investment Manager and/or its affiliates will request prospective investors and, in some instances, existing shareholders to provide additional documentation verifying, among other things, such person's identity and the source of funds used to

purchase its Shares of the Fund. The Investment Manager may decline to accept a subscription based upon this information, or if this information is not provided.

Pursuant to the Fund's AML Program, the Investment Manager and/or its affiliates will undertake enhanced due diligence procedures prior to accepting investors the Investment Manager believes present high risk factors with respect to money laundering activities. Examples, although not comprehensive, of persons posing high risk factors are persons resident in or organized under the laws of a "non-cooperative jurisdiction" or other jurisdictions designated by the Department of the Treasury as warranting special measures due to money laundering concerns, and any person whose capital contributions originate from or are routed through certain banking entities organized or chartered in a non-cooperative jurisdiction.

In addition, the Fund's AML Program prohibits the acceptance of subscriptions from or on behalf of:

1. persons on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Asset Control;
2. the Annex to Executive Order 13224;
3. such other lists as may be promulgated by law or regulation; and
4. foreign banks unregulated in the jurisdiction they are domiciled in or which have no physical presence.

Governmental regulators are continuing to consider appropriate measures to implement anti-money laundering laws as they apply to private investment funds such as the Fund. The Investment Manager and/or its affiliates will take such steps as it determines are necessary to comply with applicable law, regulations, orders, directives or special measures that may be required by governmental regulators. The specific policies and procedures that the Fund may be required to implement remain unclear, although such steps may include additional measures to confirm the identity of each investor, including the principal beneficial owners of the investor, if applicable, and/or reporting suspicious transactions to governmental regulators.

The requirements for the Investment Manager to guard against and identify money laundering activities in deciding whether to accept subscriptions are in addition to the discretion that the Investment Manager has in deciding whether to accept subscriptions.

## ANNEX A

**Definition of “U.S. Person”**

For purposes of the applicable prohibitions against ownership and transfer of Shares of the Fund, the term “U.S. Person” means:

- (1) a resident or citizen of the United States;
- (2) a partnership or corporation organized under the laws of the United States;
- (3) any entity not organized under the laws of the United States:
  - (a) that has its principal office or place of business in the United States; or
  - (b)
    - (i) in which citizens or residents of or entities organized under the laws of or existing in the United States directly or indirectly hold in the aggregate 50% or more of the beneficial interests; and
    - (ii) that will own directly or indirectly, either alone or together with affiliated persons, an aggregate of more than 9.9% of the Fund’s outstanding Shares; or
  - (c)
    - (i) that is organized principally for passive investment (such as an investment company, a commodity pool or other similar vehicle); and
    - (ii)
      - (A) in which the amount of units of participation held by United States Persons (other than “qualified eligible participants” as defined in Rule 4.7(a)(2) under the United States Commodity Exchange Act) represents in the aggregate 10% or more of the beneficial interest in the entity;
      - (B) that was formed for the purpose of facilitating investment by United States Persons in the Fund, or in any other commodity pool with respect to which the operator is exempt from certain requirements of Part 4 of the regulations promulgated by the United States Commodity Futures Trading Commission by virtue of its participants being non-United States Persons; or
      - (C) that was formed by United States Persons principally for the purpose of investing in securities not registered under the United States Securities Act of 1933, as amended, unless it is formed and owned by “accredited investors” (as defined in Rule 501(a) under the Securities Act of 1933, as amended) who are not natural persons, estates or trusts;
  - (4) an estate or trust:
    - (a) of which an executor, administrator or trustee is a United States Person, unless:
      - (i) an executor, administrator or trustee who is not a United States Person has sole or shared investment discretion with respect to the assets of the estate or trust; and
      - (ii)
        - (A) in the case of an estate, it is governed by non -U.S. law; or

- (B) in the case of a trust, no beneficiary (and no settlor if the trust is revocable) is a United States Person; or
- (b) the income of which is subject to United States income tax regardless of source;
- (5) any agency or branch of a foreign entity located in the United States;
- (6) any non-discretionary account or similar account (other than an estate or trust) held for the benefit or account of one or more United States Persons; and
- (7) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States, unless it is held by a dealer or other professional fiduciary exclusively for the benefit or account of one or more non-United States Persons.

For purposes of the foregoing, the term “*United States*” means the United States of America, its territories and possessions, any state of the United States, and the District of Columbia. Persons requiring details regarding other terms used in the foregoing definition (such as “qualified eligible participant” and “accredited investor”) should contact the Administrator.



# Delaware

PAGE 1

## The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "HIGHLAND CREDIT OPPORTUNITIES CDO GP, L.L.C.", CHANGING ITS NAME FROM "HIGHLAND CREDIT OPPORTUNITIES CDO GP, L.L.C." TO "HIGHLAND MULTI STRATEGY CREDIT GP, LLC", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF AUGUST, A.D. 2014, AT 6:39 O'CLOCK P.M.

4086683 8100

141112749

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 1654262

DATE: 08-27-14

UBSDUG000278

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Case 19-34054-sgj11 Doc 2342-14 Filed 05/20/21 Entered 05/20/21 17:12:33 Page 2 of 2

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 06:58 PM 08/26/2014  
FILED 06:39 PM 08/26/2014  
SRV 141112749 - 4086683 FILE

**STATE OF DELAWARE**  
**CERTIFICATE OF AMENDMENT**

1. Name of limited liability company is **Highland Credit Opportunities CDO GP, L.L.C.**
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

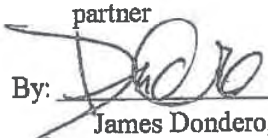
**FIRST:** The name of the limited liability company is changed to:

**Highland Multi Strategy Credit GP, LLC**

**IN WITNESS WHEREOF**, the undersigned have executed this Certificate on the 26<sup>th</sup> day of August, A.D. 2014.

**SOLE MEMBER**

Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general  
partner

By:   
James Dondero, President

UBSDUG000279

004677

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## **Highland Multi Strategy Credit Fund, L.P.**

A Delaware Limited Partnership

**Fourth Amended and Restated  
Limited Partnership Agreement**

November 1, 2014

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THIS FOURTH AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of Highland Multi Strategy Credit Fund, L.P., dated effective as of November 1, 2014, is by and among Highland Multi Strategy Credit Fund GP, L.P., as General Partner, and certain Persons who were admitted as Limited Partners in accordance with the Prior Agreement and those Persons who are hereafter admitted as additional Limited Partners in accordance with this Agreement. Capitalized terms have the meanings set forth in Article I below.

#### PRELIMINARY STATEMENTS

- (A) The General Partner and certain of the Limited Partners have heretofore formed a limited partnership pursuant to the Act (as defined herein) by filing a Certificate of Limited Partnership with the office of the Secretary of State of the State of Delaware on December 1, 2005, and previously entered into a Limited Partnership Agreement, dated effective as of December 1, 2005, as last amended and restated by the Third Amended and Restated Limited Partnership Agreement dated as of December 31, 2007 (the “*Prior Agreement*”).
- (B) The General Partner filed an amendment to the Certificate of Limited Partnership of the Fund on August 26, 2014, changing the name of the Fund to “Highland Multi Strategy Credit Fund, L.P.”
- (C) The parties hereto desire to continue the Partnership as a limited partnership under the Act and to make certain modifications to the Prior Agreement, as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants expressed herein and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Prior Agreement is amended and restated in its entirety to read as follows:

#### Article I DEFINITIONS

For purposes of this Agreement:

“*Act*” means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. §§ 17 -101, et seq., as in effect on the date hereof and as amended from time to time, or any successor law.

“*Accounting Period*” means each period that starts on the day immediately following the last day of the preceding Accounting Period, and that ends on the earliest of the following dates:

- (a) the last day of a calendar month;
- (b) any date as of which any withdrawal or distribution of capital is made with respect to any Capital Account or as of which this Agreement provides for any amount to be credited to or debited against a Capital Account, other than a withdrawal or distribution by or to, or an allocation to, all Capital Accounts that does not result in any change of the Partnership Percentage relating to any Capital Account;

(c) the date which immediately precedes any day as of which a capital contribution is accepted by the General Partner from any new or existing Partner; or

(d) any other date which the General Partner selects.

**“Advisers Act”** means the U.S. Investment Advisers Act of 1940, as amended, and the rules promulgated thereunder.

**“Advisory Committee”** has the meaning set forth in Section 4.6.

**“Affiliate”** means, with respect to any Person, a Person which controls, is controlled by, or is under common control with, such Person. For these purposes, “control” (including “controlled by” and “under common control”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Affiliated Investor”** means any Limited Partner that is an Affiliate of the General Partner or the Investment Manager, including their respective employees, members or partners and their respective immediate family members.

**“Agreement”** means this Fourth Amended and Restated Limited Partnership Agreement of the Partnership, as amended from time to time.

**“Alternative Investment Vehicle”** has the meaning set forth in Section 4.7.

**“Arbitration Rules”** has the meaning set forth in Section 8.7(b)(i).

**“Authorized Representative”** has the meaning set forth in Section 7.5(a).

**“Bad Actor Limited Partner”** means a Limited Partner that (i) would cause the disqualification of the Partnership from using Rule 506 under the Securities Act due to the operation of paragraph (d) thereof (or its successor) if such Limited Partner were to beneficially own 20% or more of the outstanding voting interest of all of the Partners (excluding any other Interests that are Non-Voting Interests) or (ii) the General Partner determines is likely to become subject to a conviction, order, judgment, finding or that would be likely to cause the disqualification described in clause (i).

**“BHCA”** means the U.S. Bank Holding Company Act of 1956, as amended.

**“BHCA Subject Person”** means any Limited Partner that is subject, directly or indirectly, to the provisions of Section 4 of the BHCA and the regulations of the Board of Governors of the Federal Reserve System promulgated thereunder.

**“Business Day”** means any day other than (a) Saturday and Sunday and (b) any other day on which banks located in New York, New York are required or authorized by law to be closed.

**“Calculation Period”** means, with respect to each Capital Account, the period commencing as of the date of the establishment of the Capital Account (in the case of the initial Calculation

Period) and thereafter each period commencing as of the day following the last day of the preceding Calculation Period with respect to such Capital Account, and ending as of the close of business on the first to occur of the following:

- (a) the last day of a calendar year;
- (b) the withdrawal of all or a portion of the Interest attributable to such Capital Account (but only with respect to such withdrawn amount);
- (c) the permitted Transfer of all or any portion of such Limited Partner's Interest; or
- (d) the final distribution to such Limited Partner following the dissolution of the Partnership.

**"Capital Account"** means, with respect to each Partner, the capital account established and maintained on behalf of such Partner as described in Section 3.3.

**"Carryforward Account"** means a memorandum account to be recorded in the books and records of the Partnership with respect to each Capital Account that has an initial balance of zero and that is adjusted as follows:

- (a) As of the first day after the close of each Calculation Period for such Capital Account, the balance of the Carryforward Account is (i) increased by the amount, if any, of such the Negative Performance Change with respect to such Capital Account for such Calculation Period and (ii) reduced (but not below zero) by the amount, if any, of the Positive Performance Change with respect to such Capital Account for such Calculation Period.
- (b) As of the close of the Calculation Period, any positive balance of the Carryforward Account is further adjusted if such Capital Account has been reduced during such Calculation Period as a result of a distribution or withdrawal, by reducing such positive balance (but not below zero) by an amount determined by multiplying (i) such positive balance by (ii) a fraction, of which (A) the numerator is equal to the amount so distributed or withdrawn, and (B) the denominator is equal to the balance of such Capital Account immediately before giving effect to such distribution or withdrawal.

The Carryforward Account attributable to each Series A Capital Account shall be reset to zero on the Effective Date. For the avoidance of doubt, any gains or losses allocated by the Partnership to any Capital Account of a Limited Partner prior to the Effective Date will be inapplicable in the calculation of the Carryforward Account following the Effective Date.

**"Certificate"** means the Certificate of Limited Partnership of the Partnership referred to in Section 2.1(b).

**"Code"** means the U.S. Internal Revenue Code of 1986, as amended, and as hereafter amended, or any successor law.

“*Dispute*” has the meaning set forth in Section 8.7.

“*Effective Date*” means the date set forth above as the effective date of this Agreement.

“*Election Notice*” has the meaning set forth in Section 8.11(c).

“*FAA*” has the meaning set forth in Section 8.7(b)(ii)

“*FATCA*” means Sections 1471 through 1474 of the Code, as amended, and any Regulations thereunder or official interpretations thereof, including any successor Regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

“*FINRA*” means the Financial Industry Regulatory Authority, Inc.

“*Fiscal Year*” means each period commencing on January 1 of each year and ending on December 31 of such year, unless the General Partner elects another fiscal year; provided that any such other fiscal year is permissible for U.S. federal income tax purposes. In the case of the Fiscal Year in which the Partnership is terminated in accordance with Article VI, “*Fiscal Year*” means the portion of the calendar year ending on the date on which the Partnership is terminated.

“*GAAP*” means generally accepted accounting principles in the United States, as amended.

“*General Partner*” means Highland Multi Strategy Credit Fund GP, L.P., a Delaware limited partnership, any successor thereto, and any Person hereafter admitted as an additional general partner, in its capacity as general partner of the Partnership.

“*Indemnified Person*” has the meaning set forth in Section 4.5(a).

“*Interest*” means the entire ownership interest of a Partner in the Partnership at the relevant time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

“*Investment Company Act*” means the U.S. Investment Company Act of 1940, as amended, and the regulations promulgated thereunder.

“*Investment Management Agreement*” means the investment management agreement between the Investment Manager, the General Partner, the Offshore Fund and the Partnership.

“*Investment Manager*” means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto, or any Person thereafter appointed as an investment manager of the Partnership in accordance with the Investment Management Agreement.

“*Investments*” means investment in securities, assets and other financial or intangible investment instruments, contracts or products made as described in the Partnership’s offering memorandum.

**“Limited Partners”** means any Person who is a limited partner of the Partnership (which, except as otherwise indicated, will include a substituted Limited Partner) at the time of reference thereto, in such Person’s capacity as a limited partner of the Partnership. For all purposes of the Act, the Limited Partners of the Partnership will constitute a single class or group of limited partners.

**“Majority-in-Interest of Limited Partners”** means Limited Partners whose Partnership Percentages represent more than 50% of the aggregate Partnership Percentages of all Limited Partners.

**“Management Fee”** means, with respect to each Capital Account, an amount equal to one fourth of (i) 1.5% of each Series A Capital Account balance; (ii) 1.5% of each Series B Capital Account balance; (iii) 1.0% of each Series C Capital Account balance; and (iv) 2.0% of each Series D Capital Account balance, which amounts are calculated on the first Business Day of each calendar quarter. Management Fees shall be appropriately adjusted for contributions during any partial quarter.

**“Negative Basis”** means, with respect to any Partner and as of any time of calculation, the excess of such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest) over the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership.

**“Negative Basis Partner”** means any Partner who withdraws from the Partnership and who has a Negative Basis as of the Withdrawal Date, but such Partner shall cease to be a Negative Basis Partner at such time as it has received allocations pursuant to Section 3.11(d) equal to such Partner’s Negative Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Net Assets”** means the total value, as determined by the General Partner or its delegate(s) in accordance with Section 7.2, of all Investments and other assets of the Partnership (including net unrealized appreciation or depreciation of the assets and accrued interest and dividends receivable net of any withholding taxes), less an amount equal to all accrued debts, liabilities and obligations of the Partnership (including any reserves for contingencies accrued pursuant to Section 3.6.). Except as otherwise expressly provided herein, Net Assets as of the first day of any Accounting Period are determined on the basis of the valuation of assets conducted as of the close of the immediately preceding Accounting Period, but after giving effect to any capital contributions made by any Partner subsequent to the last day of such immediately preceding Accounting Period, and after giving effect to Management Fee charges, and Net Assets as of the last day of any Accounting Period are determined before giving effect to any of the following amounts payable by the Partnership generally or in respect of any Investment which are effective as of the date on which such determination is made:

- (a) any Performance Allocation as of the date on which such determination is made;



(b) any withdrawals or distributions payable to any Partner which are effective as of the date on which such determination is made; and

(c) withholding or other taxes, expenses of processing withdrawals and other items payable, any increases or decreases in any reserves, holdbacks or other amounts recorded pursuant to Section 3.6 and any increases or decreases in the value of any Restricted New Issues pursuant to Section 3.8(b) and other amounts specially allocated pursuant to Section 3.8 during the Accounting Period ending as of the date on which such determination is made, to the extent the General Partner determines that, pursuant to any provisions of this Agreement, such items are not to be charged ratably among the Capital Accounts of all Partners on the basis of their respective Partnership Percentages as of the commencement of the Accounting Period.

**“Net Loss”** means any amount by which the Net Assets as of the first day of an Accounting Period exceed the Net Assets as of the last day of the same Accounting Period.

**“Net Profit”** means any amount by which the Net Assets as of the last day of an Accounting Period exceed the Net Assets as of the first day of the same Accounting Period.

**“New Issue Rules”** has the meaning set forth in Section 3.8(b).

**“Nonrecourse Deductions”** has the meaning set forth in Regulations Section 1.704 -2(b)(1) and (c).

**“Non-Voting Interest”** means an Interest, the holder of which is not entitled to vote, consent or withhold consent with respect to any Partnership matter (including but not limited to mergers, sales of substantially all assets or consolidations of the Partnership), except as otherwise expressly provided in this Agreement.

**“Offshore Fund”** means Highland Multi Strategy Credit Fund, Ltd., a Cayman Islands exempted company and a Limited Partner of the Partnership.

**“Orderly Realization”** has the meaning set forth in Section 6.1.

**“Other Account”** means any assets or investments of the General Partner, or any assets managed by the General Partner or any Affiliate of the General Partner for the account of any Person or entity (including investment vehicles) other than the Partnership, which are invested or which are available for investment in securities or other instruments or for trading activities whether or not of the specific type being conducted by the Partnership.

**“Partner”** means the General Partner or any of the Limited Partners, except as otherwise expressly provided herein, and **“Partners”** means the General Partner and all of the Limited Partners.

**“Partnership”** means the limited partnership governed by this Agreement.

**“Partnership Minimum Gain”** has the meaning set forth in Regulations Section 1.704 -2(b)(2) and (d).

**“Partnership Percentage”** means a percentage established for each Capital Account on the Partnership’s books as of the first day of each Accounting Period. The Partnership Percentage of a Capital Account for an Accounting Period is determined by dividing the amount of such Capital Account as of the beginning of the Accounting Period by the sum of the Capital Accounts of all of the Partners as of the beginning of the Accounting Period. The numerator and denominator of the above shall be calculated after crediting all capital contributions to the Capital Account or Partnership, as appropriate, which are effective as of such date, net of all deductions, including Management Fees. The sum of the Partnership Percentages of all Capital Accounts for each Accounting Period shall equal 100%.

**“Performance Allocation”** means, for each Capital Account of a Limited Partner, 20% of the amount by which (a) the Positive Performance Change for such Calculation Period for such Capital Account, if any, exceeds (b) any positive balance in the Carryforward Account for such Capital Account as of the most recent prior date as of which any adjustment has been made thereto.

**“Performance Change”** means, with respect to each Capital Account of a Limited Partner for each Calculation Period, the difference between:

(a) the sum of (i) the balance of such Capital Account as of the close of the Calculation Period (after giving effect to Management Fees and all allocations to be made to such Capital Account as of such date, including such Capital Account’s allocable share of any profits or losses pursuant to Section 3.8 and any credits or debits of any applicable carrying charge associated therewith other than any Performance Allocation to be debited against such Capital Account), plus (ii) any debits to such Capital Account during the Calculation Period to reflect any actual or deemed distributions or withdrawals with respect to such Capital Account, plus (iii) any debits to such Capital Account during the Calculation Period to reflect any items allocable to such Capital Account pursuant to Section 3.5(b) or (c); and

(b) the balance of such Capital Account as of the commencement of the Calculation Period.

If the amount specified in clause (a) exceeds the amount specified in clause (b) such difference is a **“Positive Performance Change,”** and if the amount specified in clause (b) exceeds the amount specified in clause (a), such difference is a **“Negative Performance Change.”**

The Performance Change will be computed separately for each Capital Account (and thus each separately maintained capital sub-account created to reflect an additional contribution to a Capital Account). Thus, if a Limited Partner has multiple Capital Accounts, the Performance Change will be calculated separately for each Capital Account and the resulting “Positive Performance Change” and “Negative Performance Change” shall be separately allocated to each such Capital Account and shall not be netted against each other.

**“Person”** means any individual, partnership, corporation, limited liability company, trust or other entity or any government (including a governmental agency or political subdivision thereof).

**“Positive Basis”** means, with respect to any Partner and as of any time of calculation, the excess of the amount that such Partner is entitled to receive upon withdrawal from or liquidation of the Partnership over such Partner’s “adjusted tax basis” in its Interest for U.S. federal income tax purposes at such time (determined without regard to any adjustments made to such adjusted tax basis by reason of any Transfer of such Interest).

**“Positive Basis Partner”** means any Partner who withdraws from the Partnership and who has a Positive Basis as of the Withdrawal Date, but such Partner ceases to be a Positive Basis Partner at such time as it has received allocations pursuant to Section 3.11(c) equal to such Partner’s Positive Basis as of the Withdrawal Date and without regard to such Partner’s share of the liabilities of the Partnership under Section 752 of the Code.

**“Prior Agreement”** has the meaning set forth in the Preliminary Statements to this Agreement.

**“Realization Period”** has the meaning set forth in Section 6.1.

**“Recent Amendments”** means the changes to the terms of an investment in the Partnership as contemplated in this Agreement and the constituent documents related thereto, including, but not limited to, the re-designation of all Interests held by Limited Partners on the Effective Date as Series A Interests.

**“Regulations”** means the proposed, temporary and final U.S. Treasury Regulations promulgated under the Code, including any successor regulations.

**“Regulatory Allocations”** has the meaning set forth in Section 3.10(d).

**“Restricted Capital Accounts”** has the meaning set forth in Section 3.8(b).

**“Restricted Issues”** has the meaning set forth in Section 3.8(b).

**“Revocation Notice”** has the meaning set forth in Section 8.11(c).

**“RIC Limited Partner”** means a Limited Partner that is registered as an investment company under the Investment Company Act.

**“Schedule of Partners”** means a schedule to be maintained by the General Partner containing the following information with respect to each Partner: (a) name; (b) address; (c) date of admission; (d) amount and date of all capital contributions and withdrawals; and (e) the amount and date of any permitted Transfers.

**“Series”** means a designated series of Interests established in accordance with this Agreement and having such terms as the General Partner determines.

**“Series A Capital Account”** means the Capital Account attributable to a Limited Partner’s Series A Interest.

**“Series A Interests”** means a Series of Interests having the rights and obligations applicable to Series A Interests as set forth in this Agreement.

**“Series A Lock-Up”** has the meaning set forth in Section 5.5(c)(i).

**“Series A Withdrawal Date”** has the meaning set forth in Section 5.5(c)(i).

**“Series B Capital Account”** means the Capital Account attributable to a Limited Partner’s Series B Interest.

**“Series B Interests”** means a Series of Interests having the rights and obligations applicable to Series B Interests as set forth in this Agreement.

**“Series B Withdrawal Date”** has the meaning set forth in Section 5.5(c)(ii).

**“Series C Capital Account”** means the Capital Account attributable to a Limited Partner’s Series C Interest.

**“Series C Interests”** means a Series of Interests having the rights and obligations applicable to Series C Interests as set forth in this Agreement.

**“Series C Withdrawal Date”** has the meaning set forth in Section 5.5(c)(iii).

**“Series D Capital Account”** means the Capital Account attributable to a Limited Partner’s Series D Interest.

**“Series D Interests”** means a Series of Interests having the rights and obligations applicable to Series D Interests as set forth in this Agreement.

**“Series D Withdrawal Date”** has the meaning set forth in Section 5.5(c)(iv).

**“Sub-Series of Shares”** refers to sub-series of the shares of the Offshore Fund, as created from time to time, for purposes of accounting for any profits and losses attributable to each individual shareholder and of permitting the Performance Allocation to be calculated separately with respect to each shareholder to reflect different returns achieved as a result of subscriptions received from shareholders at different times.

**“Suspension”** has the meaning set forth in Section 5.5(l).

**“Super-Majority-in-Interest of Limited Partners”** means Limited Partners whose Partnership Percentages represent more than 75% of the aggregate Partnership Percentages of all Limited Partners.

**“Transfer”** means any direct, indirect or synthetic sale, exchange, transfer, assignment, pledge, encumbrance, charge, exchange, hypothecation, placing of a lien or a security interest on an Interest or any other disposition by a Partner of its Interest to or in favor of another party, whether voluntary or involuntary (including, but not limited to, being offered or listed on or through any placement agent, intermediary, online service, site, agent or similar Person).

***“Withdrawal Date”*** means, as applicable, the Series A Withdrawal Date, the Series B Withdrawal Date, the Series C Withdrawal Date, and the Series D Withdrawal Date or any other effective date of withdrawal pursuant to Section 5.5.

## **Article II ORGANIZATION**

### **2.1 Continuation of Limited Partnership**

- (a) The General Partner and the Limited Partners hereby agree to continue the Partnership as a limited partnership under and pursuant to the Act and this Agreement.
- (b) The General Partner has executed and filed with the Secretary of State of the State of Delaware a Certificate, and shall execute, acknowledge and file with the Secretary any amendments thereto as may be required by the Act, and any other instruments, documents and certificates which, in the opinion of the Partnership’s legal counsel, may from time to time be required by the laws of the United States of America, the State of Delaware or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership. The General Partner shall cause any required amendment to the Certificate to be filed promptly following the event requiring such amendment. All amendments may be signed by the General Partner (as required by the Act) and may be signed either personally or by an attorney-in-fact.
- (c) The parties hereto agree to operate the Partnership as a limited partnership pursuant to the provisions of the Act and of this Agreement and agree that the rights and liabilities of the Limited Partners and the General Partner are as provided in the Act, for limited partners and the general partner except as provided here in.
- (d) The parties hereto acknowledge and agree that the Partnership shall be classified as a “partnership” and not as an association taxable as a corporation for U.S. federal income tax purposes. No election may be made by the Partners or the Partnership to treat the Partnership as other than a “partnership” for U.S. federal, state and/or local income tax purposes and, to the extent necessary, the Partners or Partnership shall make any election to treat the Partnership as a “partnership.” The Partners shall treat the Partnership consistently with its status as a “partnership” for U.S. federal income tax purposes and agree to undertake any further action which is necessary to treat the Partnership as such, and shall not undertake any action that is inconsistent with the Partnership’s status as a “partnership” for U.S. federal , state and/or local income tax purposes.
- (e) The General Partner may change the domicile of the Partnership to another state, country or other jurisdiction where advisable due to legal, tax or other



considerations; provided that no such change of domicile would reasonably be expected to have a material adverse effect on the Limited Partners.

## **2.2 Name of Partnership**

- (a) The name of the Partnership is Highland Multi Strategy Credit Fund, L.P. or such other name as the General Partner may hereafter adopt, subject to causing an amendment to the Certificate to be filed with the Secretary of State of the State of Delaware in accordance with the Act. The General Partner shall send a notice of any change of name to the Limited Partners. All business of the Partnership shall be conducted under such name or under such other name as the General Partner deems appropriate.
- (b) The Partnership shall have the exclusive ownership and right to use the Partnership name so long as the Partnership continues, despite the withdrawal, expulsion, resignation or removal of any Limited Partner, but upon the Partnership's termination or at such time as there ceases to be a general partner, the Partnership shall assign the name and the goodwill attached thereto to the General Partner without payment by the assignee(s) of any consideration therefor.

## **2.3 Principal Office; Registered Office**

- (a) The Partnership's principal office shall be at such location as the General Partner may designate from time to time.
- (b) The Partnership's registered office in the State of Delaware is at 1209 Orange Street, County of New Castle, Wilmington, Delaware 19801, and the registered agent of the Partnership in the State of Delaware is The Corporation Trust Company, unless a different registered office or agent is designated from time to time by the General Partner.

## **2.4 Term of Partnership**

The term of the Partnership commenced on the date on which the Certificate was filed with the Secretary of State of the State of Delaware and continues until the Partnership is dissolved pursuant to Section 6.1 (unless its term is extended pursuant to Section 6.1). The legal existence of the Partnership as a separate legal entity continues until the cancellation of the Certificate.

## **2.5 Object and Powers of Partnership**

- (a) The object and business of the Partnership is (i) to purchase, sell (including short sales), invest and trade in Investments, (ii) to engage in financial transactions, including borrowing, financing, pledging, hedging and other derivative transactions relating thereto for the benefit of the Partnership, (iii) to engage in any lawful act or activity of which limited partnerships may be formed under the Act and (iv) to engage in any and all activities necessary or incidental to the foregoing.

- (b) The Partnership possesses and may exercise all such powers and privileges as the General Partner considers necessary, convenient or incidental to the conduct, promotion or attainment of the object of the Partnership.

## **2.6 Liability of Partners**

In no event shall any Limited Partner (or former Limited Partner) be obligated to make any contribution to the Partnership in addition to its agreed capital contribution (or other payments provided for herein) or have any liability for the repayment or discharge of the debts and obligations of the Partnership except to the extent provided herein or as required by the Act.

## **2.7 Actions by Partnership**

The Partnership may execute, deliver and perform all contracts, agreements and other undertakings and engage in all activities and transactions as may in the opinion of the General Partner be necessary or advisable to carry out its objects.

## **2.8 Reliance by Third Parties**

Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth.

## **2.9 UCC Status of Limited Partner Interests**

- (a) For purposes of the grant, pledge, attachment or perfection of a security interest in an Interest or otherwise, the Interests are deemed to be “securities” within the meaning of Section 8-102(a)(15) and as provided by Section 8-103(c) of the Uniform Commercial Code as in effect from time to time in the State of Delaware or analogous provisions in the Uniform Commercial Code in effect in any other jurisdiction.
- (b) Any Interest may be evidenced by a certificate of partnership interest issued by the Partnership in such form as the General Partner may approve. Every certificate representing an Interest shall bear a legend substantially in the following form:

“For the purposes of Section 8-103 of the Uniform Commercial Code of the United States of America in effect in any relevant jurisdiction, the certificates representing an interest in the Limited Partnership constitute “securities” within the meaning of Section 8-102 and Section 8-103 of the Uniform Commercial Code.”

## **2.10 Series of Interests**

- (a) The General Partner, at any time, may without notification to or consent of the other Limited Partners, create and offer different Series of Interests in the Partnership with such rights, obligations, liabilities, privileges, designations and preferences (including different investment strategies, underlying investments, degrees of leverage, Management Fees, Performance Allocations, brokerage commissions, transparency, withdrawal rights, co-investment opportunities, and other

differences) as the General Partner may determine upon the issuance of such Series; provided that such Series would not reasonably be expected to have a material adverse effect on the existing Limited Partners. The terms and rights of such Series may be set forth in a supplement to the Partnership's offering memorandum or a "side letter" or other agreement, which the General Partner may incorporate by reference.

- (b) All Interests in the Partnership held by Limited Partners (including Affiliated Investors) as of the Effective Date are hereby designated as Series A Interests.

### Article III CAPITAL

#### 3.1 Contributions to Capital

- (a) The minimum required initial capital contribution of each Limited Partner is the amount determined by the General Partner. The General Partner may change the required minimum initial contribution amount at any time with respect to any, all or less than all Limited Partners.
- (b) The Partnership may accept additional contributions at such times as the General Partner may permit, but no Limited Partner shall be obligated to make any additional capital contribution to the Partnership, subject to the provisions of Section 3.5(b) and any contrary provision of the Act. The minimum required additional capital contribution of any existing Limited Partner to the Partnership shall be the amount the General Partner may determine. The General Partner may change the required minimum additional contribution amount at any time with respect to any, all or less than all Limited Partners.
- (c) The General Partner or an Affiliate has made a capital contribution to the Partnership as set forth in the Schedule of Partners. Except as required by the Act, the General Partner is not required to make any additional capital contributions to the Partnership. The General Partner may, however, make capital contributions to the Partnership in such amounts and at such times as it may determine. The General Partner or any of its Affiliates have the right at any time to make additional capital contributions as a Limited Partner or General Partner. If the General Partner or any of its Affiliates (including their associated Persons, such as officers, directors, partners, members or employees or any of their family members) makes a capital contribution as a Limited Partner, the General Partner or the Investment Manager shall have authority to waive the Management Fee and/or Performance Allocation with respect to such Limited Partner.
- (d) Except as otherwise permitted by the General Partner (i) initial or additional capital contributions by each Partner shall be paid in one installment with cash and/or Investments having an aggregate value as set forth in the Partnership's books and records, and (ii) initial contributions are due as of the date of admission of such Person as a Limited Partner of the Partnership. Whether Investments may be

accepted as a contribution to the capital of the Partnership is determined by the General Partner.

### **3.2 Rights of Partners in Capital**

- (a) No Partner shall be entitled to interest on its capital contributions to the Partnership. For the avoidance of doubt, interest income, if any, earned on subscription amounts remitted to the Partnership prior to the date that an Interest is issued to a Partner shall be payable to the Partnership and not applied toward the purchase of an Interest.
- (b) No Partner shall have the right to the return of any capital contribution to the Partnership except (i) upon withdrawal of such Partner pursuant to Section 5.5 or (ii) upon the dissolution of the Partnership pursuant to Section 6.1. The entitlement to any such return is limited to the value of the Capital Account(s) of the Partner. The General Partner shall not be liable for the return of any such amounts.

### **3.3 Capital Accounts**

- (a) The Partnership shall maintain a separate Capital Account for each Partner. In the event a Limited Partner invests in more than one Series of Interests, the Partnership will maintain a separate Capital Account with respect to each Series of Interests held by such Limited Partner, with each such Capital Account being treated as if it were the Capital Account of a separate Partner for purposes of computing the Performance Allocation, the Management Fee and the withdrawal rights attributable to the Series.
- (b) The General Partner may, in its discretion, maintain a separate sub-account for such purposes as the General Partner may determine appropriate, including for recordkeeping, accounting or reporting or to otherwise give effect to the provisions of this Agreement. Each Capital Account shall reflect the aggregate sum of the balances in such Partner's Capital Account.
- (c) If a Partner makes an additional capital contribution to an existing Capital Account, the Capital Account will be sub-divided into separate capital sub-accounts attributable to each separate capital contribution, with each capital sub-account treated as if it were the Capital Account of a separate Partner for purposes of determining the Management Fee, the Performance Allocation and withdrawal rights and restrictions applicable to each capital sub-account. References herein to a Partner's "Capital Account" include any such separately maintained capital sub-accounts.
- (d) The Partnership will issue to the Offshore Fund an Interest and maintain capital sub-accounts that correspond to each Sub-Series of Shares and each capital sub-account is treated separately for determining Management Fees, the Performance Allocations and withdrawal rights.

- (e) Each Capital Account has an initial balance equal to the amount of any cash and the net value of any property constituting the relevant Partner's initial capital contribution to such Capital Account.
- (f) Each Capital Account shall be increased by such Capital Account's allocable share of the Net Profits allocated by the Partnership to such Capital Account pursuant to Section 3.4.
- (g) Each Capital Account shall be reduced by (i) the amount of any cash and the net value of any property withdrawn by or distributed to the relevant Partner pursuant to Sections 5.5 or 6.3, including any amount deducted from any such withdrawal or distribution pursuant to Section 5.5(h), (ii) such Capital Account's allocable share of the Net Losses allocated by the Partnership to such Capital Account pursuant to Section 3.4, (iii) such Capital Account's *pro rata* portion of the expenses allocable (or specially allocable) by the Partnership pursuant to Section 3.5, (iv) such Capital Account's allocable share of the Performance Allocation allocable pursuant to Section 3.7, and (v) such Capital Account's *pro rata* portion of the expenses payable by the Partnership pursuant to Section 4.2(b).
- (h) The Capital Account of the Investment Manager, as a special Limited Partner of the Partnership, shall be increased by the amount of the Performance Allocation allocated to such Capital Account and the investment gains therein.
- (i) Each Capital Account shall also be adjusted to reflect all other allocations and other changes in the value of such Capital Account not otherwise described in this Section 3.3 in the manner specified in the remaining provisions of this Article III.

### **3.4 Allocations of Net Profit and Net Loss**

Subject to Sections 3.5 through 3.10, as of the last day of each Accounting Period, any Net Profit or Net Loss of such Accounting Period shall be separately allocated among and credited to or debited against the Capital Accounts of the Partners in proportion to their respective Partnership Percentages for such Accounting Period.

### **3.5 Allocation of Management Fees, Withholding Taxes and Certain Other Expenditures**

- (a) As of the first Business Day of each calendar quarter, each Capital Account's Management Fee for such calendar quarter shall be debited against such Capital Account and paid by the Partnership to the Investment Manager. Capital contributions accepted after the commencement of the calendar quarter shall be subject to a prorated Management Fee reflecting the time remaining during that quarter. The Investment Manager may reduce or eliminate the Management Fee with respect to any Partner (or Capital Account) in its sole discretion; provided that such reduction or elimination shall not increase the Management Fee payable by any other Partner (or Capital Account).
- (b) To the extent the General Partner or the Partnership is required by law (including under circumstances where the General Partner or the Partnership is unable to rely



conclusively on any withholding certification provided by a Partner) to withhold or to make tax payments on behalf of or with respect to any Partner or Partners (including backup withholding or withholding under FATCA), the General Partner or the Partnership may withhold such amounts and make such tax payments as so required. If the Partnership pays or incurs any withholding tax or other tax obligation (including under FATCA) with respect to the income allocable or distributable to one or more Partners, then the amount of such withholding tax or tax obligation shall be treated as a distribution to such Partner or Partners, as applicable, pursuant to the terms of this Agreement. Such amount shall be debited against the Capital Account(s) of such Partner or Partners as of the close of the Accounting Period during which the Partnership so withholds, pays or incurs such obligation. If the amount so withheld, paid or incurred is greater than the balance of the Capital Account(s) of the relevant Partner or Partners, as applicable, then such Partner or Partners and any successors shall make a contribution to the capital of the Partnership, within 10 days following request by the General Partner, the amount of such excess. The General Partner is not obligated to apply for or obtain a reduction of or exemption from withholding tax on behalf of any Partner that may be eligible for such reduction or exemption, or be otherwise obligated to structure Investments so as to reduce or avoid any such withholding tax.

- (c) Except as otherwise provided for in this Agreement, any expenditures payable by the Partnership, to the extent determined by the General Partner to have been paid or withheld on behalf of, or by reason of particular circumstances applicable to, one or more but fewer than all of the Partners, shall be specially allocated only to the Capital Accounts of those Partners on whose behalf such payments are made or whose particular circumstances gave rise to such payments. Such allocations shall be debited from the relevant Capital Accounts of such Partners as of the close of the Accounting Period during which any such items were accrued by the Partnership.

### **3.6 Reserves; Adjustments for Certain Future Events**

- (a) The General Partner may cause appropriate reserves to be created, accrued and charged against Net Assets and proportionately against the Capital Accounts for contingent liabilities or probable losses, such reserves to be in the amounts which the General Partner deems necessary or appropriate. The General Partner may increase or reduce any such reserve from time to time by such amounts as the General Partner deems necessary or appropriate. The amount of any such reserve, or any increase or decrease therein, may, at the election of the General Partner, be debited or credited, as the General Partner deems appropriate, to the Capital Accounts of current Partners that (i) are Partners at the time when such reserve is created, increased, or decreased, as the case may be, or (ii) were Partners, or are transferees from Persons who were Partners, at the time of the act or omission giving rise to the contingent liability for which the reserve has been established by the General Partner.

- (b) If the General Partner determines that it is equitable to treat an amount to be paid or received as being applicable to one or more prior periods, then all or a portion of such amount may be proportionately debited or credited, as appropriate, in proportion to the Capital Account balances of the current Partners as such balances existed during any such prior period.

### 3.7 Performance Allocation

- (a) The Performance Allocation shall be debited against each Capital Account of each Limited Partner as of the last day of each Calculation Period with respect to such Capital Account, and the amount so debited shall simultaneously be credited to the Capital Account of the Investment Manager, as a special Limited Partner of the Partnership.
- (b) The Investment Manager may waive or alter the Performance Allocation with respect to any Limited Partner.

### 3.8 Limited Participation Investments and New Issues

- (a) If the General Partner determines that for legal, tax, regulatory or bona fide other reasons as to which the General Partner and any Partner may agree such Partner should not participate (or should receive a reduced participation) in the Net Profit or Net Loss with respect to any Investment, the General Partner may allocate Net Profit or Net Loss, if any, with respect to such Investment only to Partners to whom the restrictions on participating in that Investment do not apply. In order to allocate Net Profit or Net Loss accordingly, the General Partner may establish and maintain a memorandum account in the accounting records of the Partnership on a Partner-by-Partner basis with respect to each such Investment. The Net Profit and Net Loss and expenses relating to such Investment will be separately calculated and allocated based on each participating Partner's balance in such memorandum account for such Investment divided by the sum of the balances of all memorandum accounts for all participating Partners. In order to compensate a Limited Partner who is not participating in an Investment pursuant to this Section 3.8 for the use of such Partner's share of Partnership capital to purchase the Investment, the General Partner may credit the non-participating Partner's Capital Account (and correspondingly debit the Capital Account of the participating Partners with a carrying charge). Any distributions from the memorandum account will be based on the participating Partner's respective percentage interest in such Investment.
- (b) Pursuant to certain rules of FINRA ("*New Issue Rules*"), members of FINRA are permitted to sell to the Partnership certain publicly-offered securities ("*Restricted Issues*") only if the Capital Accounts of Partners connected with the securities industry or executive officers or directors of investment banking clients of underwriters ("*Restricted Capital Accounts*") are not restricted from sharing a beneficial interest in such Restricted Issues in accordance with the provisions of the New Issue Rules. Notwithstanding the provisions of Section 3.4, if the Partnership chooses to invest in Restricted Issues, the Partnership shall not allocate any items

of income, gain, loss, deduction and credit that relate to investments in Restricted Issues to Restricted Capital Accounts except to the extent permitted by the New Issue Rules, and shall instead allocate such items among the other Capital Accounts on a *pro rata* basis. To the extent the New Issue Rules permit certain Persons with Restricted Capital Accounts to participate in profits and losses from Restricted Issues, the General Partner shall allocate such profits and losses from Restricted Issues among such Restricted Capital Accounts on a *pro rata* basis or on such other basis that the General Partner reasonably determines ensures compliance with the New Issue Rules. To the extent consistent with the New Issue Rules, the General Partner shall determine when all Capital Accounts may participate in the Net Profit and Net Loss from any Restricted Issue. The General Partner shall value any Restricted Issue at such time at the then-current price of the security in the secondary market.

### 3.9 Allocation to Avoid Capital Account Deficits

To the extent that any debits pursuant to this Article III would reduce the balance of the Capital Account of any Limited Partner below zero, that portion of any such debits shall instead be allocated to the Capital Account of the General Partner. Any credits in any subsequent Accounting Period which would otherwise be allocable pursuant to this Article III to a Capital Account of any Limited Partner previously affected by the application of this Section 3.9 shall instead be allocated to the Capital Account of the General Partner in such amounts as are necessary to offset all previous debits attributable to such Limited Partner pursuant to this Section 3.9 not previously recovered.

### 3.10 Regulatory Allocations

Notwithstanding anything to the contrary in this Agreement:

- (a) Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704 - 1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Partnership income and gain shall be specially allocated to each such Limited Partner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the deficit balance in the Capital Account of such Limited Partner as quickly as possible; provided that an allocation pursuant to this Section 3.10(a) may be made only if and to the extent that such Limited Partner would have a deficit balance in its Capital Account after all other allocations provided for in this Article III have been tentatively made as if this Section 3.10(a) were not in this Agreement. This Section 3.10(a) is intended to constitute a “qualified income offset” within the meaning of Section 1.704 -1(b)(2)(ii) of the Regulations and is to be interpreted consistently therewith.
- (b) Minimum Gain Chargeback. Notwithstanding any other provision of this Section 3.10, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, the Partners shall be specially allocated items of Partnership income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an

amount equal to the portion of any such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Sections 1.704-2(f) and (g). This Section 3.10(b) is intended to comply with the minimum gain chargeback requirement in such Sections of the Regulations and shall be interpreted consistently therewith.

- (c) Gross Income Allocation. In the event any Limited Partner has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (i) the amount such Limited Partner is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Limited Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 3.10(c) may be made only if and to the extent that such Limited Partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article III have been made as if Section 3.10(a) and this Section 3.10(c) were not in this Agreement.
- (d) Curative Allocations. The allocations set forth in this Section 3.10 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this Section 3.10. Therefore, notwithstanding any other provision of this Article III (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of the Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of this Partnership Agreement and all Partnership items were allocated pursuant to other provisions of this Article III (other than the Regulatory Allocations).
- (e) Nonrecourse Deductions. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Partners in accordance with their Partnership Percentages.
- (f) Section 704(b) Compliance. The allocations provided in this Section 3.10 are intended to comply with the Regulations under Section 704(b) of the Code and may, as determined by the General Partner, be interpreted and applied in a manner consistent therewith.

### 3.11 Allocations for Income Tax Purposes

- (a) Income Tax Allocations. Except as otherwise required by Code Section 704(c), items of income, gain, deduction, loss, or credit that are recognized for U.S. federal



income tax purposes in each Fiscal Year shall be allocated among the Partners in such manner as to reflect equitably amounts credited to or debited against each Partner's Capital Account, whether in such Fiscal Year or in prior Fiscal Years. To this end, the Partnership shall establish and maintain records which shall show the extent to which the Capital Account of each Partner comprises amounts that have not been reflected in the taxable income of such Partner as of the last day of each Fiscal Year. To the extent deemed by the General Partner to be feasible and equitable, taxable income and gains in each Fiscal Year shall be allocated among the Partners who have enjoyed the related credits to their Capital Accounts, and items of deduction, loss and credit in each Fiscal Year shall be allocated among the Partners who have borne the burden of the related debits to their Capital Accounts. Foreign tax credits attributable to taxes incurred by the Partnership shall be allocated in a manner consistent with Section 1.704-1(b)(4)(viii) of the Regulations. All matters concerning allocations for U.S. federal, state and/or local income tax purposes, including accounting procedures, not expressly provided for in this Agreement shall be determined by the General Partner.

- (b) Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required under Section 1.704-1(b)(2)(iv)(m) of the Regulations to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations; provided that in the event that an adjustment to the book value of Partnership property is made as a result of an adjustment pursuant to Section 734(b) of the Code, items of income, gain, loss, or deduction, as computed for book and tax purposes, shall be specially allocated among the Partners so that the effect of any such adjustment shall benefit (or be borne by) the Partner(s) receiving the distribution that caused such adjustment.
- (c) Positive Basis Allocations. If the Partnership recognized gains or items of gross income (including short-term capital gain) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Positive Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such gains or items of gross income among such Positive Basis Partners, *pro rata* in proportion to the respective Positive Basis of each such Positive Basis Partner, until either the full amount of such gains or items of gross income shall have been so allocated or the Positive Basis of each such Positive Basis Partner shall have been eliminated; and (ii) to allocate any gains or items of gross income not so allocated to Positive Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes gains or items of gross income from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the



liquidating share of any Positive Basis Partner, that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Positive Basis Partner effected a partial, and not a complete, withdrawal of its Interest), then such Positive Basis Partner may be allocated an amount of such gains or items of gross income equal to the amount, if any, by which its or its Positive Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(c).

- (d) Negative Basis Allocations. If the Partnership recognizes net losses or items of gross loss or deduction (including short-term capital loss) from the sale of Partnership assets for U.S. federal income tax purposes for any Fiscal Year in which one or more Negative Basis Partners withdraws from the Partnership pursuant to Section 5.5, the General Partner may elect: (i) to allocate such net losses or items of gross loss or deduction among such Negative Basis Partners, *pro rata* in proportion to the respective Negative Basis of each such Negative Basis Partner, until either the full amount of such losses or items of loss or deduction shall have been so allocated or the Negative Basis of each such Negative Basis Partner has been eliminated; and (ii) to allocate any net losses or items of gross loss or deduction not so allocated to Negative Basis Partners to the other Partners in such manner that reflects equitably the amounts credited to such Partners' Capital Accounts pursuant to Section 3.3; provided, however, that if, following such Fiscal Year, the Partnership recognizes net losses or items of gross loss and deduction from a sale of an Investment the proceeds of which are designated on the Partnership's books and records as being used to effect payment of all or part of the liquidating share of any Negative Basis Partner that continues to be a Partner in the Partnership following such withdrawal (*i.e.*, such Negative Basis Partner effected a partial, and not a complete, withdrawal of its Interest), there may be allocated to such Negative Basis Partner an amount of such net losses or items of gross loss or deduction equal to the amount, if any, by which its or its Negative Basis as of the Withdrawal Date exceeds the amount allocated to such Partner pursuant to clause (i) of this Section 3.11(d).

### 3.12 Individual Partner's Tax Treatment

Each Partner agrees not to treat, on any U.S. federal, state, local and/or non -U.S. income tax return or in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner inconsistent with the treatment of such item by the Partnership or which would result in inconsistent treatment, and each Partner further agrees to treat, on any U.S. federal, state, local and/or non-U.S. income tax return in any claim for a refund, any item of income, gain, loss, deduction or credit in a manner consistent with the treatment of such item by the Partnership.

### 3.13 Distributions

- (a) The Partnership shall make distributions in respect of withdrawals in accordance with Section 5.5 and liquidation in accordance with Section 6.3. In addition, the General Partner may make other distributions at the times and in the amounts the

General Partner determines. Any distributions may be paid in cash, in kind or partly in cash and partly in kind.

- (b) Notwithstanding any provision to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, may not make a distribution to any Partner on any account of its Interest if such distribution would violate Section 17-607 of the Act or other applicable law.

#### **Article IV MANAGEMENT**

##### **4.1 Duties and Powers of the General Partner**

- (a) Subject to the terms and conditions of this Agreement, the General Partner has complete and exclusive power and responsibility, to the fullest extent permitted by the Act, for (i) all investment and investment management decisions to be undertaken on behalf of the Partnership and (ii) managing and administering the affairs of the Partnership, and shall have the power and authority to do all things that the General Partner considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Partnership, whether or not such action or authority is expressly provided for in this Agreement. Without limiting the foregoing generality, the General Partner's powers include the power to borrow, obtain leverage or otherwise incur indebtedness with respect to the Partnership's capital.
- (b) Without limiting the generality of the General Partner's duties and powers hereunder and notwithstanding anything to the contrary contained herein, the General Partner has full power and authority, subject to the other terms and provisions of this Agreement, to execute, deliver and perform such contracts, agreements and other undertakings on behalf of the Partnership, without the consent or approval of any other Person, and to engage in all activities and transactions, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business contemplated by this Section 4.1.
- (c) The General Partner may delegate to any other Person, including the Investment Manager, any power and authority vested in the General Partner pursuant to this Agreement.
- (d) The General Partner is the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The General Partner has the exclusive authority in its determination to make any elections required or permitted to be made by the Partnership under any provisions of the Code or any other revenue laws. The General Partner shall be entitled to be reimbursed by the Partnership for all costs and expenses incurred by it in connection with any administrative or judicial proceeding affecting tax matters of the Partnership and/or the Partners in their capacity as such and to be indemnified by the Partnership (solely out of Partnership assets) with respect to any

action brought against it in connection with any judgment in or settlement of any such proceeding.

- (e) Every power vested in the General Partner pursuant to this Agreement and any decision or determination that it is permitted to make is to be construed as a power to act (or not to act) in its sole and absolute discretion, except as otherwise expressly provided herein, and the General Partner shall be entitled to consider in making such decisions or determinations only such interests and factors as it desires, including its own interests. No provision of this Agreement is to be construed to require the General Partner to violate the Act, the Advisers Act, or any other law, regulation or rule of any self-regulatory organization. Notwithstanding any other provision of this Agreement, whenever in this Agreement, the General Partner is permitted or required to make a decision in its “good faith” or under another expressed standard, the General Partner must act under such express standard and will not be subject to any other or different standards.
- (f) Each Limited Partner shall deliver to the General Partner, upon a reasonable request, (i) an affidavit or certificate in form satisfactory to the General Partner that is sufficient to establish that the applicable Partner (and its partners, members, and/or beneficial owners, as the case may be) is not subject to withholding under the provisions of any U.S. federal, state, local, non-U.S. or other tax laws, or with respect to such Partner’s tax status under such laws, and (ii) any information or documentation prescribed under FATCA or as may be necessary, as reasonably determined by the General Partner, for the Partnership to comply with its obligations under FATCA (including, but not limited to, information with respect to citizenship, residency, ownership or control of such Partner). Each Limited Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership, or any existing or former Investment.

#### 4.2 Expenses

- (a) Except as otherwise provided herein, and in consideration of the Management Fee, the General Partner and the Investment Manager shall each pay all of its own operating and overhead costs, without reimbursement by the Partnership.
- (b) The Partnership shall pay, or reimburse the General Partner and the Investment Manager for, all other reasonable costs, fees and expenses arising in connection with the Partnership’s operations. Such expenses payable by the Partnership include the following:
  - (i) all costs, fees and expenses directly related to Investments or prospective Investments (whether or not consummated) of the Partnership, including research and due diligence costs related to an Investment; brokerage commissions and other execution and transaction costs, interest on, and commitment fees and expenses arising out of, debit balances or borrowing; exchange, clearing and settlement charges; fees and expenses of any third-party providers of “back office” and “middle office” services relating to

trade settlement; travel expenses; appraisal fees; investment banking fees and expenses; borrowing charges on Investments sold short; custody fees; and fees of consultants and finders relating to Investments or prospective Investments of the Partnership; the costs, fees and expenses of any appraisers, accountants or other experts engaged by the General Partner or the Investment Manager as well as other expenses directly related to the Partnership's Investments;

- (ii) any withholding, transfer or other taxes imposed on the Partnership;
- (iii) the reasonable, out-of-pocket fees, costs and expenses (including legal fees and expenses) incurred to comply with any applicable law, rule or regulation (including regulatory filings or other expenses of the Partnership and the pro rata portion of any regulatory and other expenses of the General Partner or the Investment Manager, which benefit or are attributable to the Partnership);
- (iv) the reasonable, out-of-pocket costs, fees and expenses for financial and tax accounting, bookkeeping and reporting services, and administrative services performed by any Person on behalf of the Partnership (e.g., the administrator of the Partnership), including the cost of any audit of the Partnership's financial statements and the preparation of its tax returns (including with respect to FATCA compliance);
- (v) Management Fees;
- (vi) the reasonable, out-of-pocket costs, fees and expenses of legal counsel and any other litigation or investigation involving Partnership activities;
- (vii) specific expenses incurred in obtaining, maintaining or performing systems, research and other information, including information service subscriptions, utilized with respect to the Partnership's Investments including without limitation for portfolio management, valuations and accounting purposes, including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware, software, phone and internet charges;
- (viii) the reasonable, out-of-pocket costs, fees and expenses associated with the Recent Amendments, including legal and accounting fees, printing costs, reporting and providing information to existing and prospective Partners, obtaining requisite consent from Limited Partners, travel fees and expenses related to the Partnership's offering, filing fees (including any "blue sky" filing fees) and other out-of-pocket expenses and compliance with any applicable federal and state laws;
- (ix) the costs and expenses associated with meetings of Partners;

- (x) the expenses of the Advisory Committee and the members thereof, including any indemnification expenses;
  - (xi) the costs associated with maintaining “directors and officers” or similar liability insurance for the benefit of the Partnership, the General Partner, the Investment Manager, or any other Indemnified Person; and
  - (xii) any costs or expenses of winding up and liquidating the Partnership and
  - (xiii) all costs, fees and expenses associated with the ongoing offering of Limited Partner Interests.
- (c) Expenses with respect to Section 4.2(b)(viii) above will be amortized by the Partnership over a period of 36 months from the Effective Date; however, the General Partner may limit the amount of expenses amortized so that the Partnership’s audited financial statements do not contain qualification.
- (d) Except as otherwise provided elsewhere in this Agreement, including Sections 3.4, 3.5, 3.6, 3.8 and 5.5(i), expenses are generally borne *pro rata* by the Partners in accordance with their respective Partnership Percentages.
- (e) If the General Partner or the Investment Manager, as appropriate, incurs any Partnership expenses for the account or for the benefit of, or in connection with its activities or those of its Affiliates on behalf of, both the Partnership and any Other Account, the General Partner or the Investment Manager, as appropriate, shall allocate such expense among the Partnership and each such Other Account in proportion to the size of the Investment made by each in the activity or entity to which the expense relates, or in such other manner as the General Partner considers fair and reasonable.
- (f) The General Partner and the Investment Manager may, to the extent disclosed in the Partnership’s offering memorandum or otherwise disclosed to the Limited Partners, use “soft dollars” generated by the Partnership. Use of “soft dollars” by the General Partner or the Investment Manager as disclosed herein shall not constitute a breach by either the General Partner or the Investment Manager of any fiduciary or other duty which the General Partner or the Investment Manager may be deemed to owe to the Partnership or its Partners.

#### **4.3 Rights of Limited Partners**

The Limited Partners may not take any part in the management, control or operation of the Partnership’s business, and have no right or authority to act for the Partnership or to vote on matters other than the matters set forth in this Agreement or as required by applicable law.

#### **4.4 Other Activities of Partners**

- (a) The General Partner is not required to devote any specific amount of its time to the affairs of the Partnership, but shall devote such of its time to the business and affairs



of the Partnership as it may determine to be necessary to conduct the affairs of the Partnership for the benefit of the Partnership and the Partners.

- (b) Each Partner acknowledges and agrees that the General Partner, its Affiliates and their respective partners, managers, directors, officers, shareholders, members or employees may engage in or possess an interest in other business ventures or commercial dealings of every kind and description, independently or with others, including, but not limited to, management of other accounts, investment in, or financing, acquisition and disposition of, Investments, investment and management counseling, brokerage services, serving as directors, officers, advisers or agents of other issuers, partners of any partnership, or trustee of any trust, or entering into any other commercial arrangements, whether or not any such activities may conflict with any interest of the parties with respect to the Partnership. Without in any way limiting the foregoing, each Partner hereby acknowledges that none of the General Partner, its Affiliates or their respective partners, managers, directors, officers, shareholders, members or employees shall have any obligation or responsibility to disclose or refer any of the investment or other opportunities obtained through activities contemplated by this Section 4.4(b) to the Partnership, but may refer the same to any other party or keep such opportunities for their own benefit.
- (c) The General Partner and its Affiliates shall act in a manner that each considers fair, reasonable and equitable on an overall basis in allocating investment opportunities to the Partnership and any Other Account. The General Partner and its Affiliates shall allocate investment opportunities as set forth in their policies and procedures, as may be amended from time to time, and as communicated to Limited Partners through the Partnership's private offering memorandum for Interests or otherwise.
- (d) Each of the Partners hereby waives and covenants not to sue on the basis of any law (statutory, common law or otherwise) respecting the rights and obligations of the Partners *inter se* which is or may be inconsistent with this Section 4.4.

#### 4.5 Exculpation; Indemnification

- (a) The General Partner, the Investment Manager, any of their Affiliates, each direct or indirect member, manager, partner, director, officer, shareholder and employee of any of the foregoing and, with the approval of the General Partner, any agent of any of the foregoing (including their respective executors, heirs, assigns, successors or other legal representatives) (each an "***Indemnified Person***") shall not be liable to the Partnership or to any of the Limited Partners for any loss or damage occasioned by any acts or omissions in the performance of services under this Agreement or the Investment Management Agreement, or otherwise in connection with the Partnership, its Investments or operations, unless such loss or damage has occurred by reason of the willful misconduct, fraud or gross negligence of such Indemnified Person or as otherwise required by law; provided that nothing in this Agreement is to be construed as waiving any legal rights or remedies which the Partnership may have under state or federal securities laws.

- (b) The Partnership (but not the Partners individually) shall indemnify each Indemnified Person to the fullest extent permitted by law against any cost, expense (including reasonable attorneys' fees), judgment or liability incurred by or imposed upon it in connection with any action, suit or proceeding (including any proceeding before any judicial, administrative or legislative body or agency) to which it may be made a party or otherwise be involved or with which it shall be threatened by reason of being or having been General Partner, having been the Investment Manager pursuant to the Investment Management Agreement or its having provided services to the Partnership; provided that the Indemnified Person is not so indemnified to the extent such cost, expense, judgment or liability has been finally determined (i) in a non-appealable decision on the merits in any such action, suit or proceeding, or (ii) on a plea of *nolo contendere*, to have been incurred or suffered by the Indemnified Person solely by reason of willful misconduct, fraud or gross negligence by the Indemnified Person.
- (i) The right to indemnification granted by this Section 4.5 shall be in addition to any rights to which the Indemnified Person may otherwise be entitled and shall inure to the benefit of the successors or assigns of such Indemnified Person. The Partnership shall pay the expenses incurred by the Indemnified Person in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by the Indemnified Person to repay such payment if there is an adjudication or determination that it is not entitled to indemnification as provided herein; provided that no such advance shall be made in connection with any action brought by a Majority-in-Interest of the Limited Partners.
- (ii) In any suit in the name of the Partnership to recover expenses advanced pursuant to the terms of an undertaking, the Partnership shall be entitled to recover such expenses upon a final adjudication that the Indemnified Person or other Person claiming a right to indemnification hereunder has not met the applicable standard of conduct set forth in Section 4.5(a). In any such suit brought to enforce a right to indemnification or to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnified Person or other Person claiming a right to indemnification shall not be entitled to be indemnified, or to an advancement of expenses, hereunder shall be on the Partnership (or any Limited Partner acting derivatively or otherwise on behalf of the Partnership or the Limited Partners) unless otherwise required by applicable law.
- (iii) Each Indemnified Person may not satisfy any right of indemnity or reimbursement granted in this Section 4.5 or to which it may be otherwise entitled except out of the assets of the Partnership, and no Partner shall be personally liable with respect to any such claim for indemnity or reimbursement. The General Partner may obtain appropriate insurance on behalf, and at the expense, of the Partnership to secure the Partnership's obligations hereunder.

- (iv) Nothing in this Agreement is to be construed as to provide for the indemnification of an Indemnified Person for any liability (including liability under U.S. federal securities laws) to the extent that such indemnification would be in violation of applicable law but is to be construed so as to effectuate this Section 4.5 to the fullest extent permitted by law.
- (v) Each Indemnified Person shall be deemed a third-party beneficiary (to the extent not a direct party hereto) of this Agreement and, in particular, the provisions of this Section 4.5. The General Partner and/or the Investment Manager may enter into agreements on behalf of the Partnership with an Indemnified Person to provide an indemnity to the same extent provided in this Section 4.5.

#### 4.6 Advisory Committee

- (a) The General Partner and/or the Investment Manager may appoint a committee (the “*Advisory Committee*”) composed of one or more individuals selected from time to time by the General Partner. No member of the Advisory Committee may be an Affiliate of the General Partner and/or the Investment Manager (except as a Limited Partner or as an investor in an Affiliate of the Partnership).
- (b) If established, the Advisory Committee will meet with the General Partner and/or the Investment Manager from time to time as requested by and deemed appropriate by the General Partner and/or the Investment Manager to consult with and advise the General Partner and/or the Investment Manager on any matter deemed appropriate by the General Partner and/or the Investment Manager, including any circumstances involving conflicts of interest between the General Partner and/or the Investment Manager (and their Affiliates), on the one hand, and the Limited Partners and the Partnership, on the other.
- (c) The General Partner and/or the Investment Manager may in its discretion seek the approval of the Advisory Committee or establish any other reasonable mechanism in connection with (i) approvals that are or would be required under the Investment Advisers Act (including Section 206(3)) or (ii) any other matter deemed appropriate by the General Partner and/or the Investment Manager. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, the approval of a majority of the members of the Advisory Committee at such time is binding upon the Partnership and each Partner with respect to any approval sought under this Section 4.6(c).
- (d) As determined by the General Partner and/or the Investment Manager, meetings of the Advisory Committee may be held in person or by telephone. Approval of the Advisory Committee is deemed to have been given if given by a majority of those members present at a meeting or by a majority of all members of the Advisory Committee if given pursuant to a written consent without a meeting.

- (e) The Partnership agrees to reimburse members of the Advisory Committee for their out-of-pocket expenses relating to their services as Advisory Committee members and to indemnify each Advisory Committee member to the maximum extent permitted by law
- (f) In the event an Advisory Committee is not appointed, the General Partner and/or the Investment Manager may obtain the approval of an unaffiliated third party, as is determined advisable by the General Partner and/or the Investment Manager, and any such approval by such third party shall, to the extent permitted under applicable law, serve as the approval of the Advisory Committee and shall be binding on the Partnership and the Limited Partners.

#### 4.7 Alternative Investment Vehicles

The General Partner shall have the right in connection with any Investment to direct the capital contributions of some or all of the Partners to be made through one or more alternative investment vehicles (“*Alternative Investment Vehicles*”) and to exchange a portion of the Interests of one or more Limited Partners for similar equity interests in one or more Alternative Investment Vehicles if, in the judgment of the General Partner, the use of such vehicle or vehicles would allow the Partnership to overcome legal or regulatory constraints or invest in a more tax efficient manner and/or would facilitate participation in certain types of Investments; provided that the General Partner shall not employ the use of an Alternative Investment Vehicle in any manner that would reasonably be expected to have a material adverse effect on the participating Limited Partners. Any Alternative Investment Vehicle shall contain terms and conditions substantially similar to those of the Partnership and shall be managed by the General Partner or an Affiliate thereof, and such controlling Person is required to comply with the provisions of this Agreement applicable to Alternative Investment Vehicles. Expenses related to an Alternative Investment Vehicle on behalf of less than all of the Partners shall not be borne by the Partners that do not participate in such Alternative Investment Vehicle.

### Article V ADMISSIONS, TRANSFERS AND WITHDRAWALS

#### 5.1 Admission of Limited Partners

The General Partner may, at such times as the General Partner may determine, without advance notice to or consent from the Limited Partners, admit to the Partnership any Person who executes this Agreement or any other writing evidencing the intent of such Person to become a Limited Partner. Such admission shall be effective when the General Partner enters the name of such Person on the books and records of the Partnership as a Partner and does not require the consent or approval of any other Partner. The General Partner has the authority to reject subscriptions for Interests in whole or in part.

#### 5.2 Admission of Additional General Partners

- (a) Except as provided in Section 5.2(b), the General Partner may admit one or more Persons as additional general partners to the Partnership. No additional general

partner shall be added unless such additional general partner agrees to be bound by all of the terms of this Agreement.

- (b) Any Person to whom the General Partner has transferred its general partner interest in accordance with Section 5.4 shall be admitted to the Partnership as a substitute General Partner without the consent of the Limited Partners unless otherwise provided for in Section 5.4.

### **5.3 Transfer of Interests of Limited Partners**

- (a) No Transfer of any Limited Partner's Interest, whether voluntary or involuntary, shall be valid or effective, and no transferee may become a substituted Limited Partner, unless the prior written consent of the General Partner has been obtained, which consent may be granted, withheld or conditioned for any reason by the General Partner. Any attempted Transfer not made in accordance with this Section 5.3, to the fullest extent permitted by law, shall be void *ab initio*.
- (b) Prior to recognizing any Transfer in accordance with this Section 5.3, the General Partner may require the transferring Limited Partner to execute and acknowledge an instrument of Transfer in form and substance satisfactory to the General Partner, and may require the transferee to make certain representations and warranties to the Partnership and Partners and to accept, adopt and approve in writing all of the terms and provisions of this Agreement.
- (c) In the event of a Transfer of a Partner's Interest or in the event of a distribution of assets of the Partnership to any Partner, the Partnership may, but shall not be required to, file an election under Section 754 of the Code and in accordance with the applicable Regulations, to cause the basis of the Partnership's assets to be adjusted for U.S. federal income tax purposes as provided by Section 734 or 743 of the Code.
- (d) In the event of a Transfer at any time other than the end of a Fiscal Year, items of income, gain, loss, deduction or credit recognized by the Partnership for U.S. federal income tax purposes shall be allocated between the transferring parties, as determined by the General Partner, using any permissible method under Code Section 706(d) and the Regulations thereunder. To the extent the transferring parties have given the General Partner written notice prior to the consent by the General Partner pursuant to Section 5.3(a) of their agreement to apply a particular and reasonable method, then the General Partner may elect to use such method. The transferring parties agree to reimburse the General Partner and the Partnership for any incidental accounting fees and other expenses incurred by the General Partner and the Partnership in making allocations pursuant to this Section 5.3(d).

### **5.4 Transfer of Interest of the General Partner**

The General Partner may Transfer its Interest as a General Partner in the Partnership; provided that if any such proposed Transfer would result in an "assignment" (as such term is



defined under the Advisers Act), the General Partner shall obtain the consent of Limited Partners constituting a Majority-in-Interest of Limited Partners that are not Affiliated Investors.

## 5.5 Withdrawal of Interests of Partners

- (a) The Interest of a Limited Partner may not be withdrawn from the Partnership prior to its dissolution except as provided in this Section 5.5.
- (b) Withdrawal rights are determined separately with respect to each Capital Account (and each capital sub-account, if applicable). Each capital contribution shall be accounted for using a separate capital sub-account, and, in the case of a Limited Partner for which more than one capital sub-account is maintained, the withdrawals from any such capital sub-accounts shall be processed on a “first-in, first-out” basis based upon the date on which each capital contribution was made, unless otherwise agreed between the General Partner and such Partner. Each capital sub-account relating to a contribution of capital from a Limited Partner will be treated as if it were the separate Capital Account of a separate Partner for the purposes of applying the withdrawal provisions of this Section 5.5.
- (c) Subject to a Suspension and the other provisions of this Section 5.5 :
  - (i) A Limited Partner may make a complete or partial withdrawal from its Series A Capital Account effective on the last Business Day of each calendar quarter occurring at least 36 calendar months after the contribution of the capital to be withdrawn (each, a “**Series A Withdrawal Date**”) by providing written notice to the General Partner at least 90 days prior to the proposed Series A Withdrawal Date (such restriction, the “**Series A Lock-Up**”). For purposes of calculating the Series A Lock-Up, each Limited Partner holding Series A Interests on the Effective Date is deemed to have made its initial contribution for Series A Interests as of the Effective Date. Additional contributions for Series A Interests after the Effective Date will also be subject to the Series A Lock-Up, which lock-up period shall commence on the date of each such additional contribution.
  - (ii) A Limited Partner may make a complete or partial withdrawal from its Series B Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series B Withdrawal Date. The “**Series B Withdrawal Date**” means: (i) the end of the day on the last Business Day of the calendar month that immediately precedes the one-year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each one-year anniversary of the preceding Series B Withdrawal Date (or the last Business Day of such month).
  - (iii) A Limited Partner may make a complete or partial withdrawal from its Series C Capital Account upon written notice to the General Partner at least 180 days prior to the applicable Series C Withdrawal Date. The “**Series C Withdrawal Date**” means: (i) the end of the day on the last Business Day of

the calendar month that immediately precedes the two -year anniversary of the contribution of the capital to be withdrawn; and thereafter (ii) the end of the day on each two-year anniversary of the preceding Series C Withdrawal Date (or the last Business Day of such month).

- (iv) A Limited Partner may make a complete or partial withdrawal from its Series D Capital Account effective on the last Business Day of each calendar quarter (each, a “*Series D Withdrawal Date*”) occurring at least 12 calendar months after the contribution of the capital to be withdrawn by providing written notice to the General Partner at least 90 days prior to the proposed Series D Withdrawal Date.
- (d) Any notice of withdrawal shall be irrevocable by the Limited Partner, unless otherwise agreed by the General Partner. For the avoidance of doubt, if a Limited Partner notifies the General Partner of its intent to withdraw and later chooses not to withdraw (with the General Partner’s consent), any transaction costs incurred by the Partnership or the General Partner in connection therewith may be charged to such withdrawing Limited Partner. The General Partner may refuse to honor any Limited Partner’s request for a full or partial withdrawal if such request is not accompanied by such additional information as the General Partner may reasonably require, including any information required to determine the “adjusted basis” for U.S. federal income tax purposes in the Limited Partner’s Interest withdrawn.
- (e) With respect to any amounts withdrawn, a withdrawing Partner shall not share in the income, gains and losses of the Partnership or have any other rights as a Partner (in the case of a complete withdrawal) after the applicable Withdrawal Date, and withdrawn amounts will be fixed as of the applicable Withdrawal Date, except as provided in Section 3.6. For the avoidance of doubt, none of the Partnership, the General Partner or the Investment Manager shall be liable to a Limited Partner for interest on the proceeds of any withdrawal.
- (f) At least 90% of the estimated amount due with respect to the Partnership’s marketable investments is normally settled in cash or, subject to the sole discretion of the General Partner, wholly or partially with securities or other assets of the Partnership, within 30 Business Days after the Withdrawal Date, provided that the General Partner may delay such payment if such delay is reasonably necessary to prevent such withdrawal from having a material adverse impact on the Partnership or the remaining Capital Accounts. The General Partner is entitled to deduct from such settlement payment an amount equal to the pro rata portion of any Performance Allocation (based on the portion of the withdrawal being settled) payable to the Investment Manager with respect to such withdrawn amount. Any balance will be held back and distributed, without interest thereon, promptly following completion of the audit of the Partnership’s financial statements for such Fiscal Year, or sooner in the General Partner’s discretion.
- (g) In the case of a complete withdrawal, or a partial withdrawal that cannot be fully funded out of the Limited Partner’s interest in the Partnership’s marketable

investments, no settlements occur with respect to any of such Limited Partner's interest in the Partnership's non-marketable investments until the occurrence of liquidity events with respect to such non-marketable investments after the scheduled payment date for the withdrawal (without interest thereon). Notwithstanding the foregoing, the General Partner may, however, make settlements in such cases prior to the occurrence of a liquidity event if such settlement would, in the good faith opinion of the General Partner, not have a material adverse effect on the Partnership. Generally, a liquidity event will be a sale of the relevant investment for cash, in which case the settlement will be funded in cash within 90 days after the liquidity event (without interest). If the liquidity event is not a sale for cash, the General Partner may effect the settlement either by making a distribution in kind of the Limited Partner's ratable share of the relevant investment or by distributing the net proceeds derived from a sale of such investment. The General Partner is entitled to withdraw from each such settlement an amount equal to the remaining portion of any Performance Allocation (pro rata based on the portion of such withdrawal being distributed) to be credited to the Investment Manager at the same time and in the same form (in cash or in kind) as the distribution to the withdrawing Limited Partner.

- (h) The General Partner may effect withdrawal payments (i) in cash, (ii) in kind, by transfer of marketable or non-marketable Investments to the Limited Partner, the value of which, as determined in accordance with Section 7.2, would satisfy the Limited Partner's request for withdrawal, or (iii) in any combination of the foregoing.
- (i) The General Partner may deduct from any withdrawal proceeds due to any Limited Partner pursuant to this Section 5.5 an amount representing the Partnership's actual or estimated expenses, as determined by the General Partner, associated with processing the withdrawal. Any such withdrawal deduction shall be retained by the Partnership for the benefit of the remaining Limited Partners.
- (j) The right of any Partner to withdraw or receive distributions pursuant to the provisions of this Section 5.5 is subject to all Capital Account allocations and adjustments contemplated by this Agreement and to the provision by the General Partner for all Partnership liabilities and for reserves and holdbacks for contingencies provided in Section 3.6.
- (k) The General Partner may suspend or limit, in whole or in part, (i) the right of the Partners to withdraw or receive distributions from the Partnership and/or (ii) the valuation of the Partnership's Net Assets :
  - (i) during any period when any exchange or over-the-counter market on which the Partnership's Investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended;

- (ii) during the existence of any state of affairs as a result of which, in the reasonable opinion of the General Partner, disposal of, or withdrawals or redemptions from, Investments by the Partnership, or the determination of the value of the assets of the Partnership, would not be reasonably practicable;
  - (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Partnership's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Partnership cannot reasonably be accurately ascertained within a reasonable time frame;
  - (iv) during any period when the transfer of funds involved in the realization or acquisition of any Investments cannot, in the reasonable opinion of the General Partner, be effected at normal rates of exchange;
  - (v) in other circumstances where the General Partner is unable to fairly value the Partnership's assets due to extreme market conditions ; or
  - (vi) automatically upon liquidation of the Partnership .
- (l) In the event of any such suspension or limitation described above in Section 5.5(k) (a "***Suspension***"), the General Partner shall promptly notify each Limited Partner. Any Limited Partner who has submitted a withdrawal request and to whom payment in full of the amount being withdrawn has not yet been remitted is not given any priority with respect to the withdrawal of such Interests or portions thereof after the cause for such Suspension ceases to exist. The General Partner may, however, allow any such Partners to rescind their withdrawal requests to the extent of any portion thereof for which withdrawal proceeds have not yet been remitted. Upon the reasonable determination by the General Partner that conditions leading to Suspension no longer apply, withdrawal rights for all Limited Partners shall be promptly reinstated, and any pending withdrawal requests (or new, timely withdrawal requests) shall be honored as of the last Business Day of the calendar quarter in which withdrawals have recommenced, subject to the application of the withdrawal limitations described herein.
- (m) The General Partner may, notwithstanding any Suspension, upon not less than five days' prior written notice (or immediately if the General Partner determines in its sole discretion that such Limited Partner's continued participation in the Partnership may cause the Partnership, the Investment Manager or the General Partner to violate any applicable law), require any Limited Partner's Interest to be withdrawn in part or in its entirety from the Partnership (including, but not limited to, for reasons relating to FATCA) and for the Limited Partner to cease to be a Limited Partner of the Partnership (in the case of a withdrawal of a Limited Partner's Interest in its entirety) pursuant to this Section 5.5(m). Except as otherwise provided herein, settlements of withdrawals pursuant to this Section 5.5(m) are made in the same manner as voluntary withdrawals.

- (n) Notwithstanding the foregoing, the General Partner may waive any restrictions on any Limited Partner's ability to withdraw.

**Article VI**  
**SOFT WIND DOWN, DISSOLUTION AND LIQUIDATION**

**6.1 Soft Wind Down**

- (a) The General Partner may, in consultation with the Investment Manager, make a determination that the investment strategy should no longer be continued (whether or not the General Partner has implemented a Suspension). Having made such determination, the Investment Manager may recommend to the General Partner to cause the Partnership to return the Partnership's assets to Limited Partners in an orderly manner (without proceeding with a liquidation of the Partnership) (an "**Orderly Realization**"). The General Partner may, in such circumstances, resolve to effect an Orderly Realization should it determine that doing so is in the best interests of the Partnership as a whole. Such Orderly Realization shall not constitute a dissolution or winding up of the Partnership for any purposes, but rather only the continued management of the Partnership's portfolio so as to reduce such portfolio to cash (to the extent reasonably practicable, as advised by the Investment Manager) and return such cash as well as all other assets of the Partnership to the Limited Partners.
- (b) The General Partner will notify the Limited Partners of any decision to proceed with an Orderly Realization of the Partnership. During an Orderly Realization, the Investment Manager may, in consultation with the General Partner, take such steps as are considered appropriate in the best interests of the Partnership as a whole to effect the Orderly Realization. The General Partner, in consultation with the Investment Manager, shall establish what they consider to be a reasonable time by which the Orderly Realization should be effected (the "**Realization Period**"). Any resolution to undertake an Orderly Realization and the process thereof shall be deemed to be integral to the business of the Partnership and may be carried out without recourse to a formal process of liquidation under Delaware law or any other applicable bankruptcy or insolvency regime.
- (c) The General Partner, in consultation with the Investment Manager, may resolve to cease the Orderly Realization within the Realization Period and recommence active trading if the circumstances permit a lifting of any applicable Suspension or, where no Suspension is in effect, if the circumstances are such that the investment strategy can then be continued.
- (d) Management Fees, and all other fees and expenses, shall be payable and Performance Allocations shall be made during an Orderly Realization on the same basis as provided herein.



## 6.2 Dissolution of Partnership

- (a) The Partnership shall be dissolved upon the first to occur of the following dates:
  - (i) any date on which the General Partner shall elect in writing to dissolve the Partnership; or
  - (ii) the occurrence of any other event causing (A) the General Partner (or a successor to its business) to cease to be the general partner of the Partnership or (B) the dissolution of the Partnership under the Act.
- (b) In the event an Orderly Realization lasts longer than three years, a Super -Majority-in-Interest of the Limited Partners may seek a court decree of dissolution or seek the appointment by the court of a liquidator for the Partnership. The Limited Partners will not have any other right to bring an action in court to dissolve the Partnership. The parties agree that irreparable damage would be done to the goodwill and reputation of the Partners if any Limited Partner should bring an action in court to dissolve the Partnership. Care has been taken in this Agreement to provide for fair and just payment in liquidation of the Interests of all Partners. Accordingly, each Limited Partner hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by the court of a liquidator for the Partnership except as provided herein.

## 6.3 Liquidation of Assets

- (a) Upon dissolution of the Partnership, the General Partner shall promptly liquidate the business and administrative affairs of the Partnership to the extent feasible, except that if the General Partner is unable to perform this function, a liquidator elected by a Majority-in-Interest of Limited Partners shall liquidate the business and administrative affairs of the Partnership. Net Profit and Net Loss during any Accounting Period, which includes the period of liquidation, shall be allocated pursuant to Article III. The proceeds from liquidation shall be divided in the following manner, subject to the Act:
  - (i) the debts, liabilities and obligations of the Partnership, other than any debts to the Partners as Partners, and the expenses of liquidation (including legal, administrative and accounting expenses incurred in connection therewith), up to and including the date that distribution of the Partnership's assets to the Partners has been completed, shall first be satisfied (whether by payment or the making of reasonable provision for payment thereof);
  - (ii) such debts as are owing to the Partners as Partners are next paid; and
  - (iii) the Partners shall next be paid liquidating distributions (in cash or in securities or other assets, whether or not readily marketable) *pro rata* in accordance with, and up to the positive balances of their respective Capital Accounts, as adjusted pursuant to Article III to reflect allocations for the

Accounting Period ending on the date of the distributions under this Section 6.1(a)(iii).

- (b) Notwithstanding this Section 6.3 and the priorities set forth in the Act, the General Partner or liquidator may distribute ratably in kind rather than in cash, upon dissolution, any assets of the Partnership; provided, however, that if any in kind distribution is to be made, (i) the assets distributed in kind shall be valued pursuant to Section 7.2, and charged as so valued and distributed against amounts to be paid under Section 6.3(a) and (ii) any gain or loss (as computed for book purposes) attributable to property distributed in kind shall be included in the Net Profit or Net Loss for the Accounting Period ending on the date of such distribution.

## Article VII ACCOUNTING AND VALUATION; BOOKS AND RECORDS

### 7.1 Accounting and Reports

- (a) The Partnership may adopt for tax accounting purposes any accounting method that the General Partner shall decide is in the best interests of the Partnership and that is permissible for U.S. federal income tax purposes.
- (b) As soon as practicable after the end of each Fiscal Year thereafter, the General Partner shall cause an audit of the financial statements of the Partnership as of the end of each such period to be made by a firm of independent accountants selected by the General Partner. As soon as is practicable thereafter, but subject to Section 7.4, the General Partner shall furnish to each Limited Partner a copy of the set of financial statements prepared in accordance with GAAP, with such adjustments thereto as the General Partner determines appropriate, including the report of such independent accountants.
- (c) As soon as practicable after the end of each taxable year, the General Partner shall furnish to each Limited Partner such information as may be required to enable each Limited Partner properly to report for U.S. federal, state and local income tax purposes its distributive share of each Partnership item of income, gain, loss, deduction or credit for such year. The General Partner shall have discretion as to how to report Partnership items of income, gain, loss, deduction or credit on the Partnership's tax returns, and the Limited Partners shall treat such items consistently on their own tax returns.
- (d) As soon as practicable after the end of each calendar month, but subject to Section 7.5, the General Partner shall arrange for the preparation and delivery to each Limited Partner of an interim report containing such information concerning the affairs of the Partnership (which need not include any financial statements) as the General Partner considers appropriate.

## **7.2 Valuation of Partnership Assets and Interests**

- (a) The General Partner (or its delegate, including the Investment Manager or the administrator of the Partnership) shall value the assets of the Partnership as of the close of business on the last day of each Accounting Period. Such valuations will generally be in accordance with GAAP, with such adjustments thereto as the General Partner reasonably determines appropriate. In addition, the General Partner shall value the assets which are being distributed in kind as of the close of the Business Day immediately preceding the distribution date in accordance with Section 5.5(c) or Section 6.3(b). In determining the value of the assets of the Partnership, no value shall be placed on the goodwill or name of the Partnership, or the office records, files, statistical data or any similar intangible assets of the Partnership not normally reflected in the Partnership's accounting records, but there shall be taken into consideration any related items of income earned but not received, expenses incurred but not yet paid, liabilities fixed or contingent, prepaid expenses to the extent not otherwise reflected in the books of account, and the value of options or commitments to purchase or sell securities pursuant to agreements entered into on or prior to such valuation date.
- (b) To the extent readily available, valuations will be based on independent market quotations obtained by the General Partner from recognized pricing services, market participants or other sources. In the case of any Investment for which a quotation from an independent source is not available or is determined by the General Partner to be unreliable or inadequate, the General Partner (i) shall be authorized, to the extent permitted by applicable law, to value such positions at their fair value in such manner as the General Partner determines in good faith, or (ii) may (but shall not be required to) obtain an appraisal, at the expense of the Partnership, by an independent third party selected by the General Partner. Except as otherwise determined by or at the direction of the General Partner, investment and trading transactions shall be accounted for on the trade date.
- (c) Accounts shall be maintained in U.S. dollars, and except as otherwise determined by or at the direction of the General Partner: (i) assets and liabilities denominated in currencies other than U.S. dollars shall be translated at the rates of exchange quoted by an independent pricing service as in effect as of the close of business on the relevant valuation dates (and exchange adjustments shall be recorded in the results of operations); and (ii) investment and trading transactions and income and expenses shall be translated at the rates of exchange in effect at the time of each transaction.

## **7.3 Determinations by the General Partner**

- (a) All matters concerning the determination and allocation among the Partners of the amounts to be determined and allocated pursuant to this Agreement, including Article III and accounting procedures applicable thereto, shall be determined by the General Partner, unless specifically and expressly otherwise provided for by the provisions of this Agreement, and such determinations and allocations shall be final

and binding on all the Partners; provided, however, that all calculations of the Performance Allocation will be made on the basis of, or subject to correction based on, the annual audit of the Partnership's financial statements and appropriate adjustments will be made to all such calculations and related allocations to the extent necessary as a result of that audit.

- (b) The General Partner may make such adjustments to the computation of Net Profit or Net Loss or any other allocations with respect to any Limited Partner, or any component items comprising any of the foregoing, as it considers appropriate to reflect the financial results of the Partnership and the intended allocation thereof among the Partners in a reasonably accurate, fair and efficient manner. Without limiting the generality of the foregoing, any provision of this Agreement that requires an adjustment to be made to any Capital Account or sub-account as of any mid-month or mid-quarter date may be made as of the most recent preceding or succeeding date when a regular valuation is being conducted.

#### **7.4 Books and Records**

- (a) The General Partner shall keep books and records pertaining to the Partnership's affairs showing all of its assets and liabilities, receipts and disbursements, realized income, gains, deductions and losses, Partners' Capital Accounts and all transactions entered into by the Partnership. The General Partner shall afford to the Partnership's independent auditors reasonable access to such documents during customary business hours and shall permit the Partnership's auditors to make copies thereof or extracts therefrom at the expense of the Partnership.
- (b) The General Partner shall establish such standards as it deems appropriate regarding the access of Limited Partners to the books and records of the Partnership and shall not be obliged to permit access by a Limited Partner to the name or address of any other Limited Partner.

#### **7.5 Confidentiality**

- (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its Interest or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "**Authorized Representative**")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (A) the information to be disclosed is publicly available at the time of proposed disclosure by such Limited Partner or Authorized Representative, (B) the information otherwise is or becomes legally available to such Limited Partner other than through disclosure by the Partnership or the General Partner, or (C) such disclosure is required by law or in

response to any governmental agency request or in connection with an examination by any regulatory authorities; provided that such governmental agency, regulatory authorities or association is aware of the confidential nature of the information disclosed; (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners; and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's relationship to the Partnership or the General Partner. Prior to making any disclosure required by law, each Limited Partner shall use its best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 7.5(a) and each such Authorized Representative or beneficial owner shall agree to be bound by such obligations.

- (b) The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner deems reasonable, any information, including the identity of the Partners or information regarding the Partners or Investments, which the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or agreement with a third party to keep confidential.
- (c) Subject to applicable legal and regulatory considerations, the General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests to be kept confidential.
- (d) Notwithstanding the provisions of this Section 7.5, Partners (and their employees, representatives and other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Partnership and its transactions and all materials of any kind (including tax opinions or other tax analyses) that are provided to such Person by, or on behalf of the Partnership. For this purpose, "tax treatment" is the purported or claimed U.S. federal income tax treatment of a transaction and "tax structure" is limited to any fact that may be relevant to understanding the purported or claimed U.S. federal income tax treatment of a transaction. For this purpose, the names of the Partnership, the Partners, their affiliates, the names of their partners, members or equity holders and the representatives, agents and tax advisors of any of the foregoing are not items of tax structure.
- (e) The General Partner may disclose to prospective investors such information relating to the Partnership or the Investments as it believes in good faith will benefit the Partnership and facilitate investment in the Partnership by such prospective investors.



- (f) The Investment Manager and a Person acting as a service provider to the Partnership shall have the right to access all information belonging to the Partnership.

## **Article VIII GENERAL PROVISIONS**

### **8.1 Amendment of Partnership Agreement**

- (a) Except as otherwise provided in this Section 8.1, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) the consent of a Majority-in-Interest of Limited Partners (which approval may be obtained by negative consent affording the Limited Partners at least 30 calendar days to object).
- (b) Any amendment that would:
  - (i) increase the obligation of a Partner to make any contribution to the capital of the Partnership;
  - (ii) reduce the Capital Account of a Partner other than in accordance with Article III;
  - (iii) adversely alter any Partner's rights with respect to the allocation of Net Profit or Net Loss or with respect to distributions and withdrawals; or
  - (iv) change the respective liabilities of the General Partner and the Limited Partners;may only be made if the consent of each Partner adversely affected thereby is obtained (which consent may be obtained by negative consent affording the Partner at least 30 calendar days to object).
- (c) Notwithstanding paragraphs (a) and (b) of this Section 8.1, this Agreement may be amended by the General Partner without the consent of the Limited Partners, at any time and without limitation, if any Limited Partner whose contractual rights as a Limited Partner would be materially and adversely changed by such amendment has an opportunity to withdraw from the Partnership as of a date determined by the General Partner that is not less than 30 calendar days after the General Partner has furnished written notice of such amendment to each affected Limited Partner and that is prior to the effective date of the amendment. The admission and withdrawal of Limited Partners will not require notice or disclosure to, or the approval of, the other Limited Partners.
- (d) The General Partner may at any time without the consent of the other Partners:

- (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;
  - (ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement;
  - (iii) change the name of the Partnership;
  - (iv) make any changes required by a governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners, provided, however, that no such amendment may be made unless such change (A) is for the benefit of, or not adverse to, the interests of Limited Partners, (B) does not affect the right of the General Partner to manage and control the Partnership's business, (C) does not affect the allocation of profits and losses among the Partners and (D) does not affect the limited liability of the Limited Partners;
  - (v) amend this Agreement to reflect a change in the identity of the General Partner which has been made in accordance with this Agreement;
  - (vi) amend this Agreement (other than with respect to the matters set forth in Section 8.1(b)) to effect compliance with any applicable laws, regulations or administrative actions;
  - (vii) subject to Section 8.1(b), amend this Agreement to reflect the creation, and terms, of any new Series of Interests;
  - (viii) effect any other amendment which would not, in the good faith judgment of the General Partner, adversely affect any of the existing Limited Partners; and
  - (ix) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.
- (e) Following the adoption of any amendments to this Agreement pursuant to 8.1(d), the General Partner shall promptly deliver a copy of such amendments to this Agreement to the Limited Partners.
- (f) The General Partner may agree with a Limited Partner to waive or modify the application of any provision of this Agreement with respect to such Limited Partner without notifying or obtaining the consent of any other Limited Partner (other than a Limited Partner whose rights as a Limited Partner pursuant to this Agreement would be materially and adversely changed by such waiver or modification). Any such waiver or modification may be evidenced by a "side letter" or other document which will govern with respect to the applicable Limited Partner and be incorporated as part of this Agreement.

## 8.2 Special Power-of-Attorney

- (a) Each Limited Partner hereby irrevocably makes, constitutes and appoints the General Partner (and each of its successors and permitted assigns), with full power of substitution, the true and lawful representative and attorney -in-fact of, and in the name, place and stead of, such Limited Partner with the power from time to time to make, execute, sign, acknowledge, swear to, verify, deliver, record, file or publish:
  - (i) an amendment to this Agreement that complies with the provisions of this Agreement (including the provisions of Section 8.1);
  - (ii) the Certificate and any amendment thereof required because this Agreement is amended, including an amendment to effectuate any change in the membership of the Partnership or in the capital contributions of the Partners;
  - (iii) any financing statement or other filing or document required or permitted to perfect the security interests contemplated by any provision hereof; and
  - (iv) all such other instruments, documents and certificates which, in the opinion of legal counsel to the Partnership, may from time to time be required by the laws of the United States of America, the State of Delaware, or any other jurisdiction in which the Partnership determines to do business, or any political subdivision or agency thereof, or which such legal counsel may deem necessary or appropriate to effectuate, implement and continue the valid and subsisting existence and business of the Partnership as a limited partnership, exchange a portion of a Limited Partner's Interest for similar equity interests in an Alternative Investment Vehicle, or to effect the dissolution or termination of the Partnership.
- (b) Each Limited Partner is aware that the terms of this Agreement permit certain amendments to this Agreement to be effected and certain other actions to be taken or omitted by or with respect to the Partnership without that Limited Partner's consent. If an amendment of the Certificate or this Agreement or any action by or with respect to the Partnership is taken by the General Partner in the manner contemplated by this Agreement, each Limited Partner agrees that, notwithstanding any objection which such Limited Partner may assert with respect to such action, the General Partner in its sole discretion is authorized and empowered, with full power of substitution, to exercise the authority granted above in any manner which may be necessary or appropriate to permit such amendment to be made or action to be lawfully taken or omitted. Each Partner is fully aware that each other Partner relies on the effectiveness of this special power-of-attorney with a view to the orderly administration of the affairs of the Partnership. This power-of-attorney is a special power-of-attorney and is coupled with an interest in favor of the General Partner and as such:
  - (i) is irrevocable and continues in full force and effect notwithstanding the subsequent death or incapacity of any party granting this power -of-attorney,

regardless of whether the Partnership or the General Partner has had notice thereof; and

- (ii) survives the delivery of an assignment by a Limited Partner of the whole or any portion of such Limited Partner's Interest, except that where the assignee thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, this power-of-attorney given by the assignor survives the delivery of such agreement for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

### **8.3 Notices**

Notices which may be or are required to be given under this Agreement by any party to another shall be given by hand delivery, transmitted by facsimile, transmitted electronically to an address that has been previously provided or verified through another form of notice or sent by registered or certified mail, return receipt requested or internationally recognized courier service, and shall be addressed to the respective parties hereto at their addresses as set forth on the register of Partners maintained by the General Partner or to such other addresses, facsimile numbers or electronic addresses as may be designated by any party hereto by notice addressed to (a) the General Partner, in the case of notice given by any Limited Partner, and (b) each of the Limited Partners, in the case of notice given by the General Partner. Notices will be deemed to have been given (i) when delivered by hand, transmitted by facsimile or transmitted electronically or (ii) on the date indicated as the date of receipt on the return receipt when delivered by mail or courier service.

### **8.4 Agreement Binding Upon Successors and Assigns; Delegation**

This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, but the rights and obligations of the Partners hereunder are not assignable, transferable or delegable except as provided in Sections 4.1(c), 5.3 and 5.4, and any attempted assignment, transfer or delegation thereof which is not made pursuant to the terms of such Sections will be null and void *ab initio*.

### **8.5 Governing Law**

This Agreement is, and the rights of the Partners hereunder are, governed by and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rule thereof which would result in the application of the laws of a different jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue for any action arising out of this Agreement in the courts located in Dallas County, Texas. Each Partner consents to service of process in any action or proceeding involving the Partnership by the mailing thereof by registered or certified mail, postage prepaid, to such Partner's mailing address set forth in the register of Partners maintained by the General Partner.

**8.6 Not for Benefit of Creditors**

The provisions of this Agreement are intended only for the regulation of relations among Partners and between Partners and former or prospective Partners and the Partnership. Except for the rights of the Indemnified Persons hereunder, this Agreement is not intended for the benefit of non-Partner creditors and no rights are granted to non-Partner creditors under this Agreement.

**8.7 Dispute Resolution**

The following procedures shall be used to resolve any controversy or claim ("**Dispute**") arising out of, relating to or in connection with the Agreement or otherwise involving the Partnership, its Partners and/or any Indemnified Person. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

**(a) Mediation**

- (i) Any Dispute shall be submitted to mediation by written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, a mediator shall be designated by JAMS/Endispute at the request of a party using, if necessary, strike and rank procedures then in effect.
- (ii) The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- (iii) The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (iv) Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

**(b) Arbitration**

- (i) If a Dispute has not been resolved within 90 days after the written notice beginning the mediation process (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate and the dispute will be settled by arbitration. A party who files a suit in court regarding a Dispute rather than in arbitration waives its claim and must pay all attorney's fees and costs incurred by the other party in seeking to have such suit dismissed. Under no circumstances will a party maintain its right to pursue his/her/its Dispute if that party initiates a judicial suit instead of complying with the



mediation and arbitration provisions herein. The arbitration will be conducted through JAMS/Endispute in accordance with the procedures in this document and the commercial dispute arbitration rules then in effect ("*Arbitration Rules*"). In the event of a conflict, the provisions of this document will control.

- (ii) The arbitration will be conducted before a panel of three arbitrators, regardless of the size of the dispute, to be selected as provided in the Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the U.S. Federal Arbitration Act ("*FAA*"), and resolved by the arbitrators, *provided, however*, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality, non-competition, non-solicitation or non-recruitment covenants or agreements binding on any party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. Under no circumstances will a state arbitration act preclude application of the FAA, including any choice of law provisions in this Agreement, or any other agreement. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.
- (iii) The arbitrators may not award non-monetary or equitable relief of any sort. They shall have no power to award punitive damages or any other damages not measured by the prevailing party's actual damages, and the parties expressly waive their right to obtain such damages in arbitration or any in other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law.
- (iv) The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement.
- (v) No discovery will be allowed in connection with the arbitration unless the arbitration panel, upon a showing of substantial need, expressly authorizes

it. In any event, there shall be no more than (a) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (b) one non-party deposition of six hours; (c) twenty-five interrogatories; (d) twenty-five requests for admission; (e) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; and (f) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted.

- (vi) All aspects of the arbitration shall be treated as confidential, including its institution and/or settlement. Neither the parties nor the arbitrators may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. In the event a party who recovered monies by settlement, award by the arbitration panel, or otherwise in connection with the Dispute violates this confidentiality term, he, she, or it shall refund all such sums recovered. The parties expressly intend to waive the right to retain any monies received through settlement, award by the arbitration panel, or otherwise in connection with the Dispute in the event that that party violates the aforementioned confidentiality term.
- (vii) The result of the arbitration will be binding on the parties, and judgment on the arbitrators' award may be entered in any court having jurisdiction.

## 8.8 Consents and Voting

- (a) Except as provided in Section 5.4, Limited Partners do not have any right to vote for the admission or removal of any General Partner and, except for the right to vote on certain amendments proposed by the General Partner and as otherwise expressly set out herein, have no other voting rights. Upon the request of any Limited Partner, the General Partner may designate an Interest as a Non-Voting Interest, in which case the Limited Partner shall not have the right to vote on any matter including amendments.
- (b) Any and all consents, agreements or approvals provided for or permitted by this Agreement shall be in writing and a copy thereof shall be filed and kept with the books of the Partnership. For the avoidance of doubt, an amendment made pursuant to Section 8.1(c) or pursuant to negative consent under Section 8.1(a) or Section 8.1(b) shall not require any affirmative written response by any Limited Partner who is not electing to withdraw from the Partnership.
- (c) In the event the Partnership seeks the approval, vote or consent of the Offshore Fund with respect to any matter to which it would be entitled to vote as a Limited

Partner of the Partnership under this Agreement, the Offshore Fund will: (i) submit such matter for the consent of the shareholders and (ii) shall vote its Limited Partner interest proportionally for and against such matter in the same proportion that the shareholders voted for and against such matter.

#### **8.9 Merger and Consolidation**

- (a) The Partnership may merge or consolidate with or into one or more limited partnerships formed under the Act or other business entities pursuant to an agreement of merger or consolidation which has been approved in the manner contemplated by Section 17-211(b) of the Act.
- (b) Notwithstanding anything to the contrary contained elsewhere in this Agreement, an agreement of merger or consolidation approved in accordance with Section 17-211(b) of the Act may, to the extent permitted by Section 17-211(g) of the Act, (i) effect any amendment to this Agreement, (ii) effect the adoption of a new limited partnership agreement for the Partnership if it is the surviving or resulting limited partnership in the merger or consolidation, or (iii) provide that the limited partnership agreement of any other constituent partnership to the merger or consolidation (including a limited partnership formed for the purpose of consummating the merger or consolidation) shall be the limited partnership agreement of the surviving or resulting limited partnership.

#### **8.10 Miscellaneous**

- (a) The captions and titles preceding the text of each Section hereof shall be disregarded in the construction of this Agreement. Use of the word “including” in this Agreement means in each case “without limitation,” whether or not such term is explicitly stated.
- (b) This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.
- (c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

#### **8.11 BHCA Subject Persons**

Notwithstanding any other provision of this Agreement to the contrary:

- (a) Solely for purposes of any provision of this Agreement that confers voting rights on the Limited Partners and any other provisions hereof regarding consents of or action by the Limited Partners, any BHCA Subject Person that shall have given the General Partner an Election Notice and shall not thereafter have given the General Partner a Revocation Notice, and that at any time has a Partnership Percentage in

excess of 4.9% of the aggregate Partnership Percentages of the Limited Partners entitled to participate in such voting or the giving of any consent or the taking of any action, shall be deemed to hold a Partnership Percentage of only 4.9% of the aggregate Partnership Percentages of the Limited Partners (after giving effect to the limitations imposed by this Section 8.11 on all such Limited Partners), and such Partnership Percentage in excess of said 4.9% shall be deemed held by the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages; provided that this limitation shall not prohibit a Limited Partner from voting or participating in giving or withholding consent or taking any action under any provision of this Agreement up to the full amount of its Partnership Percentage in situations where such Limited Partner's vote or consent or action is of the type customarily provided by statute or stock exchange rules with regard to matters that would significantly and adversely affect the rights or preference of the Limited Partner's Interest. The foregoing voting restriction shall continue to apply with respect to any assignee or other transferee of such BHCA Subject Person's Interest; provided, however, that the foregoing voting restriction shall not continue to apply if the Interest is transferred: (i) to the Partnership; (ii) to the public in an offering registered under the Securities Act; (iii) in a transaction pursuant to Rule 144 or Rule 144A under the Securities Act in which no Person acquires more than 2% of the Partnership's outstanding Interests; or (iv) in a single transaction to a third party who acquires at least a majority of the Partnership's outstanding Interests without regard to the Transfer of such Interests.

- (b) Except as specifically provided otherwise in this Agreement, a Limited Partner that is a BHCA Subject Person that shall have given the General Partner an Election Notice, and shall not thereafter have given the General Partner a Revocation Notice, shall not be entitled to exercise any rights to consent to actions to be taken with respect to the Partnership, including rights conferred by any applicable law. Such right to consent shall be deemed granted to the Limited Partners who are not BHCA Subject Persons, *pro rata* in proportion to their respective Partnership Percentages.
- (c) A Limited Partner that is a BHCA Subject Person and that elects to be subject to Section 8.11(a) and (b) shall notify the General Partner thereof (an "***Election Notice***") and, on the General Partner's receipt of such Election Notice, such Limited Partner shall be subject to Section 8.11(a) and (b) until 10 calendar days after such Limited Partner notifies the General Partner that it elects no longer to be subject to Section 8.11(a) and (b) (a "***Revocation Notice***"), which period may be reduced by the General Partner.

## 8.12 RIC Limited Partners

An Interest of a RIC Limited Partner does not entitle the RIC Limited Partner to vote or consent with respect to any Partnership matter unless the RIC Limited Partner's vote or consent with respect to its Interest would not be considered to be "voting securities" as defined under Section 2(a)(42) of the Investment Company Act. Except as provided in this Section 8.12, an Interest held by a RIC Limited Partner as a Non-Voting Interest is identical in all regards to all other Interests held by Limited Partners.

### **8.13 Bad Actor Limited Partners**

Under Rule 506(d) under the Securities Act, the Partnership may be banned from selling Interests under Rule 506 if a Limited Partner beneficially owning 20% or more of the Partnership's voting securities engages in a "bad act" set forth in Rule 506. Accordingly, each Limited Partner agrees that the General Partner may deem the portion of any Bad Actor Limited Partner's Interests to be, or convert any Bad Actor Limited Partner's Interests into, Non-Voting Interests (except for the purposes of voting on any amendment to this Agreement that would materially and adversely change the Bad Actor Limited Partner's rights and preferences as a Limited Partner other than pursuant to an amendment under Section 8.1(c)) to the extent that the General Partner determines that such portion is in excess of 19.99% of the outstanding aggregate voting Interests of all Partners excluding any Interests that are Non-Voting Interests.

### **8.14 Entire Agreement**

The parties acknowledge and agree that, this Agreement, together with any other agreement with a Limited Partner pursuant to Section 8.1(e), constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

[Signature Page Follows]



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The parties hereto have executed this Agreement as of the day and year first above written.


**GENERAL PARTNER:**

HIGHLAND MULTI STRATEGY CREDIT FUND GP,  
L.P.

By: HIGHLAND MUTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President


**LIMITED PARTNERS:**

By: HIGHLAND MULTI STRATEGY CREDIT  
FUND GP, L.P.  
attorney-in-fact for the Limited Partners

By: HIGHLAND MULTI STRATEGY CREDIT GP,  
LLC  
its general partner

By: HIGHLAND CAPITAL MANAGEMENT, L.P.  
its sole member

By: STRAND ADVISORS, INC.  
its general partner

By:   
Name: James Dondero  
Title: President

*Signature Page to the Fourth Amended and Restated Limited Partnership Agreement of Highland Multi Strategy  
Credit Fund, L.P.*

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**HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**

**INCUMBENCY CERTIFICATE**

I am the Secretary of Strand Advisors, Inc. (the "*General Partner*"), the general partner of Highland Capital Management, L.P., the sole member of Highland Multi Strategy Credit GP, LLC, the general partner of Highland Multi Strategy Credit Fund CDO GP, L.P., the general partner of **HIGHLAND MULTI STRATEGY CREDIT FUND, L.P.**, a Delaware limited partnership (the "*Partnership*"). In that capacity, I certify that the persons listed in Annex A, attached hereto, have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that each person listed in Annex A, attached hereto, holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated. I also certify that in their capacity as officers of the General Partner, the persons listed in Annex A, attached hereto, are authorized to execute any and all agreements on behalf of the General Partner in its capacity described above in connection with the Partnership. I also certify that in their capacity as officers of the General Partner, the persons listed in Annex A, attached hereto, are authorized to give any party on behalf of the Partnership all notices, orders, directions, or instructions (including but not limited to written, facsimile, or oral funds transfer instructions) in connection with any transaction to which the Partnership is or in the future may be a party to in any capacity.

WITNESS my hand to be effective as of 9<sup>th</sup> day of January, 2020.

HIGHLAND MULTI STRATEGY CREDIT  
FUND, L.P.

By: Highland Multi Strategy Credit Fund GP, L.P.,  
its general partner

By: Highland Multi Strategy Credit GP, LLC, its  
general partner

By: Highland Capital Management, L.P., its sole  
member

By: Strand Advisors, Inc., its general partner

By:   
Scott Ellington, Secretary


Annex A

I am the Secretary of **STRAND ADVISORS, INC.**, a Delaware corporation (the "**General Partner**"), the general partner of **HIGHLAND CAPITAL MANAGEMENT, L.P.**, a Delaware limited partnership. In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated.

<u>Printed Name of Officer</u>	<u>Title</u>	<u>Signature</u>
Scott Ellington	Secretary	
Frank Waterhouse	Treasurer	

WITNESS my hand to be effective as of the 9<sup>th</sup> day of January, 2020.

STRAND ADVISORS, INC.

By:   
Scott Ellington, Secretary

Summary of Assets Exchanged for Highland Financial Partners - Long Term Notes									
Issuer Name	Asset Name	Date Exch	Commitment	Mark	MV	Date Returned	Commitment	Mark	MV (12/31/08)
<b>Highland Credit Opportunities CDO, LP</b>									
<b>CLO Mezz</b>									
ROCKW 2007-1A B2L	Floating - 08/2024 - B-2L	9/25/2008	4,250,000.00	44.94088	1,909,978.69	3/20/2019	4,250,000.00	9.93	422,025
STAMC 2007-1A B2L	Class B2L	9/25/2008	3,000,000.00	51.5200	1,545,600.00	3/20/2019	3,000,000.00	12.79	383,700
SYMP 2007-4A E	Floating - 07/2021 - 871556AF3	9/25/2008	2,000,000.00	45.9800	919,600.00	3/20/2019	2,000,000.00	13.40	368,000
VENTR 2007-9A	Floating - 10/2021 - D - 92323EAJ9	9/25/2008	2,000,000.00	55.7500	1,115,000.00	N/A	N/A	16.00	N/A
WITEH 2008-4A	Floating - 01/2020 -96524UAD0	9/25/2008	2,500,000.00	45.0500	1,126,250.00	3/20/2019	2,500,000.00		400,000
			<b>13,750,000.00</b>		<b>6,616,428.69</b>		<b>11,750,000.00</b>		<b>1,573,725</b>
<b>Long Term Notes</b>									
Highland Financial Partners	Long Term Debt	9/25/2008	6,616,429.00	100.0000	6,616,429.00				
<b>Highland Credit Opportunities Holding Corporation</b>									
<b>Life Settlement</b>									
AXA Equitable Life Insurance Company		9/25/2008	20,000,000.00	11.4690	2,293,808.48	3/20/2019			
Prudential Financial, Inc		9/25/2008	15,000,000.00	18.4963	2,774,442.42	3/20/2019	20,000,000.00		
ING-RellaStar Life Insurance Company (USA)		9/25/2008	13,785,000.00	20.3876	2,810,435.82	3/20/2019	15,000,000.00		
John Hancock Life Insurance Company (USA)		9/25/2008	10,000,000.00	7.8950	789,500.80	3/20/2019	13,785,000.00		
John Hancock Life Insurance Company (USA)		9/25/2008	10,000,000.00	15.9730	1,597,296.92	3/20/2019	10,000,000.00		
John Hancock Life Insurance Company (USA)		9/25/2008	10,000,000.00	7.8950	789,500.80	3/20/2019	10,000,000.00		
John Hancock Life Insurance Company (USA)		9/25/2008	10,000,000.00	7.8950	789,500.80	3/20/2019	10,000,000.00		
Massachusetts Mutual Life Insurance Company		9/25/2008	10,000,000.00	10.9639	1,086,389.52	3/20/2019	10,000,000.00		
Massachusetts Mutual Life Insurance Company		9/25/2008	10,000,000.00	24.1780	2,417,797.37	3/20/2019	10,000,000.00		
MetLife Insurance Company of Connecticut		9/25/2008	10,000,000.00	42.1481	4,214,811.04	3/20/2019	10,000,000.00		
Pruco Life Insurance Company		9/25/2008	10,000,000.00	7.4820	748,195.39	3/20/2019	10,000,000.00		
ReliaStar Life Insurance Company		9/25/2008	10,000,000.00	27.5996	2,759,957.26	3/20/2019	10,000,000.00		
Pruco Life Insurance Company		9/25/2008	6,500,000.00	33.5176	2,178,643.73	3/20/2019	10,000,000.00		
American General Life Insurance Company		9/25/2008	5,000,000.00	19.3289	966,445.19	3/20/2019	6,500,000.00		
John Hancock Variable Life Insurance Company		9/25/2008	5,000,000.00	45.0144	2,250,718.66	3/20/2019	5,000,000.00		
Phoenix Home Life Variable Insurance Company		9/25/2008	5,000,000.00	22.0964	1,124,819.17	3/20/2019	5,000,000.00		
			<b>160,285,000.00</b>		<b>29,592,263.35</b>		<b>160,285,000.00</b>	<b>18.92</b>	<b>30,325,922</b>
<b>Long Term Notes</b>									
Highland Financial Partners	Long Term Debt	9/25/2008	29,592,263.00	100.0000	29,592,263.00	Note Paydown			113,753
Totals		<b>Total Notes =</b>	<b>36,205,692.00</b>	<b>Total Transferred MV =</b>	<b>36,208,691.69</b>		<b>Total Returned MV =</b>		<b>31,899,647</b>

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Highland Credit Opportunities Fund																			
Data as of 3/30/2019																			
CashID	Death Benefit	Insurance Carrier	Purchase Source	Purchase Date	Purchase Price	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Thru
46933	5,000,000	American General Life Ins Co	FairMarket Life Settlements Corp.	6/13/2008	950,000	181,689	155,211	183,500	120,369	107,027	112,285	135,137	134,050	188,566	211,739	224,699	267,684	90,872	
46953	30,000,000	AXA Equitable Life Insurance Company	FairMarket Life Settlements Corp.	6/13/2008	2,240,000	365,268	-	802,140	850,088	965,529	1,053,160	1,163,030	1,433,449	1,666,553	1,882,474	1,353,192	2,122,280	541,694	
46925	10,000,000	John Hancock Life Ins. Co. U.S.A.	FairMarket Life Settlements Corp.	3/12/2008	1,300,000	236,742	283,642	254,000	310,444	281,559	310,343	335,259	323,947	351,312	420,050	432,738	457,463	118,908	
46927	10,000,000	John Hancock Life Ins. Co. U.S.A.	FairMarket Life Settlements Corp.	3/12/2008	500,000	236,742	283,642	254,000	310,444	281,559	310,343	335,259	323,947	351,312	420,050	432,738	457,463	118,908	
46928	10,000,000	John Hancock Life Ins. Co. U.S.A.	FairMarket Life Settlements Corp.	3/12/2008	500,000	236,742	283,642	254,000	310,444	281,559	310,343	335,259	323,947	351,312	420,050	432,738	457,463	118,908	
46929	10,000,000	John Hancock Life Ins. Co. U.S.A.	FairMarket Life Settlements Corp.	3/12/2008	500,000	236,742	283,642	254,000	310,444	281,559	310,343	335,259	323,947	351,312	420,050	432,738	457,463	118,908	
46967	10,000,000	Massachusetts Mutual Life Ins. Co.	FairMarket Life Settlements Corp.	6/18/2008	700,000	61,440	134,238	338,318	312,572	398,954	415,888	443,671	355,639	478,070	494,246	503,648	519,302	130,550	
46968	10,000,000	Massachusetts Mutual Life Ins. Co.	FairMarket Life Settlements Corp.	6/18/2008	2,000,000	50,766	77,563	228,556	416,808	400,167	415,887	446,852	409,206	479,425	485,170	504,801	521,164	133,348	
46982	5,000,000	Prudential Life Insurance Company	FairMarket Life Settlements Corp.	6/13/2008	950,000	216,742	246,880	106,178	306,476	26,034	437,957	82,974	209,293	220,093	257,281	273,901	285,856	88,581	
46987	6,500,000	Prudential Life Insurance Company	FairMarket Life Settlements Corp.	6/13/2008	2,180,000	9,275	18,551	125,914	174,779	171,395	172,598	192,156	190,887	245,337	298,683	330,504	404,218	113,949	
46988	10,000,000	Prudential Life Insurance Company	FairMarket Life Settlements Corp.	6/18/2008	560,000	199,158	150,515	60,151	438,684	406,877	447,018	488,403	456,385	654,502	787,216	853,950	1,003,002	285,796	
46960	13,785,000	Reliastar Life Insurance Company INC	FairMarket Life Settlements Corp.	6/18/2008	2,500,000	352,338	354,400	517,000	438,684	406,877	447,018	488,403	456,385	654,502	787,216	853,950	1,003,002	285,796	
46991	10,000,000	Reliastar Life Insurance Company INC	FairMarket Life Settlements Corp.	6/18/2008	2,700,000	296,945	220,297	264,718	257,781	394,435	471,079	535,942	556,293	673,352	765,573	816,135	936,910	253,956	
46994	5,000,000	John Hancock Life Ins. Co. U.S.A.	FairMarket Life Settlements Corp.	4/9/2008	2,850,000	186,395	229,282	497,797	614,015	575,099	457,573	651,838	722,700	326,585	-	-	-	-	
46974	10,000,000	John Hancock Life Ins. Co. U.S.A.	FairMarket Life Settlements Corp.	4/22/2008	2,100,000	190,079	190,079	236,323	497,787	614,015	575,099	457,573	651,838	722,700	326,585	-	-	-	
46974	10,000,000	MetLife	FairMarket Life Settlements Corp.	4/22/2008	3,950,000	47,350	205,480	247,268	247,268	272,043	271,046	107,821	-	192,480	-	-	-	-	



## STERLING VALUATION GROUP, INC.

September 26, 2008

Highland Capital Management, L.P.  
13455 Noel Road, Suite 800  
Dallas, Texas 75240

### Certificate of Consent to Trade

We have been appointed and authorized by Highland Capital Management, L.P., to provide (or withhold) consent on behalf of the Asset Seller (as defined below) to trades subject to Section 206(3) of the Investment Advisers Act of 1940 (15 U.S.C.A. 80b-1, *et seq.*). Pursuant thereto, we hereby issue this certificate with respect to the trade (the "Trade") identified in the table following this paragraph between Highland Financial Partners, L.P. ("HFPLP"), as purchaser, and Highland Crusader Master Fund, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., and Highland Credit Opportunities CDO, L.P., as seller (collectively, the "Asset Seller") of the assets described below:

Asset Type:	1) Life insurance settlement contracts 2) Collateralized Loan Obligations (CLOs)
Description:	See <u>Schedule 1</u> , attached hereto and incorporated by this reference
Price:	\$315,970,680, paid in the form of \$315,970,680 notional amount 10% Senior Secured Notes due November 15, 2018 (the " <u>Notes</u> "), issued by HFPLP to the Asset Seller
Transfer Date:	September 26, 2008

We have examined (i) the HFP Book Value and Adjusted Book Value per Common LP Unit calculation as of August 31, 2008, the HFP Balance Sheet and Income Statement for the period ending August 31, 2008, the HFP March 31, 2008 Financial Statements, and the documents listed in the Schedule, (ii) the draft Note Purchase Agreement (the "Note Purchase Agreement") between HFPLP, as issuer of the Notes, and the Asset Seller, as purchaser of the Notes, dated September 25, 2008 (2), and any other information subsequently received from HFPLP as

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Highland Capital Management, L.P.  
September 26, 2008

Page -2-

requested by us relating to the Trade, collectively, the “Data”), provided to us by HFPLP with respect to the Trade in accordance with Schedule 1.

Based upon the foregoing and subject to the qualifications and limitations set forth below, we hereby consent to the Trade.

Our consent is subject to the following qualification and limitations:

1. In our examination, we have assumed the genuineness and authenticity of the Data.
2. We have relied solely on the Data provided, have assumed the accuracy and completeness of the Data, and have not undertaken any independent investigation of the Data or the Trade (other than any information we have deemed necessary to request as described above, which, following our receipt thereof, constitutes Data subject to the immediately preceding qualification and limitation in this qualification and limitation number 2 and copies of which accompany the Certificate).
3. We do not express any opinion on, or offer, or provide, any investment advice regarding the nature, merits, potential value, suitability, or profitability of any security bought or sold in connection with the Trade.
4. We have assumed that the executed Note Purchase Agreement will be identical in all material respects to the draft Note Purchase Agreement reviewed by us in connection with this Consent to Trade.
5. We have assumed that the Note Purchase Agreement is legally binding and enforceable in accordance with its terms.
6. We have assumed that the consideration for the Trade, comprising the principal amount of the Notes and the interest due thereunder, will be paid by HFPLP to the Asset Seller in accordance with the terms and conditions of the Note Purchase Agreement.
7. We have assumed that the Notes are secured by the collateral described in the Note Purchase Agreement and we do not express any opinion relating to the creation, attachment, or perfection of any security interest in such collateral.

**STERLING VALUATION GROUP, INC.**

*Sterling Valuation Group, Inc.*

## **SCHEDULE 1 TO CERTIFICATE OF CONSENT TO TRADE**

### **A. Life Insurance Settlement Contracts**

#### Data Provided

Actuarial Valuation Analysis of a Life Settlement Portfolio as of October 1, 2008 by Watson Wyatt, attached hereto as Exhibit 1 and incorporated by this reference.

### **B. Collateralized Loan Obligations**

#### Data Provided

Cash flow models and values for each CLO developed by Intex Solutions, Inc., attached hereto as Exhibit 1.

Merrill Lynch bid valuation as of August 29, 2008 for Aberdeen Loan Funding Preferred Shares Class II, attached hereto as Exhibit 1.

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

UBS SECURITIES LLC AND UBS AG, LONDON  
BRANCH

Plaintiffs,

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND SPECIAL OPPORTUNITIES HOLDING  
COMPANY, HIGHLAND CDO OPPORTUNITY  
MASTER FUND, L.P., HIGHLAND FINANCIAL  
PARTNERS, L.P., HIGHLAND CREDIT STRATEGIES  
MASTER FUND, L.P., HIGHLAND CRUSADER  
OFFSHORE PARTNERS, L.P., HIGHLAND CREDIT  
OPPORTUNITIES CDO, L.P. AND STRAND  
ADVISORS, INC.,

Defendants.

Index Nos. 650097/2009,  
650752/2010,  
652646/2011

(I.A.S. Part 60, Friedman, J.)

**EXPERT REPORT OF DAVID C. SMITH, PH.D.**

**CONFIDENTIAL/ SUBJECT TO PROTECTIVE ORDER**

**APRIL 19, 2013**



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EXHIBIT 2 -- Biography and Curriculum Vitae of David C. Smith

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EXHIBIT 8 -- Settlement Agreement Recovery Rates

EXHIBIT 9 -- Average Recovery Rates for Defaulted Loans and Bonds, by Seniority

## INTRODUCTION

1. The attorneys in the law firm of Lackey Hershman, L.L.P., in connection with their representation of Highland Capital Management, L.P. (“HCM”), Highland Special Opportunities Holding Company (“SOHC”), Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”), Highland Financial Partners, L.P. (“HFP”), Highland Credit Strategies Master Fund, L.P. (“Credit Strategies”), Highland Crusader Offshore Partners, L.P. (“Crusader Fund”), Highland Credit Opportunities CDO, L.P. (“Credit Opportunities Fund”), Strand Advisors, Inc. (“Strand”), and Highland Crusader Holding Co. (“Crusader Holding”) (the “Defendants”), have asked me to:
  1. Provide an economic analysis of the issuance by HFP of \$316 million of 10% senior secured notes on September 26, 2008 (and, as amended and restated on October 10, 2008, the amount of \$371 million, collectively the “Notes”) as to whether the characteristics of the Notes are consistent with a bona fide debt obligation.<sup>1</sup>
  2. Discuss the extent to which the March 20, 2009 Termination, Settlement, and Release Agreement for the Notes (the “Settlement Agreement”) to CDO Fund, Credit Strategies, Credit Opportunities Fund, Highland Credit Opportunities CDO, Ltd., Crusader Fund, Highland Crusader Holding, HCM, and Citigroup Global Markets, Inc. as holders, successors, and pledgees of the Notes (collectively, the “Holders”), and the negotiations that occurred with respect to the Settlement Agreement, appear as an arm’s-length transaction.<sup>2</sup>
  3. Provide a rebuttal to the analysis contained in the Expert Report of Louis G. Dudney, CPA, CFF (“Dudney Report”) related to alleged fraudulent transfers involving SOHC, HFP, and CDO Fund.
2. This report is based on my experience, education, and specific knowledge of debt markets, the instruments traded in these markets, and the standard and customary agreements and practices that govern debt financing, including debt financing to financially distressed firms. I have also considered information contained in filings in this case and materials supplied to me by counsel for the Defendants. A list of all materials considered in connection with this report is set forth in Exhibit 1.
3. I have been engaged to provide the opinion included in this report and any required testimony with respect to it. I am being compensated based on hours worked on this engagement at the hourly rate of \$500. My compensation is not in any way dependent on the opinions expressed in this report, any testimony with respect to the report, or the outcome of the litigation.

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<sup>1</sup> The issuance of the Notes are described in the September 26, 2008 Note Agreement (Plaintiff’s Exhibit 4) and the October 10, 2008 Amended and Restated Note Agreement (Plaintiff’s Exhibit 5).

<sup>2</sup> The Notes Settlement Agreement is contained in Plaintiff’s Exhibit 6.

4. I reserve the right to update my analysis or refine or revise my conclusions if additional documents or information becomes available to me. I may develop additional opinions based on such additional documents or information and/or clarifications to existing information made available to me.

#### EXPERIENCE AND QUALIFICATIONS

5. As indicated in Exhibit 2 of this report, I am an Associate Professor of Commerce at the University of Virginia and Director of the McIntire Center for Financial Innovation. The McIntire School of Commerce ranks consistently in the top tier of U.S. business schools and is currently rated #2 among U.S. undergraduate business school programs by *BusinessWeek*.
6. I earned a Doctor of Philosophy in Finance from the Kelley School of Business at Indiana University, have presented my research at universities and conferences around the world, and published in leading academic journals, including the *Journal of Finance*, *Journal of Financial Economics*, *Journal of Financial Intermediation*, and *Journal of Econometrics*. I have received competitive research grants from the American Bankruptcy Institute, National Bureau of Economic Research, and Research Council of Norway. Prior to joining the McIntire faculty, I was an economist in the International Finance Division of the Federal Reserve Board in Washington, D.C. and before that, an assistant professor of finance at the Norwegian School of Management in Oslo, Norway.
7. I specialize in corporate finance and valuation, particularly as they relate to the nature of debt contracts used by mid to large firms, the restructuring of financially distressed companies, and the trading of debt claims against distressed entities. As part of my published research, I have collected and analyzed data from over 3,700 credit agreements of public corporations, and tracked the impact of more than 3,500 debt covenant violations on corporate borrower behavior.<sup>3</sup> I have also studied recent trends in the use of secured debt by risky corporate borrowers.<sup>4</sup>
8. I have served on numerous panels as a credit and distressed debt expert, including for the American College of Bankruptcy, American Bankruptcy Institute (ABI), and Mid-Atlantic Bankruptcy Association, have testified before the ABI Bankruptcy Reform Commission on issues related to valuing bankrupt entities, and am a column editor for the *ABI Journal*. I have interacted directly with dozens of professionals in credit and distressed debt markets, including agent lenders, investment bankers, debt traders, hedge fund, private equity fund, and Collateralized Loan Obligation (CLO) managers, attorneys, claims agents, and

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<sup>3</sup> See Greg Nini, David C. Smith, and Amir Sufi, "Creditor Control Rights and Firm Investment Policy," *Journal of Financial Economics* 92 (2009), 400-420 and Greg Nini, David C. Smith, and Amir Sufi, "Creditor Control Rights, Corporate Governance, and Firm Value," *Review of Financial Studies* 25 (2012), 1713-1761.

<sup>4</sup> Greg Nini and David C. Smith, "Some Facts and Figures on Secured Lending," *Loan Market Chronicle* 2013, 79-82.

bankruptcy judges. I teach corporate restructuring, which includes a broad coverage of credit markets and debt structures, at the undergraduate, graduate and executive education levels.

### SUMMARY OF CONCLUSIONS

9. The Note Agreement, as reproduced in Plaintiff's Exhibits 4 and 5, is a standard debt contract, similar in form and substance to debt agreements and indentures commonly used in the commercial sphere, including:
  - (a) A clear statement of the amount raised (\$371,458,681), the interest rate paid to the Holders (10%), and the maturity date for the Notes (November 15, 2018).
  - (b) An amortization schedule for the repayment of principal and interest over the life of the loan.
  - (c) Contractual conditions, representations, warranties, covenants, and other protective clauses that are standard in credit agreements and indentures.
  - (d) Grants of security interests in collateral in HFP.
10. The Notes were issued during one of the worst months – if not the worst month – of the 2007-2009 Global Financial Crisis (“GFC”) and subsequent banking panic. During September and October 2008, credit market lending and liquidity provision came to a virtual standstill.
11. Surviving the banking panic required hedge funds and other investment professionals, including entities similar to HFP, to de-leverage and/or seek stable, long-term sources of financing. The Notes issuance provided HFP with just such a source.
12. Evaluated in the context of the 11 factors arising from *Roth Steel Tube* decision, the Notes appear to meet the standards of a bona fide debt obligation.<sup>5</sup> Of particular note, the fact the Notes were issued at a time of declining capital, and by affiliated parties within the grouping of Highland entities, should have no bearing on the characterization of the Notes as debt. Indeed, issuing secured notes through affiliated parties is an efficient mechanism for raising financing when outside financing is unavailable (as during the Fall 2008 banking panic).
13. Based on the totality of the characteristics summarized above, the Note Agreement and Notes issuance appear to constitute a bona fide debt obligation executed at arm's length.
14. The characteristics of the Settlement Agreement are standard for a negotiated restructuring of debt that is in danger of default. The Settlement Agreement has the form and substance of an arm's length contract.

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<sup>5</sup> *Roth Steel Tube Co. v. C.I.R.*, 800 F.2d 625, 86-2 U.S. Tax Case. (CCH) ¶ 9676, 58 A.F.T.R.2d 86-5808 (6th Cir. 1986).

15. The Settlement Agreement precluded an event of default and a prolonged restructuring or foreclosure process that could have further diminished the value of the Collateral. By agreeing to retire the debt early, the Holders received their Collateral (and additional distributions) immediately, while the Holders were able to extinguish an antecedent debt at less than face value, which greatly reduced the Holders' debt burden.
16. Based on my knowledge of debt restructurings, the Settlement Agreement appears to be negotiated in good faith and at arm's-length, and led to an outcome that preserved asset value for the Holders while extinguishing a large debt obligation against HFP.
17. In my opinion, the analysis put forth in the Dudney Report is flawed when alleging that transfers from HFP to Holders associated with the Settlement Agreement were constructively fraudulent transfers. The Dudney Report fails to recognize that Plaintiffs are not creditors in HFP, and thus, are not subject to transfers out of HFP. The report also fails to recognize that fair consideration was given in exchange for the transfers, and that HFP was balance sheet solvent once the transfer took place.

#### **CHARACTERISTICS OF THE NOTE AGREEMENT**

18. The Notes were issued by HFP to obtain long-term financing for the purchase, as an investment, of equity and mezzanine tranches of collateralized loan obligations ("CLOs"). The Notes were also used to finance the acquisition of life settlement contracts.
19. Financing from the Notes came primarily in the form of assets transferred from the Holders to HFP. The total amount raised from the Notes issuance equals the market value of the assets transferred at the time of the Note Agreement.
20. The Note Agreement, as reproduced in Plaintiff's Exhibits 4 and 5, is a standard debt contract, similar in form and substance to debt agreements and indentures commonly used in the commercial sphere.
21. The Note Agreement indicates on its cover page the amount to be raised (\$371,458,681), the interest rate to be paid to the Holders (10%), and the maturity date for the Notes (November 15, 2018). The interest rate on the Notes appears well within the bounds of a "market rate" on secured bonds at the time the Notes were issued. For instance, Exhibit 3 of this report identifies all secured bonds issued during September and October 2008, as tracked by the Fixed Income Securities Database ("FISD"). The exhibit shows that the 10% interest rate charged on the Notes is well within the range of rates observed on other secured bonds issued around the time of the Notes, and just above the average rate of 8.66%.<sup>6</sup>

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<sup>6</sup> Due the near-collapse in credit markets that occurred during the Fall 2008, the number of bond issuances for available for comparison purposes is relatively small.



22. Exhibit 1 to the Note Agreement attaches the actual form of the “note” provided to each of the Holders, specifying, among other things, the amount borrowed from the individual noteholder and instructions on how to collect principal and interest payments from the issuer. Exhibit 2 similarly contains the form that the noteholder can use to “assign” (sell) the note to a third party.<sup>7</sup>
23. Schedule D of the Note Agreement contains an amortization table that details the principal and interest repayment schedule. According to Schedule D, payments are to be paid in cash to the Holders on a quarterly basis in the amount of \$15,078,833, beginning February 15, 2009 and continuing until the maturity date.<sup>8</sup>
24. The sections of the Note Agreement, and the contents within those sections, follow closely the standard format of note purchase agreements, credit agreements, indentures and other debt contracts, including: conditions precedent to closing (Section 4), representations and warranties of the issuer and Holders (Sections 5 and 6), rights for inspection (Section 7), guidelines and conditions for prepayment of the Notes (Section 8), affirmative and negative covenants (Sections 9 and 10), events of default and remedies upon default (Sections 11 and 12), and guidelines for Holders to vote to amend or waive terms and components of the Note Agreement (Section 16).
25. According to Schedule B (“Defined Terms”) of the Note Agreement, the Holders were granted security interests in assets of HFP, including, among other things: (a) the CLO assets transferred from the Holders, (a) life settlement contracts acquired with financing from the Notes, and (c) the equity in the HFP subsidiaries, HFP Asset Funding II, Ltd., (“HFP AF II”) and HFP Asset Funding III, Ltd. (“HFP AF III”), created to house the CLO assets and life settlement contracts (together, the “Collateral”).
26. Schedule C of the Note Agreement contains additional commitments by HFP to, among other things, assure that, within a pre-specified period of time, Holders will receive executed security agreements, evidence that security interests have been perfected in the Collateral, and notice of a collateral account in which HFP, and its subsidiaries, shall deposit earnings and proceeds from the Collateral.
27. The Amended and Restated Note Purchase Agreement includes an additional section (Section 20), in which the Bank of New York Mellon Trust is appointed as “Collateral Agent” to hold security interests in, and liens, on the Collateral for the benefit of the Holders. The Collateral Agent, at the discretion of the Holders, is

<sup>7</sup> Schedule A of the Note Agreement lists the market value of the assets that each Holder contributes to HFP in exchange for its notes.

<sup>8</sup> Note that Section 14.4 of the Note Agreement allows the Issuer to make up to five amortization payments in kind (“PIK”), whereby instead of making cash payments, HFP capitalizes the PIKs into the total amount owed to the Holders through the issuance of additional notes.

also charged with creating valid security interests in the Collateral, and to perfect liens against the Collateral on behalf of the Holders.

28. I am not aware of any security agreements being produced related to the Collateral. I also do not know whether the security interests granted in the Note Agreement were ultimately attached to, and perfected in, the Collateral. However, my understanding of the Note Agreement is that Holders were granted security interests in the Collateral and had *the right* to pursue a process whereby the security interests would be attached to, and liens would be perfected in, the Collateral.

### **TIMING OF LOAN AND FALL 2008 BANKING PANIC**

29. It is important to put the *timing* of the Notes issuance in the context of the 2007-2009 GFC. The Notes were issued on September 26, 2008 in the midst of a full-blown, global banking panic, with September 2008 representing one of the worst months in the financial history of the United States.
30. The GFC began during 2007 with the decline in housing prices and subsequent meltdown in the subprime mortgage market, and the bankruptcy of a number of large mortgage institutions. Trouble spread when banks began to experience interruptions in the usually liquid interbank lending markets, fostered by banks' exposures to the risky tranches of collateralized debt obligations ("CDOs"). Banks began to doubt the creditworthiness of their counterparties and reduce their own credit exposures.<sup>9</sup>
31. As shown in Exhibit 4, this retrenching by banks led to a near-immediate slowdown in commercial lending. By the first quarter of 2008, the dollar volume of commercial loan issuances had contracted 64% from its peak in 2007.
32. Lending in short-term credit markets were also seriously impacted by the GFC. Commercial paper ("CP") issuances declined drastically, beginning in the asset-backed CP ("ABCP") market in the Fall of 2007.<sup>10</sup> Exhibit 5 shows how credit spreads on "prime brokers" began to increase markedly during late 2007 and early 2008. Prime brokers provide, among other things, debt financing to hedge funds and other investment professionals for purchases of assets and securities held in their portfolios.<sup>11</sup>

<sup>9</sup> This paragraph summarizes information from several sources, including *The Financial Crisis: A Timeline of Events and Policy Actions*, Federal Reserve Bank of St. Louis at <http://timeline.stlouisfed.org/index.cfm?p=timeline#>, Victoria Ivashina and David Scharfstein, "Bank Lending During the Financial Crisis of 2008," *Journal of Financial Economics* 97 (2010), 319-388, Mark Mitchell and Todd Pulvino, "Arbitrage Crashes and the Speed of Capital," *Journal of Financial Economics* 104 (2012), 469-490, and Gary B. Gorton, *Slapped by the Invisible Hand: The Panic of 2007*, Oxford University Press (2010).

<sup>10</sup> See Richard G. Anderson and Charles S. Gascon, "The Commercial Paper Market, the Fed, and the 2007-2009 Financial Crisis" *Federal Reserve Bank of St. Louis Review* 91(6) (2009), 589-612.

<sup>11</sup> Mitchell and Pulvino, *op. cit.*, p. 471.

33. The GFC came to a head in September 2008, when as shown in Exhibit 6, the month saw the collapse of seven of the nation's largest financial institutions, including the September 15<sup>th</sup> bankruptcy filing by Lehman Brothers, losses in the value of short-term, liquid – and typically safe – assets that lead to the decline in the net asset value of a money market mutual fund to less than a \$1 (the so-called “breaking of the buck” on September 16, 2008), and massive injections by the Federal Reserve and U.S. Treasury into short-term money markets.
34. Exhibit 4 shows that the severest decline in bank lending occurred in the last quarter of 2008, when the volume of lending declined another 44% compared to the previous quarter. Likewise, Exhibit 4 shows that the credit risk of prime brokers spiked in September and October of 2008, which brought a halt to lending in the prime broker market.
35. Close to 2,000 hedge funds failed between late 2008 through mid-2010, shrinking the amount of assets managed by hedge funds by nearly one-third.<sup>12</sup>
36. Surviving the banking panic required hedge funds and other investment professionals, including entities similar to HFP, to de-leverage and/or seek stable, long-term sources of financing. The Notes issuance provided HFP with just such a source.

#### **THE NOTES IN LIGHT OF ROTH STEEL TUBE FACTORS**

37. As described in paragraphs 18 through 28 above, the Notes and Note Agreement have the form and substance of a standard debt contract and, in my opinion, do not reflect characteristics common to equity contributions and equity contracts.
38. However, it may also be instructive to evaluate the Notes in light of the so-called *Roth Steel Tube* factors, the set of 11 factors utilized in a number of tax and bankruptcy courts for evaluating whether debt can be recharacterized as an equity contribution.<sup>13</sup> Paragraphs 39 through 49 below briefly evaluate the Notes with respect to each factor.

<sup>12</sup> Tom Sullivan, “Nicely Trimmed,” *Barron's*, May 24, 2010

<sup>13</sup> The reference to *Roth Steel Tube* comes from *Roth Steel Tube Co. v. C.I.R.*, 800 F.2d 625, 86-2 U.S. Tax Case. (CCH) ¶ 9676, 58 A.F.T.R.2d 86-5808 (6th Cir. 1986). In bankruptcy courts, the factors are sometimes referred to the “*AutoStyle Plastics*” factors, following the bankruptcy case in the court determined that the *Roth Steel* factors provided a general framework for establishing whether debt could be recharacterized in bankruptcy. My two scholarly references for discussions of debt recharacterization are James H.M. Sprayregen, Jonathan P. Friedland, Jo Ann J.Brighton, and Salvatore F. Bianca, “Recharacterization of Debt to Equity: An Overview, Update, and Practical Guide to an Evolving Doctrine,” *Annual Survey of Bankruptcy Law: 2004 Edition*, William J. Norton, Ed., Thomson-West (2004), 1-32, and James M. Wilton and Stephen Moeller-Sally, “Debt Recharacterization Under State Law,” *The Business Lawyer* 62 (2007), 1257-1280.

39. *Names Given to Instruments.* As recited in Paragraph 9 above, the Notes are issued via the Note Purchase Agreement dated September 26, 2008 and the Amended and Restated Note Purchase Agreement dated October 10, 2008.
40. *Presence of a Fixed Maturity Date and Schedule of Repayments.* As described in Paragraphs 9a., 9b., 21, and 23 of this report, the Notes had a fixed maturity date of November 15, 2018 and a schedule of repayments, reported as Attachment D to the Note Agreement, that required quarterly amortized payments of principal and interest of \$15,078,833.
41. *Presence of a Fixed Rate of Interest and Interest Payments.* As described in Paragraphs 9a, 9b., 21, and 23, the Notes paid a fixed interest rate of 10%, payable as a component of the quarterly amortized payment of \$15,078,833.
42. *Source of Repayment.* According to the “Proposed Note Settlement Agreement between HFP and its Lenders” attached as Exhibit A to “Minutes of a Meeting of the Board of Directors” of HFP dated March 16, 2009 (Plaintiff’s Exhibit 240), the primary source of repayment was the “high current interest income from CLO equity.”<sup>14</sup> But, as described in Paragraphs 25 through 27 above, the Notes were also granted security interests in the Collateral.
43. *Adequacy of Capitalization.* HFP appears to have been created as a well-capitalized entity, with little or no debt in its capital structure prior to the Notes issuance. As shown in Exhibit 7, the largest four equity interests in HFP, represented by limited partner contributions, were (partnership interests are in parentheses): (1) third party investors (56.9%), (2) HCM (21.0%), (3) CDO Fund (9.7%), and (4) Crusader Fund (9.0%).<sup>15</sup> While the value of the equity in HFP likely declined as the banking panic accelerated during September 2008, HFP was solvent at the time of the Notes issuance (see Paragraph 74 below). In any case, there are good economic reasons for using secured debt when the value of equity capital is shrinking. In particular, secured debt grants investors a senior position in the capital structure of the company, where they can feel most protected from further declines in the asset value of the firm.<sup>16</sup> Investors are reluctant to put financing into a company in more junior positions because these positions are more likely to be wiped out by further declines in asset value. Thus, companies in need of financing during times of declines in the value of its equity capital can typically only raise financing through senior and secured debt offerings.<sup>17</sup> It would be unusual – on economic grounds –

<sup>14</sup> Plaintiff’s Exhibit 240 at H\_008490.

<sup>15</sup> Document H\_1760206.

<sup>16</sup> See Nini and Smith, *op. cit.*, at 81.

<sup>17</sup> A common example of this phenomenon is debtor-in-possession (DIP) financing provided to companies during Chapter 11 bankruptcy reorganizations. DIP financing is always providing as debt with at least an administrative claim status, putting DIP lenders senior in priority to all other claimants except prepetition secured lenders. In some circumstances, DIP lenders can also be granted a priority that is equal or superior to prepetition secured lenders via “priming liens.” The legal literature on debt recharacterization and equitable subordination also discuss lending to undercapitalized firms in the context of financial distress; see Sprayregen et al, *op. cit.*, at 9: “if courts subordinated claims solely



to recharacterize the Notes as equity because of GFC-related declines in the equity of HFP.

44. *Identity of Interest Between the Creditor and Equity Owner.* While Holders CDO Fund and Crusader Fund also held limited partner interests in HFP, there is no apparent connection between amounts contributed by Holders and ownership shares held by limited partners. Exhibit 7 shows that little overlap exists between the Holders (as creditors) and the limited partner interests (as equity owners). For instance, the largest ownership interest in HFP is held by third party investors whom, to my knowledge, are not Holders. Meanwhile, Crusader Fund contributed 68.2% of the proceeds from the Notes, but holds only 9% interest in HFP. HCM and CDO Fund make Notes contributions that are smaller than their partnership interests, and 18.9% of the Notes contributions are from creditors that hold no limited partnership interests.

45. *Security for Advances.* As is detailed in Paragraphs 25 through 27 and 42 of this report, the Notes were granted security interests in the Collateral.

46. *Ability to Obtain Outside Financing.* Given that the Notes Issuance came at a time when external lending markets had virtually shut down (see Paragraphs 29 through 36 above), it is unlikely that HFP could have obtained financing in September 2008 from a source external to the affiliates of Highland Capital.<sup>18</sup> Indeed, there are good economic reasons for allowing arm's-length lending to occur between affiliated entities. Managers within affiliated entities are often better informed about the future viability of a company than unaffiliated parties, which make the affiliated lenders "efficient" in the sense that they can better select when to finance a valuable project, and when to forego an investment that does not add value. But affiliated parties face the same incentive problems as unaffiliated lenders when investing in an firm with low capital, and therefore can most efficiently deploy needed financing to firm with decline value by offering senior and secured debt.<sup>19</sup> The need for affiliated financing becomes especially useful during times when typical providers of financing – such as banks – are themselves financially distressed, as was the case

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based on a debtor's undercapitalization, insiders would always be reluctant to lend money to a struggling entity".

<sup>18</sup> The affiliated parties included the following: Holders HCM, CDO Fund and Crusader Fund were equity owners in HFP. HCM was investment manager for HFP and for each of the Holders, and a direct or indirect owner in HFP and the other Holders. Mr. James Dondero was a director in HFP, a director in the HFP subsidiaries, HFP Asset Funding II, Ltd., ("HFP AF II") and HFP Asset Funding III, Ltd. ("HFP AF III"), and President of each of the Holders.

<sup>19</sup> The importance of inside financing to financially distressed firms is also covered in the scholarly legal articles; e.g., see Wilton and Moeller-Sally, *op. cit.*, at 1258:

The doctrine of equitable subordination, as developed under the Bankruptcy Act, established the general principle that money loaned by corporate insiders is as green as money loaned by non-insiders; absent inequitable conduct, an insider's claim to recover a loan to a corporation ranks *pari passu* with claims of non-insider lenders.

See also Michael R. Tucker, "Debt Recharacterization During an Economic Trough: Trashing Historical Tests to Avoid Discouraging Insider Lending," *Ohio State Law Journal*



during the Fall 2008. At that time, few external options for financing existed, making a loan from an affiliated source all the more important.

47. *Extent to Which Advances Were Subordinated to Claims of Outside Creditors.* As described above in Paragraphs 25 through 27, and Paragraph 42, the Notes were granted security interests in the Collateral. The intention under the Note Agreement was to perfect a first priority claim against the collateral in HFP.<sup>20</sup> To my knowledge, no other substantial debt claims existed against HFP at the time the Notes were issued.

48. *Extent to Which Advances Were Used to Acquire Capital Assets.* Plaintiff's Exhibit 240 at H\_008490 explains that proceeds from the notes would be used to "acquire and hold various structured product assets [e.g., CLO equity and mezzanine tranches] to maturity. The Notes were also issued to acquire life settlement contracts." I would characterize the assets obtained with the Notes issuance as assets used for generating income in the ordinary course of business for HFP.

49. *Presence of a Sinking Fund to Provide Repayments.* There appears to be no sinking fund associated with the Notes. However, to my knowledge, sinking funds are fairly uncommon in today's corporate debt service agreements.

50. In sum, based on my review of the Note Agreement and documents related to the Notes issuance, coupled with my knowledge of corporate debt contracts and markets, my opinion is that the Note Agreement and the Notes issuance exhibit the characteristics of a standard arm's-length debt transaction.

#### **THE SETTLEMENT AGREEMENT**

51. The 4<sup>th</sup> quarter of 2008 ended with a sharp increase in credit downgrades to corporate loans. This had a significant negative impact on the cash inflows to HFP from its CLO equity assets because CLO indenture provisions required that income flows to the CLO be retained as cash, rather than paid out to equity tranche holders (such as HFP), to offset the downgraded loans held in the CLO portfolios.<sup>21</sup>

52. The drop in cash inflows from CLO assets was significant enough to make it unlikely that HFP would be able to meet its debt service obligations under the Notes as they came due.<sup>22</sup>

<sup>20</sup> For instance, Section 5.14 of the Amended and Restated Note Purchase Agreement (Plaintiff's Exhibit 5 at H\_0928497) states, "The provisions of the Security Documents are effective to create in favor of the Holders a legal, valid and enforceable first priority Lien on all right, title, and interest of the respective Issuer Parties in the Collateral described herein." While to my knowledge the security documents were not ultimately executed, the grant of security interests in the Collateral is sufficient, in my opinion to show the indent of the parties to the agreement.

<sup>21</sup> Plaintiff's Exhibit 240 at H\_008491-H\_008492.

<sup>22</sup> Plaintiff's Exhibit 240 at H\_008492

53. During the early months of 2009, the HFP board sought a negotiated resolution to its inability to meet its debt service requirements that would avoid an event of default under the Note Agreement. The process through which the HFP board contemplated its options followed a pattern similar to what would be cogently followed in a distressed-related financial restructuring.<sup>23</sup>
54. On March 20, 2009, the Settlement Agreement was entered into by HFP and the Holders. The Settlement Agreement retired the Notes, in exchange for which HFP transferred collateral and cash to the Holders in satisfaction of the Holders' claims against HFP.
55. The characteristics of the Settlement Agreement are standard for a negotiated restructuring of debt that is in danger of default. The Settlement Agreement has the form and substance of an arm's-length contract, including (a) a complete listing of the collateral assets, pledged equity, and additional cash to be transferred to Holders in satisfaction of their claims (Sections 2.1, 2.5, 2.6 and Exhibits A and B of the Settlement Agreement, and (b) an explicit recognition of the termination of the obligations against HFP under the Note Agreement (Section 2.3 of the Settlement Agreement) and release of the parties from any future causes of action related to the Note Agreement (Section 2.4 of the Settlement Agreement).
56. Exhibit 8 shows the dollar recoveries and recovery rates (dollar recoveries as a percentage of face value of debt) to the Holders under the Settlement Agreement, as reported in Exhibit A of Plaintiff's Exhibit 358 (at H\_008515). For comparison purposes, Exhibit 9 reports average U.S. recovery rates for *defaulted* loans, secured bonds, senior unsecured bonds, and subordinated bonds over the 2000 to 2011 period, as reported by FitchRatings Credit Market Research.
57. Under the Settlement Agreement, the Holders recovered an average of 61% of the face value on the Notes (Exhibit 8). By comparison, secured bonds tracked by FitchRatings that defaulted during 2009 recovered an average of 39% (Exhibit 9). The recovery rate to Holders was higher than the 2009 average because the value of the Collateral backing the Notes remained relatively high. Exhibit 8 shows that the recovery rate on the Collateral alone was 52%. The recovery rate to Holders was more in line with defaulted *loans* in 2009, which averaged 59% (loans are often strictly monitored and restructured quickly following a default), and defaulted secured bonds over the longer 2001-2011 sample period, which averaged 62%.<sup>24</sup>
58. Recovery rates to each of the Holders varied between 48% and 74%, except to HCM, which as the largest equity owner in HFP, agreed to a lower recovery rate of 36%. The recovery rates to non-HCM Holders varied as function of the market value of the collateral, as contributed by each of the non-HCM Holders under the Note Agreement.

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<sup>23</sup> Plaintiff's Exhibit 240 at H\_008491-H\_008495.

<sup>24</sup> See Nini, Smith, Sufi (2012), *op. cit.*, p. 1720.

59. The early retirement of the Notes enabled HFP to reduce its debt burden in the midst of continuing declines in the value of the assets in its portfolio at the end of 2008 and beginning of 2009. The Settlement Agreement precluded an event of default and a prolonged restructuring or foreclosure process that could have further diminished the value of the Collateral. By agreeing to retire the debt early, the Holders received their Collateral (and additional distributions) immediately, while the Holders were able to extinguish an antecedent debt at less than face value, which greatly reduced their debt burden.

60. Based on my knowledge of debt restructurings, it is my opinion that the Settlement Agreement appears to be negotiated in good faith and at arm's-length, and led to an outcome that preserved asset value for the Holders while extinguishing a large debt obligation against HFP.

#### **REBUTTAL TO DUDNEY ANALYSIS OF FRAUDULENT TRANSFERS**

61. In this section, I analyze and rebut the assertion in the Dudney Report that the transfers made from HFP to the Holders in exchange for the extinguishment of the Notes constituted a constructively fraudulent transfer.

62. As noted in the Dudney Report, New York Debtor & Creditor law defines, "every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration."<sup>25</sup> There are three features of this definition that are relevant to my rebuttal:

- (a) *The conveyances are fraudulent "as to creditors" of the person.* A conveyance can only be fraudulent against *creditors within the entity* that makes the transfer or incurs the obligation.
- (b) *The conveyance is fraudulent only when it occurs without fair consideration.* Under New York State law, "fair consideration" is defined to be, "When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied. . ."<sup>26</sup>
- (c) *The person is, or will be rendered, insolvent by the conveyance or obligation.* As covered by the Dudney Report, definitions of entity insolvency come in three forms: (1) the fair value of the assets of the entity drop below the face value of the entity's liabilities, (2) the entity,

<sup>25</sup> Dudney Report, on page 58, citing Article 10, Section 273 of the New York Debtor & Creditor law.

<sup>26</sup> Dudney Report on page 58, citing Article 10, Section 272 of the New York Debtor & Creditor law.

following its transfer, has unreasonably low capital, and (3) the entity is unable to meet its obligations as they come due.<sup>27</sup>

63. Dudney asserts that “SOHC and HFP on a combined basis” was insolvent no later than October 31, 2008 or December 31, 2008.<sup>28</sup> This assertion is flawed on several dimensions.
64. First, in relation to point (a) in Paragraph 62, a conveyance can only be fraudulent against creditors of the entity in which the transfer was made. In my review of the documents and agreements associated with this case, I have found no evidence that UBS Securities LLC (“UBS Securities”) or UBS AG (“UBS AG”), London Branch (together, “Plaintiffs”) were creditors of HFP.
65. According to the credit documents associated with the Plaintiff’s lending arrangements known as the “Knox Warehouse”, including the March 14, 2008 Engagement of UBS Securities and Placement Agent in Connection with Proposed Collateralized Debt Obligation (“Engagement Letter”, Plaintiff’s Exhibit 1), the March 14, 2008 Cash Warehouse Agreement (Plaintiff’s Exhibit 2) and the March 14, 2008 Synthetic Warehouse Agreement (Plaintiff’s Exhibit 3), UBS Securities held a claim against SOHC and CDO Fund for the amount of the “Aggregate Collateral Loss” calculated by UBS Securities upon termination of the Knox Facility. There is no indication from these documents that HFP acted as a borrower, issuer, or was in any other way obligated to the Plaintiffs.
66. Nor was HFP obligated to Plaintiffs indirectly via transfers from SOHC to HFP. SOHC was not a holder in the Notes or a creditor of HFP in some other role. HFP was affiliated with SOHC only through HFP’s holding of 100% of the equity interests in SOHC. These interests were subordinate to Plaintiffs’ claims under the Knox Warehouse.<sup>29</sup>
67. Through its participation as a Holder in the Notes, CDO Fund was originally a creditor in HFP. But CDO Fund sold a portion of their Notes for full cash value to HCM and pledged the remainder of their Notes to Citi as collateral for a separate financing facility set up by Citi.
68. The only mechanism through which the Dudney Report connects SOHC to HFP is via its “indicia” of alter ego between Highland entities. While it is beyond the scope of my report to assess the Dudney Report’s assertions of alter ego, I reiterate

<sup>27</sup> These definitions of insolvency correspond roughly to the differences in definitions of fraudulent conveyance under Sections 273, 274, and 275, respectively. See Dudney Report, pp. 58.

<sup>28</sup> Dudney Report, Point C.1. on Page 6. Dudney assesses insolvency at two points in time under two different assumptions: “one where the HFP Notes are treated as debt and another where the HFP Notes are recharacterized as equity”, (Dudney Report, Page 7), which leads Dudney to conclude that the combined SOHC was insolvent either as of October 31, 2008 or December 31, 2008. Dudney is unclear as to whether he believes the “combined entities” were insolvent at the time the transfer occurred on March 20, 2009.

<sup>29</sup> HFP Organizational Chart at H\_1759160.



my contention from earlier sections that: (i) the documents associated with the Notes, Note Agreement, and Settlement Agreement suggest that these transactions were conducted at arm's length, in a manner that is standard to debt markets, and (ii) that transactions between affiliated entities do not by themselves constitute misbehavior by the affiliated parties. My sense from the case documents reviewed for this report is that the Highland entities respected corporate formalities as they conducted affiliated transactions.

69. Second, in relation to point (b) in Paragraph 62, the conveyance is fraudulent only when the transfer is not for fair consideration. But, as detailed in Paragraphs 51 through 60 above, the transfer of assets associated with the Settlement Agreement involved an exchange that "satisfied an antecedent debt", namely the Notes.
70. Moreover, the exchange involved extinguishing the Notes for less than their face value. As discussed in Paragraph 57 and reported in Exhibit 8, Holders received a recovery rate that averaged 61% of their face value. This recovery rate reflected the current market value of the collateral contributed by each Holder, plus additional cash or assets contributed to compensate Holders for assets sold out of the original pool of Collateral.<sup>30</sup>
71. By extinguishing the Notes in exchange for this transfer, HFP obviated the risk that Holders would later assert a deficiency claim against HFP for the difference in the face value of their debt and the value of the collateral. Essentially, HFP received, in exchange for the assets, a reduction in exposure equivalent to  $100\% - 61\% = 39\%$  of the face value of the Notes, which translates to a savings of \$143.7 million, compared with the amount HFP would have paid had they made the Holders whole. At the same time, Holders received a recovery that was comparable to loan recoveries in 2009, and was above the average recovery rate for secured bonds in the year the Settlement Agreement took effect (See Exhibit 9).
72. In my opinion, this exchange represents fair consideration for the exchange. Thus, *even if UBS Securities somehow had a claim against HFP*, my analysis suggests that the March 20, 2009 transfers out of HFP associated with the Settlement Agreement did not constitute a fraudulent transfer because HFP received fair consideration in exchange for the transfer.<sup>31</sup>
73. Finally, in relation to point (c) in Paragraph 62, I will comment briefly on the fair or "salable" value of HFP relative to the face value of its liabilities – that is, the so-called "balance sheet" test of solvency -- at several points in time.

<sup>30</sup> See the discussion of the Settlement Agreement in Plaintiff's Exhibit 240 at H\_008494-H\_008495. Exhibit 8 shows that recovery rates on the Collateral averaged 52%, indicating that Holders received an average additional contribution equivalent to  $61\% - 52\% = 9\%$  of the face value of their original notes.

<sup>31</sup> Dudney dismisses the idea that the extinguishment of the Notes constituted fair consideration because, "New York State case law generally provide[s] that a repayment of a preexisting debt qualifies as fair consideration for a transfer of property unless the transferee is an insider of the transferor." (Dudney Report, p. 77). But my understanding is that the New York state and U.S. bankruptcy case law is a lot less "black and white" on the issue of fair consideration.



74. According to contemporaneous valuations of HFP assets performed by the valuation firms Watson Wyatt Insurance & Financial Services, Inc. and Sterling Valuation Group, Inc. at the time of the original Notes issuance (performed on or about September 26, 2008) and after the time of the amended and restated agreement (on or about October 31, 2008), HFP was “balance sheet solvent” at the incurrence of the Notes obligations, in the sense that the fair value of the assets exceeded the value of the Notes liabilities.<sup>32</sup>
75. The fact that HFP transferred a substantial portion of its assets to the Holders at a value that was below the face value of the Notes suggests that, at the time immediately prior to the Settlement Agreement, HFP was balance sheet insolvent. However, once the transfer was made and HFP extinguished the Notes obligation, the entity no longer had significant outstanding financial obligations. According to Plaintiff’s Exhibit 240 at H\_008495, the fair value of HFP’s assets post-Settlement Agreement amounted to approximately \$45 million (see point 13 on H\_008495). As these assets were unencumbered by additional debt, HFP was likely balance sheet solvent again.
76. In sum, I believe Dudney’s analysis is flawed when he asserts that the transfers associated with the Settlement Agreement were constructively fraudulent. My understanding of the credit documents and the organizational structure of the Highland Capital entities indicates that Plaintiffs were not creditors of HFP. In that case, any transfers out of HFP would not be fraudulent with respect to Plaintiffs’ position in other separate Highland Capital entities. Even if Plaintiffs were creditors in HFP, the transfers related to the Settlement Agreement should not, in my opinion, be fraudulent because HFP received fair consideration in exchange for the transfers through the extinguishment of the only antecedent debt within HFP, the Notes.

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<sup>32</sup> The valuations are contained at the following Bates document locations: Watson Wyatt Insurance & Financial Services, Inc: ST-0005841-ST-0005849, Sterling Valuation Group, Inc.: H\_1799770-H\_1799773 and H\_0837241-H\_0837244.

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David C. Smith  
April 19, 2013

# EXHIBIT 1

1. Greg Nini & David C. Smith, *Some Facts and Figures on Secured Lending*, LOAN MARKET CHRONICLE (2013).
2. Michael R. Tucker, *Debt Recharacterization During an Economic Trough: Trashing Historical Tests to Avoid Discouraging Insider Lending*, 71 OHIO ST. L.J. 187 (2010).
3. Mariarosa Verde & Eric Rosenthal, *Fitch U.S. High Yield Default Insight – 2013 Outlook*, FITCH RATINGS CREDIT MARKET RESEARCH (Dec. 20, 2012).
4. Victoria Ivashina & David Scharfstein, *Bank Lending During the Financial Crisis of 2008*, JOURNAL OF FINANCIAL ECONOMICS 97, 319-338 (2010).
5. Mark Mitchell & Todd Pulvino, *Arbitrage Crashes and the Speed of Capital*, JOURNAL OF FINANCIAL ECONOMICS 104, 469-490 (2012).
6. Greg Nini, David C. Smith & Amir Sufi, *Creditor Control Rights, Corporate Governance, and Firm Value*, 1713-1761 (2012).
7. *In re Northstar Development Corp.*, No. 08-10689B (Bankr. D. N.Y. Feb. 10, 2012).
8. David A. Skeel & George Krause-Vilmer, *Recharacterization and the Nonhindrance of Creditors*, EUROPEAN BUSINESS ORGANIZATION LAW REVIEW, 7, pp. 259-285 (March 2006).
9. William L. Norton, Jr., *Annual Survey of Bankruptcy Law* (2004).
10. James M. Wilton & Stephen Moeller-Sally, *Debt Recharacterization under State Law*, THE BUSINESS LAWYER, vol. 62, 1258 (Aug. 2007).
11. Gary B. Gorton, *Slapped by the invisible Hands: The Panic of 2007*, Oxford University Press (2010).
12. H\_0222183
13. Second Amended Complaint – MARKUP (Ex. 1)
14. Second Amended Complaint (Ex. 1)
15. H\_0056026 – H\_0056083 (Ex. 4)
16. H\_0928489 – H\_0928539 (Ex. 5)
17. PWC-HCM00026158 – PWC-HCM00026174 (Ex. 6)
18. OHS 006008 – OHS 006011 (Ex. 265)
19. Expert Report of Ezra Zack
20. Expert Report of Louis G. Dudney, CAP
21. H\_0086212 – H\_pp86215; H\_0056068
22. Engagement letter between UBS Securities LLC and Highland Capital Management, L.P., dated 3/14/08 (Pl. Ex. 1)
23. Cash Warehouse Agreement (Pl. Ex. 2)

24. UBS-00000584 – UBS-00000672 (Pl. Ex. 3)
25. H\_0056026 – H\_0056083 (Pl. Ex. 4)
26. H\_0928489 – H\_0928539 (Pl. Ex. 5)
27. PWC-HCM00026158 – PWC-HCM00026174 (Pl. Ex. 6)
28. H\_0008451 - H\_0008453 (Ex. 79)
29. H\_0008442 - H\_0008443 (Ex. 80)
30. H\_0842097 - H\_0842105 (Ex. 225)
31. H\_0008454 - H\_0008457 (Ex. 229)
32. H\_0008444 - H\_0008445 (Ex. 232)
33. H\_0008446 - H\_0008448 (Ex. 234)
34. H\_0008487 - H\_0008507 (Ex. 240)
35. H\_0008512 - H\_0008539 (Ex. 358)
36. Holder Recoveries.xls
37. Secured bond issues for Tables.xls
38. September October 2008 Crisis Timeline.pptx
39. Deposition Transcript of James Dondero dated 2-28-12
40. Deposition Transcript of James Dondero Volume II
41. Final Report of Highland Capital HFP Valuation dated October, 2008
42. Plaintiff Exhibit 128
43. Sterling Valuation at Amendment
44. Sterling Valuations at time of Issuance
45. Document bates label H\_0819777
46. Document bates label H\_0819778
47. Document bates label H\_0788351
48. Document bates label H\_1759160
49. Document bates label H\_1760206
50. Document bates label H\_1760207
51. Document bates label H\_1760226
52. Document bates label H\_1760259
53. Document bates label H\_1760264
54. Document bates label H\_1760328
55. Document bates label H\_1760426
56. Document bates label H\_1760490

57. Document bates label H\_1759160
58. Document bates label H\_1759161
59. Document bates label H\_1759162
60. Document bates label H\_1759163
61. Document bates label H\_1759164
62. Document bates label H\_1759190
63. Document bates label H\_1759246
64. Document bates label H\_1759262
65. HCM Organization Chart created by Highland for Judge
66. Organizational Chart Created by UBS for Judge
67. Document bates label H\_0788351
68. Document bates label H\_1759160



**EXHIBIT 2**  
**BIOGRAPHY AND CURRICULUM VITAE OF DAVID C. SMITH**

**David C. Smith**

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**Summary**

David Smith holds a Ph.D. in finance and is an Associate Professor of Commerce at the University of Virginia and Director of the McIntire Center for Financial Innovation. He is an expert on matters related to corporate bankruptcy and distressed debt trading. He has presented his research at universities and conferences around the world and published in leading academic journals.

Smith teaches corporate valuation and corporate restructuring at undergraduate graduate levels. Prior to joining the University of Virginia, he was an economist in the International Finance Division of the Federal Reserve Board.

**Current activity**

- Top-level researcher and expert in areas related to corporate credit agreements, corporate restructuring and bankruptcy, distressed debt trading, and corporate governance.
- Consulting experience includes testifying valuation expert in large economic damages case, valuation expert for liquidating assets of large resort, bankruptcy claims trading expert for litigation involving breach of claims assignment contract.
- Research work focuses on impact of covenant violations on corporate behavior, creditor influence over corporate governance, impact of distressed debt trading on Ch. 11 outcomes, defaults and restructurings of private-equity backed firms, and impact of Nevada law on firms incorporated in Nevada.
- Other relevant information: Research funded by the American Bankruptcy Institute (ABI). Column Coordinator for *ABI Journal* column "Financial Statements." Distressed debt research featured as cover article in April 2011 *ABI Journal*. Expert panelist on bankruptcy valuation (2009 VALCON) and distressed debt trading (2011 MidAtlantic Bankruptcy Institute; 2012 Rocky Mountain ABI Conference) panels. Teaches corporate restructuring to new investment banking analysts and associates through *Training the Street*.

## **Curriculum Vitae**

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### **EDUCATION**

Ph.D. (Finance)	Indiana University, 1993
B.S.	University of Delaware, 1988

### **PRESENT EMPLOYMENT**

Associate Professor of Commerce, University of Virginia, McIntire School of Commerce, 2009 -

Director, McIntire Center for Financial Innovation, 2007 -

Associate Professor of Commerce, University of Virginia, McIntire School of Commerce, 2005-2009

### **PREVIOUS POSITIONS**

Director, Berkeley Research Group, LLC, 2011 -2012

Affiliate, LECG, LLC, 2009-2011

Economist, Board of Governors of the Federal Reserve System, Washington, D.C., 2000-2005

Visiting Assistant Professor, University of Florida, Gainesville, FL., 1998-2000

Assistant Professor, BI Norwegian School of Management, Oslo, Norway, 1993-1999

### **TESTIFYING EXPERIENCE**

*Deutsche Bank Securities Inc. and SPCP Group, LLC v. Lexington Drake L.P.*, Supreme Court of the State of New York, March 2012.

*Nycal Offshore Development Corp. v. United States*, United States Court of Federal Claims, December 2010.

**PROFESSIONAL AWARDS, RECOGNITION, AND PRIZES**

2011	Order of the Cloak & Dagger Annual Faculty Recognition Award, McIntire School of Commerce
2010	Seven Society Faculty Honoree for Outstanding Contributions to the University of Virginia
2009	PriceWaterhouseCoopers Grant for Professional Services Development
2009	Faculty Inductee, Beta Gamma Sigma
2009-10	Competitive research grant from the National Bureau of Economic Research to study financial restructurings of firms backed by private equity
2007-10	Competitive research grant from the Research Council of Norway's <i>Finansmarkedsfond</i> .
2007-09	Competitive research grant from the American Bankruptcy Institute for the study of the trading of distressed debt claims, 2007-2009.
2000	1st Runner up, Outstanding Paper of the Year Award at the <i>Journal of Financial Intermediation</i> for "What Determines the Number of Bank Relationships? Cross-Country Evidence"
1998	Nominee, Smith-Breeden Prize at the <i>Journal of Finance</i> for "The Conditional Performance of Insider Trades,"

**EXTERNAL GRANTS**

2009	National Bureau of Economic Research
2007	Research Council of Norway
2007	American Bankruptcy Institute

**PROFESSIONAL AFFILIATIONS**

Column Editor, *American Bankruptcy Institute Journal*, 2011 –

Associate Editor, *Journal of Financial Services Research*, 2007-2011

Member, American Finance Association, 1993-

Member, European Finance Association, 1993-

Member, American Bankruptcy Institute, 2006-

## PUBLICATIONS

“Some Facts and Figures on Secured Lending,” with Greg Nini, *2013 LSTA Chronicle*, forthcoming.

“The Restructuring of Danfurn LLC,” with Larry Halperin and Michael Friedman, Darden Business Publishing’s *McIntire School of Commerce Business Case Series*, January 2013.

“U.S. International Equity Investment,” with John Ammer, Sarah Holland, and Francis Warnock, *Journal of Accounting Research*, December 2012, 50(5), 1109-1139.

“Creditor Control Rights, Corporate Governance, and Firm Value,” with Greg Nini and Amir Sufi, *Review of Financial Studies*, June 2012, 25(6), 1713-1761.

“Claims Trading Promotes Ownership Concentration,” with Tinamarie Feil, *American Bankruptcy Institute Journal*, April 2011, 30-3, 1.

“Creditor Control Rights and Firm Investment Policy,” with Greg Nini and Amir Sufi, *Journal of Financial Economics*, June 2009, pp. 400-420.

“On the Sequencing of Projects, Reputation Building, and Relationship Finance,” with Dominik Egli and Steven Ongena, *Finance Research Letters*, March 2006, 23-39.

“Maximizing the Value of Distressed Assets: Bankruptcy Law and the Efficient Reorganization of Firms,” with Per Strömberg, in *Systemic Financial Distress: Containment and Resolution*, Patrick Holohan and Luc Laeven editors, Cambridge University Press, 2005.

“The Impact of Bank Consolidation on Commercial Borrower Welfare,” with Jason Karceski and Steven Ongena, *Journal of Finance*, August 2005, 2043-2082.

“Loans to Japanese Borrowers,” *Journal of the Japanese and International Economies*, September 2003, 283-304.

“Global Integration in the Banking Industry,” with Allen Berger, *Federal Reserve Bulletin*, November 2003, 451-460.

“To What Extent Will the Banking Industry be Globalized? A Study of Bank Nationality and Reach in 20 European Nations,” with Allen Berger, Qinglei Dai and Steven Ongena, *Journal of Banking and Finance*, February 2003, 383-415.

“Firms and Their Distressed Banks: Lessons from the Norwegian Banking Crisis (1988 - 1991),” with Steven Ongena and Dag Michalsen, *Journal of Financial Economics*, January 2003, pp. 81-112.

“The Duration of Bank Relationships,” with Steven Ongena, *Journal of Financial Economics*, September 2001, pp. 449-475.

“Are Banks Still Special? New Evidence on their Role in the Capital-Raising Process,” with Christopher James, *Journal of Applied Corporate Finance*, Spring 2000, pp. 52-63.

“Bank Relationships: A Review,” with Steven Ongena, in *The Performance of Financial Institutions*, 2000, P. Harker and S.A. Zenios, editors, Cambridge University Press, pp. 221-258.

“What Determines the Number of Bank Relationships? Cross-Country Evidence,” with Steven Ongena, *Journal of Financial Intermediation*, January 2000, pp. 26-56.

“Finite Sample Properties of Tests of the Epstein-Zin Asset Pricing Model,” *Journal of Econometrics*, November 1999, pp. 113-148.

“The Elasticity of Interest Rate Volatility - Chan, Karolyi, Longstaff and Sanders Revisited,” with Robert Bliss, *Journal of Risk*, Fall 1998, pp. 21-46.

“The Conditional Performance of Insider Trades,” with B. Espen Eckbo, *Journal of Finance*, April 1998, pp. 467-498.

“Quality and Duration of Bank Relationships,” with Steven Ongena in *Global Cash Management in Europe*, D. F Birks, editor, MacMillan Press, 1998.

4/19/2013

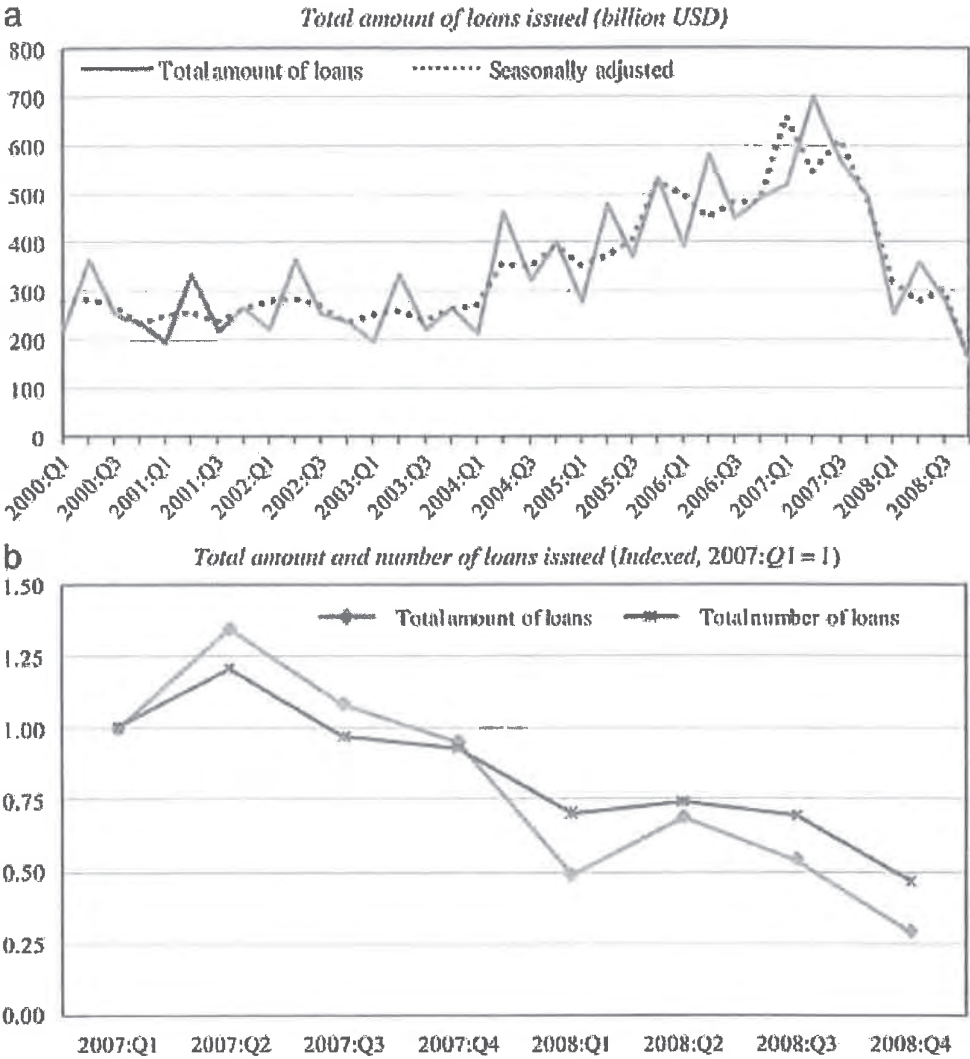


**EXHIBIT 3**  
**SECURED BOND ISSUANCES DURING SEPTEMBER AND OCTOBER 2008**

Issue Date	Issuer CUSIP	The name of the issuer as in the prospectus.	Issue type description as taken from the prospectus.	Par Value	Yield to Maturity at Issuance	Price at Issue	Face Value of Issue	Maturity Date
20080918	505588	LACLEDE GAS CO	IST MTG BD	1000	6.59	96.85	80,000	20381015
20080917	656559	NORTEK INC	GTD SR SECD NT	1000	.	.	750,000	20131201
20080903	665789	NORTHERN STS PWR CO WIS	IST MTG BD	1000	6.43	99.235	200,000	20380901
20080925	693304	PECO ENERGY CO	IST & REF MTG BD	1000	5.66	99.72	300,000	20131015
20080924	729416	PLY GEM INDS INC	GTD SR SECD NT	1000	.	.	700,000	20130615
20080925	837004	SOUTH CAROLINA ELEC & GAS CO	IST MTG BD	1000	6.54	99.713	300,000	20181101
20080908	210518	CONSUMERS ENERGY CO	IST MTG BD	1000	6.13	99.93	350,000	20190315
20080903	682331	ONCOR ELEC DELIVERY CO LLC	IST MTG BD RULE 144A	1000	5.98	99.866	650,000	20130901
20080903	682331	ONCOR ELEC DELIVERY CO LLC	IST MTG BD RULE 144A	1000	6.81	99.895	550,000	20180901
20080903	682331	ONCOR ELEC DELIVERY CO LLC	IST MTG BD RULE 144A	1000	7.53	99.695	300,000	20380901
20080924	714048	PERKINS & MARIE CALLENDERS INC	GTD SR SECD NT RULE 144A	1000	15.75	94.29	132,000	20130531
20081021	126410	CSX TRANSN INC	GTD SR SECD EQUIP NT	1000	8.38	100	350,538	20141015
20081020	192108	COEUR D ALENE MINES CORP IDAHO	SR SECD NT FLTGT RT CONV	1000	.	100	50,000	20121015
20081007	250847	DETROIT EDISON CO	SR SECD NT SER J	1000	6.46	99.742	250,000	20131001
20081006	442488	HOVNANIAN K ENTERPRISES INC	GTD SR SECD NT	1000	.	.	600,000	20130501
20081020	452092	ILLINOIS PWR CO	SR SECD NT RULE 144A	1000	10.00	98.421	400,000	20181115
20081015	677347	OHIO EDISON CO	IST MTG BD SER 2008	1000	8.50	97.303	275,000	20381015
20081007	842400	SOUTHERN CALIF EDISON CO	IST & REF MTG BD SER 2008C	1000	5.86	99.492	500,000	20140315
20081030	552953	MGM MIRAGE INC	GTD SR SECD NT RULE 144A	1000	15.00	93.132	750,000	20131115
20081014	693511	PPL ELEC UTILS CORP	SR SECD BD	1000	7.14	99.91	375,000	20131130
20081017	925335	VERTIS INC	GTD SR SECD 2ND LIEN PIK NT SER A	1	18.50	100	294,045	20121001
20081030	339099	FLEETWOOD ENTERPRISES INC	GTD SR SECD PIK NT	1000	.	.	81,400	20111215
				Minimum	5.66		50,000	20111215
				Maximum	18.50		750,000	20381015
				Average	8.66		374,454	--
				Median	6.81		325,000	20131130

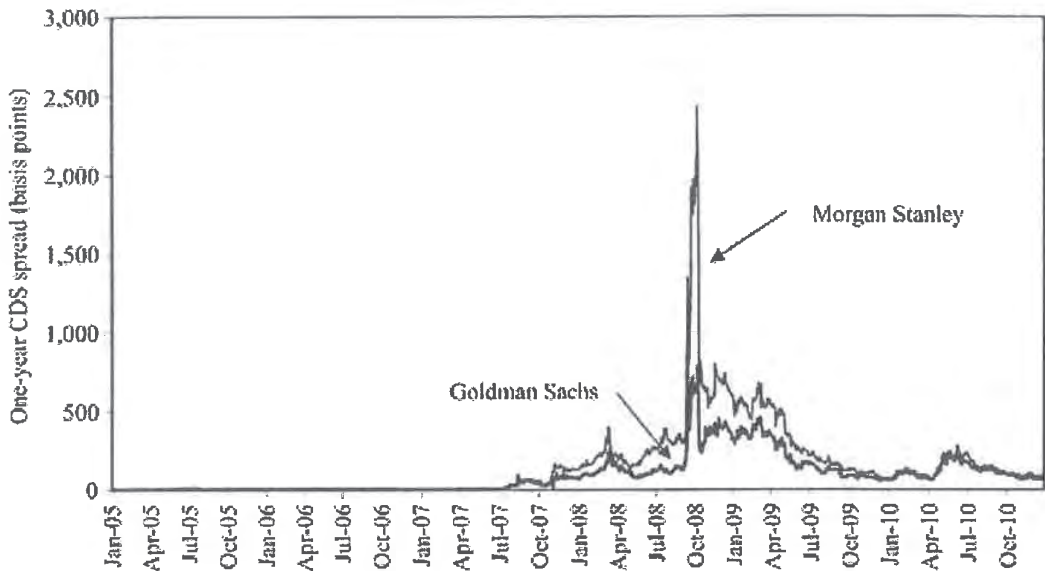
Source: Fixed Income Security Database (FISD), for secured bonds issued during September and October 2008.

**EXHIBIT 4**  
**VOLUME OF COMMERCIAL LOAN ISSUANCES**



Source: Figure 1 on page 322 of Victoria Ivashina and David Scharfstein, “Bank Lending During the Financial Crisis of 2008,” *Journal of Financial Economics* 97 (2010), 319-388. The graph is calculated by compiling total syndicated loan originations from the Reuters LPC Dealscan database.

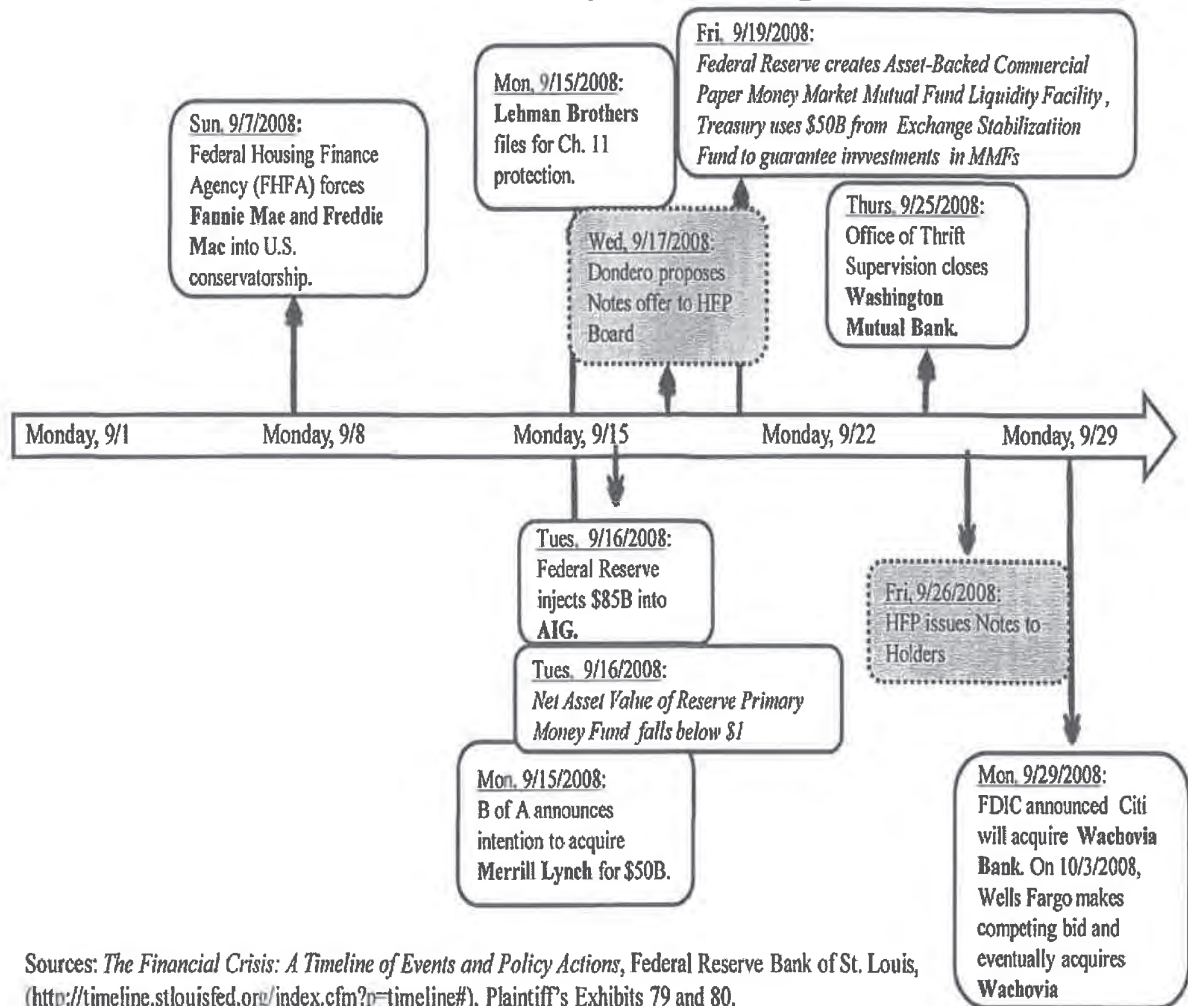
**EXHIBIT 5**  
**CREDIT RISK AT PRIME BROKERS**



Source: Figure 2 on page 475 of Mark Mitchell and Todd Pulvino, “Arbitrage Crashes and the Speed of Capital,” *Journal of Financial Economics* 104 (2012), 469-49. The graph shows daily one-year credit default spreads (CDS) for Goldman Sachs and Morgan Stanley, two high-quality prime brokers.

## Exhibit 6

### Events Related to Banking Panic of September 2008



Sources: *The Financial Crisis: A Timeline of Events and Policy Actions*, Federal Reserve Bank of St. Louis, (<http://timeline.stlouisfed.org/index.cfm?p=timeline#>), Plaintiff's Exhibits 79 and 80.

**EXHIBIT 7**  
**COMPARING CREDITOR AND EQUITY OWNER INTERESTS**

Contribution by Holders of Notes (1)	% Contribution	Limited Partner Interests in HFP (2)	% Interest
Third Party Investors	--	Third Party Investors	56.9%
HCM	6.0%	HCM	21.0%
CDO Fund	5.8%	CDO Fund	9.7%
Crusader Fund	69.3%	Crusader Fund	9.0%
Other Holders	18.9%	Other Limited Partners	3.4%
<b>Total</b>	<b>100.0%</b>	<b>Total</b>	<b>100.0%</b>

Sources: (1) Contributions by Holders of Notes is calculated using the "Current Balance" of Holders as of January 1, 2009, as reported in Plaintiff's Exhibit 358 at H\_008515. "% Contribution" is the balance of each holder, divided by the total outstanding balance on the Notes. "Other Holders" includes Credit Strategies and Credit Opportunities Fund. (2) Limited Partner Interests in HFP are obtained from Document H\_1760206. Other Limited Partners include Highland Equity Focus Fund, L.P., Internal Investors, James Dondero, and Mark Okada.



**EXHIBIT 8**  
**SETTLEMENT AGREEMENT RECOVERY RATES**

Entity	Market Value of Purchase Price Asset	Principal Amount of Notes	Amounts following transfers to HCM and Citi	Current Balance (1/1/09) in Appendix A to March 17, 2009 Minutes	Total Cash (1/1/09) in Appendix A to March 17, 2009 Minutes	Recovery Values (1/1/09) in Appendix A to March 17, 2009 Minutes	Recovery Rate (%)	Check - Value of Positions
Highland Capital			22,266,913	22,266,913		8,004,404	36%	8,004,404
CDO Fund/Citi	\$ 52,834,564	\$ 47,734,564	21,467,651	21,330,255	3,500,000	10,316,817	48%	6,816,817
Credit Strategies	34,106,429	34,106,429	34,106,429	33,999,281	3,920,083	17,515,271	52%	13,595,186
Crusader Fund**	253,408,996	253,408,996	257,408,996	256,600,323	3,170,452	164,650,301	64%	161,479,849
Credit Opportunities Fund	36,208,692	36,208,692	36,208,692	36,094,939	239,321	26,041,232	72%	25,801,911
<b>Total</b>	<b>\$ 376,558,681</b>	<b>\$ 371,458,681</b>	<b>\$ 371,458,681</b>	<b>\$ 370,291,711</b>	<b>\$ 10,829,858</b>	<b>\$ 226,528,025</b>	<b>61%</b>	<b>\$ 215,698,167</b>
							Market value of collateral	194,286,275
							Recovery rate on collateral	52%

Source: Exhibit 3 to Plaintiff's Exhibit 240 (at H\_008504) and Author's calculations

**EXHIBIT 9**  
**AVERAGE RECOVERY RATES FOR DEFAULTED LOANS AND BONDS, BY SENIORITY**

Year	Secured loans	Secured bonds	Senior unsecured bonds	Subordinated bonds
2000	69.6%	53.9%	22.5%	23.6%
2001	68.0%	35.8%	20.2%	20.3%
2002	67.5%	46.6%	28.9%	25.7%
2003	73.5%	56.2%	42.8%	30.9%
2004	94.4%	72.2%	50.6%	50.2%
2005	97.9%	87.0%	54.1%	29.9%
2006	79.0%	95.5%	51.1%	29.9%
2007	96.3%	82.9%	63.4%	50.1%
2008	68.0%	38.8%	31.0%	19.1%
2009	58.6%	37.2%	33.5%	24.9%
2010	83.0%	60.0%	63.5%	26.8%
2011	97.5%	73.4%	32.7%	30.7%
<b>Average annual</b>	<b>79.4%</b>	<b>61.6%</b>	<b>41.2%</b>	<b>30.2%</b>

Source: *Fitch U.S. High Yield Default Insight — 2013 Outlook*, FitchRatings Credit Market Research, pp. 13-14

**IN THE SUPREME COURT OF THE STATE OF  
NEW YORK, COUNTY OF NEW YORK**

UBS SECURITIES LLC AND UBS AG,  
LONDON BRANCH,

Plaintiffs,

**V.**

HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND SPECIAL  
OPPORTUNITIES HOLDING  
COMPANY, HIGHLAND CDO  
OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS,  
L.P., HIGHLAND CREDIT STRATEGIES  
MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PATNERS, L.P.,  
HIGHLAND CREDIT OPPORTUNITIES  
CDO, L.P. AND STRAND ADVISORS,  
INC.,

**Defendants.**

**Index Nos. 650097/2009, 650752/2010,  
652646**

(I.A.S Part 60, Friedman, J.)

**CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER**

## EXPERT REPORT OF JOHN LEVITSKE

DUFF &amp; PHELPS

April 19, 2013

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**PART 2:**

**APPENDIX A: SCHEDULES**

## I. OVERVIEW AND SUMMARY OF OPINIONS

### A. OVERVIEW OF ASSIGNMENT

I have been requested by the law firm of Lackey Hershman, L.L.P. on behalf of the Defendants in the actions referenced above to provide an analysis related to the report issued by Mr. Louis G. Dudney on March 8, 2013 (the “Dudney Report”) on behalf of the Plaintiffs referenced above, UBS Securities, LLC and UBS AG, London Branch (collectively, “UBS”). I also provide my own analyses on several of the issues raised herein.

I prepared this report with the assistance of and other Duff & Phelps personnel working under my supervision, and it summarizes my opinions and their bases.

### B. SCOPE OF ANALYSIS

In performing our analysis, we undertook the following major tasks:

1. Review and critique of the Dudney Report;
2. Evaluation of the Dudney Report’s assertions of insolvency of SOHC, HFP and CDO Fund,<sup>1</sup> respectively;
  - a. Correction and adjustment of the Dudney Report’s calculations regarding the solvency of SOHC, HFP and CDO Fund, respectively;
  - b. Calculation of month-end balance sheet solvency regarding SOHC, HFP and CDO Fund, respectively, as of August 2008 through December 2008;
3. Evaluation of the Dudney Report’s assertions regarding whether the Notes (as defined below) should be re-characterized as equity;
4. Evaluation of the Dudney Report’s assertions of constructively fraudulent transfers;
5. Evaluation of the Dudney Report’s assertion of “indicia of alter ego at the Highland Entities;” and
6. Consideration of the impact of the Appellate Division’s decision on *res judicata* on the Dudney Report’s conclusions.<sup>2</sup>

<sup>1</sup> As defined per the Dudney Report.

<sup>2</sup> See: *UBS Securities LLC, et. al., Plaintiffs-Respondents v Highland Capital Management, L.P., et. al., Defendants, Highland Financial Partners, L.P., et. al., Defendants-Appellants* 93 A.D.3d 489. See also, *UBS Securities LLC et. al., Respondents-Appellants, v Highland Capital Management, L.P., Appellant-Respondent, et. al., Defendants. UBS Securities LLC et. al., Respondents-Appellants, v. Highland Capital Management, L.P., Appellant-Respondent* 86 A.D.3d 469. Specifically, the order entered March 3, 2011, which denied the motion of defendants Highland Financial Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. to dismiss the



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### C. SUMMARY OF OPINIONS

It is my opinion, as further discussed herein, that:

1. The Dudney Report (and its analyses) fails to adequately consider all relevant facts and factors and contains various deficiencies.
2. The Dudney Report incorrectly asserts the insolvency of SOHC, HFP, and CDO Fund, respectively as of its selected month-end measurement dates.
  - o Calculation of month-end balance sheet solvency regarding SOHC, HFP, and CDO Fund, respectively, as of months ended August 2008 through December 2008 shows that HFP was solvent through the date of the HFP Notes amended transaction.
3. The Dudney Report's assertions regarding whether the Notes exhibited characteristics of equity as opposed to debt are contradicted.
4. The Dudney Report incorrectly asserts constructively and potential constructively fraudulent transfers.
5. The Dudney Report incorrectly asserts "indicia of alter ego at the Highland Entities."
6. The Appellate Division's rulings on *res judicata* eliminates much, or all, of the basis of the Dudney Report.

### D. QUALIFICATIONS OF DUFF & PHELPS AND DESIGNATED EXPERT

#### QUALIFICATIONS

As a leading provider of financial advisory and investment banking services, Duff & Phelps (NYSE: DUF) delivers advice to clients principally in the areas of valuation, transactions, financial restructuring, alternative assets, dispute, and taxation. We have offices in North America, Europe, and Asia. One of our largest offices is in Chicago, IL. For more information, visit [www.duffandphelps.com](http://www.duffandphelps.com).

I, John Levitske, am a managing director in the Chicago office of Duff & Phelps and am a member of the Commercial Dispute Consulting service line. I have more than 25 years of experience as a forensic accountant and business appraiser. I concentrate on the analysis and investigation of businesses, stakeholder interests and financial information for determination of value, economic damages, merger and acquisition purchase price adjustments, solvency, fraud in the financial

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amended complaint's causes of action for declaratory judgment and fraudulent conveyance, unanimously modified, on the law, to the extent of granting the motion with respect to claims arising before February 2009, and otherwise affirmed, without costs. The Court's reversal of an order denying dismissal of the complaint in a related action, warrants dismissal of a portion of plaintiff's claims in this action due to *res judicata* since defendants are in privity with the defendant in the other action.

statements, internal corporate financial fraud and Generally Accepted Accounting Principles (“GAAP”) issues. My experience also includes shareholder dissent and oppression, alter-ego/piercing the corporate veil, destruction of business, material adverse change, duress, financial misrepresentation, cost of capital and agreement vetting issues. I have served as a consultant, expert witness and neutral arbitrator in domestic and international matters. Also, I have been a speaker to professional associations, authored articles, and has served as an adjunct university faculty.

Prior to joining Duff & Phelps, I was a managing director with Standard & Poor’s Corporate Value Consulting. I also held positions at KPMG, Deloitte & Touche and FTI Consulting. I received a Juris Doctor degree from Duquesne University, a Master in Business Administration degree, *cum laude*, from the University of Notre Dame and a Bachelor of Science in business administration degree from Duquesne University. I am a Certified Public Accountant (licensed in Illinois and Pennsylvania, practice privilege in California); Accredited in Business Valuation, Certified in Financial Forensics and a Chartered Global Management Accountant with the American Institute of Certified Public Accountants; Accredited as a Senior Appraiser in Business Valuation by the American Society of Appraisers; a Chartered Financial Analyst; and a Certified Insolvency & Restructuring Advisor.

Currently, I also serve as the national vice president of the Forensic Expert Witness Association, and vice-chair of the American Bar Association business law section’s dispute resolution committee. Previously, I was selected to The International Who’s Who of Commercial Arbitration – Experts. A summary of my experience and qualifications is provided in Section IX. Our work is ongoing. I reserve the right to continue my analysis and study, and to expand, modify, amend, or supplement my analysis and study, this report, and my opinions, for example should additional or updated documents or information be provided. In addition, I reserve the right to prepare additional or supplemental materials such as summaries, graphical exhibits, tables, or charts.

#### COMPENSATION

Duff & Phelps charges \$605 per hour for my professional services in this matter. The professional services of other supporting Duff & Phelps personnel are charged at rates of \$100 to \$495 per hour. Payment is not contingent on a predetermined result or the outcome of this matter.

#### **E. MATTER BACKGROUND**

##### THE ORIGINAL WAREHOUSE TRANSACTION<sup>3</sup>

UBS and Highland Capital Management (“HCM,” as servicer), Highland CDO Opportunity Master Fund (“CDO Fund”), and Special Opportunities Holding Company (“SOHC”) entered into an agreement (the “Original Agreement”) on April 22, 2007. According to the Original Agreement, UBS was to sponsor a securitization of collateralized debt obligations, based upon a

<sup>3</sup> See: Second Amended Complaint.

pool of collateralized loan obligations (“CLOs”) securities. UBS agreed to warehouse and finance the purchase of various CLOs, as well as credit default swap obligations (“CDSs”), on HCM, CDO Fund, and SOHC’s behalf until full securitization. The Original Agreement was terminated and was replaced with a new agreement.

#### THE RESTRUCTURED WAREHOUSE TRANSACTION<sup>4</sup>

UBS and HCM, CDO Fund, and SOHC restructured the terms of their Original Agreement in March 2008, (the “Restructured Agreement”). The Restructured Agreement called for the creation of two warehouses, (i) a warehouse containing CLO tranches, or similarly situated securities, (the “Cash Warehouse”) and (ii) a warehouse containing synthetic assets primarily associated with CLOs (the “Synthetic Warehouse”). The Cash Warehouse and Synthetic Warehouse are collectively referred to as the “Warehouse Agreements.” Each warehouse was accounted for separately within UBS’ financial records. We refer to these two warehouses as the “Knox Warehouse” or “Knox,” as defined above.

Throughout 2008 the Knox transaction failed to achieve securitization. Following three separate margin calls, UBS chose to terminate the Restructured Agreement on December 3, 2008 (the “Termination Date”).

#### THE HFP NOTES TRANSACTION

HFP issued senior secured promissory notes (the “Notes,” or “HFP Notes”) on September 26, 2008 and later amended on October 10, 2008 with par balances of approximately \$316.0 million and \$371.0 million, respectively. The note holders were originally other entities managed by HCM who were to receive a 10% annual coupon on a quarterly basis with a maturity of November 15, 2008. Additional details on the Notes are provided in Section III herein.

#### TIMELINE

The chart below provides an overview of significant and relevant dates and events with respect to the dispute.

*Table 1: Timeline of Relevant Events*

Date	Event
4/20/2007	Original Engagement Letter
5/22/2007	Original Cash and Synthetic Warehouse agreements
8/15/2007	Termination of Engagement Letter
3/14/2008	Restructured Engagement Letter
3/14/2008	Restructured Cash and Synthetic Warehouse agreements between UBS and Fund Counterparties
9/26/2008	HFP issued 10% Senior Secured Notes due in 2018 in exchange for assets of approximately \$315 million.
10/7/2008	HFP issued an additional \$55 million of 10% Senior Secured Notes.
12/3/2008	Termination Date Letter from UBS
2/24/2009	Original complaint filed by UBS against Highland Capital, CDO Fund, and SOHC

<sup>4</sup> *Id.*

## II. ANALYSIS OF SOLVENCY

In essence, the balance sheet test for solvency (or insolvency) uses the balance sheet with certain economic and valuation adjustments to answer whether the value of the company's net assets exceed its liabilities.<sup>5</sup> The Dudney Report looks to the balance sheet solvency test to assert whether, "SOHC/HFP," a theoretically combined entity, was solvent (or insolvent) as of month-end August 2008 through December 2008.

The Dudney Report embarks on its asserted analysis of solvency by focusing on the wrong subject entity given its hypothetical nature. The focus of the Dudney Report is incorrectly on "SOHC and HFP on a combined basis." The Dudney Report should have focused its analyses on SOHC as a stand-alone entity, and HFP as its own entity with access to its subsidiaries. Consequently, the Dudney Report improperly undertakes an analysis of a hypothetical entity "SOHC/HFP." The Dudney Report's asserted insolvency calculations are incorrect for this and other reasons (e.g., including improper balance sheet adjustments). Consequently, the Dudney Report incorrectly asserts the insolvency of SOHC, HFP, and CDO Fund, respectively, as of its selected month-end measurement dates.

Our analysis of solvency corrects for flaws in the Dudney Report's solvency analysis, including, but not limited to:

- Correcting to focus on the actual respective entities:
  - SOHC and HFP, individually; not the hypothetical combined entity "SOHC/HFP" which the Dudney Report created and used;
- Correcting to be internally consistent:
  - Adjusted the booked liability related to the Knox liability for SOHC and CDO Fund to be consistent with the losses indicated under the Knox governing contracts assuming termination; and
  - To include only subsidiaries, if applicable, with positive economic equity;

Our analysis, corrected for the items above, is presented in Schedules I-VII of Appendix A. Our analyses indicate:

- As of the dates surrounding the HFP Notes transactions and through end-of-year 2008:
  - HFP was solvent beginning August 2008 through November 2008;
  - SOHC was solvent beginning August 2008 through September 2008; and

<sup>5</sup> Newton, Grant W. *Bankruptcy and insolvency accounting: practice and procedure*. New York: Ronald Press Co., 1975. Print.

- CDO Fund was solvent beginning August 2008 through September 2008.
- In this regard, we assumed that the Notes, based on our analyses further discussed herein, are properly characterized as they were at the time of issuance as debt.

For convenience, we also assumed that proration and allocation, if any, of the economic and valuation adjustments, to the minority interest equity ownership level of third parties would have an immaterial impact on our conclusions. Such proration and allocation, if any, in this particular case would have increased the net assets and solvency results.<sup>6</sup>

#### A. THE DUDNEY REPORT'S CREATED ENTITY

The Dudney Report begins its solvency analysis by asserting that it used a “balance sheet approach on a going concern premise” and undertakes its asserted calculations of the solvency of “SOHC/HFP.”<sup>7</sup> However, analyzing a combined SOHC/HFP is inappropriate given the facts in this matter. The Restructured Agreement is between UBS and both SOHC and CDO Fund, not HFP.

UBS performed due diligence regarding the nature of SOHC as a counterparty before entering into the Restructured Agreement. UBS' Credit risk management control department identified that SOHC and CDO Fund provided no protection in case of default.<sup>8</sup> HFP is not a counterparty to the Restructured Agreement.

Regarding the Notes transactions, the HFP Notes were the responsibility of HFP and not SOHC. The Notes did not affect the financial health of SOHC; SOHC is a bankruptcy remote subsidiary, with no responsibility for SOHC to repay the HFP Notes.<sup>9</sup> As such, we have analyzed the solvency of HFP assuming the Notes were debt (which is supported by our analyses in Section IV).

Considering this, we calculated the balance sheet solvency of SOHC, HFP, and CDO Fund as summarized below.

<sup>6</sup> In our analysis, for example, we deducted unamortized debt issuance costs and subtracted them solely from CDO HoldCo's equity instead of proportioning them to both CDO HoldCo and the minority interest that would also economically suffer.

<sup>7</sup> Dudney Report at page 60.

<sup>8</sup> UBS-000165822-26, specifically “Approval Conditions – Need to recognize the uncertainty re: the counterparty ability to pay.” See also, UBS-000416065, specifically “Credit has assessed each fund's ability to meet their respective share of the warehouse obligation and it is our view that neither fund represents a credit worthy counterparty for the following reasons: - Current levels of cash on the balance sheet are a fraction of what's requires. - Asset liquidity defined as the ability to either sell or leverage the assets is extremely low. - Since the funds obligation to UBS has been recorded as a swap transaction, UBS' claim is subordinate to the funds' other, secured creditors placing us further away from the already scare (sic) resource of free cash.”

<sup>9</sup> Although it was not responsible, HFP would have the ability to access certain cash from SOHC, if appropriate.



**B. SOHC**

We calculated the balance sheet solvency (or insolvency) of SOHC on a month-end basis from August 31, 2008 through December 31, 2008.

We began our analysis of SOHC adjusted equity using the equity reported for SOHC on the consolidating balance sheets of HFP. We then adjusted the booked liability related to the Knox liability for SOHC and CDO Fund to be consistent with the losses indicated under the Knox governing contracts assuming termination. In this adjustment, we:

- Removed the impact of the GAAP calculated liability carried on SOHC's financial statement related to exposure to the Knox Warehouse.
- Included the impact of our estimate of the liability related to the exposure of the Knox Warehouse under the terms of the Knox governance documents.

ESTIMATION OF KNOX LIABILITY UNDER GOVERNANCE DOCUMENTS

We estimated the contractual liability of SOHC's exposure from its counterparty role in the Warehouse Agreements, using an analysis which is consistent with the analyses set forth in the expert report of Adam L. Warren dated April 19, 2013, with one refinement (adjustment for collateral posted, described below). Under the terms of the Warehouse Agreements, we calculated the exposure of SOHC as of each measurement date:

1. Estimated the mark-to-market losses on cash assets in the Cash Warehouse (increases liability);
2. Estimated realized losses on CDS contracts in the Synthetic Warehouse (increases liability);
3. Calculated total interest and premiums received by UBS from warehouse assets (decreases liability);
4. Calculated total financing costs payable to UBS (increases liability); and
5. Calculated collateral posted by SOHC and related entities; and<sup>10</sup>
6. Multiplied the total from steps (1) through (5) above by the 49.0% exposure percentage applicable to SOHC.

The results of our analyses are in the table below:

<sup>10</sup> We used a balance of zero (0) for the collateral posted since any benefits from the collateral would already be included in various asset accounts at SOHC, CDO Fund, etc. Including them here in this analysis would be double-counting under the balance sheet test, but would not be double counted under a damages analysis.

Table 2: *Knox Exposure Calculation*

Mark-to-Market & Realized Losses	For Months Ended, 2008				
	August	September	October	November	December
Cash Warehouse - Unrealized Losses	\$ (52,243,728)	\$ (73,619,391)	\$ (88,361,316)	\$ (128,909,316)	(128,909,316)
Synthetic Warehouse - Realized Losses	(1,111,150)	(20,618,405)	(20,618,405)	(26,952,895)	\$ (26,952,895)
<b>Total Losses Related to Warehouses Before Adjustments</b>	<b>\$ (53,354,878)</b>	<b>\$ (94,237,796)</b>	<b>\$ (108,979,721)</b>	<b>\$ (155,862,210)</b>	<b>\$ (155,862,210)</b>
<b>Adjustments to Warehouse Losses</b>					
Less Total Interest and Premiums Received by UBS	\$ 30,889,733	\$ 31,512,364	\$ 32,266,857	\$ 33,186,187	\$ 33,301,076
Plus Total Financing Cost	(8,781,075)	(9,213,504)	(9,773,243)	(10,215,273)	(10,359,283)
<b>Indicated Exposure without Hedging Consideration</b>	<b>\$ (31,246,219)</b>	<b>\$ (71,938,936)</b>	<b>\$ (86,486,107)</b>	<b>\$ (132,891,296)</b>	<b>\$ (132,920,417)</b>
<b>Losses Attributable to SOHC</b>	<b>\$ (15,310,647)</b>	<b>\$ (35,250,079)</b>	<b>\$ (42,378,193)</b>	<b>\$ (65,116,735)</b>	<b>\$ (65,131,004)</b>
<b>Losses Attributable to CDO Fund</b>	<b>\$ (15,935,572)</b>	<b>\$ (36,688,857)</b>	<b>\$ (44,107,915)</b>	<b>\$ (67,774,561)</b>	<b>\$ (67,789,413)</b>

Refer to Appendix A, Schedule VII for detailed calculations.

#### CALCULATION OF ADJUSTED EQUITY (SOLVENCY)

We included the adjustments set forth above and calculated adjusted equity as follows:

Table 3: *Summary of SOHC Adjusted Equity*

	For Months Ended, 2008				
	August	September	October	November	December
SOHC Book Equity	\$ 16,807,655	\$ (38,198,945)	\$ (131,845,834)	\$ (207,163,555)	\$ (335,261,741)
Less: GAAP Liability of Knox Exposure	(56,460,536)	(109,929,103)	(152,821,353)	(238,680,320)	(344,440,079)
Equity Adjusted for Knox Exposure Liability	73,268,191	71,730,158	20,975,519	31,516,765	9,178,338
Plus: Losses Attributable to SOHC for Knox Exposure	(15,310,647)	(35,250,079)	(42,378,193)	(65,116,735)	(65,131,004)
<b>SOHC Adjusted Equity</b>	<b>\$ 57,957,544</b>	<b>\$ 36,480,079</b>	<b>\$ (21,402,674)</b>	<b>\$ (33,599,970)</b>	<b>\$ (55,952,666)</b>

Our analysis, on a month-end basis, indicates that SOHC was solvent through September 2008 and at least for a portion of October 2008. Additional detail of our calculation is in Schedule IV of Appendix A.

#### **C. HFP**

We also assessed the solvency (or insolvency) of HFP on a month-end basis from August 31, 2008 through December 31, 2008. The subsidiaries include SOHC, CDO HoldCo, Highland Asset Funding II ("HAF II") and Highland Asset Funding III ("HAF III"), Highland Financial Corporation ("HFC"), and Highland Financial Real Estate Corporation. In our calculations, we included only subsidiaries, if applicable, with positive economic equity.

#### HFP STAND-ALONE, BEFORE SUBSIDIARIES

We began our analysis of HFP adjusted equity (stand-alone) using the equity reported on the consolidating balance sheets of HFP. We then made the following adjustments:

1. We removed the impact of the subsidiaries whose adjusted equity balances will be adjusted subsequently.
2. We then adjusted the equity balance for the impact of consolidations of those subsidiaries.

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Refer to Appendix A, Schedule III for detailed calculations.

*Calculation of Adjusted Equity, Before Subsidiaries*

We calculated the following, before adding subsidiaries, if applicable, with positive economic equity:

*Table 4: HFP Stand-Alone Adjusted Equity, Before Positive Economic Equity Subsidiaries*

	For Months Ended, 2008				
	August	September	October	November	December
HFP Stand-Alone Book Equity	\$ 162,722,559	\$ 54,474,992	\$ (356,299,035)	\$ (559,114,459)	\$ (1,251,086,661)
Less: Equity in Subsidiaries	135,708,885	316,666,513	(89,520,888)	(288,316,129)	(972,760,929)
<i>Total HFP Stand-Alone Equity</i>	<i>27,013,674</i>	<i>(262,191,521)</i>	<i>(266,778,147)</i>	<i>(270,798,330)</i>	<i>(278,325,732)</i>
Less: HFP Consolidations	(4,095,967)	1,182,347	(21,508,827)	(19,446,496)	(1,936,032)
<b>Total Adjusted HFP Equity</b>	<b>\$ 31,109,641</b>	<b>\$ (263,373,868)</b>	<b>\$ (245,269,320)</b>	<b>\$ (251,351,834)</b>	<b>\$ (276,389,700)</b>

CDO HOLDCo ADJUSTED EQUITY

We also assessed the solvency (or insolvency) of CDO HoldCo on a month-end basis from August 31, 2008 through December 31, 2008. CDO HoldCo incorporates the financial information of certain CLOs into its consolidating reporting structure for GAAP purposes. We adjusted the equity of CDO HoldCo to include only subsidiaries (and CLOs) with positive equity. Our calculation is outlined below:

- We started with CDO HoldCo stand-alone equity.
- We added any positive CDO Construction Company equity to this amount.
- We removed the equity in subsidiaries per the consolidated balance sheet.
- We added positive CDO HoldCo subsidiary adjusted equity, after adjusting each subsidiary's book equity to remove debt issuance costs and negative minority interest.
- We removed the effects of consolidations; by subtracting the difference between CDO HoldCo stand-alone equity less consolidated book equity.

The following table summarizes my calculation as of December 31, 2008. Appendix A includes calculations for each of the months ended which we analyzed.

Table 5: CDO HoldCo Adjusted Equity Calculation (December 2008)

For Month Ended, December 31, 2008						
	Equity in Consolidated Subsidiaries	Unamortized Debt Issuance Costs	Minority Interest (if negative)	Total Equity	Equity Adjusted for Unamortized Debt Issuance Costs and Minority Interest	Positive Adjusted Equity
CDO HoldCo Stand-Alone	\$ (512,568,541)	\$ -	\$ -	\$ (592,072,266)	N/A	N/A
CDO Construction Corp	-	-	-	(43,987,712)	N/A	N/A
Westchester	-	9,992,571	(26,840,855)	(31,255,996)	(14,407,712)	-
Rockwall 2	-	12,303,618	(107,753,895)	(115,878,302)	(20,428,025)	-
Brentwood	-	9,155,091	(1,353,386)	(4,942,795)	(12,744,500)	-
Grayson	-	14,962,167	(21,464,794)	(32,984,382)	(26,481,755)	-
Eastland	-	15,915,871	(25,665,526)	(27,354,704)	(17,605,049)	-
Stratford	-	1,774,065	(8,528,376)	(13,752,474)	(6,998,163)	-
Greenbriar	-	6,019,552	(6,807,564)	(4,042,157)	(3,254,145)	-
Highlander	-	10,322,351	(7,440,923)	(12,858,566)	(15,739,994)	-
Highlander 2	-	13,206,409	-	8,085,809	(5,120,600)	-
Highlander 3	-	13,595,341	(19,689,917)	(26,880,365)	(20,785,789)	-
Highlander 4	-	6,485,633	-	43,109,828	36,624,195	36,624,195
Highland Park	-	7,737,880	(32,753,840)	(133,023,516)	(108,007,556)	-
Red River	-	9,308,623	(14,057,020)	(22,587,895)	(17,839,498)	-
Rockwall	-	9,084,047	(64,965,429)	(94,215,316)	(38,333,934)	-
Eliminations	512,568,541	-	-	537,338,633	N/A	N/A
InterCo	-	-	-	(255,515,944)	N/A	N/A
Consolidated	\$ -	\$ 139,863,219	N/A	\$ (822,818,120)	N/A	N/A
				Totals \$	(271,122,525) \$	36,624,195
						CDO HoldCo Stand-Alone Equity \$ (592,072,266)
						CDO Construction Company Equity, if positive -
						Subtotal \$ (592,072,266)
						Less: Equity in Consolidated CLOs (512,568,541)
						Add: Adjusted Equity of Consolidated CLOs 36,624,195
						Total Adjusted CDO HoldCo Equity \$ (42,879,530)
						Less: CDO HoldCo Consolidations 230,745,854
						Adjusted CDO HoldCo Equity \$ (273,625,384)

The following table indicates the resulting adjusted CDO HoldCo equity balance for each of the months ended, August 31, 2008 through December 31, 2008:

Table 6: CDO HoldCo Adjusted Equity

For Months Ended, 2008					
	August	September	October	November	December
CDO HoldCo	\$ 127,685,417	\$ 88,300,306	\$ -	\$ -	\$ -

For balance sheet solvency test purposes, CDO HoldCo had positive equity through September 30, 2008. Beginning October 31, 2008, the fair value of the assets did not exceed the liabilities of CDO HoldCo. Although the adjusted equity for CDO HoldCo was no longer positive as of October 31, 2008, due primarily to declining marks on its assets, the underlying CLO assets were still performing and were expected to continue performing. Given the lack of liquidity in the markets at the time, the assets under fair value accounting declined to a point where they no longer covered the liabilities.

While the fair value accounting rules do not typically apply to illiquid, forced-sale environments, for the purpose of this analysis concerning CDO HoldCo we have used the foregoing marks. We

have done so, even though from a cash flow standpoint, CDO HoldCo continued to generate significant anticipated income.

#### HAF II & HAF III

To assess the equity of HAF II and HAF III for balance sheet solvency test purposes, we adjusted the book equity balance to remove negative subsidiary equity. In this regard, we made an adjustment to exclude negative subsidiary equity in November 2008 for HAF II of approximately \$8.3 million. The following table summarizes the resulting adjusted CDO HoldCo equity balances:

*Table 7: HAF II and HAF III Equity*

	For Months Ended, 2008				
	August	September	October	November	December
HAF II Equity	N/A	\$ 133,076,023	\$ 106,128,005	\$ 98,810,422	\$ 44,059,839
HAF III Equity	N/A	168,184,378	172,799,791	168,203,971	141,259,092
Total HAF II & III Equity	\$ -	\$ 301,260,401	\$ 278,927,796	\$ 267,014,393	\$ 185,318,931

#### **D. HFP STAND-ALONE EQUITY**

In calculating the balance sheet solvency of HFP, we included the above positive adjusted equity amounts of subsidiaries. The results indicate that HFP was not insolvent until December 31, 2008, as summarized below. Additional detail is in Schedule I of Appendix A.

*Table 8: Summary of HFP Adjusted Equity*

Adjusted Equity by Entity	For Months Ended, 2008				
	August	September	October	November	December
HFP Stand-Alone	\$ 31,109,641	\$ (263,373,868)	\$ (245,269,320)	\$ (251,351,834)	\$ (276,389,700)
Plus: Equity of each subsidiary, if positive:					
SOHC	57,957,544	36,480,079	-	-	-
CDO HoldCo	127,685,417	88,300,306	-	-	-
HAF II	N/A	133,076,023	106,128,005	98,810,422	44,059,839
HAF III	N/A	168,184,378	172,799,791	168,203,971	141,259,092
Concluded HFP Adjusted Equity	\$ 216,752,602	\$ 162,666,918	\$ 33,658,476	\$ 15,662,559	\$ (91,070,769)

Our analysis, on a month-end basis, indicates that HFP was solvent beginning August 2008 through November 2008.



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**Confidential – Expert Report of John Levitske**CDO FUND SOLVENCY

We calculated the solvency (or insolvency) of CDO Fund on a month-end basis as of August 31, 2008 through December 31, 2008. The results of our analyses are in the table below:

*Table 9: Summary of CDO Fund Adjusted Equity*

	For Months Ended, 2008				
	August	September	October	November	December
CDO Fund NAV	\$ 424,478,846	\$ 313,027,810	\$ 37,074,943	\$ (212,838,654)	\$ (346,108,266)
Less: Estimated Losses Attributable to CDO Fund	(15,935,572)	(36,688,857)	(44,107,915)	(67,774,561)	(67,789,413)
Adjusted CDO Fund NAV	\$ 408,543,274	\$ 276,338,953	\$ (7,032,972)	\$ (280,613,214)	\$ (413,897,679)

A full presentation of our calculation is shown in Schedule VI of Appendix A attached hereto.

Our analysis starts with the same information as the Dudney Report. We begin with CDO NAV values prepared internally by HCM on behalf of CDO Fund, which were then reconciled with similar NAV files created by JPMorgan at the end of each month.<sup>11</sup>

For August 2008 through December 2008, we then included the CDO Fund's liability (51% of the total liability) from the NAV value for each period. This loss adjustment is the estimated amount that would be due from CDO Fund if a termination event occurred, as discussed in SOHC analysis section above.

Our analysis, on a month-end basis, indicates that CDO Fund was solvent through September 30, 2008, and at least some part of October 2008.

<sup>11</sup> Deposition of C. Halpin dated June 6, 2012 at pp 46 – 54.

### III. ANALYSIS OF THE NOTES

As part of our analysis of the Notes, we examined contemporaneous facts and circumstances surrounding the establishment and unwind of the Notes. Our analysis included the following steps:

- Analyzed the terms and structure of the Notes.
- Analyzed the securities exchanged for the Notes.
- Analyzed the credit markets in the period leading up to the establishment of the Notes.
- Performed a synthetic credit rating analysis based on the securities exchanged and used as collateral regarding the Notes.
  - Compared the stated fixed rate on the Notes to the yields (interest rates) on similarly rated indices.
- Analyzed the terms and interest rates on guideline debt transactions in 2007 and 2008.
- Analyzed HFP's ability to repay the Notes at or prior to its maturity in 2018.
- Analyzed the consideration exchanged for the Notes.

These analyses indicate that the Dudney Report's assertions regarding whether the Notes exhibited characteristics of equity as opposed to debt are contradicted.

Furthermore, I reached the following conclusions regarding the Notes:

- The interest rate attached to the Notes was in line with market rates of interest based on contemporaneous market information.
- Cash flow coverage was expected to exist to repay the Notes via a combination of cash inflows from the underlying securities of the Notes and expected cash flow from HFP subsidiaries (i.e., CDO HoldCo).
- The values of assets/securities/notes exchanged in the transactions were similar to each other.
- Other factors exist that support the conclusion that Notes should be characterized as debt.

#### A. OVERVIEW OF THE NOTES TRANSACTION

The Notes were originally issued on September 26, 2008 and later amended on October 10, 2008 with par balances of approximately \$316.0 million and \$371.0 million, respectively. One of the primary purposes of the Notes was to transfer Life Settlement Agreement ("LSA") contracts from various funds managed by HCM that may have difficulty making premium payments on these

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LSA contracts (thus the funds would likely lose any value of the contracts).<sup>12</sup> The following summarizes the terms and involved parties:<sup>13</sup>

<b>Issuer:</b>	Highland Financial Partners, L.P.
<b>Purchasers:</b>	Highland CDO Opportunity Master Fund, L.P. Highland Credit Opportunities CDO, L.P. Highland Credit Strategies Master Fund, L.P. Highland Crusader Offshore Partners, L.P. Highland Crusader Holding Corporation Highland Credit Opportunities Holding Corporation
<b>Interest Rate:</b>	10%
<b>Maturity:</b>	November 15, 2018
<b>Issued:</b>	September 26, 2008
<b>Revised:</b>	October 10, 2008
<b>Terminated, Settled, and Released:</b>	March 20, 2009
<b>Initial Offering:</b>	\$315,970,681
<b>Revised Offering:</b>	\$371,458,681

<sup>12</sup> Interrogatory answer of Defendants.

<sup>13</sup> See: Plaintiff's Exhibit 5, H\_0928489.

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**Confidential – Expert Report of John Levitske***Table 10: Initial Offering Summary:<sup>14</sup>*

<b>Purchaser</b>	<b>Market Value of Asset</b>	<b>Principal Amount of Notes</b>
Highland CDO Opportunity Master Fund <sup>15</sup>	\$52,834,564	\$47,734,564
Highland Credit Opportunities CDO, L.P.	\$6,616,429	\$6,616,429
Highland Credit Strategies Master Fund, L.P.	\$34,106,429	\$34,106,429
Highland Crusader Offshore Partners, L.P.	\$59,295,955	\$59,295,955
Highland Crusader Holding Corporation	\$138,625,041	\$138,625,041
Highland Credit Opportunities Holding Corporation	\$29,592,263	\$29,592,263
<b>Total</b>	<b>\$321,070,681</b>	<b>\$315,970,681</b>

*Table 11: Revised Offering Summary:<sup>16</sup>*

<b>Purchaser</b>	<b>Market Value of Asset</b>	<b>Principal Amount of Notes</b>
Highland CDO Opportunity Master Fund <sup>17</sup>	\$52,834,564	\$47,734,564
Highland Credit Opportunities CDO, L.P.	\$6,616,429	\$6,616,429
Highland Credit Strategies Master Fund, L.P.	\$34,106,429	\$34,106,429
Highland Crusader Offshore Partners, L.P.	\$59,295,955	\$59,295,955
Highland Crusader Offshore Partners, L.P.	\$55,488,000	\$55,488,000
Highland Crusader Holding Corporation	\$138,625,041	\$138,625,041
Highland Credit Opportunities Holding Corporation	\$29,592,263	\$29,592,263

<sup>14</sup> See, Highland Financial Partners, L.P., Note Purchase Agreement, Schedule A. H\_0056026 – H\_0056083 at H\_005606.

<sup>15</sup> Highland CDO Opportunity Master Fund, L.P. is transferring purchase price assets with a market value that is higher than the principal amount of the Note it is purchasing in exchange for the issuer's forgiveness of a receivable that is not part of this transaction.

<sup>16</sup> See, Amendment No. 1 to Note Purchase Agreement, Schedule A. H\_0644653 – H\_0644663, at H\_0644658.

<sup>17</sup> Highland CDO Opportunity Master Fund, L.P. is transferring purchase price assets with a market value that is higher than the principal amount of the Note it is purchasing in exchange for the issuer's forgiveness of a receivable that is not part of this transaction.

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<b>Total</b>	\$376,558,681	\$371,458,681
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**Collateral:** The collateral of the notes includes HFP's interests in various assets comprised of equity interests in CLOs, LSAs, and other CLO securities. These are detailed in Schedule E of the Amendment No. 1 to "Note Purchase Agreement."<sup>18</sup> The Notes were secured by these same securities.

*Summary of Notes Agreement Terms<sup>19</sup>*

The following includes a summary of relevant terms of the Notes between the Issuer and the Purchasers (or, holders) of the notes:

**Section 4.5 (b):** The holders of the notes may hold any liens in the collateral through a collateral agent or other nominee to perfect liens in favor of the note holders.

**Section 5.11:** The Issuer and Issuer Parties<sup>20</sup> will apply the proceeds from the sale of the notes to buy and hold certain assets for investment purposes. No part of the proceeds from the sale of the notes will be used, directly or indirectly, for the purpose of buying or carrying any margin stock.

**Section 5.14:** The Issuer Parties are legal and beneficial owners of the collateral free and clear of any lien or any adverse claim. The holders have a legal, valid, and enforceable first priority lien on all right, title and interest of the collateral.

**Section 8.1:** The Issuer may prepay at any time, all or any part of the notes at 100% of the principal amount.

**Section 8.2:** The principal amount of the notes to be prepaid will be allocated proportionally among all the notes.

**Section 8.4:** If any collateral (other than Life Settlement Agreements) is disposed of, or redeemed in full or in part, the Issuer is required to prepay the Notes equal to 10% of the market value of any disposed or redeemed collateral. Any payments or other amounts related to the Life Settlement Agreements,

<sup>18</sup> H\_0644661 – 663.

<sup>19</sup> Amended and Restated Note Agreement.

<sup>20</sup> The Issuer and each of its subsidiaries that, from time to time, beneficially own or hold any collateral.



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the Issuer is required to prepay the notes equal to 100% of the amount of such payment amount.

**Section 10.3:**

No dispositions of collateral may be made unless a mandatory prepayment is made (under Section 8.4). The Issuer Parties may not dispose of any collateral consisting of Life Settlement Agreements.

**Section 11:**

Events of default include:

- (a) Default on the payment of any note principal;
- (b) Default on the payment of interest on the note, more than five days after being due;
- (c) Any issuer party defaults in the performance or compliance of any term contained within the notes agreement;
- (d) Any representation or warranty proves to have been false or incorrect;
- (e) The Issuer, or any Issuer Party, is in default in the payment of principal or interest on any outstanding debt in the aggregate principal amount of \$10,000,000;
- (f) Any Issuer Party is not paying, or admits, in writing, its inability to pay its debts as they become due, or participates in other bankruptcy-related actions or becomes insolvent;
- (g) And others as discussed in Sections 11 (g) through (k).

**Section 14.3 (a):**

Quarterly payments are due in cash, except for payments permitted to be paid-in-kind (“PIK”) pursuant to Section 14.4.

**Section 14.4:**

In lieu of making payments of principal or interest due on the notes in cash, the Issuer may pay the principal due and the accrued unpaid interest on the notes by capitalization of the amounts, up to five (5) times PIK option).

## B. OVERVIEW OF THE NOTES UNWIND

According to a list of interrogatory answers provided by Defendants, “[b]y the end of 2008 to early 2009, once it had become apparent that HFP’s cash flows generated from its assets would no longer suffice to service the life settlement contract premiums and service the debt, amid the then-existing market conditions, HFP realized that it would be necessary to unwind the Notes to preserve the remaining value of the collateral and eliminate HFP’s obligation to repay the Notes. HFP entered into extensive negotiations with the independent committee for Credit Strat, Citibank, and representatives of the noteholders.”<sup>21</sup>

When asked whether it was clear at the time that HFP and its subsidiaries would not be able to repay its creditors, Philip Braner responded:

The Witness: Highland Financial Partners LP as a stand-alone I don’t think had any other creditors. If you are referencing SOHC’s ability to repay creditors in December I can agree with you.

Q: Did SOHC in any way – did SOHC’s financial ability to pay off other creditors in any way deteriorate as a result of the notes unwind?

A: Did SOHC’s ability?

Q: Yes.

The Witness: I don’t recall. I don’t believe so but – again I would have to look at the unwind documentation to ensure but as I sit here today I don’t believe so....

Q: Do you recall taking any efforts to analyze how UBS as a creditor under the Knox agreement could be affected by the notes unwind?

The Witness: Again I don’t specifically recall having that thought but I would have to review the notes, documentation of the unwind to know for sure.<sup>22</sup>

According to Philip Braner, the rationale for the December 31, 2008 Note unwind was because that was the day that the noteholders began paying the premiums on the LSAs:

Q: Do you have an understanding of why, even though the document was not signed until March, it was done retroactively?

A: If I remember correctly, HFP didn’t have the ability to pay for the life settlement assets, so the hedge funds that were going to receive back those assets were paying the premiums on those assets and they retained their value. So that’s the reason why – one of the reasons why it was effective as of that date.

<sup>21</sup> See H\_1796227 at H\_1796228 (Plaintiff’s Exhibit 462).

<sup>22</sup> See December 7, 2011 Braner Deposition Pages 843:15 to 845:8.

Q: From December 31<sup>st</sup> forward, the hedge funds were paying the premiums on the life settlement contracts for HFP until the time the notes were terminated?

A: No. Pursuant to the tentative agreement that they had that the notes would be unwound, they were doing that to preserve the value of the assets that were securing the notes.<sup>23</sup>

According to the notes of the BOD meeting occurring on January 5, 2009, “Mr. Braner indicated that an event of default under the Partnership’s Senior Secured Notes due 2018...was likely to occur based on the recent market conditions had had a material effect on the cash flow of the Partnership. Mr. Braner proceeded to update the Board regarding the status of the discussions between the Partnership and the holders of Notes. Mr. Braner indicated that the Partnership and the holders of such Notes had agreed to a framework to cancel such Notes, pending final Board approval.”<sup>24</sup>

According to later HFP Board of Directors (“BOD”) meeting minutes from a January 12, 2009 board meeting, management had completed a preliminary analysis of the notes unwind and, “Mr. Braner updated the Board regarding the analysis that management completed on options for restructuring certain notes (the ‘Restructuring’) between the Partnership and the holders of the Partnership’s Senior Secured Notes due 2018.”<sup>25</sup>

Furthermore, during a January 16, 2009 meeting, “[t]he Board proceeded to discuss the memorandum, dated January 16, 2009 and attached hereto that had been prepared by management to assist the Board in its review of the Partnership’s options with respect to the Partnership’s outstanding Senior Secured Notes due 2018...The Board discussed the benefits and risks to the Partnership of keeping the Notes outstanding versus a negotiated settlement of the Notes.”<sup>26</sup>

The largest risk that faced HFP if the Notes were not unwound was, “...HFP may still be unable to pay the premiums on the life settlement assets it acquired as part of the debt issuance. The life settlement policies are the largest asset class securing the Note. If HFP is unable to meet the required payments on these policies, they would lapse and become worthless.”<sup>27</sup>

Additionally, the Notes unwind was beneficial to HFP because, “[i]f HFP is unable to meet the required payments on those policies a portion would lapse and become worthless starting April 2009 with all remaining policies beginning to lapse by July 2009. If the life settlement assets were allowed to lapse, the difference between the amounts due under the Notes and the value of the collateral backing the notes would increase. Therefore, the Lenders would have a larger deficiency claim in the context of a default and recovery of collateral.”<sup>28</sup>

<sup>23</sup> See November 20, 2012 Braner Deposition Page 259:25 to 260:22.

<sup>24</sup> See D-01557 at D-01485. Of note, these minutes are not signed off or dated by Management.

<sup>25</sup> See D-01557 at D-01487. Of note, these minutes are not signed off or dated by Management.

<sup>26</sup> See H\_008544 at H\_008639.

<sup>27</sup> See H\_008544 at H\_008644.

<sup>28</sup> See D-01557 at D-01512.

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A memorandum stated that the settlement and unwind would be structured so that “HFP would return the assets originally contributed by each Lender and certain additional assets, a portion of which will be exchanged in lieu of cash flows received by the Partnership from the assets securing the Notes during the time period the Note was outstanding.”<sup>29</sup>

### **C. FINANCIAL MARKET CONDITIONS**

#### CONDITION OF FINANCIAL MARKETS AT SEPTEMBER 30, 2008

The equity markets ended the third quarter of 2008 with a large decline. The S&P 500 Index decreased 9.6%, the NASDAQ Composite Index decreased 12.9%, and the DJIA decreased 6.0% for the month of September. For the nine months of 2008, the S&P 500 Index was down 303.23 points, or 20.7%, to \$1,164.70, the NASDAQ Composite Index was down 562.0 points, or 21.2%, to \$2,091.90, and the DJIA was down 2,411.2 points, or 18.2%, to \$10,850.70.<sup>30</sup>

A \$700 billion bailout package to help financial sectors affected by the mortgage crisis was expected to be proposed to Congress. This news led the markets to improve temporarily; however, during the last week of September, the initial bailout package was not passed, and the markets declined sharply.

The continued slide of the economy led the consensus to estimate that the coming quarters were going to see negative growth in the economy. The consensus believed that real GDP would contract through 2009.

The energy concerns, economic uncertainty, and tighter credit markets were expected to lead to continued business investment declines for the last quarter of 2008 and the first part of 2009. The FOMC released a statement during the month of September indicating that they would not increase interest rates until at least the second quarter of 2009.

#### CONDITION OF FINANCIAL MARKETS AT DECEMBER 31, 2008<sup>31</sup>

Interest rates remained at near historical lows during December. Three-month bill yields dropped to virtually zero, while yields on 2, 5, 10 and 30-year Treasury securities continue to fall and were predicted to continue to be low for 2009.

Corporate and mortgage-backed spreads tightened at the end of 2009, but remained at historically-wide levels. This was also the case for the municipal market, largely as a result to Fed purchases of agency debt and the promise that it would begin direct purchases of mortgage-backed securities. Mortgage rates dropped to below 5% for a 30-year fixed mortgage which resulted in significant refinancing activity.

<sup>29</sup> See H\_008544 at H\_008646.

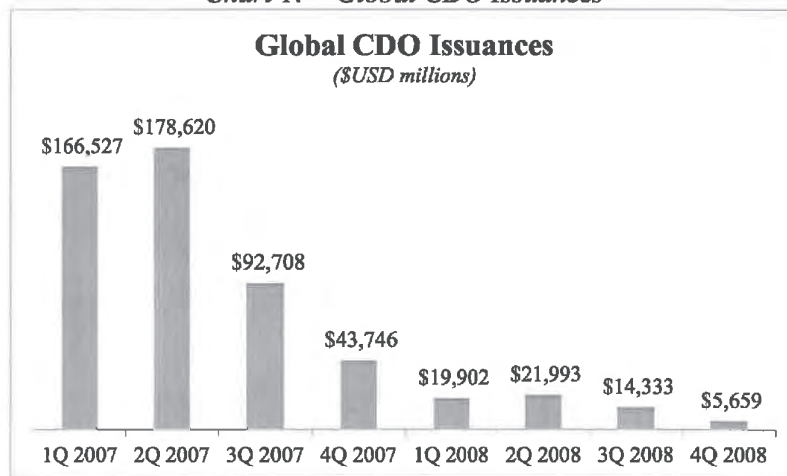
<sup>30</sup> Bloomberg.

<sup>31</sup> Bloomberg.

CDO MARKET CONDITIONS<sup>32</sup>

Additionally, the global issuances of CDOs, a type of structured asset-backed security, many of which were backed by troubled assets, experienced a significant decline from the first quarter of 2007 through the fourth quarter of 2008. Many of the assets underlying the CDO issuances, such as subprime mortgages, were adversely affected by the burst of the housing bubble which fueled a sharp increase in the number of mortgage defaults in 2007 and 2008. Global CDO Issuances Q1 2007 – Q4 2008<sup>33</sup>

Chart 1: Global CDO Issuances

CLO MARKET CONDITIONS<sup>34</sup>

CLO Markets throughout 2008 were suffering the same liquidity issues, and markets were pricing increasing risk as evidenced by a proxy index, the LCDX index (all else equal, increasing CDS spreads indicates increasing risk).<sup>35</sup>

<sup>32</sup> Bloomberg.

<sup>33</sup> "Global CDO Issuance USD millions." *SIFMA*.

<sup>34</sup> *SIFMA*.

<sup>35</sup> The LCDX index is a widely followed index of 100 liquid CDS securities.



Chart 2: 2008 LCDX Index Spread Pricing<sup>36</sup>

As indicated in the chart above, there was a large spike in the LCDX shortly after the Notes were restructured in October.

#### D. SYNTHETIC CREDIT RATING ANALYSIS

In our analysis, we evaluated whether the terms of the Notes were consistent with market rates.

Often, this is done by looking at profitability and other risk ratios of operations from sources like CreditStats (S&P). Since HFP was not a typical operating company (e.g., Wal-Mart, Microsoft, etc.), estimating a credit rating using a typical synthetic credit ratings analysis was not applicable as of the Notes transaction dates. Typical statistics such as profitability ratios of operating income to interest expense are largely not meaningful given that HFP was primarily a financial services and/or financial asset holding company. As such, using metrics from CreditStats (S&P) would not be applicable.

#### CREDIT RATING BY UNDERLYING ASSET

Based upon the facts and circumstances in this case, we estimated a synthetic credit rating using the credit ratings, when available, of the underlying securities used as collateral in forming the Notes (as well as exchanged for the Notes). The following table lists the security and the associated credit rating:

<sup>36</sup> UBS-000475712.

**Confidential – Expert Report of John Levitske***Table 12: Credit Ratings by Underlying Asset<sup>37</sup>*

<b>Reported Credit Ratings</b>					
<b>Issuer Name</b>	<b>Moody's</b>	<b>S&amp;P</b>	<b>Issuer Name</b>	<b>Moody's</b>	<b>S&amp;P</b>
EASTL 2007-1A	A2	A	STRAF 2007-1A	Baa2	BBB
DFRMM 2007-1A	A2	A	FOURC 2006-2A	Baa2	BBB
ACACL 2007-1A	Ba2	BB	NAVIG 2006-1A	Baa2	BBB
PRIM 2007-2A	A2	A	STRAF 2007-1A	Baa3	BBB-
SYMP 2007-4A C	A2	A	ROCKW 2007-1A B2L	Ba2	BB
Duane 2007 - 4A C	A2	A	STAMC 2807-1A B2L	Ba2	BB
STRAF 2007-1A	A2	A	SYMP 2007-4A E	Ba2	BB
GSC 2007-8A	A2	A	VENTR 2007-9A	Baa2	BBB
SHINN 2006-1A	Baa2	BBB	VVITEH 2006-4A	Baa2	BBB
HICDO 2004-1X B1A	A1	A+	ROCKW 2007-1A B2L	Ba2	BB
Red River CLO, Ltd.	Ba2	BB	GCLO 2006-1A a	Ba2	BB
MAC 2007-8A	Ba2	BB	CIFC 2006 1A	A2	A
GCLO 2006-1X	Baa2	BBB	MOCLO 2005-1A A3L	A2	A
SHINN 2006-1A	Ba2	BB	AVCLO 2006-3A A3L	A2	A
CLYDS 2004-1A	Ba2	BB			

For the equity tranches in various CLOs, no credit ratings were available. Since these are the lowest level amongst the claims on the assets of each CLO, I assigned a credit rating of “D” to each security (the worst credit rating). The following table lists the 11 securities these apply to:

*Table 13: Securities Assigned a “D” Rating*

<b>CLO Equities</b>
Aberdeen Loan Funding Ltd
Armstrong Loan Funding Ltc
Grayson
Greenbriar
Highlander IV
Stratford
Greenbriar
LANDM 2005 - 6A
Brentwood CLO Ltd
Eastland CLO Ltd
Eastland

No credit rating was assigned to LSA contracts. To estimate an associated credit rating, I analyzed the credit ratings of the insurance company that will be providing the payout of the death benefit.

<sup>37</sup> H\_0644662.

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The following table lists the insurance company and the range of credit rating as of the Notes' transaction dates.

*Table 14: LSA Insurance Carrier Credit Ratings<sup>38</sup>*

<b>Insurance Carrier</b>	<b>A.M. Best Rating (As of 9/28/08)</b>	<b>S&amp;P Rating (As of 9/28/08)</b>
American General Life Insurance Company	a	A+
AXA Equitable Life Insurance Company	aa-	AA
General American Life Insurance Company/Metlife	aa-	AA
ING Reliastar	-	-
ING Security Life of Denver Insurance Company	-	-
ING-ReliaStar Life Insurance Company	aa-	AA
Jefferson Pilot Financial Insurance Company / Lincoln Financial Group	-	AA
Jefferson Pilot Life Insurance Company / Lincoln Financial Group	NR	AA
John Hancock Life Insurance Company	aa+	AAA
John Hancock Life Insurance Company (USA)	aa+	-
John Hancock Variable Life Insurance Company	aa+	AAA
Lincoln Benefit Life	aa	AA
Lincoln National Life Insurance Company	aa	AA
Lincoln National Life Insurance Company/Lincoln National Corporation	a	A+
Massachusetts Mutual Life Insurance Company	aaa	AAA
MetLife Insurance Company of Connecticut	aa	AA
New York Life Insurance And Annuity Corporation	aaa	AAA
Pacific Life Insurance Company	aa+	AA
Phoenix Home Life Variable Insurance Company	-	-
Phoenix Life Insurance Company	a	A-
Protective Life Insurance Company	aa	AA
Pruco Life Insurance Company	aa-	AA
Prudential Financial Inc	a-	A+
ReliaStar Life Insurance Company	aa-	AA
Security Life Of Denver Insurance Company	aa-	AA
Transamerica Life Insurance Company	aa	AA
Transamerica Occidental Life Insurance Company	aa	AA
United States Life Insurance Company	a	A+

Based on the ratings set forth above, we concluded on an AA- rating for the LSA contracts for determining a synthetic credit rating on the Notes.

**CALCULATION OF THE AVERAGE CREDIT RATING**

Based on the credit rating scale of S&P, there are 22 different credit ratings ranging from AAA (excellent credit) to D (poor credit/in default). Since we cannot take an average of a lettering system, we assigned a numeric value to each level of credit rating ranging from 1 for AAA to 22 for D. The following table summarizes the value score for each level:

<sup>38</sup> Bloomberg.

Table 15: Numeric Value Assigned to Credit Ratings

Credit Rating	Numeric Value	Credit Rating	Numeric Value	Credit Rating	Numeric Value
AAA	1	BBB	9	CCC+	17
AA+	2	BBB-	10	CCC	18
AA	3	BB+	11	CCC-	19
AA-	4	BB	12	CC	20
A+	5	BB-	13	C	21
A	6	B+	14	D	22
A-	7	B	15		
BBB+	8	B-	16		

Next, we calculated the weighted average credit rating using the mark-to-market value of the security and the credit score value based on the methodology set forth above. The following table summarizes my calculations:

Table 16: Weighted Average Credit Rating Summary

Asset Type	Market Value	Weighted Average Credit Rating	Numeric Value
CDO & CLO Assets	\$ 208,341,375	CCC+	17.2
Life Settlements	168,217,305	AA-	4.0
Total	\$ 376,558,680	BB+	11.2

As indicated above, the average credit rating for the entirety of the underlying securities was approximately 11.2, which yielded a synthetic credit rating of BB+. To account for the PIK structure and to account for the increased difficulty in analyzing the Notes (i.e., lack of liquidity), I added 2 to the 11.2 score above which results in an indicated credit rating of BB- (~13).

#### YIELDS FROM INDICES WITH SIMILAR CREDIT RATINGS

Using our estimated credit rating of BB- for the Notes, we collected data on yields of similarly rated indices with durations approximately the same as the Notes.<sup>39</sup> The following table summarizes the similar rated indices yields:

<sup>39</sup> The yields from publicly available indices are based on semi-annual coupon payments with a balloon principal payment at maturity. The Notes are amortizing in nature (similar to a typical mortgage) and thus have a much shorter life in terms of timing to cash flow. As such, the indices presented here are 5-years in maturity which is closely aligned with the Notes duration.

Table 17: Similar Rated Index Yields<sup>40</sup>

Market Yield Index Curves	Credit Rating		Credit Rating	
	B	BB	B	BB
Composite Industry Index	As of 9/26/2008		As of 10/10/2008	
5 Year Maturity	9.41%	8.28%	10.69%	8.50%
10 Year Maturity	10.27%	9.26%	11.82%	9.82%
Finance Industry Index	As of 9/26/2008		As of 10/10/2008	
5 Year Maturity	N/A	8.05%	N/A	8.40%
10 Year Maturity	N/A	9.01%	N/A	9.68%

As indicated above, the 10% interest rate on the Notes is within the range of the public market indices.

#### GUIDELINE DEBT TRANSACTIONS<sup>41</sup>

Using our estimated credit rating of BB- for the Notes, we collected data on yields of similarly rated transactions with maturities and PIK structures. Using Bloomberg, we queried for all transactions with durations approximately the same as the Notes.<sup>42</sup> The following table displays the results of our queries:

Table 18: Guideline Debt Transactions

Guideline Debt Issuances	Yield to Maturity			
	All	2006	2007	2008
Payment-in-Kind Guideline Transactions	20			
Average	9.34%	9.30%	9.35%	9.38%
Median	9.62%	9.12%	9.68%	10.99%
Min	3.56%	8.99%	8.87%	4.52%
Max	11.75%	9.62%	11.75%	11.00%
High Yield Guideline Transactions	39			
Average	8.89%	N/A	N/A	8.89%
Median	8.37%	N/A	N/A	8.37%
Min	2.50%	N/A	N/A	2.50%
Max	14.05%	N/A	N/A	14.05%

As indicated above, the 10% interest rate on the Notes is within a reasonable range of the guideline transactions.

<sup>40</sup> Bloomberg.

<sup>41</sup> Bloomberg.

<sup>42</sup> The yields from publicly available indices are based on semi-annual coupon payments with a balloon principal payment at maturity. The Notes are amortizing in nature (similar to a typical mortgage) and thus have a much shorter life in terms of timing to cash flow. As such, the indices presented here are 5-years in maturity which is closely aligned with the Notes duration.



CONCLUSION OF INTEREST RATE

Based on our analyses, the interest rate charged on the Note transaction appears to be within a reasonable market rate of interest given the underlying securities, guideline market indices and available guideline transactions as of the Notes transaction dates.

**E. ABILITY TO REPAY**

We also performed an analysis of HFP's ability to repay the principal and interest obligations related to the Notes. In general, we performed the following steps:

1. Forecasted cash inflows from the underlying CLO/CDO assets associated with the Notes.
2. Forecasted cash inflows related to expected death benefits from the LSA contracts.
3. Forecasted cash outflows related to premium payments associated with the LSA contracts.
4. Subtracted the principal and interest payments due under the terms of the Notes with the assumption that the PIK option was used by HFP from steps (1), (2), and (3) above.
5. If the cash flows from Steps (1) through (4) above are negative on a cumulative basis, I then analyzed alternative sources of cash flow for HFP, namely expected dividend cash flow from CDO HoldCo.

Based on the procedures set forth above, we note the following:

- Based on Steps (1) through (4), at the time of each Notes issuance, it was expected for HFP to have sufficient cash flow to cover the P/I on the Notes through the first nine quarters (Q4 2010) for the original Notes and through the first 12 quarters (Q3 2011) for the amended Notes.
  - After those points, the cumulative cash flows are negative and remain negative until Q4 of 2015 for the original Notes and Q3 of 2014 for the amended Notes.
  - Also, the LSA contracts were expected to accrete in value by approximately \$70 million to \$90 million by the time of the first projected shortfall in cash flow (before expected accretion). Therefore, in such shortfalls it would make economic sense for HFP to use the cash flow it expected to receive as dividends from CDO HoldCo (see Step (5)) to make both payments on the Notes and premium payments on the LSA contracts to retain both title and continue the contracts that were accreting in value.
- Including the cash flows from Step (5) set forth above, the cumulative forecasted cash flow remain sufficient to cover all P/I for both the original and amended Notes.

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STEP 1: FORECASTED CASH INFLOWS FROM CLO/CDO ASSETS

Cash inflows to support payments to the note holders are sourced from the cash flows from the collateralized loan obligations backing the amended Note agreement.

Cash flows from the collateralized loan obligations were forecasted by Duff & Phelps using INTEX modeling software. Using the base case assumptions for the CLO assets that were contemporaneous to the time period, we forecasted cash flows over a 14 year period.

STEP 2: FORECASTED CASH INFLOWS FROM LSAs

In addition to the cash inflows from Step 1 above, we forecasted LSA death benefits using the actuarial life expectancy estimates provided in the Watson Wyatt valuation report.<sup>43</sup> The face value of the life insurance benefits totaled \$751 million and the benefits are spread across 15 years based upon the life expectancy of the individual. The sum of the CLO cash flows and estimated death benefits represent the cash inflows from the securities available to for the P/I on the Notes payments and premiums due on the LSA contracts.

STEP 3: FORECASTING CASH OUTFLOWS

Cash outflows stem from two sources: the contractual amortization schedule originally outlined in the original Notes and amended Notes and the premiums payments required on the LSA contracts. The contractual quarterly payments on the original and amended Note begin at \$12.8 million and \$15.1 million respectively. We assume the HFP would employ its PIK option for the first five quarters which increases the quarterly amortization payments to \$16.7 million and \$19.6 million for the original Notes and amended Notes, respectively.<sup>44</sup>

To maintain the expected death benefit, HFP needed to make premium payments to the insurance carrier. We forecasted premiums using the historical payment data outlined in the Watson Wyatt valuation report and adjusted for the reduction in premiums required due to the expected mortality of the insured individual.<sup>45</sup>

The sum of the new amortization payments under the original Notes and amended Notes coupled with the LSA premiums, represent the quarterly cash outflows for HFP related to the Notes. My calculations are illustrated in the following tables which include cash inflows from the CLO/CDO assets and LSA Payouts, as well as the out flows in LSA premiums for the original and amended Notes for an initial 16 quarters (to provide sample cash flows) following inception:

<sup>43</sup> ST0000728.

<sup>44</sup> Using the PIK option postpones any cash payment to the note holder and adds the payment to the note principal. As a result, amortization payments increase after each PIK period due to increased interest accruals.

<sup>45</sup> ST0000728.

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Table 19: Estimated Free Cash Flow by Quarter - Original Notes Issuance

Original Note Issuance (PIK First Five Quarters)									
		[A]	[B]	[C]	[D] = [A] + [B] + [C]		[E]	[F] = [D] + [E]	
Period	Year	Quarter	Cash Flow from CLOs	LSA Premiums	LSA Payouts	Cash from Underlying CLO Securities Net of LSAs	Note Payments	Free Cash Flow per Quarter	
1	2008	Qtr4	\$ 6,498,418	\$ (2,342,147)	\$ -	\$ 4,156,271	\$ -	\$ 4,156,271	
2	2009	Qtr1	10,589,983	(2,342,147)	-	8,247,836	-	8,247,836	
3	2009	Qtr2	7,642,675	(2,342,147)	-	5,300,528	-	5,300,528	
4	2009	Qtr3	6,028,694	(2,342,147)	-	3,686,547	-	3,686,547	
5	2009	Qtr4	6,587,014	(2,342,147)	-	4,244,867	-	4,244,867	
6	2010	Qtr1	6,529,410	(2,342,147)	-	4,187,263	-	4,187,263	
7	2010	Qtr2	6,518,413	(2,342,147)	-	4,176,266	(16,710,455)	(12,534,189)	
8	2010	Qtr3	5,444,243	(2,342,147)	-	3,102,096	(16,710,455)	(13,608,359)	
9	2010	Qtr4	5,861,835	(2,342,147)	-	3,519,688	(16,710,455)	(13,190,768)	
10	2011	Qtr1	4,847,947	(2,342,147)	5,000,000	7,505,800	(16,710,455)	(9,204,655)	
11	2011	Qtr2	4,670,506	(2,342,147)	-	2,328,359	(16,710,455)	(14,382,096)	
12	2011	Qtr3	4,573,804	(2,342,147)	-	2,231,657	(16,710,455)	(14,478,798)	
13	2011	Qtr4	4,909,754	(2,342,147)	-	2,567,607	(16,710,455)	(14,142,848)	
14	2012	Qtr1	5,279,404	(2,342,147)	-	2,937,257	(16,710,455)	(13,773,198)	
15	2012	Qtr2	5,638,011	(2,330,329)	5,000,000	8,307,682	(16,710,455)	(8,402,773)	
16	2012	Qtr3	18,827,442	(2,330,329)	10,000,000	26,497,113	(16,710,455)	9,786,658	

Table 20: Estimated Free Cash Flow By Quarter - Amended Notes Issuance

Amended Note Issuance (PIK First Five Quarters)									
		[A]	[B]	[C]	[D] = [A] + [B] + [C]		[E]	[F] = [D] + [E]	
Period	Year	Quarter	Cash Flow from CLOs	LSA Premiums	LSA Payouts	Cash from Underlying CLO Securities Net of LSAs	Note Payments	Free Cash Flow per Quarter	
1	2008	Qtr4	\$ 15,219,893	\$ (2,342,147)	\$ -	\$ 12,877,746	\$ -	\$ 12,877,746	
2	2009	Qtr1	15,737,233	(2,342,147)	-	13,395,086	-	13,395,086	
3	2009	Qtr2	15,636,871	(2,342,147)	-	13,294,724	-	13,294,724	
4	2009	Qtr3	10,996,888	(2,342,147)	-	8,654,741	-	8,654,741	
5	2009	Qtr4	12,303,297	(2,342,147)	-	9,961,150	-	9,961,150	
6	2010	Qtr1	12,079,893	(2,342,147)	-	9,737,746	-	9,737,746	
7	2010	Qtr2	12,697,086	(2,342,147)	-	10,354,939	(19,644,570)	(9,289,632)	
8	2010	Qtr3	10,793,869	(2,342,147)	-	8,451,722	(19,644,570)	(11,192,848)	
9	2010	Qtr4	10,483,307	(2,342,147)	-	8,141,160	(19,644,570)	(11,503,410)	
10	2011	Qtr1	8,481,671	(2,342,147)	5,000,000	11,139,524	(19,644,570)	(8,505,047)	
11	2011	Qtr2	7,768,672	(2,342,147)	-	5,426,525	(19,644,570)	(14,218,045)	
12	2011	Qtr3	8,169,879	(2,342,147)	-	5,827,732	(19,644,570)	(13,816,839)	
13	2011	Qtr4	8,917,404	(2,342,147)	-	6,575,257	(19,644,570)	(13,069,313)	
14	2012	Qtr1	10,119,598	(2,342,147)	-	7,777,451	(19,644,570)	(11,867,120)	
15	2012	Qtr2	11,044,065	(2,330,329)	5,000,000	13,713,735	(19,644,570)	(5,930,835)	
16	2012	Qtr3	25,481,275	(2,330,329)	10,000,000	33,150,946	(19,644,570)	13,506,376	

**STEP 4: CUMULATIVE FREE CASH FLOWS**

The sum of the cash inflows and cash outflows from the Notes indicates the forecasted free cash flow per quarter over a period of 58 quarters. The amounts for the initial 16 quarters are listed below.

**Confidential – Expert Report of John Levitske***Table 21: Cumulative Free Cash Flow – Before CDO HoldCo – Original Notes Transaction*

<b>Original Note Issuance (PIK First Five Quarters)</b>					
Period	Year	Quarter	Free Cash Flow per Quarter	Forecasted Cumulative Free Cash Flow Before CDO HoldCo	
1	2008	Qtr4	\$ 4,156,271	\$	4,156,271
2	2009	Qtr1	8,247,836		12,404,107
3	2009	Qtr2	5,300,528		17,704,635
4	2009	Qtr3	3,686,547		21,391,182
5	2009	Qtr4	4,244,867		25,636,049
6	2010	Qtr1	4,187,263		29,823,312
7	2010	Qtr2	(12,534,189)		17,289,123
8	2010	Qtr3	(13,608,359)		3,680,763
9	2010	Qtr4	(13,190,768)		(9,510,004)
10	2011	Qtr1	(9,204,655)		(18,714,659)
11	2011	Qtr2	(14,382,096)		(33,096,755)
12	2011	Qtr3	(14,478,798)		(47,575,553)
13	2011	Qtr4	(14,142,848)		(61,718,402)
14	2012	Qtr1	(13,773,198)		(75,491,600)
15	2012	Qtr2	(8,402,773)		(83,894,373)
16	2012	Qtr3	9,786,658		(74,107,715)

Table 22: Cumulative Free Cash Flow – Before CDO HoldCo – Original Notes Transaction

Amended Note Issuance (PIK First Five Quarters)					
Period	Year	Quarter	Free Cash Flow per Quarter	Forecasted Cumulative Free Cash Flow Before CDO HoldCo	
1	2008	Qtr4	\$ 12,877,746	\$	12,877,746
2	2009	Qtr1	13,395,086		26,272,832
3	2009	Qtr2	13,294,724		39,567,556
4	2009	Qtr3	8,654,741		48,222,297
5	2009	Qtr4	9,961,150		58,183,448
6	2010	Qtr1	9,737,746		67,921,193
7	2010	Qtr2	(9,289,632)		58,631,562
8	2010	Qtr3	(11,192,848)		47,438,713
9	2010	Qtr4	(11,503,410)		35,935,303
10	2011	Qtr1	(8,505,047)		27,430,257
11	2011	Qtr2	(14,218,045)		13,212,211
12	2011	Qtr3	(13,816,839)		(604,627)
13	2011	Qtr4	(13,069,313)		(13,673,941)
14	2012	Qtr1	(11,867,120)		(25,541,060)
15	2012	Qtr2	(5,930,835)		(31,471,895)
16	2012	Qtr3	13,506,376		(17,965,520)

Next, we calculated the cumulative free cash flows over time to determine if the Notes created enough cash to sustain the ability to repay during quarters of negative free cash flows. The first quarter with negative cumulative free cash flow is forecasted to be the 4<sup>th</sup> quarter 2010 and 3<sup>rd</sup> quarter 2011 for the original Note and amended Note, respectively.

#### STEP 5: ALTERNATIVE CASH FLOW SOURCES - CDO HOLDCO

Although there is a cash shortfall when analyzing the Notes underlying assets, at the time of the issuance and the amended issuance, HFP's subsidiary, CDO HoldCo was generating cash flow and was expected to continue to create cash flow that HFP could expect to receive as dividends. This cash flow could be used by HFP to cover the cash outflows related to the Notes. CDO HoldCo held 14 different equity tranche CLOs as of August 31<sup>st</sup>, 2008 which were receiving cash flows from the CLOs.<sup>46</sup> We utilized contemporaneous cash flow forecasts as of September 5, 2008 and October 10, 2008 as the basis for forecasting the expected cash flows from these 14 CLOs for the original Notes and amended Notes, respectively.<sup>47</sup>

The cash forecasts (September 5, 2008 & October 10, 2008) are for the periods of Q4 2008 and Q1 2009, including cash on hand. We calculated Q1 2009 cash flows available to fund the Notes

<sup>46</sup> H\_0082826-H\_0082831

<sup>47</sup> H\_0082900 and H\_0842097-H\_0842099



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using adjusted forecasted cash data between January 1<sup>st</sup>, 2009 and March 31<sup>st</sup>, 2009. The following provides the framework for my calculation of Q1 2009 quarterly cash flows from the equity CLOs for the original Notes and amended Notes:

*Table 23: CDO HoldCo Cash Flow Forecast*

<b>CDO Holdco - CLO Equity Cash Flow Forecast</b>			
<b>Cash Forecast</b>	<b>Original Issuance (1)</b>		<b>Amended Issuance (2)</b>
<b>2008 Ending Cash Balance:</b>	<b>\$</b>	<b>8,511,424</b>	<b>\$ 2,036,785</b>
<b>2009 Q1 - Forecasted Entries:</b>			
Equity Flows from CDOs:	<b>\$</b>	<b>35,000,000</b>	<b>\$ 38,000,000</b>
MTM Margin Call:		<b>(10,000,000)</b>	<b>-</b>
D&O Payment:		<b>(55,000)</b>	<b>(110,000)</b>
Q4 2008 Management Fee:		<b>(1,200,000)</b>	<b>(1,200,000)</b>
Operating Payables:		<b>(800,000)</b>	<b>(800,000)</b>
<b>Quarterly Cash Flows: (3)</b>	<b>\$</b>	<b>22,945,000</b>	<b>\$ 35,890,000</b>

We have assumed these cash flows to reoccur each subsequent quarter until an expected date for the equity tranches in the CLOs mature in Q2 2012.<sup>48</sup> The following table outlines the forecasted equity CLO cash inflows available to HFP to satisfy the original and amended Note:

<sup>48</sup> The weighted average inception date for the 14 equity CLOs was approximately July 2007. Typically, CLOs has a five-year expected life from the inception date, providing an estimated average maturity of the 14 CLOs to be Q2 2012. After the expected maturity date, I assume no more cash flows would be generated by these 14 CLOs.

Table 24: CDO HoldCo Quarterly CLO Equity Cash Flow Forecast

CDO HoldCo - CLO Equity Cash Flow Forecast				
Year	Quarter	Period	Original Note - Qrtly CF	Amended Note - Qrtly CF
2008	Qtr4	1	8,511,424	2,036,785
2009	Qtr1	2	22,945,000	35,890,000
2009	Qtr2	3	22,945,000	35,890,000
2009	Qtr3	4	22,945,000	35,890,000
2009	Qtr4	5	22,945,000	35,890,000
2010	Qtr1	6	22,945,000	35,890,000
2010	Qtr2	7	22,945,000	35,890,000
2010	Qtr3	8	22,945,000	35,890,000
2010	Qtr4	9	22,945,000	35,890,000
2011	Qtr1	10	22,945,000	35,890,000
2011	Qtr2	11	22,945,000	35,890,000
2011	Qtr3	12	22,945,000	35,890,000
2011	Qtr4	13	22,945,000	35,890,000
2012	Qtr1	14	22,945,000	35,890,000
2012	Qtr2	15	22,945,000	35,890,000

The inclusion of the incremental cash flows available from CDO HoldCo provide ample coverage for each forecasted quarter in terms of covering the P/I related to the original Notes and amended Notes. The following table illustrates the impact of adding CDO HoldCo free cash flow:

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**Confidential – Expert Report of John Levitske***Table 25: Cumulative Free Cash Flow with CDO HoldCo – Original Notes Transaction*

Original Note Issuance (PIK First Five Quarters)					
Period	Year	Quarter	Incremental Cash Flows		Forecasted Cumulative
			Available from CDO		Free Cash Flow with CDO
			HoldCo	HoldCo Support	
1	2008	Qtr4	\$	8,511,424	\$ 12,667,695
2	2009	Qtr1		22,945,000	43,860,531
3	2009	Qtr2		22,945,000	72,106,059
4	2009	Qtr3		22,945,000	98,737,606
5	2009	Qtr4		22,945,000	125,927,473
6	2010	Qtr1		22,945,000	153,059,736
7	2010	Qtr2		22,945,000	163,470,547
8	2010	Qtr3		22,945,000	172,807,187
9	2010	Qtr4		22,945,000	182,561,420
10	2011	Qtr1		22,945,000	196,301,765
11	2011	Qtr2		22,945,000	204,864,669
12	2011	Qtr3		22,945,000	213,330,871
13	2011	Qtr4		22,945,000	222,133,022
14	2012	Qtr1		22,945,000	231,304,824
15	2012	Qtr2		22,945,000	245,847,051
16	2012	Qtr3		-	255,633,709

Table 26: Cumulative Free Cash Flow with CDO HoldCo – Amended Notes Transaction

Amended Note Issuance (PIK First Five Quarters)					
Period	Year	Quarter	Incremental Cash Flows	Forecasted Cumulative	
			Available from CDO	Free Cash Flow with CDO	
			HoldCo	HoldCo Support	
1	2008	Qtr4	\$ 2,036,785	\$	14,914,531
2	2009	Qtr1	35,890,000		64,199,617
3	2009	Qtr2	35,890,000		113,384,341
4	2009	Qtr3	35,890,000		157,929,082
5	2009	Qtr4	35,890,000		203,780,233
6	2010	Qtr1	35,890,000		249,407,978
7	2010	Qtr2	35,890,000		276,008,347
8	2010	Qtr3	35,890,000		300,705,498
9	2010	Qtr4	35,890,000		325,092,088
10	2011	Qtr1	35,890,000		352,477,042
11	2011	Qtr2	35,890,000		374,148,996
12	2011	Qtr3	35,890,000		396,222,158
13	2011	Qtr4	35,890,000		419,042,844
14	2012	Qtr1	35,890,000		443,065,725
15	2012	Qtr2	35,890,000		473,024,890
16	2012	Qtr3	-		486,531,265

ECONOMIC INCENTIVE

According to Highland's internal valuation template used by the Sterling Valuation Group, LSA contracts accrete in value each year (i.e., increase in value following payments on premiums and decreasing time until expected death benefit).<sup>49</sup> By the time the expected negative cumulative free cash flows (before CDO HoldCo) occur in Q4 2010 and Q3 2011 for the original Notes and amended Notes, respectively, the LSA contracts will have accreted in value by approximately \$70-90 million. Therefore, it would make economic sense for HFP to invest its dividend cash flow from CDO HoldCo to make both payments on the Notes and premium payments on the LSA contracts to retain both title to the LSA contracts and continue the contracts that were accreting in value.

CONCLUSION ON ABILITY TO PAY

Based on our analysis set forth above, when coupled with the expected dividend cash flows available at HFP's discretion from CDO HoldCo, HFP was expected to have sufficient free cash flow to make the payments associated with the Notes. Further, HFP would be economically incentivized to use the cash flows from CDO HoldCo to maintain the LSA contracts which were

<sup>49</sup> ST001509.

expected to accrete considerably in value of time. Detailed calculations on each of the categories above are in Appendix A, Schedule IX.

#### F. FAIR AND ADEQUATE CONSIDERATION

As part of our analyses, we also tested whether HFP received fair and adequate consideration as part of the Notes transactions in terms of both establishment and unwind of the Notes.

The marks on all securities transferred in both the original and amended Notes were performed by third party valuation firms: Sterling Valuation Group and Watson Wyatt. We reviewed the marks on the Notes and they remain consistent with those provided by UBS on similar non-equity CLO assets within the Cash Warehouse. As seen below, non-equity CLO assets were marked at 53.2% while the Cash Warehouse was marked at 55.7% during the original Note inception of September 26, 2008 and the amended Note inception of October 10, 2008. For the reasons addressed above, we conclude that HFP provided fair and adequate consideration to the note holders and HFP as the issuer.

Table 27: Note CLO Marks<sup>50</sup>

Asset Type	Note Issuance Marks
All CLO Assets	48.16%
Equity CLO Assets	45.72%
Non-Equity CLO Assets	53.20%

Table 28: UBS Cash Warehouse Marks at Note Issuance<sup>51</sup>

Date	UBS Marks - Cash Warehouse
3/28/2008	75.49%
9/26/2008	55.74%
10/10/2008	55.74%

#### G. OTHER FACTORS

Many factors need to be considered when determining whether an interest in an entity constitutes debt or equity (i.e. stock). Due to a lack of regulations from the IRS regarding this topic, many courts over the years have established recurring factors used for determining whether an interest should be considered debt or equity. For example, the court in *Dixie Dairies Corp.*, 74 T.C. 476 (1980) had to make a decision whether advances made by a shareholder to a corporation constituted loans/debt or capital contributions/equity. We also considered the following list of the 13 factors enumerated in that decision:<sup>52</sup>

<sup>50</sup> H\_0644662.

<sup>51</sup> UBS P&L Reports. See: UBS\_00478182, UBS\_000477696, UBS\_000477710.

<sup>52</sup> AICPA, *Debt vs. Equity in the Tax Court*, February 1, 2013, accessed: [www.aicpa.org/publications/taxadviser/2013/february/pages/clinic-story-01.aspx](http://www.aicpa.org/publications/taxadviser/2013/february/pages/clinic-story-01.aspx).



1. Name or label

- “The issuance of a stock certificate indicates an equity contribution; the issuance of a bond, debenture, or not is indicative of a bond fide indebtedness” (*Estate of Mixon*, 464 F.2d 394, 403 (5<sup>th</sup> Cir. 1972))

2. Fixed maturity date

- “The presence of a fixed maturity date indicates a fixed obligation to repay, a characteristic of a debt obligation. The absence of the same on the other hand would indicate that repayment was in some way tied to the fortunes of the business, indicative of an equity advance” (id. at 404)

3. Source of payments

- “[I]f repayment is possible only out of corporate earnings, the transaction has the appearance of a contribution of equity capital but if repayment is not dependent upon earnings, the transaction reflects a loan to the corporation” (id. at 405)

4. Right to enforce payments

- “If there is a definite obligation to repay the advance, the transaction would take on some indicia of a loan” (id. at 405)

5. Participation in management (as a result of the advances)

- “If a stockholder’s percentage interest in the corporation or voting rights increase as a result of the transfer, it will contribute to a finding that the transfer was a contribution to capital” (*Hardman*, 827 F.2d 1409, 1413 (9<sup>th</sup> Cir. 1987))

6. Status in relation to regular corporate creditors

- “Whether the advance has a status equal to or inferior to that of regular corporate creditors is, or course, of some import in any determination of whether taxpayer here was dealing as a shareholder or a creditor” (*Estate of Mixon*, 464 F.2d at 406)

7. Intent of the parties

- “It is relevant whether the parties intended, at the time of the issuance of the debentures, to create a debtor-creditor relationship. The intent of the parties, in turn, may be reflected by their subsequent acts’ the manner in which the parties treat the instruments is relevant in determining their character” (*Monon Railroad*, 55 T.C. 345, 357 (1970))

8. Identity of interest between creditor and stockholder

- “If advances are made by stockholders in proportion to their respective stock ownership, an equity capital contribution is indicated. A sharply disproportionate ratio between a stockholder’s percentage interest in stock and debt is, however, strongly indicative that the debt is bona fide” (*Estate of Nixon*, 464 F.2d at 409)

9. Thinness of capital structure

- “[T]hin capitalization is very strong evidence of a capital contribution where (1) the debt to equity ratio was initially high, (2) the parties realized the likelihood that it would go higher, and (3) substantial portions of these funds were used for the purchase of capital assets and for meeting expenses needed to commence operations” (id. at 408)

10. Ability of corporation to obtain credit from outside sources

- “If a corporation is able to borrow funds from outside sources at the time an advance is made, the transaction has the appearance of a bond fide indebtedness...If no reasonable creditor would have loaned funds to the corporation at the time of the advance, an inference arises that a reasonable shareholder would likewise not so act” (id. at 410)

11. Use to which advances were put

- “A corporation’s use of cash advances to acquire capital assets suggests that an advance is equity. Use of any advance by an ongoing business to expand its operations, e.g., by acquiring an existing business, suggests that the advance is equity” (*Laidlaw Transportation, Inc.*, T.C. Memo 1998-232 at \*79)

12. Failure of the debtor to repay

- “The failure of a corporation to repay principal amounts on the due date indicates that advances were equity” (id. at \*80)

13. Risk involved in making advances

- “A reasonable expectation of repayment by the provider of an advance when the advance is made suggests that the advance is debt” (id. at \*82)

As a result of our review of the Notes Transaction, we came to the following conclusions regarding each of the 13 factors set forth above:

1. The Notes transaction consisted of the issuance of a note which is indicative of debt.

2. The Notes transactions contained the presence of a fixed maturity date which indicates a fixed obligation to repay, supporting characterizing the Notes as debt.
  - While the Dudney Report references the fact that the PIK option was there and a payment was never made, we found market evidence that PIK transactions were occurring, and in general, we find that HFP had expectations to have sufficient cash flows to make the payments on the Notes.
3. The repayment of the Notes Transaction is not dependent upon the earnings of HFP; therefore, the transaction reflects debt characteristics.
  - Refer to Appendix A, Schedule IX which illustrates our calculations relating to the ability to pay from the pledged assets coupled with the CDO HoldCo cash flow.
4. The Notes consist of definitive obligation to repay the loan; indicating the Notes to be debt.
5. None of the Noteholders gained greater voting rights pursuant to the Notes Transaction, therefore supporting the characterization of the Notes as debt and not equity.
6. The Noteholders had claims on specific assets in the transactions and not a general claim on the assets of HFP which indicates the Notes are similar to asset backed debt.
7. At the onset of the Notes Transaction, both parties intended for this transaction to be treated as debt and not equity.
8. From a proportionality perspective, the Note holders in the transactions did not participate in the same proportions as their equity stake. Further, many equity holders in HFP did not participate at all in the Notes. Therefore, this would indicate the transactions were debt in nature.
9. We considered the relative thinness of HFP's capital structure and the relatively high debt to equity ratio of the firm, and whether this may be evidence that the Notes Transaction was actually a capital contribution (equity) and not debt. However, given the financial holding company nature of HFP and its industry, this test is not as meaningful as other tests.
10. We also considered whether the asserted inability, at the exact time, of HFP to obtain funding from a third party may indicate that the transaction should be classified as equity. However, considered in context at the time when the Notes transactions occurred, the economy was experiencing serious economic issues that essentially froze most lending and borrowing activity. Many companies in various industries were temporarily unable to borrow, regardless of financial condition. Therefore, this factor is not as applicable (otherwise, i.e., this would qualify nearly all related-party transactions amongst firms worldwide during the period to be characterized as equity transactions).

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11. HFP utilized the Notes to fund its ongoing operations of investing in structured financial products which would indicate that the transaction should be classified as debt and not equity.
12. We considered whether the debtor in the Notes Transaction, HFP, would have failed to make required payments on the Notes but for the unwind of the Notes. Based on this condition the Notes would appear to be treated as equity. However, market conditions adversely changed after issuance. Therefore, this test is not as meaningful as other tests.
13. There was a reasonable expectation of repayment by HFP at the time of the Notes Transaction was entered into, therefore suggesting that the Notes were debt.

In the *Dixie Dairies* case, the court stated that each factor is not equally significant and that no single factor is determinative in deciding whether an advance should be classified as debt or equity. Additionally, the court noted, “due to the myriad factual circumstances under which debt-equity questions can arise, all of the factors are not relevant to each case.” In relation to the Notes Transaction, we have concluded that 10 of the applicable 13 factors indicate that the transaction should be classified as debt. The other three factors are not applicable or meaningful in this case.

**H. SUMMARY OF ANALYSIS OF THE NOTES**

As a result of our analyses set forth above, we reached the following conclusions:

- The interest rate attached to the Notes was in line with market rates of interest based on contemporaneous market information.
- Cash flow coverage was expected to exist to repay the Notes via a combination of cash inflows from the underlying securities of the Notes and the potential for future liquidation of the underlying securities.
- The values of assets/securities/notes exchanged in the transactions were similar to each other.
- Other factors exist that indicate the Notes should be characterized as debt.

Consequently, the Dudney Report’s assertions regarding whether the Notes exhibited characteristics of equity as opposed to debt are contradicted.

#### IV. ANALYSIS FOR ASSERTED FRAUDULENT TRANSFERS

We evaluated the Dudney Report's assertions of constructively fraudulent transfers and potential constructively fraudulent transfers.

In this regard, the Dudney Report's assertions of fraudulent transfers are driven by its assertions of insolvency. However, as discussed above, the Dudney Report incorrectly asserts the insolvency of SOHC, HFP, and CDO Fund, respectively, as of its selected month-end measurement dates. Corrected calculations of month-end balance sheet solvency regarding SOHC, HFP, and CDO Fund, as of months ended August 2008 through December 2008, indicate:

- HFP was solvent beginning August 2008 through November 2008;
- SOHC was solvent beginning August 2008 through September 2008; and
- CDO Fund was solvent beginning August 2008 through September 2008.

In addition, the Dudney Report does not evaluate whether some of the specific transactions it highlights protected the interest of the transferor, whether the transferor received some other benefits, or whether SOHC as a result of intercompany transactions during the time period August through December 2008, received a net positive inflow. Our analyses of intercompany transactions are summarized in Schedule VI of Appendix A.

To analyze constructively fraudulent transfers, we looked at HFP's general ledger, focusing on SOHC and HFP only. As discussed below, the general ledger<sup>53</sup> of HFP separates each entity into its own reporting unit.

##### A. ASSERTED FRAUDULENT TRANSFERS AT HFP

In reviewing for fraudulent transfers at HFP, we isolated transactions booked to HFP using the "Entity" column. We accomplished this by selecting all transactions with "1002-Highland Financial Partners LP" as the entity. We then used the Journal\_Line\_Description, Batch\_Name, and Journal\_Name to identify transactions that related to cash or in-kind transactions.

From our data subset, we classified each line item into one of four categories: (i) Transactions between SOHC and HFP, (ii) Transactions Between CDO HoldCo and HFP, (iii) Transactions between Asset Funding II and III and HFP, and (iv) Other. The descriptions made available in the general ledger allowed us to identify into which category to place each transaction.

Finally, we separated the transactions into their respective reporting periods using the "Period\_Name" column. We summed the debits and credits for each period, identifying net inflows (debits) or outflows (credits).<sup>54</sup> Our analysis indicates that HFP had net asset outflows

<sup>53</sup> 2012-01-25.xlsx

<sup>54</sup> Per Generally Accepted Accounting Principles ("GAAP"), asset balances are increased with a debit, and decreased with a credit.



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(credits) in August, October, and November 2008, and net inflows (debits) in December 2008. Our HFP solvency analysis indicates that HFP was insolvent at December 31, 2008. Our analysis indicates no fraudulent transfers from the perspective of HFP through December 31, 2008.

When there are net asset outflows from the perspective of HFP in November, these outflows are already accounted for in our solvency analysis. Therefore, these net outflows in November would not reduce our November 2008 solvency calculation, and would not render HFP insolvent prior to month-end November 2008.

**B. ASSERTED FRAUDULENT TRANSFERS AT SOHC**

We performed the same type of analysis for SOHC as we did for HFP, only changing the entity at which we looked, and the categories to which we assigned asset inflows and outflows.

As discussed above, we isolated transactions booked to SOHC using the “Entity” column by selecting all transactions with “1006-Highland Special Opportunities Holding Company” as the entity. We then used the Journal\_Line\_Description, Batch\_Name, and Journal\_Name to identify transactions that related to cash or in-kind transactions.

From our data subset, we classified each line item into one of five categories: (i) Transactions between HFP and SOHC, (ii) Contributions Into/Distributions out of SOHC, (iii) Notes Transactions, (iv) Capital, and (v) Other. The descriptions made available in the general ledger allowed us to identify into which category to place each transaction.

Finally, we separated the transactions into their respective reporting periods using the “Period\_Name” column. We summed the debits and credits for each period, identifying net inflows (debits) or outflows (credits). Our analysis indicates that SOHC had net asset outflows (credits) in August and November 2008, and net inflows (debits) in September, October, and December 2008. Our SOHC solvency analysis indicates that SOHC is solvent through September 2008.

The driver of the outflows (credits) from SOHC related to capital. There are no transactions between SOHC and HFP in November 2008. In December 2008, there are net inflows (debits) to SOHC, including approximately \$8.1 million from HFP. The transfers into SOHC during the period of August 2008 through December 2008 exceed outflows by approximately \$68.3 million. SOHC received a net positive inflow.

**C. ADDITIONAL ANALYSES**

From our review of the general ledger we were able to match inflows (debits) from one HFP entity to the corresponding outflows (credits) from another HFP entity. The table below shows some examples of the transactions we were able to match.

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**Confidential – Expert Report of John Levitske***Table 29: Example of Matching Inflows and Outflows*

ACCOUNT	ENTITY	JOURNAL NAME	PERIOD NAME	JOURNAL LINE DESCRIPTION	ACCOUNTED_DR	ACCOUNTED_CR
1002 17641 0000	1002-Highland Financial Partners LP	CVS HFP October Cash 4	8-Oct	Contribution to SOHC	300,000	
1006 32001 0000	1006-Highland Special Opportunities Holding Company	MG - SOHC contributions distribution October	8-Oct	contribution		300,000
1006 32001 0000	1006-Highland Special Opportunities Holding Company	MG - additional contributions from HFP	8-Sep	contribution from HFP	140,000	
1002 10100 0000	1002-Highland Financial Partners LP	CVS HFP September Cash 23	8-Sep	Contribution to SOHC		140,000
1003 24000 0000	1003-Highland CDO Holding Company	JE - Holdco JE Its 1-24 Balance Sheet Close USD	8-Dec	ST Borrowings	3,700,000	
1002 10100 0000	1002-Highland Financial Partners LP	CVS - HFP December Cash 3	8-Dec	Contribution to Holdco		3,700,000

Using this information, we identified all cash and in-kind transfers to and from the perspectives of SOHC and HFP.

The examples provided were during a time of high financial stress in the market, and Mr. Dondero was making essentially emergency loans to Highland related entities to avoid significant disruptions in operations.

#### **D. ASSERTED FRAUDULENT TRANSFERS AT CDO FUND**

The Dudney Report concludes that there were “potential constructively fraudulent transfers.”<sup>55</sup> However, the Dudney Report states that these are “potential” as they lack sufficient information. Nevertheless, the Dudney Report does not consider whether the transactions it flagged, such as in December 2008, have an ordinary course, legitimate business purpose, or whether there is benefit to CDO Fund from the transaction. For example, the December 2008 transactions appear to be related to repo agreements with third-party financial institutions (e.g., Goldman Sachs).

<sup>55</sup> The Dudney Report at Exhibit 8.

## V. ANALYSIS OF ASSERTED “INDICIA OF ALTER EGO AT THE HIGHLAND ENTITIES”

The Dudney Report incorrectly asserts “indicia of alter ego at the Highland Entities.” It is our understanding that to establish alter-ego, for evaluation of potential veil-piercing remedy claims; a plaintiff must establish both of the following factors:

1. Establish that the owners exercised complete domination of the corporation in respect to the transaction attacked; and
2. Establish that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff’s injury.<sup>56</sup>

Furthermore, alter-ego analysis is a fact-laden exercise with requires constructive analysis, dependent on the attendant facts and equities, situation specific, not bright-line, not formulaic and not results oriented.<sup>57</sup>

However, the Dudney Report fails in these regards and draws speculative conclusions that it “observed indicia of alter ego at the Highland Entities.” The Dudney Report fails to establish that the owner, HFP, exercised complete domination of SOHC in respect to the transaction attacked. In addition, the Dudney Report also fails to establish that such domination was used to commit a wrong against the plaintiff, UBS, which resulted in the plaintiff’s, UBS’, asserted injury and damages.

It is our understanding that the factors often considered in an alter-ego evaluation include the following ten factors:<sup>58</sup>

1. Formalities and paraphernalia that are part and parcel of corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like;
2. Inadequate capitalization;
3. Whether funds are put in and taken out of the corporation for personal rather than corporate purposes;
4. Overlap in ownership, officers, directors and personnel;
5. Common office space, address and telephone numbers of corporate entities;

<sup>56</sup> Piercing the Corporate Veil of a New York Not-For-Profit Corporation, Matthew D. Caudiff, citing *Morris v. New York State Dep’t of Taxation and Finance*.

<sup>57</sup> These factors are not intended to necessarily be definitive rules governing the varying circumstances as necessitated for each unique situation. For support of the 10 sources listed herein, see, for. See additionally, Piercing the Corporate Veil of a New York Not-For-Profit Corporation, Matthew D. Caudiff, citing Mark S. Cohen, *Ground for Disregarding the Corporate Entity and Piercing the Corporate Veil*, in 45 American Jurisprudence Proof of Facts 3d §1 (1998). See also, Piercing the Corporate Veil: An Empirical Study, Thompson, Robert at 1036 – 1038.

<sup>58</sup> See: *Wm. Passalacqua Bldrs., Inc. v. Resnick Devs. S., Inc.*

6. The amount of business discretion displayed by the allegedly dominate corporation;
7. Whether the related corporations deal with the dominated corporation at arm's length;
8. Whether the corporations are treated as independent profit centers;
9. The payment or guarantee of debts of the dominated corporation by other corporations in the group; and
10. Whether the corporation in question had property that was used by other corporations as if it were its own.

It is my understanding that UBS alleges that HFP is SOHC's alter ego. The Restructured Agreement is between UBS and both SOHC and CDO Fund, not HFP. UBS performed due diligence regarding the nature of SOHC as a counterparty before entering into the Restructured Agreement. UBS's Credit Risk Management Department identified that SOHC and CDO Fund provided no protection in case of default.<sup>59</sup> UBS did not appear to consider HFP to be a part to the Restructured Agreement.

In contrast, the Dudney Report embarks on its asserted analysis of the aforesaid ten factors by focusing on the wrong and hypothetical subject entity. The focus of the Dudney Report is incorrectly on "SOHC and HFP on a combined basis." The Dudney Report should have focused its analyses on SOHC as stand-alone entity, and HFP as its own entity. Consequently, the Dudney Report undertakes an analysis of a hypothetical entity "SOHC/HFP."

Furthermore, the Dudney Report asserts certain exceptions to general policies and practices as indicia of alter ego. Additionally, indicia of alter ego asserted by the Dudney Report are taken out of context, disregarding whether there is business purpose or benefit.

The Dudney Report ignores whether factors other than HFP's actions impacted SOHC, or resulted in financial losses for SOHC. Similarly, the Dudney Report ignores asset borrowings or additional capital from HFP that actually improved UBS' situation.

#### ORGANIZATIONAL STRUCTURE OVERVIEW<sup>60</sup>

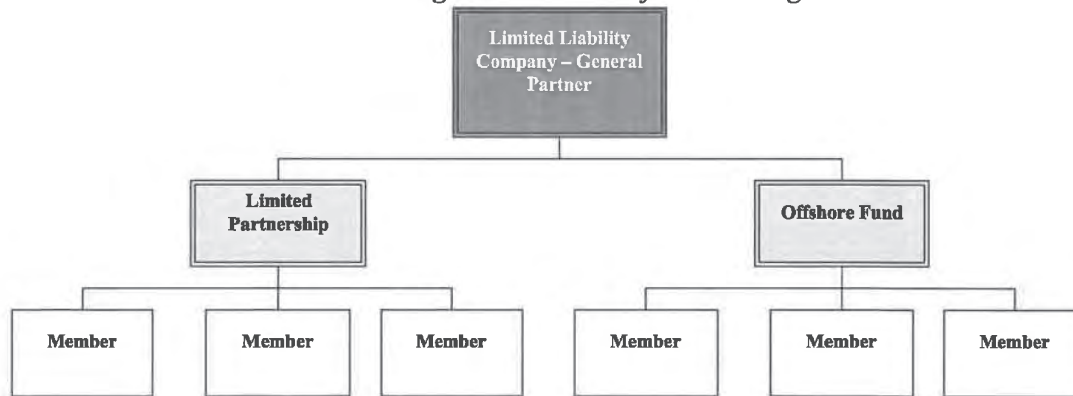
In this case, the Dudney Report fails to acknowledge the common structure of hedge funds, or other unregistered securities firms, when asserting domination by Mr. Dondero over HFP,

<sup>59</sup> UBS-000165822-26, specifically "Approval Conditions – Need to recognize the uncertainty re: the counterparty ability to pay." See also, UBS-000416065, specifically "Credit has assessed each fund's ability to meet their respective share of the warehouse obligation and it is our view that neither fund represents a credit worthy counterparty for the following reasons: - Current levels of cash on the balance sheet are a fraction of what's requires. - Asset liquidity defined as the ability to either sell or leverage the assets is extremely low. - Since the funds obligation to UBS has been recorded as a swap transaction, UBS' claim is subordinate to the funds' other, secured creditors placing us further away from the already scare (sic) resource of free cash."

<sup>60</sup> Navendu P. Vasavada, *Taxation of U.S. Investment Partnerships and Hedge Funds* 6-10 (John Wiley & Sons, Inc. 2010).

SOHC, and CDO HoldCo. In the United States, hedge funds are often organized in the structure presented in Chart 3 below.

*Chart 3: Recognized Structure of a U.S. Hedge Fund*



As evidenced in the chart above, a Limited Liability Company (“LLC”) sits atop a structure comprised of Limited Partnerships (“LP”) and other Offshore Funds. The LPs are funds that have the LLC as its general partner. This depiction is a highly simplified version of a structure. Most hedge fund and unregistered investment fund structures are typically much more complicated in nature.

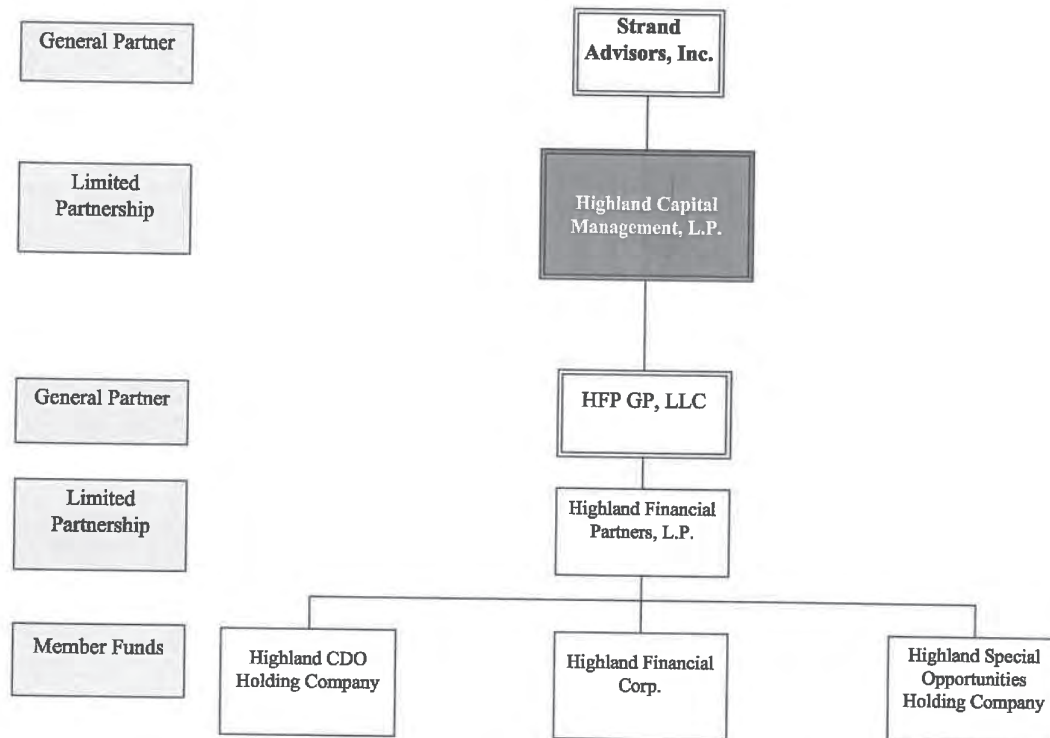
The general partner is typically governed by an operating agreement, which generally sets forth the voting rights of the members, designates the manager, grants power of attorney and authority to the manager, and provides for profit sharing among the members. The LP is governed by its own agreement of partnership.

Additionally, offshore funds may be formed, adopting a master feeder structure to join itself with the U.S. hedge fund. The master-feeder structure is achieved by the offshore fund buying a limited partnership interest in the onshore fund.

The Dudney Report cites to the organizational chart of HCM, stating that it is “complex.”<sup>61</sup> Comparing HCM’s organizational structure to that of common hedge fund structures presented above, HCM organized itself in a recognized and accepted hedge fund, or other unregistered securities fund structure.

<sup>61</sup> The Dudney Report at page 40.



Chart 4: General Organization of HCM<sup>62</sup>

The chart above is a simplified structure of HCM and HFP, but is meant to illustrate that the structure employed by HCM and HFP is similar to the common structure of U.S. hedge funds. In the chart above, Strand Advisors, Inc. is the general partner of HCM. HFP GP, LLC, an entity in which HCM is an investor, acts as general partner of the limited partnership, which then sits above the member funds. The structure presented is similar to what is presented in Chart 3, or the recognized structure of U.S. Hedge Funds.

In asserting that HCM's organization structure is "complex"<sup>63</sup> the Dudney Report fails to consider the structure of HCM against what is commonplace among similar entities. Furthermore, UBS's own corporate structure includes at least 341 companies.<sup>64</sup>

There is also evidence that each entity was meant to be its own established entity. The table below indicates HCM entities and their relevant organizational documents available and produced in regards to this litigation.

<sup>62</sup> This organizational chart is for demonstrative purposes only, and does not include, nor does it indicate all relationships within HCM and HCM-managed funds. This is meant only to compare the commonplace hedge fund structure previously discussed to relevant entities in this dispute.

<sup>63</sup> *Id.*

<sup>64</sup> CapitalIQ.

**Confidential – Expert Report of John Levitske***Chart 5: Summary of Organizational Documents<sup>65</sup>*

	SOHC	HFP	HCM	Highland CDO Opportunity Fund	Highland Credit Opportunities CDO	Highland Crusader Fund	Highland Credit Strategies Fund	Strand Advisors
Amended and Restated Management Agreement	X			X	X	X	X	
Custodian Agreement	X			X				
Confidential Private Placement/Offering Memorandum					X	X	X	
Certificate of Registration for a Partnership				X			X	
Certificate of Limited Partnership		X			X	X	X	
Articles of Limited Partnership				X				
Amended and Restated Limited Partnership Agreement		X	X	X	X	X	X	
Bylaws				X		X	X	X
Articles of Incorporation								X
Certificate of Incorporation	X					X	X	X
Memorandum & Articles of Association	X					X		

From the chart above, it is evident that HFP and HCM were in the practice of treating each of its subsidiaries or managed as its own entity.

As also noted, separate bank accounts were established for the HFP subsidiaries. There is also evidence in the record that accounting books and records were kept apart from one another. Deposition testimony by HCM and HFP employees also indicates that accounting functions were segregated. Chris Halpin stated that there were numerous accounting teams at HCM including: a corporate accounting team that oversaw HCM, a hedge fund accounting team that oversaw the funds, a team that oversaw the retail funds, a team that oversaw HFP, and a team that oversaw the CDOs & CLOs.<sup>66</sup> Additionally, Patrick Boyce stated that “HFP had a separate distinct accounting staff.”<sup>67</sup>

The Dudney Report asserts that “Mr. Dondero held positions in HCM, SOHC, CDO Fund and HFP (amongst other Highland Entities) that allowed him to control the actions of those entities.”<sup>68</sup> According to emails within Highland, other individuals approved cash movement and other activities within SOHC, HFP, and CDO HoldCo, among others. An example is provided in the graphic below.

<sup>65</sup> See: H\_0000001, H\_0000059, H\_0000119, H\_0000142, H\_0000149, H\_0000532, H\_0001245, H\_0001304, H\_0001567, H\_0001800, H\_0055015, H\_0055017, H\_0055021, H\_0055125, H\_0055196, H\_0055209, H\_0055258, H\_0055273, H\_0055274, H\_0055278, H\_0055328, H\_0055338, H\_0055412, H\_0055415, H\_0055430, H\_0056167, H\_0056346, H\_0242145, H\_0293585, H\_0293611, H\_0293820, H\_0293866, H\_0294136, H\_0339303, H\_0366569, H\_0366577, H\_0366578, H\_0366581, H\_0366780, H\_0366956, H\_0367205, H\_0367247, H\_0367382, H\_0367392, H\_1759034.

<sup>66</sup> Deposition of C. Halpin at pp. 38 – 39.

<sup>67</sup> Deposition of P. Boyce at p 136.

<sup>68</sup> The Dudney Report at p. 40.

*Approval of Cash Movement*<sup>69</sup>

**From:** Philip Braner  
**Sent:** Wednesday, August 20, 2008 10:09 AM  
**To:** Joe Emmanuel  
**Cc:** Matt Griffith; Jenna Bridges; Todd Travers  
**Subject:** RE: SOHC Collateral Call - 8/20/08

Yes, approved to move cash from HFP to SOHC.

---

**From:** Joe Emmanuel  
**Sent:** Wednesday, August 20, 2008 10:03 AM  
**To:** Phillip Braner  
**Cc:** Matt Griffith; Jenna Bridges  
**Subject:** SOHC Collateral Call - 8/20/08

Philip,

We have a couple of collateral calls today for SOHC resulting from swings in our CDS positions. First being with Credit Suisse for \$380,000. (attached). Second being with Morgan Stanley for \$425,496 (also attached). We currently have \$273,044 in cash at SOHC. We need approval to transfer \$600,000 from HFP to SOHC, then \$380,000 to Credit Suisse, and \$425,496 to Morgan Stanley. (HFP's balance is currently \$1,154,100)

Thanks,

**Joe Emmanuel**  
 Highland Financial Partners, LP  
 13455 Noel Road, Suite 800  
 Dallas, TX 75240  
 Phone: 972-628-4025  
 Fax: 972-628-4022

Important to note in the email above is that Mr. Dondero did not give approval for cash movement from HFP to SOHC, and Mr. Dondero was not even carbon copied on this request to meet collateral calls for SOHC. It is evident that decisions were being made by other employees who had authority to do so for companies within HCM.

OBSERVATIONS AND ANALYSIS

Using the ten criteria outlined above, and in the Dudney Report, we have made our own observations on the review of materials available with this matter:

**A. FORMALITIES AND PARAPHERNALIA THAT ARE PART AND PARCEL OF CORPORATE EXISTENCE, I.E., ISSUANCE OF STOCK, ELECTION OF DIRECTORS, KEEPING OF CORPORATE RECORDS AND THE LIKE**

We observed that formalities and paraphernalia that are part and parcel of “corporate”<sup>70</sup> existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like, do exist.

<sup>69</sup> H\_0788835. Also, see: H\_0888702, H\_0888744, H\_0888779, H\_0888877, H\_0888878, H\_0889004, and H\_1718341.

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As summarized above, HFP and its subsidiaries were kept separate from one another and from other HCM-managed entities. This is evidenced by Chart 5 above and also Chart 6 below.

*Chart 6: Summary of Highland Organizational Documents*

	SOHC	HFP	HCM	Highland CDO Opportunity Fund	Highland Credit Opportunities CDO	Highland Crusader Fund	Highland Credit Strategies Fund	Strand Advisors
Amended and Restated Management Agreement	X			X	X	X	X	
Custodian Agreement	X			X				
Confidential Private Placement/Offering Memorandum					X	X	X	
Certificate of Registration for a Partnership				X			X	
Certificate of Limited Partnership		X			X	X	X	
Articles of Limited Partnership				X				
Amended and Restated Limited Partnership Agreement		X	X	X	X	X	X	
Bylaws				X		X	X	X
Articles of Incorporation								X
Certificate of Incorporation	X					X	X	X
Memorandum & Articles of Association	X					X		

Furthermore, those financial records of SOHC were kept separate from other HCM-managed entities. General ledgers provided to us show evidence of this as they separately list and break out each entity. We also see indications that transactions between entities were recorded, and we can reconcile transactions in or out of SOHC to transactions in or out of other entities. See the examples set forth below:

*Table 30: Examples of HCM Financial Reporting<sup>71</sup>*

ACCOUNT	ENTITY	JOURNAL NAME	PERIOD NAME	JOURNAL LINE DESCRIPTION	ACCOUNTED_DR	ACCOUNTED_CR
1002 17641 0000	1002-Highland Financial Partners LP	CVS HFP October Cash 4	8-Oct	Contribution to SOHC	300,000	
1006 32001 0000	1006-Highland Special Opportunities Holding Company	MG - SOHC contributions distribution October	8-Oct	contribution		300,000
1006 32001 0000	1006-Highland Special Opportunities Holding Company	MG - additional contributions from HFP	8-Sep	contribution from HFP	140,000	
1003 10100 0000	1003-Highland Financial Partners LP	CVS HFP September Cash 23	8-Sep	Contribution to SOHC		140,000
1003 24000 0000	1003-Highland CDO Holding Company	JE - Holdco JE #s 1-24 Balance Sheet Close USD	8-Dec	ST Borrowings	3,700,000	
1002 10100 0000	1002-Highland Financial Partners LP	CVS - HFP December Cash 3	8-Dec	Contribution to Holdco		3,700,000

As seen in Table 30 above, we have identified matching transactions both in and out of SOHC, HFP, and CDO HoldCo from the general ledger. Corresponding credits were found for each debit, from the perspective of a different reporting entity.

Additionally, the balance sheets prepared by HFP report SOHC and CDO HoldCo as their own reporting units and entities. The chart below shows this breakout, both prior to, and after, the Restructured Agreement and HFP Notes transactions:

<sup>70</sup> "Corporate" is in quotes because SOHC is a Cayman Islands Corporation and HFP is a Delaware Limited Partnership. See: H\_1759160.

<sup>71</sup> See: 2012-01-25.xlsx.



Table 31: Consolidating Balance Sheet Breakout<sup>72</sup>

Highland Financial Partners, LP Consolidating Balance Sheet As of January 31, 2008				
HFP, LP	Highland CDO Holdco	SOHC	Eliminations	Consolidated HFP, LP

Highland Financial Partners, LP - Consolidating Balance Sheet								
HFT Consolidated Operations Period: DEC-08 Currency: USD Submitted: 12-FEB-09 09:33:11								
Strand/Ryne HFP	Highland CDO HoldCo	SOHC	HFP Asset Funding II	HFP Asset Funding III	HFP InterCo	Eliminations	HFP Rockness Co	Consolidated HFP

**B. INADEQUATE CAPITALIZATION**

We calculated month-end solvency of SOHC from August 2008 through December 2008, and note that SOHC is not insolvent until October 31, 2008. A summary of our conclusions are presented in the table below. Additional information on our solvency conclusions are presented in Schedule IV of Appendix A attached hereto.

Table 32: SOHC Adjusted Equity Analysis

	For Months Ended, 2008				
	August	September	October	November	December
SOHC Book Equity	\$ 16,807,655	\$ (38,198,945)	\$ (131,845,834)	\$ (207,163,555)	\$ (335,261,741)
Less: GAAP Liability of Knox Exposure	(56,460,536)	(109,929,103)	(152,821,353)	(238,680,320)	(344,440,079)
Equity Adjusted for Knox Exposure Liability	73,268,191	71,730,158	20,975,519	31,516,765	9,178,338
Plus: Losses Attributable to SOHC for Knox Exposure	(15,310,647)	(35,250,079)	(42,378,193)	(65,116,735)	(65,131,004)
SOHC Adjusted Equity	\$ 57,957,544	\$ 36,480,079	\$ (21,402,674)	\$ (33,599,970)	\$ (55,952,666)

**C. WHETHER FUNDS ARE PUT IN AND TAKEN OUT OF THE CORPORATION FOR PERSONAL RATHER THAN CORPORATE PURPOSES**

The inter-company transfers into SOHC during the period of August 2008 through December 2008 exceed outflows by approximately \$68.3 million. There are no transactions between SOHC and HFP in November 2008. In December 2008, there are net inflows (debits) to SOHC, including approximately \$8.1 million from HFP. We observed no incidents where funds were being taken out of SOHC by Mr. Dondero, or HFP, for personal use. The Dudney Report asserts examples of “personal dealing” between Mr. Dondero and HCM. However, HCM is an entity in which Mr. Dondero is an indirect owner through Strand Advisors, the General Partner

<sup>72</sup> See: H\_0081820 and H\_0884184.



of HCM.<sup>73</sup> A transfer to Mr. Dondero from HCM is not an indicia of an alter ego relationship between HFP and SOHC.

Moreover, the examples provided were during a time of high financial stress in the market and Mr. Dondero was making essentially emergency loans to avoid significant disruptions in operations.

#### **D. OVERLAP IN OWNERSHIP, OFFICERS, DIRECTORS AND PERSONNEL**

As previously discussed, the Dudney Report fails to consider the common structure of hedge funds, or other unregistered securities firms. HFP was a 100% owner of SOHC, as well as CDO HoldCo and both HFP Asset Funding II and HFP Asset Funding III. HFP also held ownership interests with Highland Financial Real Estate Corporation and Highland Financial Corporation.<sup>74</sup> This ownership structure is not unusual. Furthermore, each of the entities had its own business objectives; several had their own management agreements, and various outside investors as clients. Therefore, mere overlap of ownership of entities alone does not indicate alter-ego.

#### **E. COMMON OFFICE SPACE, ADDRESS AND TELEPHONE NUMBERS OF CORPORATE ENTITIES**

The Dudney Report fails to consider that independent company functions were the practice. Although, SOHC shared common office space, address, and telephone numbers with HFP, this is not determinative of alter-ego in this case. In contrast, deposition testimony by Highland employees also indicates that accounting functions were segregated. Chris Halpin stated claimed that there were numerous accounting teams at Highland including: a corporate accounting team that oversaw HCM, a hedge fund accounting team that oversaw the funds, a team that oversaw the retail funds, a team that oversaw HFP, and a team that oversaw the CDOs & CLOs.<sup>75</sup> Additionally, Patrick Boyce stated that “HFP had a separate distinct accounting staff.”<sup>76</sup>

Additionally, our research of UBS indicated that it has approximately 341 of its own subsidiaries.<sup>77</sup> It would be unlikely that UBS had separate offices, personnel, and other corporate functions for each one of its subsidiaries. This alone does not indicate indicia of alter ego.

A Management Agreement between HFP and HCM, where SOHC is a subsidiary listed in Annex 1 and covered by the Management Agreement outlines the responsibilities of the manager, which includes HCM serving as manager of the assets and the day-to-day operations of SOHC, including provided executive and administrative personnel to handle SOHC’s day-to-day

<sup>73</sup> Highland Capital Management, L.P. Consolidated Financial Statements with Report of Independent Auditors for Year Ended December 31, 2009, p. 7. H\_0305106

<sup>74</sup> See: H\_1759160.

<sup>75</sup> Deposition of C. Halpin at pp. 38 – 39.

<sup>76</sup> Deposition of P. Boyce at p 136.

<sup>77</sup> CapitalIQ.

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business operations.<sup>78</sup> Management Agreements, whereby management fees are charged, are common practice within the hedge fund industry.<sup>79</sup>

**F. THE AMOUNT OF BUSINESS DISCRETION DISPLAYED BY THE ALLEGEDLY DOMINATED CORPORATION**

The organizational documents of SOHC support that it had the discretion to act on its own behalf, and not at the direction of HFP or Mr. Dondero. Other entities managed by HCM had varying amounts of documentation, as evidenced in the chart below, with each doing business as it sought.

*Chart 7: Summary of Highland Organizational Documents*

	SOHC	HFP	HCM	Highland CDO Opportunity Fund	Highland Credit Opportunities CDO	Highland Crusader Fund	Highland Credit Strategies Fund	Strand Advisors
Amended and Restated Management Agreement	X			X	X	X	X	
Custodian Agreement	X			X				
Confidential Private Placement/Offering Memorandum					X	X	X	
Certificate of Registration for a Partnership				X			X	
Certificate of Limited Partnership		X			X	X	X	
Articles of Limited Partnership				X				
Amended and Restated Limited Partnership Agreement		X	X	X	X	X	X	
Bylaws				X		X	X	X
Articles of Incorporation								X
Certificate of Incorporation	X					X	X	X
Memorandum & Articles of Association	X					X		

Additionally, the HFP Notes transactions indicate that the interest rate associated with the HFP Notes were in line with market rates. Further discussion of this analysis is found above.

Each entity included in Chart 7 above also had its own purpose. A summary of certain HCM entities is provided below.

HCM is a U.S. based, employee owned investment manager whose primary purpose is to manage accounts for pooled investment vehicles. HCM typically invests in leveraged loans, high yield bonds, and structured products, among other assets.<sup>80</sup>

HFP is an affiliated holding company of HCM.<sup>81</sup>

SOHC is a limited, wholly-owned subsidiary of HFP.<sup>82</sup> HFP stated that SOHC “holds investments such as non-rated debt and distressed assets and enters into derivative transactions.”<sup>83</sup>

<sup>78</sup> See: H\_0000119.

<sup>79</sup> See generally, Navendu P. Vasavada, *Taxation of U.S. Investment Partnerships and Hedge Funds* 6-10 (John Wiley & Sons, Inc. 2010).

<sup>80</sup> S&P’s *Capital IQ* database.

<sup>81</sup> Highland Capital Management, L.P. Consolidated Financial Statements with Report of Independent Auditors for Year Ended December 31, 2008, p. 21. H\_0568972.

<sup>82</sup> Highland Financial Partners, L.P. Condensed Consolidated Financial Statements (Unaudited) as of June 30, 2008 and for the three and six months ended June 30, 2008 and June 30, 2007, p 6. H\_0082566.

<sup>83</sup> *Id.*

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Highland CDO Opportunity Master Fund, L.P. (“CDO Opportunity Master Fund”) was organized as an exempted, limited partnership under the laws of Bermuda on October 31, 2005 that began operating on January 1, 2006.<sup>84</sup> The partnership’s objective is to invest in various securities and financial instruments, including but not limited to investments in CLOs.

Highland Credit Strategies Master Fund, L.P. is an unregistered, limited partnership investment fund that began operating on August 19, 2005.<sup>85</sup>

Highland Crusader Offshore Partners, L.P. is an unregistered, limited partnership investment fund that commenced operations on July 10, 2000.<sup>86</sup>

Highland Credit Opportunities CDO, L.P. is an unregistered, limited partnership investment fund that is managed by HCM.

**G. WHETHER THE RELATED CORPORATIONS DEAL WITH THE DOMINATED CORPORATION AT ARM’S LENGTH**

As discussed in our analysis of the HFP Notes transactions, and the rate of interest associated with the HFP Notes, it is evident that the stated rate is in line with expected market rates, and that favorable treatment was not given to SOHC or any other related parties.

Furthermore, the decisions of cash movement within SOHC were made by those who were charged with the responsibility to do so.<sup>87</sup> See the example below.

<sup>84</sup> Highland CDO Opportunity Master Fund, L.P. Consolidated Financial Statements with Report of Independent Auditors for Year Ended December 31, 2007, p. 10. H\_0608974.

<sup>85</sup> Highland Credit Strategies Master Fund, L.P. Consolidated Financial Statements with Report of Independent Auditors for Year Ended December 31, 2008, p. 8. H\_0880427.

<sup>86</sup> Highland Crusader Offshore Partners, L.P. Consolidated Financial Statements with Report of Independent Auditors for Year Ended December 31, 2008, p. 25. H\_0830248.

<sup>87</sup> H\_0788835. Also, see: H\_0888702, H\_0888744, H\_0888779, H\_0888877, H\_0888878, H\_0889004, and H\_1718341.

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**Confidential – Expert Report of John Levitske***Approval of Cash Movement*<sup>88</sup>

**From:** Philip Braner  
**Sent:** Wednesday, August 20, 2008 10:09 AM  
**To:** Joe Emmanuel  
**Cc:** Matt Griffith; Jenna Bridges; Todd Travers  
**Subject:** RE: SOHC Collateral Call - 8/20/08

Yes, approved to move cash from HFP to SOHC.

**From:** Joe Emmanuel  
**Sent:** Wednesday, August 20, 2008 10:03 AM  
**To:** Philip Braner  
**Cc:** Matt Griffith; Jenna Bridges  
**Subject:** SOHC Collateral Call - 8/20/08

Philip,

We have a couple of collateral calls today for SOHC resulting from swings in our CDS positions. First being with Credit Suisse for \$380,000. (attached). Second being with Morgan Stanley for \$425,496 (also attached). We currently have \$273,044 in cash at SOHC. We need approval to transfer \$600,000 from HFP to SOHC, then \$380,000 to Credit Suisse, and \$425,496 to Morgan Stanley. (HFP's balance is currently \$1,154,100)

Thanks,

**Joe Emmanuel**  
 Highland Financial Partners, LP  
 13455 Noel Road, Suite 800  
 Dallas, TX 75240  
 Phone: 972-628-4025  
 Fax: 972-628-4022

As previously addressed, there are documents that indicate that Mr. Braner had authority to approve cash from HFP to SOHC. In addition, corporate formalities exist.

#### **H. WHETHER THE CORPORATIONS ARE TREATED AS INDEPENDENT PROFIT CENTERS**

We analyzed the profitability of SOHC from August 2008 through December 2008. Our analysis concluded that SOHC continued to earn profits from management operations during the periods analyzed. The chart below summarizes our analysis.

<sup>88</sup> H\_0788835. Also, see: H\_0888702, H\_0888744, H\_0888779, H\_0888877, H\_0888878, H\_0889004, and H\_1718341.

Table 33: Summary of SOHC Operating Profits

	For Months Ending in 2008			
	September	October	November	December
Revenue				
Interest Income	\$ 125,752	\$ 68,210	\$ 20,039	\$ (358,733)
Other Income	2,447,305	419,506	146,818	3,412,114
Income from consolidated subsidiaries	-	-	-	-
Income from consolidated CDOs	-	-	-	-
Income from Unconsolidated CDOs	-	-	-	-
Total Revenue	2,573,057	487,716	166,857	3,053,381
Expenses				
Interest expense	34,811	25,990	13,006	10,017
Net Amortization/Accretion for bonds and loans	-	-	-	-
Management fees	-	-	-	-
Professional fees	1,477,098	-	6,625	-
Provision for loan losses	(27,114)	-	-	-
Compensation expense	-	-	-	-
Other operating expenses	805,535	244,222	2,771	2,548,000
Warehouse Carry expense	(39,069)	-	-	-
Total expenses	2,251,261	270,212	22,402	2,558,017
Operating Income	321,796	217,504	144,455	495,364

SOHC also reported profits from management operations for the prior year ended December 31, 2007.<sup>89</sup>

Additionally, accounting records available in this matter indicate that the entities were being looked at on an individual basis, as opposed to solely a consolidated basis.<sup>90</sup>

As discussed above, SOHC was treated as an independent profit center. The summary of transactions and balance sheets are shown below, which are also shown in Table 30 and Table 31 above.

Table 34: Summary of Transactions

ACCOUNT	ENTITY	JOURNAL_NAME	PERIOD_NAME	JOURNAL LINE DESCRIPTION	ACCOUNTED_DR	ACCOUNTED_CR
1002 17641 0000	1002-Highland Financial Partners LP	CVS HFP October Cash 4	8-Oct	Contribution to SOHC	300,000	
1006 32001 0000	1006-Highland Special Opportunities Holding Company	MG - SOHC contributions distribution October	8-Oct	contribution		300,000
1006 32001 0000	1006-Highland Special Opportunities Holding Company	MG - additional contributions from HFP	8-Sep	contribution from HFP	140,000	
1002 10100 0000	1002-Highland Financial Partners LP	CVS HFP September Cash 23	8-Sep	Contribution to SOHC		140,000
1003 24000 0000	1003-Highland CDO Holding Company	JE - Holdco JE #s 1-24 Balance Sheet Close USD	8-Dec	ST Borrowings	3,700,000	
1002 10100 0000	1002-Highland Financial Partners LP	CVS - HFP December Cash 3	8-Dec	Contribution to Holdco		3,700,000

<sup>89</sup> H\_0458135.

<sup>90</sup> See, for example, consolidating balance sheets at: H\_0081820 and H\_0884184.



Chart 8: Balance Sheets

Highland Financial Partners, LP Consolidating Balance Sheet As of January 31, 2008								
HFP, LP	Highland CDO Holdco	SOHC	Eliminations	Consolidated HFP, LP				
<b>Highland Financial Partners, LP - Consolidating Balance Sheet</b>								
HFT Consolidated Operations Period: DEC-08 Currency: USD Submitted: 12-FEB-09 09:53:11								
Source/Line HFP	Highland CDO Holdco	SOHC	HFP Asset Funding II	HFP Asset Funding III	HFP Income Co	Eliminations	HFP Receivables Co	Consolidated HFP

**I. THE PAYMENT OR GUARANTEE OF DEBTS OF THE DOMINATED CORPORATION BY OTHER CORPORATIONS IN THE GROUP**

The Dudney Report did not appear to identify any guarantees, and we have not seen the types of patterned behaviors that would serve as indicia of alter ego.

**J. WHETHER THE CORPORATION IN QUESTION HAD PROPERTY THAT WAS USED BY OTHER CORPORATIONS AS IF IT WERE ITS OWN**

As described above, a Management Agreement between HFP and HCM, where SOHC is a subsidiary listed in Annex 1 and covered by the Management Agreement outlines the responsibilities of the manager, which includes HCM serving as manager of the assets and the day-to-day operations of SOHC, including provided executive and administrative personnel to handle SOHC's day-to-day business operations.<sup>91</sup> Management Agreements, whereby management fees are charged, are common practice within the hedge fund industry.<sup>92</sup>

Therefore, based on our observations on the ten criteria related to indicia of alter ego described above, the Dudney Report fails to establish that the owners exercised complete domination over the "corporation" in respect to the HFP Notes transactions.

**WHETHER THE ALLEGED DOMINATION WAS USED TO COMMIT A WRONG AGAINST PLAINTIFF**

The Dudney Report also fails to establish that such asserted domination was used to commit a wrong against the plaintiff, UBS, which resulted in the plaintiff's, UBS', injury and damages. Regarding SOHC, we observed the following:

<sup>91</sup> See: H\_0000119.

<sup>92</sup> See generally, Navendu P. Vasavada, *Taxation of U.S. Investment Partnerships and Hedge Funds* 6-10 (John Wiley & Sons, Inc. 2010).

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- The Dudney Report disregards that by the time of entering into the Restructured Agreement, UBS's risk management control department concluded that the counterparties', SOHC and CDO Fund, ability to pay is near zero. At the time of entering into the Restructured Agreement, UBS was aware of the risks attendant to engaging SOHC and CDO Fund as funding counterparties to the Restructured Agreement.
- Factors other than HFP's actions impacted SOHC or resulted in financial losses for SOHC during the time period which the Dudney Report analyzed of August 2008 through December 2008.

*a. SOHC's investments suffered due to external market changes.*

For example, in a letter issued by HFP to its shareholders on January 27, 2009 ("HFP January Investor Letter"), HFP cites that it has "begun to experience significant liquidity issues due to the continued deterioration of the credit markets and the economy as a whole."<sup>93</sup> The HFP January Investor Letter covers the leveraged loan and CLO markets, briefly addressed in our own independent analysis above. The letter informs investors that the average bid price for S&P LSTA Leveraged Loan Index<sup>94</sup> fell by approximately 25.1% from September 30, 2008 to December 31, 2008.

The HFP January Investor Letter also indicates that the "fourth quarter of 2008 was also one of the worst for ratings downgrades on US leveraged loans. The number of issuers downgraded during the quarter was 119 according to the data tracked by the S&P/LSTA leveraged loan index." This downgrade, according to the letter, "potentially caused the diversion of cash flows."<sup>95</sup> Additionally, the HFP January Investor Letter noted that during the fourth quarter of 2008, the cash flow diversion tests for two of the structured finance subsidiaries was triggered, resulting in a reduction of equity flows to HFP of approximately \$2,800,000. As a result of the deteriorating market conditions, HFP anticipated equity flows from the assets held would potentially stop.

In the changing market conditions, Lehman Brothers filed for bankruptcy on September 15, 2008. This announcement was, primarily, responsible for the Dow Jones Industrial Average ("Dow") declining 504 points by close. The next day, on September 16, 2008 the U.S. Government agreed to an \$85 billion "bailout" of AIG, making available a credit facility for the

<sup>93</sup> See: H\_0642618.

<sup>94</sup> The S&P/LSTA Leveraged Loan Index (LLI) is a leveraged loan index which covers the U.S. loan market. The index reflects the market-weighted performance of institutional leveraged loans in the U.S. loan market based upon real-time market weightings, spreads and interest payments. All of the index components are the institutional tranches (Term Loan A, Term Loan B and higher and Second Lien) of loans syndicated to U.S. loan investors. If a dollar portion that is syndicated in the U.S. market is tracked by the LLI and the Euro portion that is syndicated in the European market is tracked by the ELLI. The LLI series currently calculates the total return daily with an inception date of 1 January 1997. Total return is the product of two components: interest income return and market value return.

<sup>95</sup> See: H\_0642618.

company to meet its increased collateral obligations consequent to the ratings downgrade.<sup>96</sup> The U.S. Government, in exchange for the facility, took on a stock warrant for almost 80% of the equity of AIG. Following the announcement of the deal between AIG and The Fed, the Dow dropped an additional 449 points. While the Fed was working toward stabilizing the crumbling economy, it chose not to bailout Lehman Brothers, which left Lehman to file for bankruptcy.

*b. Mitigation was undertaken.*

SOHC obtained asset borrowings or additional capital from HFP which improved UBS' situation. SOHC transferred \$10.0 million to State Street on September 18, 2008, of which \$5.1 million was to fund CDO Fund's portion of the collateral call, and \$4.9 million was to fund SOHC's portion of the collateral call. A receivable from CDO Fund was booked by SOHC. This \$5.1 million receivable was then relieved in December 2008 when CDO Fund transferred \$5.1 million of assets to SOHC.<sup>97</sup>

Had SOHC not posted the collateral on behalf of CDO Fund, it is likely that a clause in the Restructured Agreement would have triggered termination. SOHC posting collateral on behalf of CDO Fund for a margin call made by UBS was to the benefit of UBS. HFP's contribution to SOHC to meet the margin call protected its investment in SOHC.

Consequently, the Dudney Report fails to establish that any such asserted domination was used to commit a wrong against the plaintiff, UBS, which resulted in the Plaintiff's, injury and damages.

<sup>96</sup> <http://www.federalreserve.gov/monetarypolicy/files/129aigseccreditfacility.pdf>.

<http://www.nytimes.com/2008/09/17/business/17insure.html?pagewanted=all&r=0>

<sup>97</sup> HFP Accounting Memorandum dated February 18, 2009 at H\_030188; UBS-0003311475 – 76.

## VI. RES JUDICATA

It is our understanding that pursuant to *UBS Securities LLC et al., v. Highland Capital Management, L.P.* 86 A.D.3d469 the Appellate Decision (1<sup>st</sup> Department) has barred Plaintiffs' claims to the extent they implicate events alleged to have occurred through the time of filing on February 24, 2009. The application of *res judicata* reduces or eliminates the pertinence of the Dudney Report's asserted analysis and conclusions, because he failed to identify relevant conduct occurring after that date.<sup>98</sup>

\* \* \* \* \*

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<sup>98</sup> See: *UBS Securities LLC, et. al., Plaintiffs-Respondents v Highland Capital Management, L.P., et. al., Defendants, Highland Financial Partners, L.P., et. al., Defendants-Appellants* 93 A.D.3d 489. See also, *UBS Securities LLC et. al., Respondents-Appellants, v Highland Capital Management, L.P., Appellant-Respondent, et. al., Defendants. UBS Securities LLC et. al., Respondents-Appellants, v. Highland Capital Management, L.P., Appellant-Respondent* 86 A.D.3d 469. Specifically, the order entered March 3, 2011, which denied the motion of defendants Highland Financial Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. to dismiss the amended complaint's causes of action for declaratory judgment and fraudulent conveyance, unanimously modified, on the law, to the extent of granting the motion with respect to claims arising before February 2009, and otherwise affirmed, without costs. The Court's reversal of an order denying dismissal of the complaint in a related action, warrants dismissal of a portion of plaintiff's claims in this action due to *res judicata* since defendants are in privity with the defendant in the other action.

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Respectfully submitted,



John Levitske  
Managing Director



**VII. DOCUMENTS CONSIDERED**

The following is a list of sources used in our analysis, which may be in addition to those specifically noted in the report:

**DOCUMENTS PRODUCED**

- Answer to Second Amended Complaint of Highland CDO Opportunity Master Fund and Highland Special Opportunities Holding Company
- Answer to Second Amended Complaint of Remaining Highland Parties
- Defendant Highland Crusader Holding Corporation's Memorandum of Law in Support of its Motion to Dismiss the Complaint, Motion to Strike and Motion for Sanctions, dated May 4, 2012
- Defendants Highland Credit Strategies Master Fund L.P., and Highland Crusader Offshore Partners, L.P.'s Memorandum of Law in Support of Their Motion to Dismiss the Second Amended Complaint, dated May 25, 2012
- Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss the Complaint, Motion to Strike, and Motion for Sanctions dated March 27, 2012
- Defendant Highland Crusader Holding Corporation's Reply Brief in Support of its Motion to Dismiss the Complaint, Motion to Strike, and Motion for Sanctions dated May 4, 2012
- Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss of Defendants Highland Credit Strategies Master Fund, L.P., and Highland Crusader Offshore Partners, L.P. dated July 13, 2012
- Defendant's Highland Credit Strategies Master Fund, L.P.'s and Highland Crusader Offshore Partners, L.P.'s Reply Brief in Support of their Motion to Dismiss the Second Amended Complaint, dated August 6, 2012
- Order Memorandum Decision dated March 1, 2011, Index No. 650097/2009, Hon. Bernard J. Fried
- CDO Fund Letter to Investors H\_0799195
- CDS ABS Swap #37662447\_5~1
- CDS ABS Swap #37662447\_5~2
- CDS ABS Swap #37662453\_4~1
- CDS ABS Swap #37662453\_4~2
- CDS ABS Swap #37662499\_9~1
- CDS ABS Swap #37662499\_9~2
- CDS ABS Swap #37662500\_4~1
- CDS ABS Swap #37662500\_4~2
- CDS ABS Swap #37662502\_5~1
- CDS ABS Swap #37662502\_5~2
- CDS ABS Swap #37662507\_13~1
- CDS ABS Swap #37662507\_13~2
- CDS ABS Swap #37662508\_7~1
- CDS ABS Swap #37662508\_7~2
- CDS ABS Swap #37662514\_7~1 & 2
- CDS ABS Swap #37675228\_2~2
- CDS ABS Swap #37675230\_2~1
- CDS ABS Swap #37675230\_2~2
- CDS ABS Swap #37675232\_2~1
- CDS ABS Swap #37675232\_2~2
- CDS ABS Swap #37699490\_18~0
- CDS ABS Swap #37702295\_3~1
- CDS ABS Swap #37702295\_3~2
- CDS ABS Swap #37702311\_3~1
- CDS ABS Swap #37702311\_3~2
- CDS ABS Swap #37702317\_3~1
- CDS ABS Swap #37702317\_3~2
- CDS ABS Swap #37702318\_3~1
- CDS ABS Swap #37702318\_3~2
- CDS ABS Swap #37702349\_3~1
- CDS ABS Swap #37702349\_3~2
- CDS ABS Swap #37702350\_3~1
- CDS ABS Swap #37702350\_3~2
- CDS ABS Swap #37731668\_7~0
- CDS ABS Swap #37773500\_5~0
- Complaint - Exhibit A
- Complaint - Exhibit B
- Complaint - Exhibit C
- Complaint - Exhibit D
- Complaint - Exhibit E
- Complaint - Exhibit F
- Complaint - Exhibit G
- Complaint - Exhibit H
- Complaint - Exhibit I
- H\_0428000-H\_0830248
- H\_0082566-H\_0842105
- H\_1798253.xlsx
- HFP Financial Statement 6.30.07 H\_0082616
- H\_0642618-48
- Knox Warehouse Source Documents Matrix

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- Second Amended Complaint
- ST0000002.xls
- ST0000003-ST0000040
- ST0000041.xls
- ST0000042-ST0002485
- Third Amended Scheduling Order
- UBS 000470556-470735
- UBS Interrogatory Responses, UBS-000311317-23, UBS-000480921
- UBS-000000001.xls-UBS-000000006.xls
- UBS-000000009-UBS-000000016
- UBS-000000023-UBS-000000024
- UBS-000000031.xls-UBS-000000251.xls
- UBS-000000310.xls-UBS-000000488.xls
- UBS-000001275-UBS-000001280
- UBS-000165158.xlsx-UBS-000165176.xls
- UBS-000165200.xls-UBS-000165211.xls
- UBS-000165284.xls-UBS-000165394.xls
- UBS-000165398.xls-UBS-000165413.xls
- UBS-000165421.xls-UBS-000165474.xls
- UBS-000165595.xls-UBS-000165755.xls
- UBS-000168418.xls-UBS-000168523.xls
- UBS-000168984.xls-UBS-000169096.xls
- UBS-000169283.xls-UBS-000169504.xls
- UBS-000169616.xls-UBS-000169934.xls
- UBS-000165822
- UBS-000301938-UBS-000301962
- UBS-000301988-UBS-000302027
- UBS-000302113-UBS-000302162
- UBS-000302212-UBS-000302250
- UBS-000302286-UBS-000302939
- UBS-000302942-UBS-000302977
- UBS-000308944-UBS-000308961
- UBS-000309172-UBS-000309175
- UBS-000309423-UBS-000309426
- UBS-000309502-UBS-000309511
- UBS-000312720-UBS-000312722
- UBS-000317468
- UBS-000318561
- UBS-000318765-UBS-000318768
- UBS-000318770-UBS-000318775
- UBS-000319074
- UBS-000319099
- UBS-000319293-UBS-000319338
- UBS-000321689-UBS-000323696
- UBS-000322236-UBS-000410029
- UBS-000330373-UBS-000330374
- UBS-000330422-UBS-000330423
- UBS-000330458-UBS-000330459
- UBS-000330462-UBS-000330464
- UBS-000330479-UBS-000330482
- UBS-000330541-UBS-000330543
- UBS-000330584-UBS-000330486
- UBS-000330636-UBS-000330637
- UBS-000330649-UBS-000330651
- UBS-000330654-UBS-000330655
- UBS-000330680-UBS-000330681
- UBS-000330714-UBS-000330716
- UBS-000330867-UBS-000330871
- UBS-000330950-UBS-000330952
- UBS-000330960-UBS-000330964
- UBS-000331041-UBS-000331043
- UBS-000331050
- UBS-000331053-UBS-000331057
- UBS-000331108-UBS-000331113
- UBS-000331123-UBS-000331124
- UBS-000331165-UBS-000331166
- UBS-000331194-UBS-000331195
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- Expert Report of Louis G. Dudney
- UBS-000480927.xls
- 2012-01-25.xls
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- H\_0646808

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- Transfer of Claim Agreement\_King Street Capital\_\$105.75M
- Transfer of Claim Agreement\_Lagan Partners
- Transfer of Claim Agreement\_SPCP
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- D-00660-661



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- D-00662-667
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- UBS-000000021-022
- UBS-000000506-537
- UBS-000000565-583
- UBS-000000584
- UBS-000332663
- UBS-000332664
- A Bird's-Eye View- The Financial Crisis of 2007-2009: Causes and Remedies, Viral Acharya, et al, Financial Markets, Institutions & Instruments, 2009.
- A Guide to Institutional Investors' Views and Preferences Regarding Hedge Fund Operational Infrastructures, AIMA, 2011.
- AIMA's Guide to Sound Practices for Hedge Fund Valuation, AIMA, March 2007.
- Bank of England Financial Stability Report, Issue No. 25, June 2009

**Confidential – Expert Report of John Levitske**

- (<http://www.bankofengland.co.uk/publications/fsr/2009/fsrfull0906.pdf>).
- Best Practices for the Hedge Fund Industry, Report of the Asset Managers' Committee to the President's Working Group on Financial Markets, January 15, 2009.
  - Best Practices in Hedge Fund Investing: Due Diligence for Fixed Income and Credit Strategies, The Education Committee of the Greenwich Roundtable, Spring 2007.
  - Collateral Loan Obligations: A Structure that Works, The Journal of Structured Finance, Summer 2012.
  - David Weidner, Merrill pegs write-down at \$5.5 billion, MarketWatch.com, October 5, 2007 (<http://www.marketwatch.com/story/merrill-lynch-to-write-down-nearly-55-billion-againstresults>).
  - Deciphering the Liquidity and Credit Crunch 2007 – 2008, Markus K. Brunnermeier, Journal of Economic Perspectives, Volume 23, Number 1, Winter 2009.
  - Global ABS/CDO Weekly Market Snapshot, Chris Flanagan, JPMorgan, August 10, 2007.
  - Global ABS/CDO Weekly Market Snapshot, Chris Flanagan, JPMorgan, January 14, 2008.
  - Global ABS/CDO Weekly Market Snapshot, Chris Flanagan, JPMorgan, May 9, 2008.
  - Global ABS/CDO Weekly Market Snapshot, Chris Flanagan, JPMorgan, August 8, 2008.
  - Global ABS/CDO Weekly Market Snapshot, Chris Flanagan, JPMorgan, January 5, 2009.
  - Highland Capital Management, LP Homepage, (available at <https://www.hcmlp.com>).
  - LSTA, "Investing Today in the US Leveraged Loan Market" Conference, Presentation on "CLO's: Where Do We Go From Here?," February 8-10, 2011.
  - LSTA, "Trick or Treat? The Future of the Leveraged Loan Market – LSTA 14th Annual Conference," Presentation on "The Future of CLOs?"
  - LSTA, CLO's: Challenges and Opportunities, Contemplating the Direction of the Leveraged Loan Market, June 16, 2010.
  - Market: Time to Pull Mark-To-Market Triggers, High Yield Report, November 3, 2008.
  - Measuring financial market liquidity, Will Kerry, Journal of Risk Management in Financial Institutions, Vol.1, No. 2, January 2008.
  - Principles and Best Practices for Hedge Fund Investors, Report of the Investors' Committee, to the President's Working Group on Financial Markets, April 2008.
  - Sound Practices for Hedge Fund Managers, Managed Funds Association, 2007.
  - Still No CLO Triple-A Buyers, But Appetite in Secondary Seen, Asset Securitization Report, October 13, 2008.
  - Still No Market for European ABS, Asset Securitization Report, October 27, 2008.
  - Study on Investment Advisers and Broker-Dealers, Securities and Exchange Commission, January 2011.
  - The ABX: How do the Markets Price Subprime Mortgage Risk? Ingo Fender and Martin Scheicher, BIS Quarterly Review, September 2008.
  - The Credit Crunch of 2007-2008: A Discussion of the Background, Market Reactions, and Policy Responses, Paul Mizen, Federal Reserve Bank of St. Louis Review, September/October 2008.
  - The Origins of the Financial Crisis, Martin Neil Baily, Robert E. Litan and Matthew S. Johnson, The Brookings Institution, November 2008.
  - D-00557
  - D-00729
  - H\_0000119
  - H\_0001304
  - H\_0008444
  - H\_0008446
  - H\_0008449
  - H\_0008458
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**DEPOSITION TRANSCRIPTS**

- Deposition Transcript of D. Bawden dated 11/2/2011 and all related exhibits.
- Deposition Transcript of C. Stoops, Volume 1 dated 11/30/2011 and all related exhibits.
- Deposition Transcript of P. Braner, Volume 1 dated 12/6/2011 and all related exhibits.
- Deposition Transcript of P. Braner, Volume 2 dated 12/7/2011 and all related exhibits.
- Deposition Transcript of G. Kwentus dated 1/6/2012 and all related exhibits.
- Deposition Transcript of K. Latimer dated 1/10/2012 and all related exhibits.
- Deposition Transcript of F. Waterhouse dated 1/12/2012 and all related exhibits.
- Deposition Transcript of P. Chudy, Volume 1 dated 1/24/2012 and all related exhibits.
- Deposition Transcript of S. Marotta, Volume 1 dated 2/10/2012 and all related exhibits.
- Deposition Transcript of C. Gilchrist dated 2/16/2012 and all related exhibits.
- Deposition Transcript of B. Howell dated 2/23/2012 and all related exhibits.
- Deposition Transcript of J. Dondero, Volume 1 dated 2/28/2012 and all related exhibits.
- Deposition Transcript of M. Okada dated 3/2/2012 and all related exhibits.
- Deposition Transcript of K. Grimaldi dated 3/6/2012 and all related exhibits.
- Deposition Transcript of M. Grenville dated 3/9/2012 and all related exhibits.
- Deposition Transcript of G. McQuown dated 3/14/2012 and all related exhibits.
- Deposition Transcript of S. Kavanaugh dated 3/20/2012 and all related exhibits.
- Deposition Transcript of K. Dillon dated 3/22/2012 and all related exhibits.
- Deposition Transcript of T. Travers dated 4/3/2012 and all related exhibits.
- Deposition Transcript of S. Anbar-Colas dated 4/26/2012 and all related exhibits.
- Deposition Transcript of P. Roos dated 5/1/2012 and all related exhibits.
- Deposition Transcript of S. Karkhanis dated 5/15/2012 and all related exhibits.
- Deposition Transcript of R. Metcalf dated 5/17/2012 and all related exhibits.
- Deposition Transcript of K. Plumer dated 5/18/2012 and all related exhibits.
- Deposition Transcript of C. Ryan dated 5/25/2012 and all related exhibits.
- Deposition Transcript of P. Boyce, Volume 1 dated 5/31/2012 and all related exhibits.
- Deposition Transcript of M. Zarrilli dated 6/4/2012 and all related exhibits.
- Deposition Transcript of C. Halpin dated 6/6/2012 and all related exhibits.
- Deposition Transcript of J. Mayer dated 6/8/2012 and all related exhibits.
- Deposition Transcript of J. Dondero, Volume 2 dated 6/11/2012 and all related exhibits.
- Deposition Transcript of K. Dowd dated 6/11/2012 and all related exhibits.
- Deposition Transcript of J. Dondero, Volume 3 dated 6/12/2012 and all related exhibits.
- Deposition Transcript of R. Grateke dated 6/18/2012 and all related exhibits.
- Deposition Transcript of P. Kauffman dated 6/19/2012 and all related exhibits.
- Deposition Transcript of P. Daugherty dated 7/11/2012 and all related exhibits.
- Deposition Transcript of B. Dillon, Volume 1 dated 7/17/2012 and all related exhibits.
- Deposition Transcript of G. Mahmud dated 7/19/2012 and all related exhibits.
- Deposition Transcript of M. Brophy dated 7/27/2012 and all related exhibits.
- Deposition Transcript of J. Teach dated 8/9/2012 and all related exhibits.
- Deposition Transcript of B. Dillon, Volume 2 dated 8/14/2012 and all related exhibits.
- Deposition Transcript of T. Leroux dated 8/14/2012 and all related exhibits.
- Deposition Transcript of B. Bejile dated 8/16/2012 and all related exhibits.
- Deposition Transcript of A. Threadgold dated 8/17/2012 and all related exhibits.
- Deposition Transcript of P. Braner, Volume 3 dated 8/21/2012 and all related exhibits.
- Deposition Transcript of J. Perez dated 8/29/2012 and all related exhibits.
- Deposition Transcript of C. Stoops, Volume 2 dated 8/30/2012 and all related exhibits.
- Deposition Transcript of V. Kumar dated 10/19/2012 and all related exhibits.
- Deposition Transcript of P. Braner, Volume 4 dated 11/20/2012 and all related exhibits.
- Deposition Transcript of V. Kumar dated 2/7/2013 and all related exhibits.

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- Deposition Transcript of G. Melamed dated 1/27/201 and all related exhibits

**PUBLICATIONS AND ARTICLES**

- Newton, Grant W. *Bankruptcy and insolvency accounting: practice and procedure*. New York: Ronald Press Co., 1975. Print.
- AICPA, Debt vs. Equity in the Tax Court, February 1, 2013, accessed: [www.aicpa.org/publications/taxadviser/2013/february/pages/clinic-story-01.aspx](http://www.aicpa.org/publications/taxadviser/2013/february/pages/clinic-story-01.aspx).
- Caudiff, Matthew. *Piercing the Corporate Veil of a New York Not-For-Profit Corporation*. 8 Fordham J. Corp & Fin. L. 449 2003.
- *Ground for Disregarding the Corporate Entity and Piercing the Corporate Veil*, in 45 American Jurisprudence Proof of Facts 3d §1 (1998).
- Thompson, Robert B.. *Piercing the corporate veil: an empirical study*. New Haven, Conn.: American Law and Economics Association, 1991. Print.
- <http://www.federalreserve.gov/monetarypolicy/files/129aigseccreditfacility.pdf>.
- <http://www.nytimes.com/2008/09/17/business/17insure.html?pagewanted=all& r=0>
- Shaked, Israel, and Robert Reilly. *A Practical Guide to Bankruptcy Valuation*. Alexandria: American Bankruptcy Institute, 2013. Print.
- Thompson, Robert B. *Piercing the corporate veil: an empirical study*. New Haven, Conn.: American Law and Economics Association, 1991. Print.
- Weil, Roman L. *Litigation services handbook: the role of the financial expert*. 5th ed. Hoboken, NJ: Wiley, 2012. Print.

**LEGAL DECISIONS**

- *Morris v. New York State Dep't of Taxation and Finance*.
- *Wm. Passalacqua Bldrs., Inc. v. Resnick Devs. S., Inc.*
- *UBS Securities LLC at. Al., Respondents v. Highland Capital Management, L.P., Appellant, et al., Defendants*. 70 A.D.3d 526
- *UBS Securities LLC at. Al., Respondents v. Highland Capital Management, L.P., Appellant, et al., Defendants*. 86 A.D.3d 469
- *UBS Securities LLC at. Al., Respondents v. Highland Capital Management, L.P., Appellant, et al., Defendants*. 93 A.D.3d 489

**DATA SOURCES, WEBSITES, AND OTHER PUBLICLY AVAILABLE INFORMATION**

- “Global CDO Issuance USD Millions.” SIFMA.



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- S&P's Capital IQ database.
- Treasury Direct Website. <http://www.treasurydirect.gov/>
- Bloomberg
- Intex database

## VIII. EXPERT RESUME

### John Levitske

Managing Director, Dispute and Legal Management Consulting, Commercial Disputes

Duff & Phelps, LLC, Chicago  
311 South Wacker Drive  
Suite 4200  
Chicago, IL 60606  
(312) 697-4749

#### A. OVERVIEW

John Levitske is a managing director in the Chicago office and part of the Dispute Consulting service line. He has more than 25 years experience as a forensic accountant and business appraiser.

John concentrates on the analysis and investigation of businesses, stakeholder interests and financial information for determination of value, economic damages, merger and acquisition purchase price adjustments, solvency, fraud in the financial statements, internal corporate financial fraud and GAAP issues. His experience also includes shareholder dissent and oppression, alter-ego/piercing the corporate veil, destruction of business, material adverse change, duress, financial misrepresentation, cost of capital and agreement vetting issues. John has served as a consultant, expert witness and neutral arbitrator in domestic and international matters. He has also taught courses, been a speaker and authored articles.

Previously, John was a managing director with Standard & Poor's Corporate Value Consulting. Prior to that, he was a managing director in FTI Consulting, Inc.'s Forensic & Litigation Consulting practice. Prior to its acquisition by FTI, John was a director in KPMG LLP's Dispute Advisory Services practice. Prior to KPMG, he served as the Dispute Consulting service line leader for the Eastern Great Lakes Valuation & Financial Services practice of Deloitte & Touche LLP. Preceding his tenure at Deloitte & Touche, John was director of the Business Valuation & Litigation Services Group of Mark I. Wolk and Associates, the managing partner of a Pittsburgh family-owned commercial real estate development firm and an accounting analyst with Westinghouse Electric Corporation.

John received his J.D. from Duquesne University, his M.B.A., *cum laude*, from the University of Notre Dame and his B.S. in business administration from Duquesne University. He is a Certified Public Accountant (licensed in Illinois and Pennsylvania, practice privilege in California); Accredited in Business Valuation, Certified in Financial Forensics and a Chartered Global Management Accountant by the American Institute of Certified Public Accountants; Accredited as a Senior Appraiser in Business Valuation by the American Society of Appraisers; a Chartered Financial Analyst; and a Certified Insolvency & Restructuring Advisor.

In addition, John is the current national vice president of the Forensic Expert Witness Association and was previously selected to *The International Who's Who of Commercial Arbitration – Experts*.

#### B. ADVISORY EXPERIENCE

Valuation of numerous closely held and inactively traded equity interests, businesses, professional practices, stock-related and cash compensation arrangements, carried interests, options, warrants, intangible assets, claims, debt/notes, and contingent liabilities in a variety of industries. Analyses of: fair market value in the context of business valuations, judicial and regulatory matters for dispute resolution, tax, transaction, planning and marital dissolution/divorce purposes; fair value in the context of judicial valuations in shareholder dissent and oppression matters, and marital dissolution/divorce; fair value in the regulatory context of financial reporting; fair value in fairness opinions.

Fact-finding and investigative engagements pertaining to:

- Assertions of financial statement misrepresentation, prospective financial information misrepresentation, employee theft and executive looting, financial insolvency, financial oppression, economic duress and financial compulsion, destruction of business, employee raiding, trade secret misappropriation, under-reporting of distributable net income, breach of fiduciary duties, avoidable intercompany preference transactions, changes in internal controls, financial corporate governance alter-ego/piercing the corporate veil and voluntary undertaking/direct corporate liability issues.
- Post-M&A contractual and GAAP accounting, quality of earnings and valuation-based purchase price adjustments; due diligence and claims of breaches of representations and warranties, and fraud; the percentages of the assets of a company that were sold; changes in manufacturing costs incurred resulting from plant closure and consolidation; whether a material adverse change occurred in a target company prior to its scheduled acquisition; whether a corporate transaction is a de facto merger; corporate governance diligence and compliance of investment portfolio performance reporting with contractual requirements; whether inter-company cash transfers and foreign exchange transactions are administrative claims in bankruptcy; and why global cash management and foreign exchange transaction systems failed.
- Measurement of economic damages, including benefit-of-the-bargain/valuation, diminution in value, lost profits, lost opportunity, delay, misappropriation, infringement, cost of capital and reasonable royalty damages. Analyses of commercial damages claims in the context of contract disputes, commercial intentional torts and commercial unintentional torts.
- Neutral arbitrator in the adjudication of post-acquisition closing balance sheet accounting disputes, working capital disputes, earn-out disputes and of business valuation disputes.

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- International and cross-border arbitration matters, for proceedings seated in: Austria - Vienna; Canada - Sault Ste. Marie, Ontario; Netherlands - Amsterdam; Sweden - Stockholm; and United States – Dayton, Chicago, New York City and Philadelphia.
- Assessment of the reasonableness of executive, owner and professional compensation in the context of business valuations, corporate income tax disputes, and marital dissolution income availability for alimony and support.
- Contract vetting regarding proposed agreements for the acquisitions of various companies and consulting in due diligence.

**C. TESTIMONY**

- Margaret Gagliardo et al. v. Paulette Caffrey a/k/a Paulette Gagliardo et al. Circuit Court of Cook County, Illinois County Department, Chancery Division, Trial – 2012, Deposition – 2012.
- Former Executive vs. Insurance Company et al. American Arbitration Association, New York, NY, Hearing – 2012, Deposition -2012.
- Member v. Private Equity Firm JAMS Commercial Arbitration, New York, NY, Hearing – 2011.
- John Galinsky vs. Advanced Equities, Inc. et al. Financial Industry Regulatory Authority, Chicago, IL, Hearing – 2011-2012.
- Santa Barbara Olive Company, Inc., Craig Makela and Cindy Makela v. Cathy Latou, Chase Bank, USA, et al. Superior Court of the State of California for the County of Santa Barbara, Jury Trial - 2011, Deposition - 2011.
- An Investment Group v. Former Executive American Arbitration Association, Chicago, IL, Hearing - 2011, Deposition - 2011.
- Buyout of Shares of a Shareholder of a Logistics Company American Arbitration Association, Chicago, IL, Hearing - 2011, Deposition - 2011.
- UC4 Software Inc. v. William A. Wrenn et al. International Chamber of Commerce, Vienna, Austria, International Arbitration Hearing – 2010.
- Terra Soil Farming, LLC v. Blue Iron Equipment, LLC, Vista Services, LLC and Laura Toellner et al. Court of Chancery of the State of Delaware, Deposition – 2010.
- PetroKazakhstan, Inc. v. Lukoil Overseas Kumkol B.V., and Lukoil Overseas Kumkol B.V. v. PetroKazakhstan, Inc. Arbitration Institute of the Stockholm Chamber of Commerce, Stockholm, Sweden, International Arbitration Hearing - 2009.

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- North Avenue Auto, Inc. d/b/a Grand Honda v. American Honda Motor Co., Inc. U.S. District Court for the Northern District of Illinois, Eastern Division, Deposition – 2008.
- SePRO Corporation v. Charles W. Koehler, and Charles W. Koehler v. SePRO Corporation American Arbitration Association, Indianapolis, Indiana, Deposition - 2008.
- Marshall Metals Trading, LLC v. Witech Corporation, et al. Circuit Court of Cook County, Illinois County Department, Law Division, Jury Trial – 2007, Deposition - 2005.
- DPL Inc., Dayton Power & Light Co., and MVE, Inc. v. Peter H. Forster, Caroline E. Muhlenkamp and Stephen F. Kozlar, Jr. Common Pleas Court of Montgomery County, Ohio, Civil Division, Depositions – 2007.
- Mark Berggren, et al. v. Bang & Olufsen America, Inc. and Ole Bek Circuit Court of Cook County, Illinois County Department, Law Division, Deposition - 2006.
- Driggs Farms of Indiana, Inc. v. MMB Group, Inc. U.S. District Court for the Northern District of Ohio, Western Division, Deposition - 2002.
- Michael D'Amelio, et al. v. Illinois Tool Works Inc. and ITW Finance II LLC U.S. District Court for the District of Massachusetts, Deposition - 2002.
- Encon Industries, LP v. Encon Electric, LP American Arbitration Association, New York, New York, Hearing - 2001.
- Wolf Deitrich Peddinghaus v. Carl Ullrich Peddinghaus, et al. Circuit Court of Cook County, Illinois, Deposition - 2000.
- Kathy McKenna v. PPR Realty, Inc. et al. American Arbitration Association ancillary to Allegheny County Court of Common Pleas, Pittsburgh, Pennsylvania, Commercial Arbitration Tribunal Hearing – 1998.
- Jayakumar v. Jayakumar Washington County Court of Common Pleas, Washington, Pennsylvania, Hearing Officer's and Master's Proceedings – 1992-1993.
- Gratton v. Gratton Allegheny County Court of Common Pleas, Pittsburgh, Pennsylvania, Hearing Officer's Proceeding – 1992.
- Calandra v. Calandra Cambria County Court of Common Pleas, Johnstown, Pennsylvania, Master's Proceeding – 1991.
- Cohen v. Cohen Allegheny County Court of Common Pleas, Pittsburgh, Pennsylvania, Master's Proceeding - 1990.
- Zambrano v. Zambrano Allegheny County Court of Common Pleas, Pittsburgh, Pennsylvania, Master's Proceeding - 1989.



**D. COURT-RELATED ALTERNATIVE DISPUTE RESOLUTION AND INVESTIGATIONS**

- In Re: Earn-Out Purchase Price Dispute Neutral accounting referee ancillary to court proceedings - 2012– 2013.
- In Re: Lehman Brothers Holdings, Inc. U.S. Bankruptcy Court, Southern District of New York, Chapter 11. Forensic accountant on the financial advisor team for the court-appointed independent examiner of the bankruptcy - 2009 - 2010.
- In Re: Inter-Track Partners, LLC; National Jockey Club, Debtor U.S. Bankruptcy Court, Northern District of Illinois, Eastern Division, Chapter 11. Neutral expert pursuant to court order - 2009.
- In Re: Steel v. Steel Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois. Direct expert-to-expert dispute resolution pursuant to court request - 2007.

**E. PUBLICATIONS**

- “Stock Options and Post-Retirement Maintenance Payments.” *Pennsylvania Family Lawyer*, Pennsylvania Bar Association, June 2010, *Expert Insights*, Duff & Phelps LLC, 2nd Quarter 2010 and *National Litigation Consultants’ Review*, National Association of Certified Valuation Analysts, November 2009.
- “Legal Woes: The World of Post-Closing Disputes” (published interview). *FactSet Flashwire Weekly*, FactSet Mergerstat, LLC, March 13, 2006.
- “Merger & Acquisition Purchase Price Disputes and Arbitration: Lessons Learned from the Arbitrator’s and Litigator’s Perspective” (webcast broadcast). Duff & Phelps LLC, March 7, 2006.
- “Purchase Price Disputes and Arbitration: Cost-Benefit Assessment from the Arbitrator’s Perspective.” *Valuation Insights*, Duff & Phelps LLC, 4th Quarter 2005.
- “Assessing the Incremental Recovery in Arbitration of Post-Merger & Acquisition Accounting and Valuation Disputes: A Case Example.” *Institutions/Corporate Law Section Newsletter*, National Bar Association, January 2003.
- “Business Logic in Determining Damages in Intellectual Property Litigation.” *Civil Litigator Newsletter*, Allegheny County Bar Association, December 1998.
- “Natural Resource Damage Measurement.” *Pittsburgh Legal Journal*, Allegheny County Bar Association, December 1995.

- “Consideration of Key Business Valuation Discounts.” *The Matrimonial Strategist*, ALM Law Journal Newsletters, April 1995 (Part I) and July 1995 (Part II).
- “Tax Savings with Family Limited Partnership Valuation Techniques.” *Insider’s Newsletter*, National Association of Estate Planners, March 1995 (Part I) and April 1995 (Part II).
- “When is Value Not Fair Market Value?” *The Bulletin*, Allegheny County Medical Society, June 1995.
- “ESOP Valuation: The Quality of All Earnings is Not the Same.” *The Journal of Pension Planning and Compliance*, Aspen Publishers, Fall 1994.
- “Valuing the Medical Practice.” *The Bulletin*, Allegheny County Medical Society, September 1994.

#### F. EDUCATION & PROFESSIONAL CERTIFICATIONS

- Juris Doctor (JD) - Duquesne University, Member: “Law Review”<sup>99</sup>
- Master of Business Administration (MBA) - cum laude, University of Notre Dame
- Bachelor of Science (BS) - Business & Administration, Duquesne University
- Certified Public Accountant (CPA) - Licensed in Illinois and Pennsylvania; Practice Privilege in California
- Accredited in Business Valuation (ABV) - American Institute of Certified Public Accountants
- Accredited Senior Appraiser in Business Valuation (ASA) - American Society of Appraisers
- Certified in Financial Forensics (CFF) - American Institute of Certified Public Accountants
- Certified Insolvency and Restructuring Advisor (CIRA) - Association of Insolvency and Restructuring Advisors
- Chartered Financial Analyst (CFA) Charterholder - CFA Institute
- Chartered Global Management Accountant (CGMA)- American Institute of Certified Public Accountants

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<sup>99</sup> Previous bar admissions (not currently in active practice of law): Commonwealth of Pennsylvania. U.S. District Court for the Western District of Pennsylvania, and Supreme Court of the United States.

#### **G. OTHER PROFESSIONAL ASSOCIATIONS**

- Association of Certified Fraud Examiners, Associate Member
- Chicago International Dispute Resolution Association, Member
- Forensic Expert Witness Association, Member
- Illinois CPA Society, Member
- Pennsylvania Institute of Certified Public Accountants, Member
- The Business Valuation Association, Member
- Turnaround Management Association, Member

#### **H. INVOLVEMENT**

##### CURRENT

Forensic Expert Witness Association, National Vice President and Chicago Chapter President

American Bar Association, Business Law Section, Dispute Resolution Committee, Vice Chair;  
Mergers & Acquisitions Committee, Revised Model Asset Purchase Agreement Task Force,  
Member

##### PREVIOUS

AICPA Uniform CPA Exam, Test Item Writer, Regulation Section

American Bar Association, National Law Student Negotiation Competition, Region 5, and  
CIDRA, Willem C. Vis International Commercial Arbitration Mini-Moot Competition; Judge

American Society of Appraisers, Pittsburgh Chapter, Board Member

Chicago Community Trust -Young Leaders Fund, Performing Arts Committee, Member

Greater Pittsburgh Business Association, Member

Illinois CPA Society, Business Valuation Symposium, Task Force Member; Mergers &  
Acquisitions Conference, Task Force Member

International Association for Financial Planning, Pittsburgh Chapter, President

Nazareth Academy, Fathers Club, Member

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Notre Dame Club of Chicago, Business Network Committee, Chair

Pennsylvania Institute of Certified Public Accountants, Pittsburgh Chapter, Consulting Services –  
Forensic and Litigation Services Committee, Member

Pleasant Hills Rotary Club, Pittsburgh, Secretary

St. Cletus School, LaGrange, IL, School Board, Policy Committee Chair

South Hills Jaycees, Pittsburgh, President

Dale Carnegie Leadership Training for Managers, The Dale Carnegie Course: Effective  
Communications and Human Relations, and KPMG Forensic & Litigation Services Leadership  
Forum; Graduate

Burr Ridge/Willowbrook, IL, Girls Fastpitch Softball, Coach; American Youth Soccer  
Organization, La Grange, IL and Greater La Grange YMCA, Youth Basketball, Assistant Coach;  
Pleasant Dale Park District, Burr Ridge, IL, Youth Basketball League and Youth Soccer League,  
Coach

#### **I. ACADEMIC AFFILIATIONS, PREVIOUS**

##### ADJUNCT FACILITY

Duff's Business Institute

Point Park College

University of Pittsburgh

##### GUEST CLE INSTRUCTOR

Duquesne University School of Law

##### GUEST LECTURER

DePaul University, School of Law

Indiana University, Master of Science in Accounting Program

Loyola University Chicago, Graduate School of Business

University of Illinois, Graduate School of Business

##### NATIONAL TRAINING INSTRUCTOR

KPMG Dispute Advisory Services

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Schedule I

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UBS Securities LLC v. Highland Capital Management, L.P., et al. of 118

Summary of HFP Adjusted Equity Analysis

For months ended 2008 (\$USD)

Adjusted Equity by Entity	August	September	October	November	December
HFP Stand-Alone <sup>(1)</sup>	\$ 31,109,641	\$ (263,373,868)	\$ (245,269,320)	\$ (251,351,834)	\$ (276,389,700)
Plus: Equity of each subsidiary, if positive:					
SOHC <sup>(2)</sup>	57,957,544	36,480,079	-	-	-
CDO HoldCo <sup>(3)</sup>	127,685,417	88,300,306	-	-	-
HAF II <sup>(4)</sup>	N/A	133,076,023	106,128,005	98,810,422	44,059,839
HAF III <sup>(4)</sup>	N/A	168,184,378	172,799,791	168,203,971	141,259,092
<b>Concluded HFP Adjusted Equity</b>	<b>\$ 216,752,602</b>	<b>\$ 162,666,918</b>	<b>\$ 33,658,476</b>	<b>\$ 15,662,559</b>	<b>\$ (91,070,769)</b>

## Notes:

- (1) See Schedule III.  
(2) See Schedule IV.  
(3) See Schedule II.  
(4) See Schedule V.

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Appendix A of Expert Report of John L. HARRINGTON

004875



Notes:

(1) H\_0082826 - 828

(2) Difference between CDO HoldCo Equity and Consolidated Total

Appendix A of Expert Report of John L. Baskin, GC000629

**Notes:**

(2) Difference between CDO HoldCo Equity and Consolidated Total

Appendix A of Expert Report of John Lewis, Docket No. 19-0326

(2) Difference between CDO HoldCo Equity and Consolidated Total

Appendix A of Expert Report of John L. Baskin, LUG000627

Notes:

(1) H\_1755147 - 150

(2) Difference between CDO HoldCo Equity and Consolidated Total

Appendix A of Expert Report of John L. Wessley G0006239

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	Equity in Consolidated Subsidiaries	Unamortized Debt Issuance Costs	Minority Interest (if negative)	Equity Adjusted for Unamortized Debt Issuance Costs and Minority Interest		Positive Adjusted Equity
				[A]	[B]	
CDO HoldCo Stand-Alone	\$ (512,568,541) [E]	\$ -	\$ -	[C]	[D] = [C] - [A] - [B]	
CDO Construction Corp.	-	-	-	\$ (592,072,266) [F]	N/A	N/A
Westchester	-	9,992,571	(26,840,855)	(43,987,712) [G]	N/A	N/A
Rockwall 2	-	12,303,618	(107,753,895)	(31,255,996)	(14,407,712)	-
Brentwood	-	9,155,091	(1,353,386)	(115,878,302)	(20,428,025)	-
Grayson	-	14,962,167	(21,464,794)	(4,942,795)	(12,744,500)	-
Eastland	-	15,915,871	(25,665,526)	(32,984,382)	(26,481,755)	-
Stratford	-	1,774,065	(8,528,376)	(27,354,704)	(17,605,049)	-
Greenbriar	-	6,019,552	(6,807,564)	(13,752,474)	(6,998,163)	-
Highlander	-	10,322,351	(7,440,923)	(4,042,157)	(3,254,145)	-
Highlander 2	-	13,206,409	-	(12,858,566)	(15,739,994)	-
Highlander 3	-	13,595,341	(19,689,917)	8,085,809	(5,120,600)	-
Highlander 4	-	6,485,633	-	(26,880,365)	(20,785,789)	-
Highland Park	-	7,737,880	(32,753,840)	43,109,828	36,624,195	36,624,195
Red River	-	9,308,623	(14,057,020)	(133,023,516)	(108,007,556)	-
Rockwall	-	9,084,047	(64,965,429)	(22,587,895)	(17,839,498)	-
Eliminations	-	-	-	(94,215,316)	(38,333,934)	-
InterCo	512,568,541	-	-	537,338,633	N/A	N/A
Consolidated	\$ -	\$ 139,863,219	N/A	(255,515,944)	N/A	N/A
				Totals \$ (822,818,120) [J]	(271,122,525)	\$ 36,624,195 [H]
CDO HoldCo Stand-Alone Equity						
CDO Construction Company Equity, if positive				\$ (592,072,266) [F]	- [G]	(592,072,266) [I]=[F]+[G]
Subtotal				\$ (592,072,266)	(512,568,541) [E]	(512,568,541) [E]
Less: Equity in Consolidated CLOs					36,624,195 [H]	36,624,195 [H]
Add: Adjusted Equity of Consolidated CLOs						
Total Adjusted CDO HoldCo Equity				\$ (42,879,530)	(42,879,530) [K]=[I]-[E]+[H]	(42,879,530) [K]=[I]-[E]+[H]
Less: CDO HoldCo Consolidations <sup>(2)</sup>				\$ 230,745,854	230,745,854 [L]=[F]-[J]	230,745,854 [L]=[F]-[J]
Adjusted CDO HoldCo Equity				\$ (273,625,384)	(273,625,384) [M]=[K]-[L]	(273,625,384) [M]=[K]-[L]

Notes:

(1) H, 1755160 - 165

(2) Difference between CDO HoldCo Equity and Consolidated Total

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Appendix A of Expert Report of John L. [REDACTED]

004880



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Schedule III

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UBS Securities LLC v. Highland Capital Management, L.P., et al. Of 118

Adjusted HFP Stand-Alone Equity Analysis, Before Adding Subsidiaries with Positive Economic Equity

For months ended 2008 (\$USD)

	(1) August	(2) September	(3) October	(4) November	(5) December
HFP Stand-Alone Book Equity	\$ 162,722,559	\$ 54,474,992	\$ (356,299,035)	\$ (559,114,459)	\$ (1,251,086,661)
Less: Equity in Subsidiaries	135,708,885	316,666,513	(89,520,888)	(288,316,129)	(972,760,929)
Total HFP Stand-Alone Equity	27,013,674	(262,191,521)	(266,778,147)	(270,798,330)	(278,325,732)
Less: HFP Consolidations <sup>(6)</sup>	(4,095,967)	1,182,347	(21,508,827)	(19,446,496)	(1,936,032)
Total Adjusted HFP Equity	\$ 31,109,641	\$ (263,373,868)	\$ (245,269,320)	\$ (251,351,834)	\$ (276,389,700)

Notes:

(1) H\_0082741.

(2) H\_0082946.

(3) H\_0078824.

(4) H\_0078947.

(5) H\_0304995.

(6) Equals difference between HFP Stand-Alone Equity and Consolidated HFP Equity.

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Appendix A of Expert Report of John L. HARRINGTON

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UBS Securities LLC v. Highland Capital Management, L.P., et al. of 118 Schedule IV  
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Adjusted SOHC Equity Analysis  
For months ended 2008 (\$USD)

	August	September	October	November	December
SOHC Book Equity	\$ 16,807,655	\$ (38,198,945)	\$ (131,845,834)	\$ (207,163,555)	\$ (335,261,741)
Less: GAAP Liability of Knox Exposure	(56,460,536)	(109,929,103)	(152,821,353)	(238,680,320)	(344,440,079)
Equity Adjusted for Knox Exposure Liability	73,268,191	71,730,158	20,975,519	31,516,765	9,178,338
Plus: Losses Attributable to SOHC for Knox Exposure <sup>(1)</sup>	(15,310,647)	(35,250,079)	(42,378,193)	(65,116,735)	(65,131,004)
SOHC Adjusted Equity	\$ 57,957,544	\$ 36,480,079	\$ (21,402,674)	\$ (33,599,970)	\$ (55,952,666)

## Notes:

(1) See Schedule VII.

(2) H\_0082741.

(3) H\_0082946.

(4) H\_0078824.

(5) H\_0304999.

(6) H\_0304995.

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Appendix A of Expert Report of John L. ...

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 UBS Securities LLC v. Highland Capital Management, L.P., et al. Of 118  
 Adjusted HAF II & III Equity Analysis  
 For months ended 2008 (\$USD)

Schedule V  
 Page 1 of 1

	(1) August	(2) September	(3) October	(4) November	(5) December
HAF II Equity	N/A	\$ 133,076,023	\$ 106,128,005	\$ 98,810,422	\$ 44,059,839
HAF III Equity	N/A	168,184,378	172,799,791	168,203,971	141,259,092
Total HAF II & III Equity	\$ -	\$ 301,260,401	\$ 278,927,796	\$ 267,014,393	\$ 185,318,931

Notes:

- (1) HAF II & III not created until September 2008.  
 (2) H\_0082946.  
 (3) H\_0078824.  
 (4) H\_0078947.  
 (5) H\_0304995.  
 (6) Adjusted to remove negative subsidiary equity of approximately \$8.3 million.

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Appendix A of Expert Report of John L. ...

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Schedule VI

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UBS Securities LLC v. Highland Capital Management, L.P., et al.

Adjusted CDO Fund NAV Analysis

For months ended 2008 (\$USD)

	<sup>(1)</sup> August	<sup>(2)</sup> September	<sup>(3)</sup> October	<sup>(4)</sup> November	<sup>(5)</sup> December
CDO Fund NAV	\$ 424,478,846	\$ 313,027,810	\$ 37,074,943	\$ (212,838,654)	\$ (346,108,266)
Less: Estimated Losses Attributable to CDO Fund <sup>(6)</sup>	(15,935,572)	(36,688,857)	(44,107,915)	(67,774,561)	(67,789,413)
Adjusted CDO Fund NAV	<u>\$ 408,543,274</u>	<u>\$ 276,338,953</u>	<u>\$ (7,032,972)</u>	<u>\$ (280,613,214)</u>	<u>\$ (413,897,679)</u>

## Notes:

- (1) H\_0112021.xls.  
(2) H\_0112038.xls.  
(3) H\_0108750.xls.  
(4) H\_0109269.xls.  
(5) H\_0111005.pdf.  
(6) See Schedule VII.

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Appendix A of Expert Report of John Levinsky, Esq.

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Schedule VII  
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UBS Securities, LLC v. Highland Capital Management, L.P., et al.

Estimated Liability for the Knox Warehouse

For months ended 2008 (\$USD)

Mark-to-Market & Realized Losses	For months ended, 2008			
	August	September	October	November
Cash Warehouse - Unrealized Losses	(1) \$ (52,243,728)	\$ (73,619,391)	\$ (88,361,316)	\$ (128,909,316)
Synthetic Warehouse - Realized Losses	(2) (1,111,150)	(20,618,405)	(20,618,405)	\$ (26,952,895)
<b>Total Losses Related to Warehouses Before Adjustments</b>	\$ (53,354,878)	\$ (94,237,796)	\$ (108,979,721)	\$ (155,862,210)
<b>Adjustments to Warehouse Losses</b>				
Less: Total Interest and Premiums Received by UBS	(3) \$ 30,889,733	\$ 31,512,364	\$ 32,266,857	\$ 33,186,187
Plus: Total Financing Cost	(4) (8,781,075)	(9,213,504)	(9,773,243)	(10,359,283)
<b>Indicated Exposure without Hedging Consideration</b>	\$ (31,246,219)	\$ (71,938,936)	\$ (86,486,107)	\$ (132,920,417)
Losses Attributable to SOHC	(5) \$ (15,310,647)	\$ (35,250,079)	\$ (42,378,193)	\$ (65,116,735)
Losses Attributable to CDO Fund	(6) \$ (15,935,572)	\$ (36,688,857)	\$ (44,107,915)	\$ (67,774,561)

## Notes:

- (1) D&P marks based on UBS P&L reports from the following dates nearest to the measurement dates above: 3/28/2008, 8/29/08, 9/30/08, 10/31/08, and 12/5/2008
- (2) Calculated based on Lehman termination payments from UBS-000475421 and calculated based on the final Profit and Loss available from UBS P&L reports as of the measurement dates. Only losses from liquidated synthetic warehouse assets are ineligible and have been included
- (3) Interest income from inception till 12/3/2008 from UBS-474450-474475 Premium income from inception till 12/3/2008 from UBS-000475428, UBS-000475427, and UBS-000475722 CDS premium excludes cash flows from UBS Counterparty trades
- (4) Financing cost based on a Libor + 0.35% annual rate per Cash Warehouse Agreement, see UBS-000376918 Financing cost based on a 0.05% annual rate per Synthetic Warehouse Agreement (excludes UBS Counterparty CDS), see UBS-000376918
- (5) SOHC is responsible for 49% of losses
- (6) CDO Fund is responsible for 51% of losses

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Appendix A of Expert Report of John Lettice, dated August 10, 2021

004885



Schedule VIII

**UBS Securities LLC v. Highland Capital Management, L.P., et al.**  
**Summary of Cash Transactions by Year and Entity for SOHC and HFP**  
**For the Months Ended, in \$USD**

	Special Opportunities Holding Company (SOHC)												Total
	August 2008		September 2008		October 2008		November 2008		December 2008		Debit (Credit)		
Transactions between HFP & SOHC	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	
From HFP to SOHC	\$ 6,600,000	N/A	\$ 24,175,000	N/A	\$ 4,508,000	N/A	\$ -	N/A	\$ 8,111,000	N/A	\$ 43,394,000		
From SOHC to HFP	N/A	\$ 9,600,000	N/A	\$ 24,175,000	N/A	\$ 555,000	N/A	\$ -	N/A	\$ -	\$ (34,330,000)		
Total	\$ -	\$ (3,000,000)	\$ -	\$ -	\$ 3,953,000	\$ -	\$ -	\$ -	\$ 8,111,000	\$ -	\$ 9,064,000		
Contributions into/Distributions out of SOHC													
Contributions to SOHC	\$ -	N/A	\$ 62,600,576	N/A	\$ 935,000	N/A	\$ -	N/A	\$ 3,700,000	N/A	\$ 67,235,576		
Distributions from SOHC	N/A	\$ -	N/A	\$ 24,122,975	N/A	\$ 5,063,852	N/A	\$ -	N/A	\$ -	\$ (29,186,827)		
Total	\$ -	\$ -	\$ 38,477,601	\$ -	\$ -	\$ (4,128,852)	\$ -	\$ -	\$ 3,700,000	\$ -	\$ 38,048,749		
Notes Transactions													
Payments to SOHC	\$ -	N/A	\$ 14,498,577	N/A	\$ 24,325	N/A	\$ 13,005	N/A	\$ -	N/A	\$ 14,535,907		
Payments from SOHC	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	\$ -		
Total	\$ -	\$ -	\$ 14,498,577	\$ -	\$ 24,325	\$ -	\$ 13,005	\$ -	\$ -	\$ -	\$ 14,535,907		
Capital													
Transfers to SOHC	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ 10,007,038	N/A	\$ 10,007,038		
Transfers from SOHC	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ 15,294,488	N/A	\$ 1,900,000	\$ (17,194,488)		
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (15,294,488)	\$ 8,107,038	\$ -	\$ (7,187,450)		
Other													
Transfers to SOHC	\$ 13,501	N/A	\$ 10,783	N/A	\$ 13,013,198	N/A	\$ 3,366,458	N/A	\$ -	N/A	\$ 16,403,939		
Transfers from SOHC	N/A	\$ -	N/A	\$ 2,550,966	N/A	\$ 3,444	N/A	\$ 3,784	N/A	\$ -	\$ (2,558,194)		
Total	\$ 13,501	\$ -	\$ -	\$ (2,540,184)	\$ 13,009,754	\$ -	\$ 3,362,674	\$ -	\$ -	\$ -	\$ 13,845,746		
Total													
Transfers to SOHC	\$ 6,613,501	N/A	\$ 101,284,936	N/A	\$ 18,480,523	N/A	\$ 3,379,463	N/A	\$ 21,818,038	N/A	\$ 151,576,460		
Transfers from SOHC	N/A	\$ 9,600,000	N/A	\$ 50,848,941	N/A	\$ 5,622,296	N/A	\$ 15,298,271	N/A	\$ 1,900,000	\$ (83,269,508)		
Total	\$ -	\$ (2,986,499)	\$ 50,435,994	\$ -	\$ 12,858,227	\$ -	\$ -	\$ (11,918,808)	\$ 19,918,038	\$ -	\$ 68,306,952		

	Highland Financial Partners (HFP)												Total
	August 2008		September 2008		October 2008		November 2008		December 2008		Debit (Credit)		
Transactions between SOHC & HFP	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	
From SOHC to HFP	\$ 9,600,000	N/A	\$ 24,175,000	N/A	\$ 555,000	N/A	\$ -	N/A	\$ -	N/A	\$ 34,330,000		
From HFP to SOHC	N/A	\$ 6,600,000	N/A	\$ 24,175,000	N/A	\$ 4,508,000	N/A	\$ -	N/A	\$ 8,111,000	\$ (43,394,000)		
Total	\$ 3,000,000	\$ -	\$ -	\$ -	\$ -	\$ (3,953,000)	\$ -	\$ -	\$ -	\$ (8,111,000)	\$ (9,064,000)		
Transactions between CDO HoldCo & HFP													
From CDO HoldCo to HFP	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -		
From HFP to CDO HoldCo	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ -	N/A	\$ 3,700,000	\$ (3,700,000)		
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (3,700,000)	\$ -		
Transactions between Asset Funding II & III & HFP													
From Asset Funding II & III to HFP	\$ -	N/A	\$ -	N/A	\$ 1,398,000	N/A	\$ 3,032,081	N/A	\$ 20,304,000	N/A	\$ 24,734,081		
From HFP to Asset Funding II & III	N/A	\$ -	N/A	\$ -	N/A	\$ 4,818,000	N/A	\$ 16,324,782	N/A	\$ 3,285,000	\$ (24,427,782)		
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (3,420,000)	\$ -	\$ (13,292,701)	\$ 17,019,000	\$ -	\$ 306,299		
Other													
Transfers to HFP	\$ 55,000,000	N/A	\$ 7,060,000	N/A	\$ 555,000	N/A	\$ 470,853	N/A	\$ 1,166,970	N/A	\$ 64,252,823		
Transfers from HFP	N/A	\$ 60,000,000	N/A	\$ 7,060,000	N/A	\$ 555,000	N/A	\$ 3,296,730	N/A	\$ 1,166,970	\$ (72,078,700)		
Total	\$ -	\$ (5,000,000)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (2,825,877)	\$ -	\$ -	\$ (7,825,877)		
Total													
Transfers to HFP	\$ 64,600,000	N/A	\$ 31,235,000	N/A	\$ 2,508,000	N/A	\$ 3,502,934	N/A	\$ 21,470,970	N/A	\$ 123,316,904		
Transfers from HFP	N/A	\$ 66,600,000	N/A	\$ 31,235,000	N/A	\$ 9,881,000	N/A	\$ 19,621,512	N/A	\$ 16,262,970	\$ (143,600,482)		
Total	\$ -	\$ (2,000,000)	\$ -	\$ -	\$ -	\$ (7,373,000)	\$ -	\$ (16,118,578)	\$ 5,208,000	\$ -	\$ (20,283,578)		

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Appendix A of Expert Report of John Levinsky, dated August 12, 2021

004886

UBS Securities, LLC v Highland Capital Management, L.P., et al  
 Ability to Repay - Summary of Results  
 (\$USD)

Schedule IX-A

Original Note Issuance (PIK First Five Quarters)							
		[A]		[B]		[C]	
						[D] = [A] + [B] + [C]	
Period	Year	Quarter	Cash Flow from CLOs	LSA Premiums	LSA Payouts	Cash from Underlying CLO Securities Net of LSAs	
1	2008	Qtr4	\$ 6,498,418	\$ (2,342,147)	\$ -	\$ 4,156,271	
2	2009	Qtr1	10,589,983	(2,342,147)	-	8,247,836	
3	2009	Qtr2	7,642,675	(2,342,147)	-	5,300,528	
4	2009	Qtr3	6,028,694	(2,342,147)	-	3,686,547	
5	2009	Qtr4	6,587,014	(2,342,147)	-	4,244,867	
6	2010	Qtr1	6,529,410	(2,342,147)	-	4,187,263	
7	2010	Qtr2	6,518,413	(2,342,147)	-	4,176,266	
8	2010	Qtr3	5,444,243	(2,342,147)	-	3,102,096	
9	2010	Qtr4	5,861,835	(2,342,147)	-	3,519,688	
10	2011	Qtr1	4,847,947	(2,342,147)	5,000,000	7,505,800	
11	2011	Qtr2	4,670,506	(2,342,147)	-	2,328,359	
12	2011	Qtr3	4,573,804	(2,342,147)	-	2,231,657	
13	2011	Qtr4	4,909,754	(2,342,147)	-	2,567,607	
14	2012	Qtr1	5,279,404	(2,342,147)	-	2,937,257	
15	2012	Qtr2	5,638,011	(2,330,329)	5,000,000	8,307,682	
16	2012	Qtr3	18,827,442	(2,330,329)	10,000,000	26,497,113	
17	2012	Qtr4	5,304,141	(2,242,874)	5,000,000	8,061,267	
18	2013	Qtr1	4,948,220	(2,242,874)	-	2,705,346	
19	2013	Qtr2	5,290,564	(2,156,735)	10,000,000	13,133,830	
20	2013	Qtr3	5,089,285	(2,067,680)	13,250,000	16,271,605	
21	2013	Qtr4	5,214,816	(2,067,680)	-	3,147,136	
22	2014	Qtr1	5,399,774	(2,050,517)	34,000,000	37,349,257	
23	2014	Qtr2	9,087,060	(2,033,714)	5,000,000	12,053,346	
24	2014	Qtr3	9,802,585	(1,993,907)	5,000,000	12,808,678	
25	2014	Qtr4	23,233,671	(1,887,586)	28,000,000	49,346,085	
26	2015	Qtr1	11,861,020	(1,887,586)	-	9,973,434	
27	2015	Qtr2	6,089,551	(1,782,088)	43,785,000	48,092,463	
28	2015	Qtr3	6,848,505	(1,698,046)	31,500,000	36,650,459	
29	2015	Qtr4	4,849,630	(1,647,801)	10,000,000	13,201,829	
30	2016	Qtr1	4,689,088	(1,384,053)	75,000,000	78,305,035	
31	2016	Qtr2	4,547,139	(1,384,053)	8,250,000	11,413,086	
32	2016	Qtr3	17,689,334	(1,146,858)	32,000,000	48,542,477	
33	2016	Qtr4	5,096,504	(1,135,558)	20,000,000	23,960,947	
34	2017	Qtr1	4,155,654	(948,289)	63,500,000	66,707,365	
35	2017	Qtr2	4,462,070	(878,452)	39,000,000	42,583,619	
36	2017	Qtr3	4,824,791	(865,776)	5,000,000	8,959,015	
37	2017	Qtr4	6,700,216	(865,776)	-	5,834,440	
38	2018	Qtr1	7,693,653	(812,069)	30,000,000	36,881,584	
39	2018	Qtr2	9,370,184	(771,729)	27,000,000	35,598,456	
40	2018	Qtr3	17,180,249	(718,178)	55,000,000	71,462,071	
41	2018	Qtr4	21,812,527	(717,841)	10,000,000	31,094,686	
42	2019	Qtr1	6,097,368	(717,841)	5,000,000	10,379,527	
43	2019	Qtr2	3,130,735	(717,841)	-	2,412,894	
44	2019	Qtr3	10,071,174	(717,841)	-	9,353,333	
45	2019	Qtr4	13,502,945	(717,841)	-	12,785,104	
46	2020	Qtr1	15,265,107	(717,841)	-	14,547,266	
47	2020	Qtr2	20,820,939	(601,618)	40,000,000	60,219,321	
48	2020	Qtr3	14,115,483	(601,618)	-	13,513,865	
49	2020	Qtr4	10,551,762	(601,618)	-	9,950,144	
50	2021	Qtr1	1,193,727	(45,020)	70,000,000	71,148,707	
51	2021	Qtr2	499	(45,020)	20,743,862	20,699,341	
52	2021	Qtr3	23,135	(24,584)	5,000,000	4,998,551	
53	2021	Qtr4	-	(24,584)	-	(24,584)	
54	2022	Qtr1	-	(24,584)	-	(24,584)	
55	2022	Qtr2	-	(24,584)	-	(24,584)	
56	2022	Qtr3	-	(24,584)	-	(24,584)	
57	2022	Qtr4	-	-	10,000,000	10,000,000	
58	2023	Qtr1	-	-	30,000,000	30,000,000	
59	2023	Qtr2	-	-	-	-	
Totals			\$ 416,460,657	\$ (80,445,450)	\$ 751,028,862	\$ 1,087,044,069	

Notes:

[A] CLO interest & principal forecasts are based on Duff & Phelps independent estimates of base case economic conditions of late September & early October 2008

[B] Life Settlement Agreement premiums and death benefits are calculated based on the Watson Wyatt actuarial valuation report ST0000728

[C] Life Settlement Agreement premiums and death benefits are calculated based on the Watson Wyatt actuarial valuation report ST0000728

UBS Securities, LLC v Highland Capital Management, L P, et al  
Ability to Repay - Summary of Results  
(\$USD)

Schedule IX-B

Amended Note Issuance (PIK First Five Quarters)									
			[A]	[B]	[C]	[D] = [A] + [B] + [C]			
Period	Year	Quarter	Cash Flow from CLOs	LSA Premiums	LSA Payouts	Cash from Underlying CLO Securities Net of LSAs			
1	2008	Qtr4	\$ 15,219,893	\$ (2,342,147)	\$ -	\$ -	\$ 12,877,746		
2	2009	Qtr1	15,737,233	(2,342,147)	-	-	13,395,086		
3	2009	Qtr2	15,636,871	(2,342,147)	-	-	13,294,724		
4	2009	Qtr3	10,996,888	(2,342,147)	-	-	8,654,741		
5	2009	Qtr4	12,303,297	(2,342,147)	-	-	9,961,150		
6	2010	Qtr1	12,079,893	(2,342,147)	-	-	9,737,746		
7	2010	Qtr2	12,697,086	(2,342,147)	-	-	10,354,939		
8	2010	Qtr3	10,793,869	(2,342,147)	-	-	8,451,722		
9	2010	Qtr4	10,483,307	(2,342,147)	-	-	8,141,160		
10	2011	Qtr1	8,481,671	(2,342,147)	5,000,000	-	11,139,524		
11	2011	Qtr2	7,768,672	(2,342,147)	-	-	5,426,525		
12	2011	Qtr3	8,169,879	(2,342,147)	-	-	5,827,732		
13	2011	Qtr4	8,917,404	(2,342,147)	-	-	6,575,257		
14	2012	Qtr1	10,119,598	(2,342,147)	-	-	7,777,451		
15	2012	Qtr2	11,044,065	(2,330,329)	5,000,000	-	13,713,735		
16	2012	Qtr3	25,481,275	(2,330,329)	10,000,000	-	33,150,946		
17	2012	Qtr4	11,488,008	(2,242,874)	5,000,000	-	14,245,135		
18	2013	Qtr1	9,945,706	(2,242,874)	-	-	7,702,833		
19	2013	Qtr2	10,134,229	(2,156,735)	10,000,000	-	17,977,495		
20	2013	Qtr3	10,282,930	(2,067,680)	13,250,000	-	21,465,250		
21	2013	Qtr4	10,297,520	(2,067,680)	-	-	8,229,840		
22	2014	Qtr1	11,713,935	(2,050,517)	34,000,000	-	43,663,418		
23	2014	Qtr2	15,501,621	(2,033,714)	5,000,000	-	18,467,908		
24	2014	Qtr3	16,489,848	(1,993,907)	5,000,000	-	19,495,941		
25	2014	Qtr4	29,262,050	(1,887,586)	28,000,000	-	55,374,464		
26	2015	Qtr1	20,113,041	(1,887,586)	-	-	18,225,455		
27	2015	Qtr2	13,681,221	(1,782,088)	43,785,000	-	55,684,133		
28	2015	Qtr3	12,479,384	(1,698,046)	31,500,000	-	42,281,338		
29	2015	Qtr4	10,758,338	(1,647,801)	10,000,000	-	19,110,538		
30	2016	Qtr1	10,254,792	(1,384,053)	75,000,000	-	83,870,740		
31	2016	Qtr2	9,549,081	(1,384,053)	8,250,000	-	16,415,028		
32	2016	Qtr3	22,444,625	(1,146,858)	32,000,000	-	53,297,768		
33	2016	Qtr4	9,594,344	(1,135,558)	20,000,000	-	28,458,787		
34	2017	Qtr1	8,375,113	(948,289)	63,500,000	-	70,926,824		
35	2017	Qtr2	8,401,539	(878,452)	39,000,000	-	46,523,088		
36	2017	Qtr3	8,390,551	(865,776)	5,000,000	-	12,524,775		
37	2017	Qtr4	10,113,872	(865,776)	-	-	9,248,096		
38	2018	Qtr1	10,921,196	(812,069)	30,000,000	-	40,109,127		
39	2018	Qtr2	12,290,339	(771,729)	27,000,000	-	38,518,611		
40	2018	Qtr3	19,735,436	(718,178)	55,000,000	-	74,017,259		
41	2018	Qtr4	24,106,468	(717,841)	10,000,000	-	33,388,627		
42	2019	Qtr1	8,206,833	(717,841)	5,000,000	-	12,488,992		
43	2019	Qtr2	5,000,220	(717,841)	-	-	4,282,379		
44	2019	Qtr3	15,730,744	(717,841)	-	-	15,012,903		
45	2019	Qtr4	22,423,203	(717,841)	-	-	21,705,362		
46	2020	Qtr1	17,154,971	(717,841)	-	-	16,437,130		
47	2020	Qtr2	24,566,718	(601,618)	40,000,000	-	63,965,100		
48	2020	Qtr3	20,488,109	(601,618)	-	-	19,886,491		
49	2020	Qtr4	42,566,581	(601,618)	-	-	41,964,963		
50	2021	Qtr1	5,345,134	(45,020)	70,000,000	-	75,300,114		
51	2021	Qtr2	4,345	(45,020)	20,743,862	-	20,703,187		
52	2021	Qtr3	201,271	(24,584)	5,000,000	-	5,176,687		
53	2021	Qtr4	-	(24,584)	-	-	(24,584)		
54	2022	Qtr1	-	(24,584)	-	-	(24,584)		
55	2022	Qtr2	-	(24,584)	-	-	(24,584)		
56	2022	Qtr3	-	(24,584)	-	-	(24,584)		
57	2022	Qtr4	-	-	10,000,000	-	10,000,000		
58	2023	Qtr1	-	-	30,000,000	-	30,000,000		
59	2023	Qtr2	-	-	-	-	-		
Totals			\$ 693,944,218	\$ (80,445,450)	\$ 751,028,862	\$ -	\$ 1,364,527,630		

Notes:

[A] CLO interest & principal forecasts are based on Duff & Phelps independent estimates of base case economic conditions of late September & early October 2008

[B] Life Settlement Agreement premiums and death benefits are calculated based on the Watson Wyatt actuarial valuation report ST0000728

[C] Life Settlement Agreement premiums and death benefits are calculated based on the Watson Wyatt actuarial valuation report ST0000728

UBS Securities, LLC v. Highland Capital Management, L.P., et al.  
Ability to Repay - Summary of Results  
(USD)

Schedule IX-C

Original Note Issuance (First Five Quarters)											
[A]			[B]			[C] = [A] + [B]		[D] = Sum [C]		[E]	
										[F] = Sum [C] + Sum [E]	
Cash from Underlying CLO			Forecasted Cumulative Free Cash			Incremental Cash Flows Available			Forecasted Cumulative Free Cash		
Period	Year	Quarter	Securities Net of LSAs	Note Payments	Free Cash Flow per Quarter	Flow Before CDO HoldCo	Flow Before CDO HoldCo	from CDO HoldCo	Flow with CDO HoldCo Support		
1	2008	Qtr4	\$ 4,156,271	\$ -	\$ 4,156,271	\$ 4,156,271	\$ 4,156,271	\$ 8,511,424	\$ 12,667,695		
2	2009	Qtr1	\$ 8,247,836	-	8,247,836	12,404,107	22,945,000	43,860,531			
3	2009	Qtr2	\$ 5,300,528	-	5,300,528	17,704,635	22,945,000	72,106,059			
4	2009	Qtr3	\$ 3,686,547	-	3,686,547	21,391,182	22,945,000	98,737,606			
5	2009	Qtr4	\$ 4,244,867	-	4,244,867	25,636,049	22,945,000	125,927,473			
6	2010	Qtr1	\$ 4,187,263	-	4,187,263	29,823,312	22,945,000	153,059,736			
7	2010	Qtr2	\$ 4,176,266	(16,710,455)	(12,534,189)	17,289,123	22,945,000	163,470,545			
8	2010	Qtr3	\$ 3,102,096	(16,710,455)	(13,608,359)	3,680,763	22,945,000	172,807,187			
9	2010	Qtr4	\$ 3,519,688	(16,710,455)	(13,190,768)	(9,510,004)	22,945,000	182,561,420			
10	2011	Qtr1	\$ 7,505,800	(16,710,455)	(9,204,655)	(18,714,659)	22,945,000	196,301,765			
11	2011	Qtr2	\$ 2,328,359	(16,710,455)	(14,382,096)	(33,096,755)	22,945,000	204,864,669			
12	2011	Qtr3	\$ 2,231,657	(16,710,455)	(14,478,798)	(47,575,553)	22,945,000	213,530,871			
13	2011	Qtr4	\$ 2,567,607	(16,710,455)	(14,142,848)	(61,718,402)	22,945,000	222,133,022			
14	2012	Qtr1	\$ 2,937,257	(16,710,455)	(13,773,198)	(75,491,600)	22,945,000	231,804,824			
15	2012	Qtr2	\$ 8,307,685	(16,710,455)	(8,402,773)	(83,894,373)	22,945,000	245,847,051			
16	2012	Qtr3	\$ 26,497,113	(16,710,455)	9,786,658	(14,107,715)	-	255,633,709			
17	2012	Qtr4	\$ 8,061,267	(16,710,455)	(8,649,188)	(82,756,903)	-	246,984,521			
18	2013	Qtr1	\$ 2,705,346	(16,710,455)	(14,005,109)	(96,762,012)	-	232,979,412			
19	2013	Qtr2	\$ 13,133,830	(16,710,455)	(3,576,625)	(100,338,638)	-	229,402,786			
20	2013	Qtr3	\$ 16,271,605	(16,710,455)	(438,850)	(100,777,488)	-	228,963,936			
21	2013	Qtr4	\$ 3,147,136	(16,710,455)	(13,563,320)	(114,340,807)	-	215,400,617			
22	2014	Qtr1	\$ 37,349,257	(16,710,455)	20,638,802	(93,702,005)	-	236,039,419			
23	2014	Qtr2	\$ 12,053,346	(16,710,455)	(4,657,109)	(98,359,114)	-	231,382,310			
24	2014	Qtr3	\$ 12,808,678	(16,710,455)	(3,901,777)	(102,260,891)	-	227,480,533			
25	2014	Qtr4	\$ 49,346,085	(16,710,455)	32,635,630	(69,625,262)	-	260,116,162			
26	2015	Qtr1	\$ 9,973,434	(16,710,455)	(6,737,021)	(76,362,283)	-	253,379,141			
27	2015	Qtr2	\$ 48,092,463	(16,710,455)	31,382,008	(44,980,275)	-	284,761,149			
28	2015	Qtr3	\$ 36,630,459	(16,710,455)	19,940,004	(25,040,271)	-	304,701,153			
29	2015	Qtr4	\$ 13,201,829	(16,710,455)	(3,508,626)	(28,548,897)	-	301,192,527			
30	2016	Qtr1	\$ 78,305,035	(16,710,455)	61,594,580	33,045,683	-	362,787,107			
31	2016	Qtr2	\$ 11,413,086	(16,710,455)	(5,297,369)	27,748,314	-	357,489,738			
32	2016	Qtr3	\$ 8,542,477	(16,710,455)	(8,167,978)	59,580,336	-	389,521,760			
33	2016	Qtr4	\$ 23,960,947	(16,710,455)	7,250,492	66,830,828	-	396,572,522			
34	2017	Qtr1	\$ 66,707,353	(16,710,455)	49,996,898	116,827,738	-	446,598,162			
35	2017	Qtr2	\$ 42,583,619	(16,710,455)	25,873,163	142,700,901	-	472,443,325			
36	2017	Qtr3	\$ 8,959,013	(16,710,455)	(7,751,441)	134,949,461	-	464,690,885			
37	2017	Qtr4	\$ 5,834,440	(16,710,455)	(10,876,015)	124,073,446	-	453,814,870			
38	2018	Qtr1	\$ 36,881,584	(16,710,455)	20,171,129	144,244,575	-	473,985,999			
39	2018	Qtr2	\$ 35,598,456	(16,710,455)	18,888,001	163,132,575	-	492,873,999			
40	2018	Qtr3	\$ 71,462,071	(16,710,455)	54,751,616	217,884,191	-	547,625,615			
41	2018	Qtr4	\$ 31,094,686	(16,710,455)	14,384,231	232,268,422	-	562,009,846			
42	2019	Qtr1	\$ 10,379,527	-	10,379,527	247,647,949	-	572,389,373			
43	2019	Qtr2	\$ 2,412,894	-	2,412,894	245,060,843	-	574,802,267			
44	2019	Qtr3	\$ 9,333,333	-	9,333,333	254,414,176	-	584,155,600			
45	2019	Qtr4	\$ 12,785,104	-	12,785,104	267,199,280	-	596,940,704			
46	2020	Qtr1	\$ 14,547,266	-	14,547,266	281,746,545	-	611,487,969			
47	2020	Qtr2	\$ 60,219,321	-	60,219,321	341,965,866	-	671,707,290			
48	2020	Qtr3	\$ 13,513,865	-	13,513,865	355,479,731	-	685,221,155			
49	2020	Qtr4	\$ 9,950,144	-	9,950,144	365,429,875	-	695,171,299			
50	2021	Qtr1	\$ 71,148,707	-	71,148,707	436,578,582	-	766,320,006			
51	2021	Qtr2	\$ 20,699,341	-	20,699,341	457,277,924	-	787,019,348			
52	2021	Qtr3	\$ 4,998,551	-	4,998,551	462,276,474	-	792,017,898			
53	2021	Qtr4	\$ (24,584)	-	(24,584)	462,251,890	-	791,993,314			
54	2022	Qtr1	\$ (24,584)	-	(24,584)	462,227,306	-	791,968,730			
55	2022	Qtr2	\$ (24,584)	-	(24,584)	462,202,722	-	791,944,146			
56	2022	Qtr3	\$ (24,584)	-	(24,584)	462,178,138	-	791,919,562			
57	2022	Qtr4	\$ 10,000,000	-	10,000,000	472,178,138	-	801,919,562			
58	2023	Qtr1	\$ 30,000,000	-	30,000,000	502,178,138	-	831,919,562			
59	2023	Qtr2	\$ -	-	-	502,178,138	-	831,919,562			
Totals			\$ 1,087,044,069	\$ (584,865,931)	\$ 502,178,138	\$ -	\$ 329,741,424				



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UBS Securities, LLC v. Highland Capital Management, L.P., et al.  
Ability to Repay - Summary of Results  
(\$USD)

Schedule IX-D

Amended Note Issuance (PIK First Five Quarters)									
[A]		[B]		[C] = [A] + [B]		[D] = Sum [C]		[E]	
Period		Year		Quarter		Cash from Underlying CLO Securities Net of LSAs		Note Payments	
						Free Cash Flow per Quarter		Forecasted Cumulative Free Cash Flow Before CDO HoldCo	
						Incremental Cash Flows Available from CDO HoldCo		Forecasted Cumulative Free Cash Flow with CDO HoldCo Support	
1	2008	Qtr4	\$	12,877,746	\$	12,877,746	\$	2,036,785	\$
2	2009	Qtr1		13,395,086		13,395,086		35,890,000	
3	2009	Qtr2		13,294,724		13,294,724		35,890,000	
4	2009	Qtr3		8,654,741		8,654,741		35,890,000	
5	2009	Qtr4		9,961,150		9,961,150		35,890,000	
6	2010	Qtr1		9,737,746		9,737,746		35,890,000	
7	2010	Qtr2		10,354,939	(19,644,570)	(9,289,632)		35,890,000	
8	2010	Qtr3		8,451,722	(19,644,570)	(11,192,848)		35,890,000	
9	2010	Qtr4		8,141,160	(19,644,570)	(11,503,410)		35,890,000	
10	2011	Qtr1		11,139,524	(19,644,570)	(8,505,047)		35,890,000	
11	2011	Qtr2		5,426,525	(19,644,570)	(14,218,045)		35,890,000	
12	2011	Qtr3		5,827,732	(19,644,570)	(13,816,839)		35,890,000	
13	2011	Qtr4		6,575,257	(19,644,570)	(13,069,313)		35,890,000	
14	2012	Qtr1		7,777,451	(19,644,570)	(11,867,120)		35,890,000	
15	2012	Qtr2		13,713,735	(19,644,570)	(5,930,835)		35,890,000	
16	2012	Qtr3		33,150,946	(19,644,570)	13,506,376		35,890,000	
17	2012	Qtr4		14,245,135	(19,644,570)	(5,399,436)		35,890,000	
18	2013	Qtr1		7,702,833	(19,644,570)	(11,941,737)		35,890,000	
19	2013	Qtr2		17,977,495	(19,644,570)	(1,667,076)		35,890,000	
20	2013	Qtr3		21,465,250	(19,644,570)	1,820,680		35,890,000	
21	2013	Qtr4		8,229,840	(19,644,570)	(11,414,730)		35,890,000	
22	2014	Qtr1		43,663,418	(19,644,570)	24,018,848		35,890,000	
23	2014	Qtr2		18,467,908	(19,644,570)	(1,176,662)		35,890,000	
24	2014	Qtr3		19,495,941	(19,644,570)	(148,629)		35,890,000	
25	2014	Qtr4		55,374,464	(19,644,570)	35,729,894		35,890,000	
26	2015	Qtr1		18,225,455	(19,644,570)	(1,419,115)		35,890,000	
27	2015	Qtr2		55,684,133	(19,644,570)	36,039,563		35,890,000	
28	2015	Qtr3		42,281,338	(19,644,570)	22,636,768		35,890,000	
29	2015	Qtr4		19,110,538	(19,644,570)	(534,033)		35,890,000	
30	2016	Qtr1		83,870,740	(19,644,570)	64,226,169		35,890,000	
31	2016	Qtr2		16,415,028	(19,644,570)	(3,229,542)		35,890,000	
32	2016	Qtr3		53,297,768	(19,644,570)	33,653,197		35,890,000	
33	2016	Qtr4		28,458,787	(19,644,570)	8,814,217		35,890,000	
34	2017	Qtr1		70,926,824	(19,644,570)	51,282,254		35,890,000	
35	2017	Qtr2		46,523,088	(19,644,570)	26,878,517		35,890,000	
36	2017	Qtr3		12,524,775	(19,644,570)	(7,119,795)		35,890,000	
37	2017	Qtr4		9,248,096	(19,644,570)	(10,396,475)		35,890,000	
38	2018	Qtr1		40,109,127	(19,644,570)	20,464,557		35,890,000	
39	2018	Qtr2		38,518,611	(19,644,570)	18,874,041		35,890,000	
40	2018	Qtr3		74,017,259	(19,644,570)	54,372,688		35,890,000	
41	2018	Qtr4		33,388,627	(19,644,570)	13,744,057		35,890,000	
42	2019	Qtr1		12,488,992	-	12,488,992		35,890,000	
43	2019	Qtr2		4,282,379	-	4,282,379		35,890,000	
44	2019	Qtr3		15,012,903	-	15,012,903		35,890,000	
45	2019	Qtr4		21,705,362	-	21,705,362		35,890,000	
46	2020	Qtr1		16,437,130	-	16,437,130		35,890,000	
47	2020	Qtr2		63,965,100	-	63,965,100		35,890,000	
48	2020	Qtr3		19,886,491	-	19,886,491		35,890,000	
49	2020	Qtr4		41,964,963	-	41,964,963		35,890,000	
50	2021	Qtr1		75,300,114	-	75,300,114		35,890,000	
51	2021	Qtr2		20,703,187	-	20,703,187		35,890,000	
52	2021	Qtr3		5,176,687	-	5,176,687		35,890,000	
53	2021	Qtr4		(24,584)	-	(24,584)		35,890,000	
54	2022	Qtr1		(24,584)	-	(24,584)		35,890,000	
55	2022	Qtr2		(24,584)	-	(24,584)		35,890,000	
56	2022	Qtr3		(24,584)	-	(24,584)		35,890,000	
57	2022	Qtr4		10,000,000	-	10,000,000		35,890,000	
58	2023	Qtr1		30,000,000	-	30,000,000		35,890,000	
59	2023	Qtr2		-	-	-		35,890,000	
Totals			\$	1,364,527,630	\$	(687,559,959)	\$	676,967,671	\$
								504,496,785	

## Notes

[A] See Schedule IX-B.

[B] We assume the Payment-in-Kind option available under the Note is utilized in the first five quarters. Note Payments are re-calculated on an equal pay amortizing basis. H\_0056026-H\_0056083.

[E] See the table on page 33 of the report for a build up of the CDO HoldCo cash flows.



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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 21**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

*INDEX*

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

- Vol. 1*
1. Notice of Appeal
    - 000001* a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11
  2. The Judgment, Order, or Decree Appealed from:
    - 000004* a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]
  3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
    - a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422

000488

000649

Vol. 3  
000680

000752

000761

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

Vol. 3  
000798  
000811  
000815  
Thru Vol. 4  
Vol. 4  
001144  
001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 5  
001174  
001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
05/18/2021	2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
05/20/2021	2339	Amended Exhibit List <i>Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
05/20/2021	2342	Amended Exhibit List <i>Supplemental Exhibit List</i> filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit



Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

## **EXHIBIT 33**

EXECUTION COPY

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HIGHLAND FINANCIAL PARTNERS, L.P.

\$371,458,681

10.00% Senior Secured Notes due November 15, 2018

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AMENDED AND RESTATED NOTE PURCHASE AGREEMENT

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Dated as of September 26, 2008 and Amended and Restated as of December 22, 2008

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OHS West:260551486.8

CONFIDENTIAL



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HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% Senior Secured Notes due November 15, 2018

TO EACH OF THE PURCHASERS LISTED IN  
THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

The parties hereto acknowledge and agree that this Note Purchase Agreement was initially entered into as of September 26, 2008 (the "**Initial Closing Date**"), amended on October 10, 2008 (the "**Subsequent Closing Date**"), and is hereby amended and restated in its entirety as of December 22, 2008 (the "**Restatement Date**") (as amended and restated on the Restatement Date, as it may further be amended, supplemented or restated this "**Agreement**"). Highland Financial Partners, L.P., a Delaware limited partnership (the "**Issuer**"), agrees with you to amend and restate the Existing Agreement as follows:

**1. AUTHORIZATION OF NOTES.**

The Issuer authorized the issuance and sale of \$371,458,681 aggregate principal amount of its 10.00% Senior Secured Notes due November 15, 2018 (the "**Notes**", such term to include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement). The Notes shall be substantially in the form set out in Exhibit 1, with such changes therefrom, if any, as may be approved by you and the Issuer. Certain capitalized terms used in this Agreement are defined in Schedule B; references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement. The Notes shall be secured by the Liens created by the Security Documents.

**2. SALE AND PURCHASE OF NOTES.**

Subject to the terms and conditions of the Existing Agreement and this Agreement, the Issuer issued and sold to you and you purchased from the Issuer, on the Initial Closing Date or the Subsequent Closing Date, Notes in the principal amount specified opposite your name in Schedule A at the purchase price of 100% of the principal amount thereof. The obligations of the Purchasers under this Agreement are several and not joint obligations and each Purchaser shall have no obligation to any Person for the performance or non-performance by any other Purchaser under this Agreement.

**3. CLOSING.**

The sale and purchase of \$315,970.81 in principal amount of Notes, occurred on the Initial Closing Date and \$55,488,000 in principal amount of Notes occurred on the

**Subsequent Closing Date.** The Initial Closing Date and the Subsequent Closing Date are collectively referred to herein as the “Closing.”

The purchase price of the Notes was received by the Issuer in the form of assets having a market value equal to the purchase price that was mutually agreed by the Issuer and you on each Closing Date.

#### 4. CONDITIONS TO CLOSING; COLLATERAL MATTERS; POST CLOSING DELIVERIES

4.1 [Reserved].

## 4.2 [Reserved].

### 4.3 [Reserved].

#### 4.4 [Reserved]..

#### 4.5 Post Closing Deliveries; Further Assurances.

(a) The items set forth on Schedule C hereto shall constitute post-closing deliveries and the Issuer and its Subsidiaries shall be required to provide them on or before the dates specified for their delivery as set forth in such Schedule.

(b) The Issuer agrees, and agrees to cause its Subsidiaries to (i) enter into such documentation, post Closing as may be required such that the Holders may hold any Liens in the Collateral through the Collateral Agent or other agent or nominee on their behalf, and shall re-execute or re-file any documentation relating to the Collateral (or make any transfers of Collateral) as may be necessary in the reasonable judgment of the Holders, or any of them, to perfect Liens in favor of such agent on behalf of the Holders; (ii) to enter into any joinders or amendments to this Agreement or any Related Document to effectuate the same. The Issuer Parties and each Holder hereby acknowledge and agree that should the Holders designate such agents or nominees in writing, that such agents and nominees shall be deemed to be a "nominee" for all purposes set forth in this Agreement as specified in such designation and (iii) pay all fees, expenses and other amounts due and payable by Issuer in connection with the Closing, including the reasonable fees and disbursements invoiced by the Holders' special counsel, Haynes and Boone, LLP.

## 5. REPRESENTATIONS AND WARRANTIES OF THE ISSUER

The Issuer Parties each represent and warrant to you as follows, as of Initial Closing Date, the Subsequent Closing Date and the Restatement Date with respect Section 5.1 through Section 5.13, and as of the effective date of the applicable Security Document with respect to Section 5.14:

### 5.1 Organization; Power and Authority.

Such Issuer Party is a limited partnership or company limited by shares duly organized, validly existing and in good standing under the laws of its jurisdiction of

organization, and is duly qualified as a foreign company and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Issuer has the power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement, the Notes and any Related Documents it is a party to and to perform the provisions hereof and thereof. Each of the Issuer Parties other than the Issuer, is a Wholly-Owned Subsidiary of the Issuer.

## **5.2 Authorization, etc.**

Each of the Related Documents have been duly authorized by all necessary action on the part of the Issuer Parties, and this Agreement constitutes, and upon execution and delivery thereof each Note (and such other Related Documents) will constitute, a legal, valid and binding obligation of the Issuer Parties party thereto, enforceable against such Issuer Party in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

## **5.3 Compliance with Laws, Other Instruments, etc.**

The execution, delivery and performance by the Issuer Parties of the Related Documents to which it is a party will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Issuer or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other Material agreement or instrument to which the Issuer Parties is bound or by which the Issuer Parties or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Issuer or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Issuer Parties.

## **5.4 Governmental Authorizations, etc.**

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Issuer Parties of the Related Documents, other than UCC or other similar filings to perfect security interests.

## **5.5 Litigation; Observance of Statutes and Orders.**

(a) There are no actions, suits or proceedings pending or, to the knowledge of any Issuer Party, threatened against or affecting the Issuer Parties or any Subsidiary or any property of the Issuer Parties or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.



(b) Neither the Issuer Parties nor any Subsidiary is in default under any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

#### 5.6 Jurisdiction of Issuer Parties.

The jurisdiction of organization of the Issuer is Delaware, the jurisdiction of organization of the other Issuer Parties is the Cayman Islands, the chief executive office and principal place of business of each of the Issuer Parties is 13455 Noel Road, 8th Floor, Dallas, Texas, 75240.

#### 5.7 Taxes.

The Issuer and its Subsidiaries have filed all income tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Issuer or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Federal income tax liabilities of the Issuer and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended November 30, 2007.

#### 5.8 Title to Property; Leases.

The Issuer Parties have good and sufficient title to their respective Material properties, in each case free and clear of Liens prohibited by this Agreement, except for those defects in title and Liens that, individually or in the aggregate, would not have a Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

#### 5.9 Licenses, Permits, etc.

The Issuer Parties own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

#### 5.10 Private Offering by the Issuer.

Neither the Issuer nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers, each of which has been offered the Notes at a private sale for investment. Neither the Issuer nor

anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

#### **5.11 Use of Proceeds; Margin Regulations.**

The Issuer Parties will apply the proceeds of the sale of the Notes to buy and hold certain assets for investment purposes. Such acquired assets may be held by any subsidiary of the Issuer which is wholly-owned and who enters into appropriate Security Documents related hereto, and agrees to be bound by a joinder to the terms of this Agreement. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation G of the Board of Governors of the Federal Reserve System (12 CFR 207), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Issuer in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). As used in this Section, the terms "**margin stock**" and "**purpose of buying or carrying**" shall have the meanings assigned to them in said Regulation G.

#### **5.12 Foreign Assets Control Regulations, etc.**

Neither the sale of the Notes by the Issuer hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

#### **5.13 Solvency.**

Issuer is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

#### **5.14 Ownership of Collateral; Collateral Documents.**

Except as set forth in the Security Documents and upon the payment of the purchase price for the Notes contemplated in Section 3 hereof and the completion of any associated asset transfers, the Issuer Parties are legal and beneficial owners of the Collateral free and clear of any Lien or adverse claim. The provisions of the Security Documents are effective to create in favor of the Holders a legal, valid and enforceable first priority Lien on all right, title and interest of the respective Issuer Parties in the Collateral described therein. Except for filings completed prior to the Initial Closing Date and the Subsequent Closing Date or as contemplated to be done post Closing in accordance with Section 4.5, no filing or other action will be necessary to perfect or protect such Liens.

### **6. REPRESENTATIONS OF THE PURCHASER.**

Each Holder hereby represents as of the Initial Closing Date, the Subsequent Closing Date and the Restatement Date that such Holder purchased the Notes for such Holder's own account or for one or more separate accounts maintained by such Holder or for the account of one or more pension or trust funds and not with a view to the distribution thereof, provided that the disposition of the Holder's or the owner of such account's property shall at

all times be within such Holder's or the owner of such account's control. Each Holder understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Issuer is not required to register the Notes.

## 7. INSPECTION.

The Issuer Parties shall permit the representatives of each Holder:

(a) No Default -- if no Default or Event of Default then exists, at the expense of such Holder and upon reasonable prior notice to the Issuer, to visit the principal executive office of any Issuer Party, to discuss the affairs, finances and accounts of the Issuer and its Subsidiaries with the Issuer Parties' officers, and, with the consent of the Issuer Parties (which consent will not be unreasonably withheld) to visit the other offices and properties of the Issuer and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) Default -- if a Default or Event of Default then exists, at the expense of the Issuer to visit and inspect any of the offices or properties of the Issuer Parties, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants or valuation experts (and by this provision the Issuer authorizes said accountants and valuation experts to discuss the affairs, finances and accounts of the Issuer and its Subsidiaries), all at such times and as often as may be requested.

## 8. PREPAYMENT OF THE NOTES.

### 8.1 Optional Prepayments.

The Issuer may, at its option and in its sole discretion, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, at 100% of the principal amount so prepaid. The Issuer will give the Paying Agent, the Note Registrar and each Holder written notice of each optional prepayment under this Section 8.1 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such Holder to be prepaid (determined in accordance with Section 8.2), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid.

### 8.2 Allocation of Partial Prepayments.

(a) In the case of each partial prepayment of the Notes, whether pursuant to an optional prepayment under Section 8.1 hereof or a mandatory prepayment under Section 8.4, including prepayments from any funds received from the Collateral, including but not limited to payments or other amounts in respect of any Collateral consisting of any Life Settlements or any funds received by the Collateral Agent as a result of any proceeds from

the Collateral after a Default, the Paying Agent shall apply payments received or collected from the Issuer or for the account of the Issuer (including the monetary proceeds of collections or of realization upon any Collateral) as follows:

(i) first, to the payment in full of any fees, indemnities or reimbursements then due to the Collateral Agent and the Holders from the Issuer Parties pursuant to any Related Document;

(ii) second, to the payment or prepayment in full of principal in respect of the Notes, paid to each Holder on a pro rata basis based on the outstanding principal balance of each Holder's Note. For purposes of applying partial prepayments of principal on the Notes under this subclause (ii), the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment; and

(iii) third, to the payment in full of interest then due in respect of the Notes, paid to each Holder on a pro rata basis based on the outstanding principal balance of each Holder's Note.

(b) If after receipt of any payment of, or proceeds of Collateral applied to the payment of, the Notes, the Collateral Agent or any Holder is required to surrender or return such payment or proceeds to any Person for any reason, then the obligations intended to be satisfied by such payment or proceeds shall be reinstated and continue and this Agreement shall continue in full force and effect as if such payment or proceeds had not been received by the Collateral Agent or such Holder. Issuer Parties shall be liable to pay to the Collateral Agent, and do hereby indemnify and hold the Collateral Agent and the Holders harmless for the amount of any payments or proceeds surrendered or returned. This Section 8.2(b) shall (i) remain effective notwithstanding any contrary action which may be taken by the Collateral Agent or any Holder in reliance upon such payment or proceeds and (ii) survive the payment of the Notes and the termination of this Agreement.

### **8.3 Maturity; Surrender, etc.**

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid as indicated in the notice from Issuer shall mature and become due and payable on the date fixed in such notice for such prepayment, together with interest on such principal amount accrued to such date. From and after such date, unless the Issuer shall fail to pay such principal amount when so due and payable, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Issuer and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

### **8.4 Mandatory Prepayments.**

(a) If on any date, any Collateral consisting of CLO Securities is Disposed or redeemed in full or in part, the Issuer shall deposit into the Securities Account an amount equal to 10% of the market value of any such Disposed or redeemed Collateral, and the Paying Agent shall cause such amount to be distributed to the Holder's in accordance with

Section 8.2. For the avoidance of doubt, the preceding sentence does not apply to (i) any distributions of principal or interest on the Collateral consisting of CLO Securities or (ii) any dividends received in respect of any Collateral consisting of CLO Securities.

(b) The Issuer shall deposit into the Securities Account an amount equal to 10% of any distributions of principal it (or any Issuer Party) receives on the Collateral consisting of CLO Securities, and the Paying Agent shall cause such amounts to be distributed in accordance with Section 8.2 within three (3) Business Days of the date of such deposit.

(c) All amounts deposited into the Life Settlement Account shall be distributed by the Paying Agent in accordance with Section 8.2 within three (3) Business Day of the date of such deposit.

## 9. AFFIRMATIVE COVENANTS.

The Issuer covenants that so long as any of the Notes are outstanding:

### 9.1 Compliance with Law.

The Issuer will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

### 9.2 Payment of Taxes.

The Issuer will and will cause each of its Subsidiaries to file all income tax or similar tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies payable by any of them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, provided that neither the Issuer nor any Subsidiary need pay any such tax or assessment if (i) the amount, applicability or validity thereof is contested by the Issuer or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Issuer or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Issuer or such Subsidiary or (ii) the nonpayment of all such taxes and assessments in the aggregate would not reasonably be expected to have a Material Adverse Effect.

### 9.3 Legal Existence, etc.

The Issuer will at all times preserve and keep in full force and effect its legal existence. The Issuer will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Issuer or a Subsidiary, provided that the surviving entity of any merger of a Subsidiary holding Collateral shall be subject to



the requirements of Section 9.7) and all rights and franchises of the Issuer and its Subsidiaries unless, in the good faith judgment of the Issuer, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise would not, individually or in the aggregate, have a Material Adverse Effect.

#### **9.4 Reports.**

(a) Issuer (and its Subsidiaries if applicable) shall provide to the Holders and the Collateral Agent, notice of (i) any voluntary or involuntary Disposition of Collateral, whether or not permitted hereunder and (ii) recoveries relating to any Collateral consisting of Life Settlements. Additionally, at the request of any Holder or the Collateral Agent, Issuer (and its Subsidiaries if applicable) shall provide copies of all other financial statements, appraisal reports, notices, and other matters at any time or from time to time prepared by Issuer, its Subsidiaries (or in the case of any Collateral subject to a servicing arrangement, any servicer of such Collateral).

(b) Issuer, on a quarterly basis, shall provide to the Holders and the Collateral Agent valuation reports provided by persons that are reasonably acceptable to the Required Holders relating to all Collateral consisting of (a) securities and (b) Life Settlements.

(c) Issuer and its Subsidiaries will provide to Holders, promptly upon becoming aware of (a) the existence of any condition or event which constitutes an Event of Default or a Default a written notice specifying the nature and period of existence thereof and the action which the Issuer or such Subsidiary is taking or proposes to take with respect thereto; and (b) the existence of any condition or event which would trigger a default or potential default pursuant to Indebtedness described in Section 10(e).

#### **9.5 Compliance with Law.**

Issuer and its Subsidiaries will comply in all material respects with all material laws, rules, regulations, and all orders of any Governmental Authority, including without limitation, Environmental Laws.

#### **9.6 Proceeds of Collateral.**

(a) Issuer and its Subsidiaries shall from time to time deposit and instruct any and all third parties who may receive proceeds of any Collateral consisting of CLO Securities (whether income, interest or principal, to deposit all proceeds or distributions of such Collateral) into the Securities Account. So long as no Default or Event of Default exists, the Issuer may (from time to time and for any purpose) withdraw any amounts that have been deposited into the Securities Account in respect of (i) any distributions of interest on the Collateral consisting of CLO Securities or (ii) any dividends received in respect of any Collateral consisting of CLO Securities. So long as (i) no Default or Event of Default exists and (ii) the mandatory prepayment described in Section 8.2(b) has been made, the Issuer may (from time to time and for any purpose) withdraw any amounts that have been deposited in respect of any distributions of principal on the Collateral consisting of CLO Securities.

(b) Issuer and its Subsidiaries shall from time to time deposit and instruct any and all third parties who may receive any payments or other amounts in respect of any Collateral consisting of any Life Settlements, to deposit all proceeds or distributions of such Collateral into the Life Settlements Account. Amounts on deposit in the Life Settlements Account shall only be withdrawn in order to be distributed in accordance with Sections 8.2 and 8.4(c). For the avoidance of doubt, the Payment Agent and the Collateral Agent shall have no responsibilities whatsoever with respect to any Life Settlement contract (including monitoring, maintaining or servicing such contracts) or any Collateral consisting of Life Settlements other than to receive all proceeds or distributions of such Collateral into the Life Settlements Account and to make distributions from such account in accordance with Sections 8.2 and 8.4(c).

#### 9.7 Covenant to Maintain and Give Security.

Upon the formation or acquisition of any new Issuer Party holding Collateral:

(a) within 10 days after such formation or acquisition or transfer, cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Holders a description of the Collateral to be transferred to it, in detail satisfactory to the Holders or their nominee,

(b) within 15 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the agent which is a party to the Security Documents, as specified by and in form and substance satisfactory to the Holders or their nominee (including but not limited to delivery of 100% of the Equity Interests of such Issuer Party, any guarantees of the Indebtedness hereunder by such Subsidiary, and other instruments of the type reasonably necessary to perfect a Lien in such Equity Interests and any Collateral held by such Subsidiary, including such items of the type specified on Schedule C, as may be applicable) and take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) that may be necessary or advisable in the opinion of the Holders or their nominee to vest in the Holders or such nominee valid and subsisting Liens on the properties purported to be subject to such Security Documents, and such opinions of counsel and other documents relating to the same as were given at the Initial Closing Date and Subsequent Closing Date or required post-Closing pursuant to Section 4 hereof.

Additionally, notwithstanding anything to the contrary in this Agreement or any Related Document, at any time upon request of any Holder or their nominee, the Issuer shall, or shall cause any relevant Issuer Party to promptly execute and deliver any and all further instruments and documents and take all such other action as any Holder may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such Security Documents relating to any Collateral.

#### 10. NEGATIVE COVENANTS.

The Issuer covenants that so long as any of the Notes are outstanding:

#### **10.1 Transactions with Affiliates.**

The Issuer will not and will not permit any Subsidiary to enter into directly or indirectly any Material transaction or Material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Issuer or another Subsidiary), except in the ordinary course of the Issuer's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Issuer or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

#### **10.2 Merger, Consolidation, etc.**

The Issuer shall not consolidate with or merge with any other entity or convey, transfer or lease substantially all of its assets in a single transaction or series of transactions to any Person unless:

(a) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease substantially all of the assets of the Issuer as an entirety, as the case may be, shall be a Solvent corporation organized and existing under the laws of the United States or any State thereof (including the District of Columbia), and, if the Issuer is not such entity, such entity shall have executed and delivered to each Holder its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and the Notes; and

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

No such conveyance, transfer or lease of substantially all of the assets of the Issuer shall have the effect of releasing the Issuer or any successor corporation that shall theretofore have become such in the manner prescribed in this Section 10.2 from its liability under this Agreement or the Notes. Additionally, no merger, consolidation or conveyance of substantially all of the Issuer's assets permitted hereby shall be effected without concurrent notice to the Holders or their nominee, and the Issuer Parties shall do all things necessary prior to, simultaneously with or promptly thereafter to preserve Liens in favor of the Holders or their nominee on all Collateral consistent with Section 4.5(b) of this Agreement.

#### **10.3 Dispositions of Collateral.**

Except as permitted by and subject to the terms of Sections 8.2, 8.4 and 9.6, the Issuer Parties shall not make any Disposition of any Collateral or direct the Collateral Agent to make any Disposition of any Collateral (other than Collateral consisting of any Life Settlements) unless substantially simultaneously with such Disposition, the Issuer (or any Issuer Party on Issuer's behalf) shall make a mandatory prepayment pursuant to Section 8.4, if any is required by such Section. Except as permitted by and subject to the terms of Sections 8.2, 8.4 and 9.6, the Issuer Parties shall not make any Disposition of any Collateral consisting of any Life Settlements or direct the Collateral Agent to do so.

#### **10.4 Investments.**

The Issuer Parties (other than the Issuer) shall not make or hold any Investments, except:

- (a) Investments held by such Issuer Parties and its Subsidiaries in the form of cash;
- (b) Investments such Issuer Parties' respective Subsidiaries on the date hereof;
- (c) Investments constituting Collateral hereunder or the proceeds of such Collateral.

#### **10.5 Negative Pledge.**

Without the approval of each Holder (or the Collateral Agent with the consent of each Holder), none of the Issuer nor any Subsidiary will create or suffer to exist any Lien upon the Collateral, other than a first priority security interest in and upon the Collateral in favor of the Collateral Agent. Issuer will not pledge any of its Equity Interests in any of its Subsidiaries to any Person other than the Collateral Agent.

#### **10.6 Indebtedness.**

Without the approval of each Holder (or the Collateral Agent with the consent of each Holder), none of the Issuer Parties (other than the Issuer) will create or suffer to exist any Indebtedness except Indebtedness outstanding on the date hereof, the Notes and any PIK Notes.

#### **10.7 Restricted Payments.**

Without the approval of each Holder (or the Collateral Agent with the consent of each Holder), none of the Issuer Parties (other than the Issuer) will declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom, each such Issuer Party may make Restricted Payments to the Issuer and any other Subsidiary.

#### **10.8 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by the Issuer and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

#### **10.9 Payments relating to Life Settlements.**

Issuer shall make all payments, or cause all payments to be made such that the Life Settlements (and any underlying insurance policies and agreements relating to the servicing

of such policies) owned by any Issuer Party which constitute Collateral hereunder remain in full force and effect from time to time.

#### 11. EVENTS OF DEFAULT.

An “Event of Default” shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Issuer defaults in the payment of any principal on any Note when the same becomes due and payable, whether at maturity or at a date fixed for repayment, prepayment or by declaration or otherwise; or

(b) the Issuer defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) any Issuer Party defaults in the performance of or compliance with any term contained herein or in any Related Document (other than those referred to in clauses (a), (b) and (d) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer of such Issuer Party obtaining actual knowledge of such default and (ii) the Issuer receiving written notice of such default from any Holder (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (d) of Section 11); or

(d) any representation or warranty made in writing by or on behalf of any Issuer Party or by any officer of any Issuer Party in any Related Document or other writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or

(e) (i) the Issuer or any Subsidiary which is an Issuer Party is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$10,000,000 beyond any period of grace provided with respect thereto, or (ii) the Issuer or any Subsidiary which is an Issuer Party is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$10,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared due and payable before its stated maturity or before its regularly scheduled dates of payment; or

(f) any Issuer Party (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or



(g) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by the Issuer or any of its Significant Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Issuer or any of its Significant Subsidiaries, or any such petition shall be filed against the Issuer or any of its Significant Subsidiaries and such petition shall not be dismissed within 60 days; or

(h) a final judgment or judgments for the payment of money aggregating in excess of \$10,000,000 are rendered against one or more of the Issuer and its Significant Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay;

(i) if any Lien intended to be created by any Security Document shall at any time be invalidated, subordinated or otherwise cease to be in full force and effect, for whatever reason, or any security interest purported to be created by any Security Document shall cease to be, or shall be asserted by any Holder not to be, a valid, first priority (except as expressly otherwise provided in this Agreement or such Security Document) perfected Lien in the collateral described on Schedule E;

(j) default shall occur in the performance of the covenants and agreements of any Issuer Party contained in Sections 9.3, 9.7, 10.2 and 10.3; or

(k) any provision of any Related Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Notes, ceases to be in full force and effect (other than as a result of a substitution of a similar document in the case of any post Closing matters relating to the Security Documents as approved by the Required Holders or their nominee); or any Issuer Party or any other Person contests in any manner the validity or enforceability of any provision of any Related Document; or any Issuer Party denies that it has any or further liability or obligation under any provision of any Related Document, or purports to revoke, terminate or rescind any provision of any Related Document.

## 12. REMEDIES ON DEFAULT, ETC.

### 12.1 Acceleration.

(a) If an Event of Default with respect to the Issuer described in clause (f) or (g) of Section 11 has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders or the Collateral Agent (at the direction of the Required Holders) shall by one or more notices to the Issuer, declare all the Notes then outstanding to be immediately due and payable. The Holders may exercise their right to provide such direction at any time while such an Event of Default is continuing.

(c) If any Event of Default described in clause (a) or (b) of Section 11 has occurred and is continuing, any Holder at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Issuer, declare (or direct the Collateral Agent to declare) all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable pursuant this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus all accrued and unpaid interest thereon (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case with out presentment, demand, protest or further notice, all of which are hereby waived.

#### **12.2 Other Remedies.**

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the Holder (or such Holder's nominee) at the time outstanding or the Collateral Agent (acting at the direction of the Required Holders ) may proceed to protect and enforce the rights of such Holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise. Notwithstanding anything to the contrary set forth in this Agreement, to the extent a Holder (or the Collateral Agent) receives any cash, assets or rights in connection with its enforcement of a remedy against an Issuer Party, such cash, asset or right shall be shared pari passu with all other Holders.

#### **12.3 Rescission.**

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the Collateral Agent (at the direction of Required Holders), by written notice to the Issuer, may rescind and annul any such declaration and its consequences if (a) the Issuer has paid all overdue interest and principal on the Notes that are due and payable and are unpaid (other than by reason of such declaration) plus all interest on such overdue amounts and (to the extent permitted by applicable law) additional interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 16, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

#### **12.4 No Waivers or Election of Remedies, Expenses, etc.**

No course of dealing and no delay on the part of any Holder or the Collateral Agent in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such Holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Related Document or by any Note upon any holder thereof or upon the

Collateral Agent shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Issuer under Section 14, the Issuer will pay to each Holder and the Collateral Agent on demand such further amount as shall be sufficient to cover all costs and expenses of such Holder and the Collateral Agent incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

### **13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

#### **13.1 Registration of Notes.**

(a) The Issuer Parties and the Holders hereby appoint The Bank of New York Mellon Trust Company, National Association as Note Registrar in accordance with the terms of this Agreement, and The Bank of New York Mellon Trust Company, National Association hereby accepts such appointment and agrees to serve as Note Registrar in exchange for the compensation it receives as Collateral Agent.

(b) The Note Registrar shall keep at its principal executive office a register for the registration and registration of transfers of Notes (the "Holder Register"). The name and address of each Holder, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in the Holder Register. No transfer shall be effective unless the Note Registrar receives a duly executed instrument of transfer in the form of Exhibit 2. Note Registrar shall promptly notify Issuer of any such transfers. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Note Registrar shall not be affected by any notice or knowledge to the contrary. The Note Registrar shall give to any Holder promptly upon request therefor, a complete and correct copy of the Holder Register relating to such Holder's Notes.

#### **13.2 Transfer and Exchange of Notes.**

Upon surrender of any Note at the principal executive office of the Issuer (or to the Collateral Agent) for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered Holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Issuer shall execute and deliver to the Collateral Agent (which shall in turn deliver such new Note to the appropriate Holder), at the Issuer's expense (except as provided below), one or more new Notes (as requested by the Holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such Holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. Notes shall not be transferred in denominations of less than \$1, provided that if necessary to enable the registration of transfer by a Holder of its entire holding of Notes, one Note may be in a denomination of less than \$1. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth

in Section 6. Notwithstanding anything to the contrary provided herein, the Issuer shall not be required to transfer any Note if in the reasonable judgment of the Issuer, it would violate applicable law.

### **13.3 Replacement of Notes.**

Upon receipt by the Issuer of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be notice from such Holder of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it, or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Issuer at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **14. PAYMENTS ON NOTES.**

### **14.1 Place of Payment.**

(a) Subject to Section 14.2, payments of principal, and interest becoming due and payable on the Notes shall be made by the Paying Agent at its offices located at 601 Travis Street, 16th Floor, Houston, Texas, 77002. The Paying Agent may at any time, by notice to each Holder, change the place of payment of the Notes so long as such place of payment shall be the principal office of a bank or trust company in such jurisdiction, and such jurisdiction is located in the United States of America.

(b) As a condition to the payment on any Note hereunder without the imposition of withholding tax, the Paying Agent shall require certification reasonably acceptable to the Paying Agent to enable each to determine its duties and liabilities with respect to any taxes or other charges that either may be required to deduct or withhold from payments in respect of such Notes under any present or future law or regulation of the United States or other jurisdiction or any present or future law or regulation of any political subdivisions thereof or taxing authority therein or to comply with any reporting or other requirement under any such law or regulation. Without limiting the foregoing, as a condition to making any payment on any Note hereunder without U.S. federal back-up withholding, the Paying Agent shall require the delivery of properly completed and signed applicable U.S. federal income tax certifications (generally, an IRS Form W-9 (or applicable successor form) in the case of a person that is a "United States person" as defined in the Internal Revenue Code (the "Code") or an IRS Form W-8 (or applicable successor form) in the case of a person that is not a "United States person" as defined in the Code.

#### **14.2 Home Office Payment.**

(a) The Issuer Parties and the Holders hereby appoint The Bank of New York Mellon Trust Company, National Association as Paying Agent in accordance with the terms of this Agreement, and The Bank of New York Mellon Trust Company, National Association hereby accepts such appointment and agrees to serve as Note Registrar in exchange for the compensation it receives as Collateral Agent.

(b) So long as you or your nominee shall be a Holder, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Issuer shall be obligated to pay all sums becoming due on such Note for principal, and interest by the method and at the address specified for such purpose below your name in Schedule A, or by such other method or at such other address as you shall have from time to time specified to the Issuer in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Issuer made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, reasonably promptly after any such request, to the Note Registrar at its offices located at 601 Travis Street, 16th Floor, Houston, Texas, 77002. The Note Registrar shall promptly notify the Paying Agent and the Issuer of such surrender. Prior to any sale or other disposition of any Note held by you or your nominee you will, at your election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Note Registrar in exchange for a new Note or Notes pursuant to Section 13.2. The Issuer will afford the benefits of this Section 14.2 to any Holder that is the direct or indirect transferee of any Note purchased by you under this Agreement and that has made the same agreement relating to such Note as you have made in this Section 14.2.

#### **14.3 Timing of Payments of Principal and Interest.**

(a) On each Quarterly Payment Date the Issuer shall cause an amount equal to the Quarterly Payment Amount to be deposited into the Securities Account. Such Quarterly Payment Amount shall be in cash, except for payments permitted to be paid in kind pursuant to Section 14.4 hereof. Within three (3) Business Days of each Quarterly Payment Date the Paying Agent shall distribute to each Holder, an amount equal to the product of (i) a fraction, the numerator of which is the aggregate outstanding principal balance of such Holder's Notes, and the denominator is the aggregate outstanding principal balance of the Notes, and (ii) the cash portion of the Quarterly Payment Amount deposited by the Issuer into Securities for such Quarterly Payment Date.

(b) If a prepayment pursuant to Section 8 or if a PIK Option (as defined below) exercised in accordance with Section 14.4, the Issuer shall recalculate the remaining Quarterly Payment Amounts for each Note by using the Amortization Formula and update Schedule C. Upon the Issuer's delivery of such updated Schedule C to the Paying Agent, such Schedule C shall be deemed amended and restated accordingly and shall become a part of this Agreement. The Paying Agent shall deliver each updated Schedule C to each Holder promptly upon its receipt of such updated Schedule C from the Issuer.



#### **14.4 Payment in Kind Option.**

The Issuer may, at its option on up to five (5) occasions (the “PIK Option”), in lieu of making payments of principal or interest due on the Notes (and principal or interest due on any PIK Notes, as defined below, outstanding) in cash, pay the principal due and the accrued and unpaid interest on the Notes (and any PIK Notes outstanding) by capitalization of such amounts (the “PIK Amount”), and executing and delivering to each Holder additional Notes in the form of the Notes annexed hereto as Exhibit 1 (the “PIK Notes”) in accordance with this Section 14.4. Subject to the terms and conditions of this Agreement, each Holder of a PIK Note agrees to make loans (collectively the “PIK Loans”) to the Holders of the related Note upon exercise by the Issuer of the PIK Option in an aggregate principal amount equal to the PIK Amount on such date calculated at 10% per annum. Each PIK Loan shall be evidenced by a PIK Note (adjusted to reflect the terms of this Section 14.4) payable to each Holder of a Note and representing the obligation of the Issuer to pay the principal amount of the PIK Loan with interest thereon. The PIK Note shall bear interest from the date of issuance, upon the same terms and conditions as the Notes. The Issuer shall deliver in accordance with this Agreement to each Holder executed PIK Notes on such Quarterly Payment Date in an aggregate principal amount equal to the respective PIK Loan. The Issuer shall deliver in accordance with this Agreement to each Holder executed PIK Notes on such Quarterly Payment Date in an aggregate principal amount equal to the respective PIK Loan. The Issuer shall promptly notify the Paying Agent and the Note Registrar of such exercise of the PIK Options, and shall provide the Paying Agent and the Note Registrar with an accounting of such PIK Notes issued (and copies of the actual PIK Notes issued) so that they may be accurately reflected in the Holder Register.

#### **15. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein by the Issuer Parties shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by you of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent Holder of a Note, regardless of any investigation made at any time by or on behalf of you or any other Holder of a Note. All statements contained in any Officer's Certificate or other instrument delivered by or on behalf of the Issuer pursuant to this Agreement shall be deemed representations and warranties of the Issuer under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between you and the Issuer and supersede all prior agreements and understandings relating to the subject matter hereof. The Collateral Agent, the Note Registrar and the Paying Agent shall be permitted to rely upon such representations in the performance of its duties under this Agreement.

#### **16. AMENDMENT AND WAIVER.**

##### **16.1 Requirements.**

This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Issuer and the Collateral Agent (at the direction of the

Required Holders), except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 4.1, 4.2, 4.3 or 4.4 hereof, or any defined term (as it is used therein), will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the Holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any regularly scheduled payment of principal (but not a mandatory prepayment), or reduce the rate or change the time of payment or method of computation of interest on, the Notes, (ii) change the percentage of the principal amount of the Notes the Holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8.1, 8.2, 8.3, 11(a), 11(b), 12 or 16.

#### 16.2 Solicitation of Holders of Notes.

(a) Solicitation. The Issuer will provide each Holder (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, but in any event at least seven (7) Business Days to enable such Holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Issuer will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 16 to each Holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Holders.

(b) Payment. The Issuer will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Holder as consideration for or as an inducement to the entering into by any Holder or any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each Holder of Notes then outstanding even if such Holder did not consent to such waiver or amendment.

#### 16.3 Binding Effect, etc.

Any amendment or waiver consented to as provided in this Section 16 applies equally to all Holders and is binding upon them and upon each future Holder and upon the Issuer without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Issuer and any Holder or the Collateral Agent, nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of such Holder or the Collateral Agent. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

#### 16.4 Notes held by Issuer, etc.

Solely for the purpose of determining whether the Holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have

directed the taking of any action provided herein or in the Notes to be taken upon the direction of the Holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Issuer or any of its Subsidiaries shall be deemed not to be outstanding.

#### 17. NOTICES.

Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including e-mail, telegraphic, telex, telecopier or cable communication) and e-mailed, mailed, telegraphed, telexed, telecopied, cabled or delivered to the intended recipient at the address given below:

(i) if to you or your nominee, to you or it at the address specified for such communications in Schedule A, or at such other address as you or it shall have specified to the Issuer and Collateral Agent in writing,

(ii) if to any other Holder, to such Holder at such address as such other Holder shall have specified to the Issuer and Collateral Agent in writing;

(iii) if to the Issuer, to the Issuer at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240, or at such other address as the Issuer shall have specified to each Holder in writing; or

(iv) if to the Collateral Agent, the Note Registrar or the Paying Agent at 601 Travis Street, 16th Floor, Houston, Texas, 77002, Attn: Global Corporate Trust -- HFP Asset Funding II, telephone -- (713) 483-6000, telecopy -- (713) 483-6001 or such other address as the Issuer shall have specified to the Issuer and each Holder in writing.

Any such notice or communication shall be deemed to have been given or made as of the date so delivered, if delivered personally or by overnight courier; when answered back, if telexed; when receipt is acknowledged, if telecopied or e-mailed; and five (5) calendar days after mailing if sent by registered or certified mail (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee).

#### 18. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by you at the Initial Closing Date and the Subsequent Closing Date (except the Notes themselves) or otherwise required pursuant to this Agreement after the date of the Closing,, and (c) financial statements, Officer's Certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and you may destroy any original document so reproduced. The Issuer agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall

likewise be admissible in evidence. This Section 18 shall not prohibit the Issuer or any other Holder from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

## **19. MISCELLANEOUS.**

### **19.1 Successors and Assigns.**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent Holder) whether so expressed or not.

### **19.2 Payments Due on Non-Business Days.**

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

### **19.3 Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

### **19.4 Construction.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

### **19.5 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**19.6 Governing Law.**

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

**20. COLLATERAL AGENCY.**

**20.1 Appointment of Collateral Agent.**

(a) The Holders hereby appoint The Bank of New York Mellon Trust Company, National Association as its Collateral Agent in accordance with the terms of this Agreement, and The Bank of New York Mellon Trust Company, National Association hereby accepts such appointment. The Holders hereby direct the Collateral Agent, for the benefit of the Holders, to hold a security interest in and continuing Lien on, and the Collateral Agent hereby agrees to hold on behalf of the Holders, a security interest in and continuing Lien on, all of the Holders' right, title and interest in, to and under the following property, in each case whether now owned or existing, or hereafter acquired or arising, and wherever located:

(i) all Collateral; and

(ii) all proceeds, profits, rents, products, earnings, interest, dividends (whether in the form of cash, securities, instruments or other property) and distributions (whether of rights, options, stock, warrants, securities or other property) of any of the foregoing.

(b) The Collateral Agent shall promptly execute and deliver all instruments and documents prepared for its execution, including, without limitation, the Security Documents, and, at the Holders' expense, take all further action that the Holders may reasonably request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted under the Security Documents or to enable the Collateral Agent to exercise and enforce its rights and remedies under this Agreement or under such Security Documents with respect to any Collateral, including (without limitation) executing and filing (when and as required by the Required Holders) such financing or continuation statements, or amendments thereto, and executing and delivering such other agreements, instruments, endorsements, powers of attorney or notices, as the Required Holders may reasonably request in order to perfect and preserve the security interests granted or purported to be granted under the Security Documents. The Collateral Agent shall not be required to file any financing statements, continuation statements, to give notices to account debtors, obligors or take any other action whatsoever to perfect or continue any security interest in the Collateral.

**20.2 Representations and Warranties of Collateral Agent.**

(a) The Collateral Agent has the corporate power to execute, deliver and perform its obligations under this Agreement; and



(b) This Agreement is the valid and legally binding obligation of the Collateral Agent.

#### 20.3 Right of Resignation.

The Collateral Agent may at any time resign hereunder by giving written notice of its resignation to the Issuer and the Holders at least thirty (30) days prior to the date specified for such resignation to take effect, and upon the effective date of such resignation, the Collateral shall be delivered by it to such Person as may be designated in writing by the Required Holders, whereupon all the Collateral Agent's obligations hereunder shall cease and terminate. If no such Person shall have been designated by such date then the retiring Collateral Agent may, on behalf of the Holders, appoint a successor Agent from among the Holders and thereafter, all obligations of the Collateral Agent hereunder shall, nevertheless, cease and terminate. The Collateral Agent's sole responsibility thereafter shall be to keep safely all Collateral then held by it and to deliver the same to such Person designated by them or by the Required Holders, as specified above or in accordance with the direction of a final order or judgment of a court of competent jurisdiction.

#### 20.4 Indemnification and Fees.

(a) The Issuer Parties each agree, jointly and severally, to indemnify, defend and hold harmless the Collateral Agent and each Holder, and their respective officers, directors, employees and agents (each, an "Indemnitee"), from and against any and all losses, claims, damages, demands, reasonable expenses and costs (including the reasonable fees, charges and disbursements of counsel for any Indemnitee), causes of action, judgments or liabilities that may be incurred by any of them ("Indemnified Losses") arising, directly or indirectly, out of, in connection with, or as a result of (i) the execution and delivery of this Agreement, any other Related Document or any agreement or instrument contemplated hereby or thereby, the performance the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or in the case of the Collateral Agent, the acceptance or appointment, and performance of duties hereunder or thereunder, and (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, based on contract, tort or any other theory, whether brought by a third party or by any Issuer Party or its Subsidiary, and regardless of whether any Indemnitee is a party thereto, including the reasonable out of pocket legal costs and expenses as such expenses are incurred (including, without limitation, the expenses of any experts, counsel or agents) of investigating, preparing for or defending itself against any such claim, litigation, investigation or proceeding; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Issuer Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Related Document, if any Issuer Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. The Collateral Agent shall not be under any duty whatsoever to, institute or defend any legal proceedings which relate to the Collateral.

(b) To the extent that any Issuer Party for any reason fails to indefeasibly pay or reimburse the Collateral Agent for Indemnified Losses within 15 Business Days of the Collateral Agent's delivery of written notice to an Issuer Party of such Indemnified Losses required under clause (a) above to be paid by an Issuer Party to the Collateral Agent (or any sub-agent thereof) or any of its officers, directors, employees and agents, each Holder severally agrees to pay or reimburse to the Collateral Agent (to the extent not paid or reimbursed by the Issuer Parties hereunder and without limiting the obligations of any Issuer Party hereunder) such Holder's share (on a pro rata basis based on the outstanding principal balance of each Holder's Note) for such Indemnified Losses. If any Holder fails to pay or reimburse the Collateral Agent for Indemnified Losses within 15 Business Days of the day on which the Collateral Agent has delivered written notice to any such Holder of any Issuer Party's failure to pay or reimburse the Collateral Agent for such Indemnified Losses, the Collateral Agent may pay or reimburse itself for such Indemnified Losses from the Collateral.

(c) To the fullest extent permitted by applicable law, no Issuer Party shall assert, and each Issuer Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Related Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Related Documents or the transactions contemplated hereby or thereby.

(d) All amounts due under this Section shall be payable not later than 15 Business Days after demand therefore.

(e) The obligations set forth in this Section 20.4 shall survive the termination of this Agreement, the replacement of any Holder, or the resignation or removal of the Collateral Agent.

(f) The Collateral Agent shall be obligated only for the performance of such duties, responsibilities and obligations as are specifically set forth in this Agreement and no duties, responsibilities or obligations shall be inferred or implied. The Collateral Agent may conclusively rely and shall be fully protected in acting or refraining from acting on any written notice, request, waiver, instruction, consent or instrument reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Collateral Agent shall not be subject to, nor required to comply with, any other agreement between or among any or all of the parties hereto or to which any party hereto is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance with this Agreement) from any party hereto or any entity acting on its behalf. The Collateral Agent shall not be liable with respect to any action taken or omitted to be taken by it hereunder (or under any Security Document to which it is a party), in good faith in accordance with the direction of the Required Holders and each Holder agrees to promptly provide the Collateral Agent with any direction or instruction requested or otherwise deemed necessary or

advisable by the Collateral Agent in order to perform its duties and obligations hereunder. The Collateral Agent shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder. The Collateral Agent shall have no duty to determine or inquire into the happening or occurrence of any event or contingency, and it is agreed that their duties are purely ministerial in nature. The Collateral Agent may consult with and obtain advice from legal counsel selected with due care (which may be in house counsel) as to any provision hereof or its duties hereunder, and the Collateral Agent shall not be liable for any action taken or omitted by it, except for gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment, in good faith and reasonably believed by it to be authorized hereby, nor for action taken or omitted by it in accordance with the advice of such counsel.

(g) The Issuer Parties agree, jointly and severally, to pay to the Collateral Agent the fees as set forth in the Collateral Agent's fee proposal. The Issuer Parties also agree, jointly and severally, to reimburse the Collateral Agent for its reasonable expenses, including reasonable attorney's fees incurred in connection with the negotiation, drafting and performance by it of the services rendered by it pursuant to the provisions of this Agreement and the Security Documents to which the Collateral Agent is a party. Any additional services beyond those specified in this Agreement and the Security Documents to which the Collateral Agent is a party, or activities requiring excessive administrator time or out of pocket expenses, shall be deemed extraordinary expenses for which related costs, transaction charges and additional fees will be billed at the Collateral Agent's standard charges for such items. The Issuer Parties' obligation to pay the Collateral Agent's fees and expenses shall survive the termination of this Agreement and the Security Documents to which the Collateral Agent is a party.

#### **20.5 Binding Effect.**

Each Holder agrees that (i) any action taken by Collateral Agent or the Required Holders (or, if expressly required hereby, a greater proportion of the Holders) in accordance with the provisions of the Note, this Agreement or the Security Documents, (ii) any action taken by Collateral Agent in reliance upon the instructions of Required Holders (or, where so required, such greater proportion) and (iii) the exercise by Collateral Agent or the Required Holders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Holders.

#### **20.6 Delegation of Rights and Duties.**

Collateral Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any of the Notes, this Agreement or any Security Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Holder). Any such Person shall be entitled to the same benefits, rights and protections as those provided in this Section 20 to the Collateral Agent.

#### 20.7 Release of Liens.

Notwithstanding anything to the contrary herein or in any of the Security Documents, the Collateral Agent and the Holders agree and acknowledge that: (i) upon the consummation of any Disposition permitted hereunder, all Liens created by the Security Documents on the Collateral which is disposed of in connection therewith shall be promptly released by Collateral Agent upon request of the relevant Issuer Party; and (ii) upon the maturity and repayment in full of the Notes, all Liens under the Security Documents shall thereupon terminate and the Collateral Agent and the Holders agree to promptly thereafter deliver to the relevant Issuer Party such Collateral as may be in the possession of the Collateral Agent or any Holder (or any other Person on their behalf). In connection with any release or termination of the Liens on the Collateral, Collateral Agent, or the Holders as contemplated by this Section 20.7, at the relevant Issuer Party's request, the Collateral Agent (being hereby authorized by the Holders to do so) shall promptly execute and deliver any instruments or documents reasonably requested to acknowledge the release or termination of such Liens and to effect the removal or cancellation of such Liens.

#### 20.8 Proof of Claims.

(a) In case of the pendency of any proceeding under any bankruptcy or other debtor relief law or any other judicial proceeding relative to any Issuer Party, Collateral Agent (irrespective of whether the principal of any Note shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Collateral Agent or any Holder shall have made any demand on Issuer) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file proofs of claim for the whole amount of the principal and interest owing and unpaid in respect of the Notes and all other obligations that are owing and unpaid under this Agreement and any Related Document and to file such other documents as may be necessary or advisable in order to have the claims of the Holders and Collateral Agent (including any claim for costs expenses, compensation, fees expenses, disbursements and advances of the Holders and Collateral Agent and their respective agents and counsel including as set forth herein) allowed in such judicial proceeding, and (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same. Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to Collateral Agent and, if Collateral Agent shall consent to the making of such payments directly to the Holders, to pay to the Holders any amount due for costs, expenses, compensation, fees, disbursements and advances of the Holders and Collateral Agent and their respective agents and counsel including as set forth herein). The permissive right of the Collateral Agent to act hereunder shall not impose upon the Collateral Agent any affirmative duty to so act.

(b) Nothing contained herein shall be deemed to authorize Collateral Agent to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes and any obligations hereunder or under any Related Document or the rights of any Holder to authorize Collateral Agent to vote in respect of the claim of any Holder or in any such proceeding.

#### **20.9 Reliance on Instructions.**

(a) The Collateral Agent may, but is not required to, rely upon and comply with instructions and directions sent by email or facsimile (or any other reasonable communication), by persons believed by the Collateral Agent in good faith to be authorized to provide such instructions or direction; provided, however, that the Collateral Agent may require such additional evidence, confirmation or certification from any such party or parties as the Collateral Agent, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(b) The Collateral Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured email, facsimile transmission or other similar unsecured electronic methods, provided, however, that each of the Issuer Parties and the Holders shall provide to the Collateral Agent an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If any of the Issuer Parties or the Holders elects to give the Collateral Agent email or facsimile instructions (or instructions by a similar electronic method) and the Collateral Agent in its discretion elects to act upon such instructions, the Collateral Agent's understanding of such instructions shall be deemed controlling. The Collateral Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Collateral Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer Parties (or the Holders, as applicable) agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Collateral Agent, including without limitation the risk of the Collateral Agent acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

#### **20.10 Enforcement of Security Documents.**

Each Holder (or the Collateral Agent upon written Direction of the Required Holders) shall have the right to enforce the terms of any Security Documents against the Issuer and any Subsidiary of the Issuer that is a party to such Security Document.

\* \* \* \* \*



If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Issuer, whereupon the foregoing shall become a binding agreement between you and the Issuer.

Very truly yours,

HIGHLAND FINANCIAL PARTNERS, L.P.

By \_\_\_\_\_  
Name:  
Title:

The foregoing is hereby agreed to  
as of the date thereof.

HFP ASSET FUNDING II, LTD.

By \_\_\_\_\_  
Name:  
Title:

HFP ASSET FUNDING III, LTD.

By \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, NATIONAL ASSOCIATION,  
as Collateral Agent, Note Registrar and Paying Agent

By \_\_\_\_\_  
Name:  
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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The foregoing is hereby agreed to  
as of the date thereof.

HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: Highland CDO Opportunity Fund GP, L.P., its general partner  
By: Highland CDO Opportunity Fund GP, LLC, its general partner  
By: Highland Capital Management, L.P. its sole member  
By: Strand Advisors, Inc., its general partner

By \_\_\_\_\_  
Name:  
Title:

HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: Highland General Partner LP, its general partner  
By: Highland GP Holdings LLC, its general partner  
By: Highland Capital Management, L.P., its sole member  
By: Strand Advisors, Inc., its general partner

By \_\_\_\_\_  
Name:  
Title:

HIGHLAND CREDIT OPPORTUNITIES CDO L.P.

By: Highland Credit Opportunities CDO GP, L.P., its general partner  
By: Highland Credit Opportunities CDO GP, LLC, its general partner  
By: Highland Capital Management, L.P., its sole member  
By: Strand Advisors, Inc., its general partner

By \_\_\_\_\_  
Name:  
Title:

HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: Highland Crusader Fund GP, L.P., its general partner  
By: Highland Crusader GP, LLC, its general partner  
By: Highland Capital Management, L.P. its sole member  
By: Strand Advisors, Inc., its general partner

By \_\_\_\_\_  
Name:  
Title:

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HIGHLAND CREDIT OPPORTUNITIES HOLDING CORPORATION

By \_\_\_\_\_  
Name:  
Title:

HIGHLAND CRUSADER HOLDING CORPORATION

By \_\_\_\_\_  
Name:  
Title:

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SCHEDULE A

INFORMATION RELATING TO PURCHASERS

Name and Address of Purchaser*	Description of Purchase Price Asset	Market Value of Purchase Price Asset	Principal Amount of Notes to be Purchased
Highland CDO Opportunity Master Fund, L.P.	Each of the assets listed under the name "CDO Opportunity Fund" on page 1 of Schedule E	\$52,834,564.00**	\$47,734,564.00
Highland Credit Opportunities CDO, L.P.	Each of the assets listed under the name "CREDIT OPS" on page 1 of Schedule E	\$6,616,429.00	\$6,616,429.00
Highland Credit Strategies Master Fund, L.P.	Each of the assets listed under the name "CREDIT STRAT" on page 1 of Schedule E	\$34,106,429.00	\$34,106,429.00
Highland Crusader Offshore Partners, L.P.	Each of the assets listed under the name "CRUSADER" on page 2 of Schedule E and denoted with "**"	\$59,295,955.00	\$59,295,955.00
Highland Crusader Offshore Partners, L.P.	Each of the assets listed under the name "CRUSADER" on page 2 of Schedule E and denoted with "***"	\$55,488,000.00	\$55,488,000.00
Highland Crusader Holding Corporation	Each of the assets listed under the name "Crusader" on page 2 of Schedule E	\$138,625,041.00	\$138,625,041.00
Highland Credit Opportunities Holding Corporation	Each of the assets listed under the name "Credit Ops" on Schedule E	\$29,592,263.00	\$29,592,263.00

\* The address for each Purchaser is 13455 Noel Road, 8th Floor, Dallas, Texas, 75240.

\*\* Highland CDO Opportunity Master Fund, L.P. is transferring purchase price assets with a market value that is higher than the principal amount of the Note it is purchasing in exchange for the Issuer's forgiveness of a prior loan that is not a part of this transaction.

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Schedule A

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SCHEDULE B

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**"Affiliate"** means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of the Issuer.

**"Amortization Formula"** means the following formula which shall be used to recalculate Quarterly Payment Amounts:  $\text{Quarterly Payment Amount} = L[c(1+c)^n]/[(1+c)^n - 1]$

L = the current outstanding principal amount of the Note.

c = quarterly interest rate, after the first payment period 2.5% (10%/4).

n = remaining payment periods on the Notes.

**"Business Day"** means any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in Dallas, Texas or New York, New York are required or authorized to be closed.

**"Capital Lease"** means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

**"CLO Securities"** means any Collateral described on Schedule E as "CLO Mezz" or "CLO Equity" securities.

**"Closing"** is defined in Section 3.

**"Closing Date"** the Initial Closing Date or the Subsequent Closing Date, as applicable.

**"Code"** is defined in Section 14.1(b).

**"Collateral"** means (i) the items identified on Schedule E as debt securities or life settlement contracts, (ii) the Equity Interests of HFP Asset Funding II, Ltd., (iii) the Equity Interests of HFP Asset Funding III, Ltd., (iii) the Securities Account, (iv) the Life Settlements Account and (v) any item from time to time included as collateral under any Security Document, provided, however, that any item or asset that is transferred or disposed in accordance with the terms of this Agreement shall no longer be Collateral as of the date of such transfer or disposal.

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**"Collateral Agent"** means The Bank of New York Mellon Trust Company, National Association, and its permitted successors and assigns.

**"Default"** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**"Default Rate"** means that rate of interest that is 2.00% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes.

**"Disposition"** or **"Dispose"** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

**"Environmental Laws"** means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**"Equity Interests"** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

**"Event of Default"** is defined in Section 11.

**"Existing Agreement"** means the Note Purchase Agreement dated as of September 26, 2008, among the Issuer Parties and the Purchasers, as amended by Amendment No. 1 to the Note Purchase Agreement dated as of the Subsequent Closing Date among the Issuer Parties and the Purchasers.

**"GAAP"** means generally accepted accounting principles as in effect from time to time in the United States of America.

**"Governmental Authority"** means

(a) the government of

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(i) the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which the Issuer or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Issuer or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**"Guaranty"** means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

**"Holder"** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Issuer pursuant to Section 13.1.

**"Holder Register"** is defined in Section 13.1.

**"Indebtedness"** with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable Preferred Stock;

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(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) Swaps of such Person; and

(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

**"Indemnified Losses"** is defined in Section 20.4.

**"Indemnatee"** is defined in Section 20.4.

**"Initial Closing Date"** is defined in the first paragraph of this Agreement.

**"Investment"** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

**"Issuer"** is defined in the first paragraph of this Agreement.

**"Issuer Party"** means the Issuer, and each of its Subsidiaries that from time to time beneficially owns or holds any Collateral.

**"Lien"** means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

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**"Life Settlements"** means the items identified on Schedule E as life settlement contracts.

**"Life Settlements Account"** means an account established with the Collateral Agent pursuant to an account control agreement between the Collateral Agent and HFP Asset Funding III, Ltd., to which Collateral consisting of Life Settlements and proceeds of such Collateral shall be credited from time to time.

**"Material"** means material in relation to the business, operations, affairs, financial condition, assets, or properties of the Issuer and its Subsidiaries taken as a whole.

**"Material Adverse Effect"** means a material adverse effect on (a) the business, operations, financial condition, assets or properties of the Issuer and its Subsidiaries taken as a whole, or (b) the ability of any Issuer Party to perform its obligations under the Related Documents, or (c) the validity or enforceability of the Related Documents.

**"Notes"** is defined in Section 1.

**"Note Registrar"** means The Bank of New York Mellon Trust Company, National Association, and its permitted successors and assigns.

**"Officer's Certificate"** means a certificate of a Senior Financial Officer or of any other officer of the Issuer whose responsibilities extend to the subject matter of such certificate.

**"Paying Agent"** means The Bank of New York Mellon Trust Company, National Association, and its permitted successors and assigns.

**"Person"** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

**"PIK Amount"** is defined in Section 14.4.

**"PIK Loan"** is defined in Section 14.4.

**"PIK Option"** is defined in Section 14.4.

**"PIK Notes"** is defined in Section 14.4.

**"Preferred Stock"** means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such corporation.

**"property"** or **"properties"** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

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**"Purchaser"** means a purchaser listed on Schedule A.

**"Quarterly Payment Amount"** means the amount of principal and interest on the Notes for each Quarterly Payment Date as set forth in the amortization table attached hereto as Schedule C.

**"Quarterly Payment Date"** means commencing with February 15, 2009 and ending with November 15, 2018, each February 15, May 15, August 15 and November 15.

**"Restatement Date"** is defined in the first paragraph of this Agreement.

**"Related Documents"** means, the Security Documents, the Notes, the Guarantees, this Agreement and any fee letter (regarding the transactions contemplated by this Agreement) among any Issuer Party and The Bank of New York Mellon Trust Company, National Association.

**"Required Holders"** means, at any time, the Holders of more than 50%, by principal amount, of the Notes at the time outstanding.

**"Responsible Officer"** means any Senior Financial Officer or any other officer of the Issuer with responsibility for the administration of the relevant portion of this agreement.

**"Restricted Payment"** means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

**"Securities Act"** means the Securities Act of 1933, as amended from time to time.

**"Securities Account"** means a securities account established with the Collateral Agent pursuant to an account control agreement between the Collateral Agent and HFP Asset Funding II, Ltd., to which Collateral other than the Collateral consisting of Life Settlements and proceeds of such Collateral shall be credited from time to time.

**"Security Documents"** means the security agreement; the assignment of account/control agreement, the pledge agreement, and such other agreements, instruments or documents executed from time to time, that create or purports to create a Lien in favor of the Holders (or the Collateral Agent on behalf of the Holders), in each case in a form that is reasonably acceptable to the Holders necessary to grant a security interest to in the Collateral, or Equity Interests of Subsidiaries of Issuer holding such Collateral (or accounts in which such Collateral is held).

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**"Senior Financial Officer"** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Issuer.

**"Significant Subsidiary"** means, with respect to any Person, a Subsidiary that meets the any of the following conditions: (a) such Person and its other Subsidiaries' investment in and advances to such Subsidiary exceed 10% of the total assets of such Person and its Subsidiaries consolidated as of the end of the most recently completed fiscal year; (b) such Person and its other Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of such Subsidiary exceeds 10% of the total assets of such Person and its Subsidiaries consolidated as of the end of the most recently completed fiscal year; or (c) such Person and its other Subsidiaries' equity in the income from continuing operations before taxes, extraordinary items and cumulative effect of a change in accounting principle of such Subsidiary exceeds 10% of such income of such Person and its Subsidiaries consolidated as of the end of the most recently completed fiscal year.

**"Solvent"** means, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**"Subsequent Closing Date"** is defined in the first paragraph of this Agreement.

**"Subsidiary"** means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of the Issuer.

**"Swaps"** means, with respect to any Person, payment obligations with respect to interest rate swaps, currency swaps and similar obligations obligating such Person to make payments, whether periodically or upon the happening of a contingency. For the purposes of

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this Agreement, the amount of the obligation under any Swap shall be the amount determined in respect thereof as of the end of the then most recently ended fiscal quarter of such Person, based on the assumption that such Swap had terminated at the end of such fiscal quarter, and in making such determination, if any agreement relating to such Swap provides for the netting of amounts payable by and to such Person thereunder or if any such agreement provides for the simultaneous payment of amounts by and to such Person, then in each such case, the amount of such obligation shall be the net amount so determined.

**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary one hundred percent (100%) of all of the Equity Interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Issuer and the Issuer’s other Wholly-Owned Subsidiaries at such time.

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SCHEDULE C

POST CLOSING DELIVERIES

1. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive Guarantees, duly executed and delivered by each Subsidiary of Issuer.
2. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive a security agreement duly executed and delivered by the relevant Issuer Parties holding Collateral.
3. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive evidence of creation of a Securities Account in the name of one or more Issuer Parties;
4. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive evidence of creation of a Life Settlements Account in the name of one or more Issuer Parties;
5. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive duly executed and delivered assignments of accounts and/or control agreements relating to any deposit or securities account of Issuer or any Subsidiary in which Collateral is to be held including the Securities Account and the Life Settlements Account in favor of Holders.
6. As soon as practicable (but no longer than 195 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive assignments as collateral of the Life Settlements in favor of the Holders.
7. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive searches of Uniform Commercial Code ("UCC") filings (or their equivalent) in each jurisdiction where a filing has been or would need to be made in order to perfect the Holders' security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist, or, if necessary, copies of proper financing statements, if any, filed on or before the date hereof necessary to terminate all security interests and other rights of any Person in any Collateral previously granted.
8. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Issuer shall cause duly authorized UCC financing statements, and any amendments thereto, for each appropriate jurisdiction as is necessary, in Holder's discretion, to perfect the security interests of Holders in the Collateral.
9. As soon as practicable (but no longer than 165 days after the Initial Closing Date, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive a favorable opinion of each of Orrick Herrington and Maples and Calder, counsel to the Issuer Parties, covering such matters relating to the transactions contemplated hereby as reasonably requested by counsel to the Holders, and in a form reasonably acceptable to Holders.

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Schedule C

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SCHEDULE D

AMORTIZATION TABLE

[SEE ATTACHMENT]

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Schedule D

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SCHEDULE E

DESCRIPTION OF COLLATERAL

[SEE ATTACHMENT]

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Schedule E

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EXHIBIT 1

[FORM OF NOTE]

HIGHLAND FINANCIAL PARTNERS, L.P.

[ ]% SENIOR SECURED NOTE DUE [ ], [ ]

No. [ ]  
\$[ ]

[Date]

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at [ ] or at such other place as the Issuer shall have designated by written notice to the Holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Amended and Restated Note Purchase Agreement, dated as of December 22, 2008 (as from time to time amended, the "Note Purchase Agreement"), among the Issuer Parties, the Collateral Agent, the Paying Agent, the Note Registrar and the Holders named therein and is entitled to the benefits thereof. Each Holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered Holder hereof or such Holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

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Exhibit 1

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EXHIBIT 1

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By \_\_\_\_\_  
Name:  
Title:

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Exhibit 1

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EXHIBIT 2

[FORM OF NOTE ASSIGNMENT]

ASSIGNMENT  
OF  
10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2008

FOR VALUE RECEIVED [INSERT NAME OF ASSIGNOR] (THE "ASSIGNOR") HEREBY SELLS, ASSIGNS AND TRANSFERS UNTO [INSERT NAME OF ASSIGNEE] (THE "ASSIGNEE"), WITH AN ADDRESS FOR NOTICES LOCATED AT [INSERT ADDRESS OF ASSIGNEE] A [ ]% INTEREST IN THE NOTE ATTACHED HERETO AND DOES HEREBY IRREVOCABLY CONSTITUTE AND APPOINT THE [INSERT NAME OF ASSIGNEE] ATTORNEY TO TRANSFER THE SAID PERCENTAGE OF THE ATTACHED NOTE ON THE NOTE REGISTER MAINTAINED PURSUANT TO THE TERMS OF THE NOTE PURCHASE AGREEMENT (AS DEFINED BELOW) WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

THE SIGNATURE OF THE ASSIGNOR ON THIS ASSIGNMENT, IF MADE BY AN INDIVIDUAL, MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER. IF THIS ASSIGNMENT IS MADE BY A CORPORATION OR OTHER ENTITY (AND NOT AN INDIVIDUAL), THIS ASSIGNMENT MUST BE EXECUTED ON BEHALF OF THAT ENTITY BY A DULY AUTHORIZED REPRESENTATIVE, IN THE NAME OF THAT ENTITY AS WRITTEN UPON THE FACE OF THE ATTACHED NOTE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

THE ATTACHED NOTE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF THE AMENDED AND RESTATED NOTE PURCHASE AGREEMENT DATED AS OF DECEMBER 22, 2008 (THE "NOTE PURCHASE AGREEMENT"), AMONG HIGHLAND FINANCIAL PARTNERS, L.P., HFP ASSET FUNDING II, LTD., HFP ASSET FUNDING III, LTD. AND CERTAIN OTHER PARTIES NAMED THEREIN.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

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Exhibit 2

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EXHIBIT 2

DATED: [INSERT DATE OF TRANSFER].

[INSERT NAME OF ASSIGNOR],  
AS ASSIGNOR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE ASSIGNEE BY ACCEPTANCE OF THIS NOTE ALSO AGREES THAT IT  
SHALL BE A HOLDER OF NOTES PURSUANT TO THE NOTE PURCHASE  
AGREEMENT AND SUBJECT TO THE TERMS THEREOF.

[INSERT NAME OF ASSIGNEE],  
AS ASSIGNEE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Charge Over Shares  
in  
HFP Asset Funding II, Ltd and  
HFP Asset Funding III, Ltd**

**26 September 2008**

**Highland Financial Partners, L.P.**

**(as Chargor)**

**and**

**Highland CDO Opportunity Master Fund, L.P.  
Highland Credit Strategies Master Fund, L.P.  
Highland Credit Opportunities CDO, L.P.  
Highland Crusader Offshore Partners, L.P.  
Highland Crusader Holding Corporation  
Highland Credit Opportunities Holding Corporation**

**(as Chargees)**



**This Charge And Assignment** is made on 26th day of September 2008

**Between:**

- (1) Highland Financial Partners, L.P. a Delaware limited partnership (the "**Chargor**"); and
- (2) Highland CDO Opportunity Master Fund, L.P., a Bermudan limited partnership the registered office of which is at c/o MQ Services Ltd., Chancery Hall, 52 Reid Street, Hamilton HM 12 Bermuda ("**Chargee 1**");
- (3) Highland Credit Strategies Master Fund, L.P., a Bermudan limited partnership the registered office of which is at c/o MQ Services Ltd., Chancery Hall, 52 Reid Street, Hamilton HM 12 Bermuda ("**Chargee 2**");
- (4) Highland Credit Opportunities CDO, L.P., a Delaware limited partnership the registered office of which is at c/o Corporation Trust Company, Corporation Trust Centre, 1209 Orange Street Wilmington, DE 19801 ("**Chargee 3**");
- (5) Highland Crusader Offshore Partners, L.P., a Bermudan limited partnership the registered office of which is at c/o MQ Services Ltd., Chancery Hall, 52 Reid Street, Hamilton HM 12 Bermuda ("**Chargee 4**");
- (6) Highland Crusader Holding Corporation, a Delaware Corporation the registered office of which is at c/o Corporation Trust Company, Corporation Trust Centre, 1209 Orange Street Wilmington, DE 19801 ("**Chargee 5**"); and
- (7) Highland Credit Opportunities Holding Corporation, a Delaware Corporation the registered office of which is at c/o Corporation Trust Company, Corporation Trust Centre, 1209 Orange Street Wilmington, DE 19801 ("**Chargee 6**" and, collectively with Chargee 1, Chargee 2, Chargee 3, Chargee 4 and Chargee 5, the "**Chargees**" and, each a "**Chargee**").

**Whereas:**

- (A) Pursuant to the Note Purchase Agreement (as defined below), the Chargor has agreed to the issue and sale of Notes (as defined below) subject to the terms and conditions set out in the Note Purchase Agreement and the Notes.
- (B) It is a term of the Note Purchase Agreement that the Chargor enters into this charge and assignment of shares in each Company to secure its obligations under the Notes.

**It is agreed** as follows:

**1 Definitions and Interpretation**

- 1.1 In this Charge (except where the context otherwise requires) words and expressions shall have the same meanings assigned to them in the Note Purchase Agreement and the following words and expressions shall have the following meanings:

**"Business Day"** means any day which is not a Saturday or Sunday or a public holiday in the place or at which the notice is left or sent;

**"Charged Shares"** means the Initial Shares and all and any other shares, warrants and other securities of any kind (including loan capital) of the relevant Company now

or at any time in the future beneficially owned by the Chargor or in which the Chargor has any interest and all rights, benefits and advantages now or at any time in the future deriving from or incidental to any of the Charged Shares including:

- (a) all dividends, interest and other income paid or payable in relation to any Charged Shares; and
- (b) all shares, securities, rights, monies or other property accruing, offered or issued at any time by way of redemption, conversion, exchange, substitution, preference, option or otherwise in respect of any Charged Shares (including but not limited to proceeds of sale);

**"Chargee Representative"**

has the meaning in Clause 2 hereof;

**"Company"**

means, as the context requires, each or both of HFP Asset Funding II, Ltd. and HFP Asset Funding III, Ltd., each being an exempted company incorporated in the Cayman Islands;

**"Enforcement Event"**

means the Notes becoming immediately due and payable following a Event of Default in accordance with section 12.1 of the Note Purchase Agreement;

**"Initial Shares"**

means the securities listed in Schedule 1 which are all registered in the name of the Chargor;

**"Majority Chargee"**

means one or more Chargees holding more than 50 per cent of the Percentage Interest;

**"Notes "**

has the meaning given to it in the Note Purchase Agreement;

**"Note Purchase Agreement"**

means the Note Purchase Agreement dated 26 September 2008 for 10.00% Senior Secured Notes due November 15, 2018 between, *inter alia*, the Chargor and the purchasers thereto;

**"Percentage Interest"**

means, for each Chargee, the percentage calculated by dividing the aggregate outstanding principal balance of Notes held by such Chargee (determined in accordance with the Note Purchase Agreement) by the total aggregate outstanding principal amount of Notes (including such Chargee's Notes) (determined in accordance with the Note Purchase Agreement) and multiplying by 100;

**"Receiver"**

has the meaning given to it in Clause 10;

**"Secured Obligations"**

means all and any amounts of any kind now or in

the future, actual or contingent, due or payable (or expressed to be due or payable) (including, without limitation, any accrued or capitalised interest) by the Chargor to the Chargees under or in connection with the Notes; and

**"Security Interest"**

means any mortgage, charge, pledge, lien, encumbrance, right of set off or any security interest, howsoever created or arising.

1.2 In this Charge:

- (a) any reference to a Recital, Clause or Schedule is to the relevant Recital, Clause or Schedule of or to this Charge;
- (b) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are reenactments (whether with or without modification);
- (c) references to persons shall include companies, partnerships, associations and bodies of persons, whether incorporated or unincorporated;
- (d) the clause headings are included for convenience only and shall not affect the interpretation of this Charge;
- (e) use of the singular includes the plural and vice versa;
- (f) use of any gender includes the other gender;
- (g) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (h) references to any document or agreement are to be construed as references to such document or agreement as is in force for the time being and as amended, varied supplemented, substituted or novated from time to time.

1.3 The Recitals and Schedules form part of this Charge and shall have effect as if set out in full in the body of this Charge and any reference to this Charge includes the Recitals and Schedules.

**2 Chargee Representative and intercreditor agreements**

2.1 The Chargees shall appoint and maintain at all times, while the Charge is in force, one Chargee who shall represent and act on behalf of the Chargees in connection with all matters under this Charge (such Chargee, the **"Chargee Representative"**). The initial Chargee Representative is Highland Crusader Offshore Partners, L.P.. Thereafter, the Chargee Representative may be replaced by written resolution of the Majority Chargees. The Chargees shall promptly notify the Chargor, in accordance with Clause 20, of the identity of Chargee Representative promptly following any change to the Chargee Representative.

- 2.2 The Chargees and the Chargor agree that the Chargee Representative shall be vested with all powers, authorities and discretions of the Chargees under this Charge and shall be entitled to act exclusively for all Chargees both upon an Enforcement Event or otherwise. The Chargees and Chargor acknowledge and confirm that the Chargor shall be entitled to deal only with the Chargee Representative and shall be relieved of any liability for acting in accordance with instructions received from the Chargee Representative.
- 2.3 The Chargee Representative agrees to act in the best interests of all of the Chargees which, if there is any dispute as to any actions or proposed actions or inactions by the Chargee Representative, shall be decided by written consent of the Majority Chargees.
- 2.4 The Chargees agree that their rights under this Charge shall rank pro rata and pari passu in proportion to their respective Percentage Interests.
- 2.5 The Chargees agree that, to the extent any Chargee, receives any Shares or proceeds from the sale of such Shares or otherwise upon an Enforcement Event, in excess of such Chargee's Percentage Interest, such Chargee shall hold such excess on trust for the other Chargees in proportion to such other Chargees' Percentage Interests.
- 2.6 The Chargees and the Chargor agree that all references hereafter in this Charge to "Chargees" shall, where the context requires, mean the Chargee Representative acting on behalf of all of the Chargees.

### **3 Covenant to Pay**

The Chargor covenants with the Chargees that it will on demand pay (as principal and not merely as surety) and discharge each of the Secured Obligations when due and payable to the Chargees.

### **4 Charge**

- 4.1 The Chargor hereby charges in favour of the Chargees by way of first fixed charge as a continuing security for the full and punctual payment and discharge of the Secured Obligations, all its right, title, interest and benefit, present and future, actual and contingent accruing in, to and under the Charged Shares subject to the provisions for release of this Charge set out below.
- 4.2 Upon the Chargees being satisfied that the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, and following a written request therefor from the Chargor, the Chargees will, subject to being indemnified to their reasonable satisfaction for the costs and expenses incurred by the Chargees in connection therewith, release the security constituted by this Charge.

### **5 Covenants by the Chargor**

The Chargor covenants that, for so long as any Secured Obligations remain outstanding:

- 5.1 it shall forthwith and from time to time deposit with the Chargee Representative all certificates (if any) and other documents of title relating to the Charged Shares.
- 5.2 it shall deliver to the Chargee Representative as security in accordance with the terms of this Charge the following (on the date hereof):
- (a) the original share certificate(s) (if any) in respect of the Initial Shares;

- (b) blank, signed and undated transfers in respect of the Initial Shares in the form set out in Schedule 2; and
  - (c) shareholder proxies in favour of the Chargee Representative in the forms set out in Schedule 3.
- 5.3 it shall remain liable to perform all the obligations assumed by it in relation to the Charged Shares and the Chargees shall be under no obligation of any kind whatsoever in respect thereof or be under any liability whatsoever in the event of any failure by the Chargor to perform its obligations in respect thereof;
- 5.4 it shall promptly pay (and shall indemnify the Chargees on demand against) all calls, instalments and other payments which may be made or become due in respect of the Charged Shares and so that, in the event of default by the Chargor, the Chargees may do so on behalf of the Chargor;
- 5.5 it shall not, except with the prior written consent of the Chargees:
- (a) create or permit to exist over all or part of the Charged Shares (or any interest therein) any Security Interest (other than created or expressly permitted to be created under this Charge) whether ranking prior to, pari passu with or behind the security contained in this Charge;
  - (b) sell, assign, lend, transfer or otherwise dispose of the Charged Shares or any interest therein or attempt or agree to so dispose (other than in accordance with this Charge);
  - (c) permit any person other than the Chargor or the Chargees or the Chargees' nominee or nominees to be registered as, or become the holder of, the Charged Shares; or
  - (d) vote in favour of a resolution to amend, modify or change the memorandum and articles of association of any Company in any material way (including, but not limited to increasing or reducing the authorised or issued share capital of any Company) or to continue the Company in a jurisdiction outside the Cayman Islands;
- 5.6 save as contemplated by the Note Purchase Agreement and to the extent that the same is within the control of the Chargor (acting reasonably), no further shares in any Company will be issued without the prior consent of the Chargees;
- 5.7 it shall promptly forward to the Chargees all material notices, reports, accounts and other documents relating to the Charged Shares which it may receive from time to time (including all notices of meetings of the shareholders of any Company);
- 5.8 at any time after an Enforcement Event it shall exercise all voting and other rights and powers which may at any time be exercisable by the holder of the Charged Shares as the Chargees may in their absolute discretion direct;
- 5.9 it shall not take or accept any Security Interest from any Company or, in relation to the Secured Obligations, from any third party, without first obtaining the Chargees' written consent; and
- 5.10 unless directed in writing to do so by the Chargees it shall not prove in a liquidation or winding up of any Company until all the Secured Obligations are paid in full and if directed to prove by the Chargee (or if the Chargor otherwise receives any payment or other benefit in



breach of this Clause or Clause 5.9) the Chargor shall hold all monies received by it on trust for the Chargees to satisfy the Secured Obligations.

## **6 Representations and Warranties**

The Chargor represents and warrants to the Chargees and undertakes that:

- 6.1 the Chargor is the absolute sole legal and beneficial owner of all of the Initial Shares free of all Security Interests, encumbrances, trusts, options, rights of pre-emption, equities and claims whatsoever (save those under this Charge) and that all of the Initial Shares are fully paid up and there are no moneys or liabilities outstanding in respect of thereof;
- 6.2 the Initial Shares represent all the shares issued by the relevant Company registered in the name of the Chargor;
- 6.3 it is duly incorporated and in good standing under the laws of the jurisdiction in which it is incorporated and has and will at all times have the necessary power to enter into and perform its obligations under this Charge and has duly authorised the execution and delivery of this Charge and the performance of its obligations hereunder;
- 6.4 this Charge constitutes its legal, valid, binding and enforceable obligation and is a first priority security interest over the Charged Shares effective in accordance with its terms;
- 6.5 the execution, delivery, observance and performance by the Chargor of this Charge will (i) not require the Chargor to obtain any licences, consents or approvals and (ii) will not result in any violation to the best of the Chargor's knowledge, of any applicable law, statute, ordinance, rule, regulation, any order of any governmental or other official authority, body or agency, any judgment, order or decree of any court having jurisdiction over it, conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound;
- 6.6 it is able to pay its debts as they fall due and it has not taken any action nor have any steps been taken or legal proceedings been started or threatened in writing against it for (i) winding up, dissolution or reorganisation; (ii) the enforcement of any Security Interest over its assets; or (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its assets;
- 6.7 it is not in breach (nor would be in breach with the giving of notice, passing of time, or satisfaction of any other condition) or in default under any deed, instrument or any agreement to which it is a party or which is binding on it or any of its assets;
- 6.8 no action, litigation or administrative proceeding has been commenced (so far as it is aware having made all reasonable enquiry) or is pending or threatened in writing against it, nor is there subsisting any unsatisfied judgment or award given against it by any court, board of arbitration or other body;
- 6.9 it has obtained all the necessary authorisations and consents to enable it to enter into this Charge and the necessary authorisations and consents will remain in full force and effect at all times during the subsistence of the security constituted by this Charge; and
- 6.10 the execution, delivery, observance and performance by the Chargor of the Charge will not constitute an event of default or trigger any enforcement under any Security Interest in the

Chargor's assets nor will it result in the creation of any Security Interest over or in respect of the present or future assets of any Company.

## **7 Power of Attorney**

The Chargor hereby irrevocably and by way of security for the full and punctual payment of the Secured Obligations and the performance of its obligations under this Charge appoints the Chargee Representative as its true and lawful attorney (with full power to appoint substitutes and to sub-delegate) on behalf of the Chargor and in the Chargor's own name or otherwise, at any time and from time to time, to:

- (a) sign, seal, deliver and complete all transfers, renunciations, proxies, mandates, assignments, deeds and documents and do all acts and things which the Chargee Representative may reasonably consider to be necessary or advisable to perfect, maintain or improve its security over the Charged Shares; or
- (b) give proper effect to the intent and purposes of this Charge; or
- (c) enable or assist in any way in the exercise of any right or the enforcement thereof including any power of sale of the Charged Shares (whether arising under this Charge or implied by statute or otherwise);

provided that unless and until an Enforcement Event (and for so long as the same continues) neither the Chargee Representative nor any persons deriving title under it may do anything pursuant to this appointment.

- 7.2 The power hereby conferred shall be a general power of attorney and the Chargor hereby ratifies and confirms and agrees to ratify and confirm any instrument, act or thing which any such attorney may execute or do pursuant to and subject to Clause 6.1. In relation to the power referred to herein, the exercise by the Chargee of such power shall be conclusive evidence of its right to exercise the same.

## **8 Enforcement Event**

- 8.1 Unless and until the occurrence of an Enforcement Event:

- (a) the Chargor shall be entitled to exercise all voting rights attaching to the Charged Shares or any thereof for all purposes not inconsistent with the purposes of this Charge, any of the Secured Obligations, and of the Note Purchase Agreement;
- (b) the Chargor shall be entitled to receive and retain any and all dividends paid in respect of the Charged Shares or any thereof; and
- (c) the Chargor shall pay all calls, installments or other payments and shall discharge all other obligations, which may become due in respect of any of the Charged Shares and in an Enforcement Event, the Chargees may if they think fit make such payments or discharge such obligations on behalf of the Chargor. Any sums so paid by the Chargees in respect thereof shall be repayable on demand and pending such repayment shall constitute part of the Secured Obligations.

- 8.2 The Chargees shall not have any duty to ensure that any dividends, interest or other moneys and assets receivable in respect of the Charged Shares are duly and punctually paid, received or collected as and when the same become due and payable or to ensure that the correct amounts (if any) are paid or received on or in respect of the Charged Shares or to ensure the taking up of any (or any offer of any) stocks, shares, rights, moneys or other

property paid, distributed, accruing or offered at any time by way of redemption, bonus, rights, preference, or otherwise on or in respect of, any of the Charged Shares.

- 8.3 The Chargor shall forthwith following the occurrence of an Enforcement Event sign, seal, deliver and complete all transfers, renunciations, proxies, mandates, assignments, deeds and documents and do all acts and things which the Chargees may, in their absolute discretion, at any time and from time to time specify for enabling or assisting the Chargees:
- (a) to perfect or improve its title to and security over the Charged Shares (or any part thereof);
  - (b) to vest the Charged Shares (or any part thereof) in the Chargees or their nominee or nominees;
  - (c) to procure that the Chargees or its nominee or nominees is registered in the Register of Members of each Company in respect of the Charged Shares in that Company;
  - (d) to exercise (or enable its nominee or nominees to exercise) any rights or powers attaching to the Charged Shares;
  - (e) to sell, transfer, grant options or otherwise dispose of the Charged Shares (or any part thereof); and/or
  - (f) otherwise to enforce any of the rights of the Chargees under or in connection with this Charge.

## **9 Chargees' Rights as to Shares**

At any time after the occurrence of an Enforcement Event, the security hereby constituted shall become immediately enforceable and the rights of enforcement of the Chargees under this Charge shall be immediately exercisable upon and at any time thereafter and, without prejudice to the generality of the foregoing the Chargees without further notice to the Chargor and without prejudice to any other right or remedy available hereunder or under applicable law, forthwith become entitled:

- 9.1 solely and exclusively to exercise all voting rights attaching to the Charged Shares or any thereof and shall exercise such rights in such manner as the Chargees may in their absolute discretion determine; and/or
- 9.2 solely and exclusively to exercise all other rights and/or powers and/or discretions of the Chargor in, to and under the Charged Shares pursuant to the memorandum and articles of association of the relevant Company; and/or
- 9.3 to receive and retain all dividends, distributions, interest or other moneys or assets accruing on or in respect of the Charged Shares or any thereof and any such dividends, distributions, interest or other moneys or assets received by the Chargor after such time shall be held in trust by the Chargor for the Chargees and be paid or transferred to the Chargee on demand to be applied towards the discharge of the Secured Obligations; and/or
- 9.4 without notice to, or further consent or concurrence by, the Chargor to sell, transfer, grant options over or otherwise dispose the Charged Shares or any part thereof by such method, at such place and upon such terms as the Chargees may in its absolute discretion determine, with power to postpone any such sale and in any such case the Chargee may exercise any and all rights attaching to the Charged Shares as the Chargee in its absolute

discretion may determine and without being answerable for any loss occasioned by such sale or resulting from postponement thereof or the exercise of such rights; and/or

- 9.5 to date and deliver the documents delivered to it pursuant to this Charge hereof as it considers appropriate and to take all steps to register the Charged Shares in the name of the Chargees or their nominee or nominees and to assume control as registered owner of the Charged Shares.

## **10 Receiver**

At any time after the occurrence of an Enforcement Event the Chargees may by writing without notice to the Chargor appoint one or more person or persons as the Chargees thinks fit to be a receiver (the "**Receiver**") in relation to the Charged Shares. Where the Chargees appoint two or more persons as Receiver, the Receivers may act jointly or independently.

- 10.1 The Receiver may take such action in relation to the enforcement of this Charge including, without limitation, to sell, charge or otherwise dispose of the Charged Shares, to exercise any powers, discretion, voting or other rights or entitlements in relation to the Charged Shares and generally to carry out any other action which he may in his sole discretion deem necessary in relation to the enforcement of this Charge.
- 10.2 The Receiver shall have, in addition to the other powers set out in this Clause, the following powers:
- (a) power to take possession of, collect and get in the Charged Shares and, for that purpose, to take such proceedings as may seem to him to be expedient;
  - (b) power to raise or borrow money and grant security over the Charged Shares;
  - (c) power to appoint an attorney or accountant or other professionally qualified person to assist him in the performance of his functions;
  - (d) power to bring or defend any action or other legal proceedings in the name of and on behalf of the Chargor in respect of the Charged Shares;
  - (e) power to do all acts and execute in the name and on behalf of the Chargor any document or deed in respect of the Charged Shares;
  - (f) power to make any payment which is necessary or incidental to the performance of his functions;
  - (g) power to make any arrangement or compromise on behalf of the Chargor in respect of the Charged Shares;
  - (h) power to rank and claim in the insolvency or liquidation of each Company and to receive dividends and to accede to agreements for the creditors of each Company;
  - (i) power to present or defend a petition for the winding up of each Company; and
  - (j) power to do all other things incidental to the exercise of the foregoing powers.
- 10.3 The Receiver shall be the agent of the Chargor and the Chargor alone shall be responsible for his acts and defaults and liable on any contracts made, entered into or adopted by the



Receiver. The Chargees shall not be liable for the Receiver's acts, omissions, negligence or default, nor be liable on contracts entered into or adopted by the Receiver.

## 11 Application of Monies

11.1 All moneys received by the Chargees (and/or any Receiver) pursuant to this Charge shall be held by it upon trust in the first place to pay or make good all such expenses, liabilities, losses, costs, duties, fees, charges or other moneys whatsoever as may have been paid or incurred by the Chargees (and/or any Receiver) in exercising any of the powers specified or otherwise referred to in this Charge and the balance shall be applied in the following manner:

- (a) **FIRST:** In or towards satisfaction of any amounts in respect of the balance of the Secured Obligations as are then accrued due and payable or are then due and payable by virtue of payment demanded, on a pro rata basis in accordance with each Chargee's Percentage Interest);
- (b) **SECOND:** in retention of an amount equal to any part or parts of the Secured Obligations as are or are not then due and payable but which (in the sole and absolute opinion of the Chargees) will or may become due and payable in the future and, upon the same becoming due and payable, in or towards satisfaction thereof in accordance with the foregoing provisions of this Clause 11.1; and
- (c) **THIRD:** the surplus (if any) shall be paid to the Chargor.

11.2 The Chargees, their agents, managers, officers, employees, delegates and advisers shall not be liable for any claim, demand, liability, cost, expense, loss or damage occasioned by:

- (a) any sale or disposal of the Charged Shares or an interest in the Charged Shares; or
- (b) arising out of the exercise, or failure to exercise, any of its powers under this Charge; or
- (c) any neglect or default to pay any instalment or accept any offer or notify the Chargor of any such neglect or default; or
- (d) any other loss of whatever nature in connection with the Charged Shares.

## 12 Protection of Purchasers

No purchaser or other person dealing with the Chargees or their delegate shall be bound to see or inquire whether the right of the Chargees to exercise any of their powers has arisen or become exercisable or be concerned with notice to the contrary, or be concerned to see whether the delegation by the Chargees pursuant to the terms of this Charge shall have lapsed for any reason or been revoked.

## 13 Continuing Security and Non-Merger

13.1 The security constituted by this Charge shall be continuing and shall not be considered as satisfied or discharged by any intermediate payment or settlement of the whole or any part of the Secured Obligations or any other matter or thing whatsoever and shall be binding until all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full.



13.2 This Charge is in addition to and shall not merge with or otherwise prejudice or affect any banker's lien, right to combine and consolidate accounts, right of set-off or any other contractual or other right or remedy or any guarantee, lien, pledge, bill, note, charge or other security now or hereafter held by or available to the Chargee.

13.3 The Chargees shall not be bound to enforce any other security before enforcing the security created by this Charge.

#### **14 Currency**

14.1 For the purpose of, or pending the discharge of, any of the Secured Obligations the Chargees may, in their sole discretion, convert any moneys received, recovered or realised in any currency under this Charge (including the proceeds of any previous conversion under this Clause) from their existing currency of denomination into any other currency at such rate or rates of exchange and at such time as the Chargee thinks fit.

14.2 No payment to the Chargees (whether under any judgment or court order or otherwise) shall discharge the Secured Obligations in respect of which it was made unless and until the Chargees shall have received payment in full in the currency in which such Secured Obligations were incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such Secured Obligations expressed in that currency, the Chargees shall have a further separate cause of action against the Chargor and shall be entitled to enforce this Charge to recover the amount of the shortfall.

#### **15 Costs**

15.1 The Chargor shall on demand pay to the Chargees the amount of all reasonable costs and expenses and other liabilities (including stamp duty, and reasonable legal and out of pocket expenses) which the Chargees incurs in connection with:

- (a) the preservation or exercise (or attempted preservation or exercise) of any rights under or in connection with and the enforcement (or attempted enforcement) of this Charge; or
- (b) dealing with or obtaining advice about any matter or question arising out of or in connection with enforcing the Chargees' exercise of its rights under this Charge.

15.2 The Chargor shall pay promptly all stamp, documentary and other like duties and taxes to which this Charge may be subject or give rise and shall indemnify the Chargees on demand against any and all liabilities with respect to or resulting from any delay or omission on the part of the Chargor to pay any such duties or taxes.

#### **16 Variation and Amendment**

This Charge shall remain in full force and effect notwithstanding any amendments or variations from time to time of the Note Purchase Agreement and no variation of this Charge shall be valid unless it is in writing and signed by or on behalf of each of the parties.

#### **17 Assignment**

This Charge shall be binding upon and inure to the benefit of each party hereto and its successors in title and permitted assigns.

**18 Entire Agreement**

This Charge, the Note Purchase Agreement and the Notes constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Charge.

**19 Further Assurance**

The Chargor shall promptly execute all documents and do all things that the Chargees may reasonably specify for the purpose of:

- (a) securing and perfecting its security over or title to all or any of the Charged Shares;
- (b) preserving or protecting any of the rights of the Chargees under this Charge;
- (c) ensuring that the security constituted by this Charge and the covenants and obligations of the Chargor under this Charge shall enure to the benefit of any assignee of the Chargees; and/or
- (d) enabling the Chargees to vest all or part of the Charged Shares in its name or in the names of its nominee(s), agent or any purchaser.

**20 Notices**

- 20.1 Without prejudice to any other method of service of notices and communications provided by law, a demand or notice under this Charge shall be in writing signed by an officer or agent of the Chargee Representative or the Chargor, as the case may be, and may be served on the Chargor or the Chargee Representative, as the case may be, by hand, by post, or by facsimile transmission. Any such notice or communication shall be sent to the address or number of the Chargor and Chargee Representative as set out below:

Chargor:

Highland Financial Partners, L.P.  
13455 Noel Road, 8th Floor, Dallas, Texas 75240  
Facsimile Number: 972-628-4147  
For the attention of: General Counsel

Chargee Representative:

Highland Crusader Offshore Partners, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, TX 75240-6620  
Facsimile Number: 972-628-4147  
Telephone Number: 972-628-4100  
For the attention of: General Counsel  
With a copy to each of:

For each Chargee

Highland CDO Opportunity Master Fund, L.P.

c/o Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, TX 75240  
Attn: General Counsel  
Tel: 972-628-4100  
Fax: 972-628-4147

- 20.2 Any such notice or communication given by the Chargee Representative shall be deemed to have been received:
- (a) if sent by facsimile transmission, at the time of transmission, or the following Business Day if transmitted after normal business hours;
  - (b) if delivered personally (including being sent by courier), at the time of delivery, or the following Business Day if delivered after normal business hours; and
  - (c) if posted, on the fifth Business Day following the day on which it was properly despatched by mail courier; and
  - (d) For the avoidance of doubt, notice given under this Charge shall not be validly served if sent by email.
- 20.3 Any notice given to the Chargee Representative shall be deemed to have been given only on actual receipt by the Chargee.
- 20.4 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in Clause 20.1 (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in Clause 20.1 (or as otherwise notified by that party hereunder).

## **21 Miscellaneous**

- 21.1 All sums payable by the Chargor under this Charge shall be paid without any set off, counterclaim, withholding or deduction whatsoever unless required by law in which event the Chargor will simultaneously with making the relevant payment under this Charge pay to the Chargees such additional amount as will result in the receipt by the Chargees of the full amount which would otherwise have been receivable and will supply the Chargee promptly with evidence satisfactory to the Chargees that the Chargor has accounted to the relevant authority for the sum withheld or deducted.
- 21.2 No delay or omission on the part of the Chargees in exercising any right or remedy under this Charge shall impair that right or remedy or operate as or be taken to be a waiver of it nor shall any single, partial or defective exercise of any such right or remedy preclude any other or further exercise under this Charge of that or any other right or remedy.
- 21.3 The Chargees' rights powers and remedies under this Charge are cumulative and are not, nor are they to be construed as, exclusive of any rights, powers or remedies provided by law or otherwise and may be exercised from time to time and as often as the Chargees deem expedient.

- 21.4 Any waiver by the Chargees of any terms of this Charge or any consent or approval given by the Chargees under it shall be effective only if given in writing and then only for the purpose and upon the terms and conditions (if any) on which it is given.
- 21.5 If at any time any one or more of the provisions of this Charge is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction neither the legality, validity or enforceability of the remaining provisions of this Charge nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.
- 21.6 Any statement, certificate or determination of the Chargees as to the Secured Obligations or (without limitation) any other matter provided for in this Charge shall, in the absence of manifest error, be conclusive and binding on the Chargor.
- 21.7 The Chargor shall at all times maintain an agent for service of process in the Cayman Islands. Such agent shall be Maples Corporate Services Limited of PO Box 309, Ugland House, Grand Cayman, KY1-1104 and any writ, judgment or other notice of legal process shall be sufficiently served on the Chargor if delivered to such agent at its address set out above. The Chargor undertakes not to revoke the authority of the above agent and if, for any reason, such agent no longer serves as agent of the Chargor to receive service of process the Chargor shall promptly appoint another such agent and advise the Chargor of the new agent's name and address for service.

## **22 Law and Jurisdiction**

- 22.1 This Charge is governed by, and shall be construed in accordance with, the law of the Cayman Islands.
- 22.2 The Chargor irrevocably agrees for the exclusive benefit of the Chargee that the courts of the Cayman Islands shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Charge and for such purposes irrevocably submits to the jurisdiction of such courts.

## **23 Counterparts**

This Charge may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

In witness whereof this Charge has been executed and delivered as a Deed the day and year first above written.

EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland Financial Partners, L.P. )  
In the presence of : )



Witness: \_\_\_\_\_  
Signature: *Genny Wooten*  
Name of Witness: Genny Wooten  
Address of Witness: 1333 S Noel Rd Suite 800  
Dallas, TX 75240



EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland Credit Opportunities Holding )  
Corporation )




Signed in the presence of:

Witness:

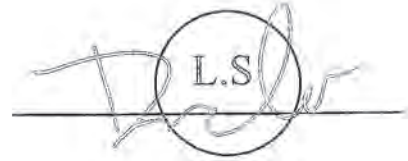
Signature:

Name of Witness:

Address of Witness:

  
Helen Kim  
13455 Noel Rd, Ste 800  
Dallas, TX 75240

EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland Crusader Holding Corporation )




Signed in the presence of:

Witness:

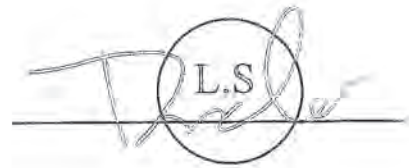
Signature:

Name of Witness:

Address of Witness:

  
Helen Kim  
13455 Noel Rd, #2800  
Dallas, TX 75240

EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland Crusader Offshore Partners, L.P. )  
By: Highland Crusader Fund GP, L.P., )  
its general partner )  
By: Highland Crusader GP, LLC, )  
its general partner )  
By: Highland Capital Management, L.P., )  
its sole member )  
By: Strand Advisors, Inc., )  
its general partner )




Signed in the presence of:

Witness:

Signature:

Name of Witness:

Address of Witness:

  
Helen Kim  
13435 Noel Rd, Ste 800  
Dallas, TX 75240

EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland Credit Opportunities CDO L.P. )  
By: Highland Credit Opportunities CDO )  
GP, L.P., its general partner )  
By: Highland Credit Opportunities CDO )  
GP, LLC, its general partner )  
By: Highland Capital Management, L.P., )  
its sole member )  
By: Strand Advisors, Inc., )  
its general partner )

Signed in the presence of:

Witness:

Signature:

Name of Witness:


Address of Witness:

Helen Kim  
13455 Noel Rd, Ste 800  
Dallas, TX 75240

EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland Credit Strategies Master Fund, L.P. )  
By: Highland General Partner LP, )  
its general partner )  
By: Highland GP Holdings LLC, )  
its general partner )  
By: Highland Capital Management, L.P., )  
its sole member )  
By: Strand Advisors, Inc., )  
its general partner )

Signed in the presence of:

Witness:

Signature: 

Name of Witness: Helen Kim

Address of Witness: 13455 Nod Rd, Ste 800  
Dallas, TX 75240



EXECUTED AS A DEED under )  
Seal by )  
as authorised signatory for and on behalf of )  
Highland CDO Opportunity Master Fund, L.P. )  
By: Highland CDO Opportunity Fund )  
GP, L.P., its general partner )  
By: Highland CDO Opportunity Fund )  
GP, LLC., its general partner )  
By: Highland Capital Management, L.P., )  
its sole member )  
By: Strand Advisors, Inc., )  
its general partner )

Signed in the presence of:

Witness:

Signature:

Name of Witness:

Address of Witness:

Helen Kim  
13455 Noel Rd, Ste 800  
Dallas, TX 75240

**Schedule 1**

<b>Amount or number of Initial Shares</b>	<b>Description of Shares</b>
1	Ordinary shares of US\$1.00 par value in HFP Asset Funding II, Ltd., a Cayman Islands exempted company of PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.
1	Ordinary shares of US\$1.00 par value in HFP Asset Funding III, Ltd., a Cayman Islands exempted company of PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

**Schedule 2**  
**Share Transfer - HFP Asset Funding II, Ltd.**

The Undersigned, Highland Financial Partners, L.P. (the "**Transferor**"), for value received does hereby transfer to \_\_\_\_\_ (the "**Transferee**"), the one (1) share standing in its name in the undertaking called HFP Asset Funding II, Ltd. to hold the same unto the Transferee.

Signed by the Transferor  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Highland Financial Partners, L.P.

Signed by the Transferee  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[**Transferee**]

Dated this        day of        200

**Share Transfer - HFP Asset Funding III, Ltd.**

The Undersigned, Highland Financial Partners, L.P. (the "**Transferor**"), for value received does hereby transfer to (the "**Transferee**"), the one (1) share standing in its name in the undertaking called HFP Asset Funding III, Ltd. to hold the same unto the Transferee.

Signed by the Transferor

in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Highland Financial Partners, L.P.

Signed by the Transferee

in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
[**Transferee**]

Dated this       day of       200

**Schedule 3**  
**Irrevocable Proxy**

**HFP Asset Funding II, Ltd.**

The undersigned, Highland Financial Partners, L.P., being the legal owner of one (1) issued share (the "**Share**") in the share capital of HFP Asset Funding II, Ltd. (the "**Company**"), a company incorporated in the Cayman Islands, hereby makes, constitutes and appoints \_\_\_\_\_ (the "**Attorney**") as the true and lawful attorney and proxy of the undersigned with full power to appoint a nominee or nominees to act hereunder from time to time and to vote the Share represented by the Share Certificate(s) of the Company at all general meetings of shareholders or stockholders of the Company with the same force and effect as the undersigned might or could do and to requisition and convene a meeting or meetings of the shareholders of the Company for the purpose of appointing or confirming the appointment of new directors of the Company and/or such other matters as may in the opinion of the Attorney be necessary or desirable for the purpose of implementing the Share Charge referred to below and the undersigned hereby ratifies and confirms all that the said attorney or its nominee or nominees shall do or cause to be done by virtue hereof.

The Share has been charged to the Attorney pursuant to a share charge dated 26 September 2008 between Highland Financial Partners, L.P. and the Chargee as defined therein (the "**Share Charge**").

This power and proxy is given to secure a proprietary interest of the donee of the power and is irrevocable and shall remain irrevocable as long as the Share Charge is in force.

**IN WITNESS** whereof this instrument has been duly executed this 26th September 2008 as a deed.

**EXECUTED** and \_\_\_\_\_ )  
**DELIVERED** as a **DEED** by \_\_\_\_\_ )  
Highland Financial Partners, L.P., \_\_\_\_\_ )

\_\_\_\_\_  
By

in the presence of:

\_\_\_\_\_  
Witness



## Irrevocable Proxy

### HFP Asset Funding III, Ltd.

The undersigned, Highland Financial Partners, L.P., being the legal owner of one (1) issued share (the "**Share**") in the share capital of HFP Asset Funding III, Ltd. (the "**Company**"), a company incorporated in the Cayman Islands, hereby makes, constitutes and appoints (the "**Attorney**") as the true and lawful attorney and proxy of the undersigned with full power to appoint a nominee or nominees to act hereunder from time to time and to vote the Share represented by the Share Certificate(s) of the Company at all general meetings of shareholders or stockholders of the Company with the same force and effect as the undersigned might or could do and to requisition and convene a meeting or meetings of the shareholders of the Company for the purpose of appointing or confirming the appointment of new directors of the Company and/or such other matters as may in the opinion of the Attorney be necessary or desirable for the purpose of implementing the Share Charge referred to below and the undersigned hereby ratifies and confirms all that the said attorney or its nominee or nominees shall do or cause to be done by virtue hereof.

The Share has been charged to the Attorney pursuant to a share charge dated 26 September 2008 between Highland Financial Partners, L.P. and the Chargee as defined therein (the "**Share Charge**").

This power and proxy is given to secure a proprietary interest of the donee of the power and is irrevocable and shall remain irrevocable as long as the Share Charge is in force.

**IN WITNESS** whereof this instrument has been duly executed this 26th September 2008 as a deed.

**EXECUTED** and )  
**DELIVERED** as a **DEED** by )  
Highland Financial Partners, L.P., )

\_\_\_\_\_  
By

in the presence of:

\_\_\_\_\_  
Witness



An Actuarial Valuation Analysis of  
a Life Settlement Portfolio  
as of October 1, 2008

**Highland Capital Management, L.P.**

September 24, 2008

Jay Vadiveloo, Ph.D, FSA, MAAA, CFA

Head of Insurance & Financial Services  
Watson Wyatt Hartford Office



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# Section 1: Introduction

## Background

Highland Capital Management, L.P. (“Highland Capital”) retained Watson Wyatt Insurance & Financial Services, Inc. (“WWIFS”) to provide actuarial consulting services related to the analysis of certain life insurance policies purchased by Highland Capital. This portfolio has been designated as the HFP portfolio. The scope of these services is described in the engagement letter dated April 2, 2008 and all the terms and conditions of that letter apply to this report.

Specifically, as requested by Ricky Sanchez and Vincent Lui from Highland Capital, our actuarial services for the HFP portfolio involved the valuation as of Oct. 1<sup>st</sup>, 2008 of 84 life insurance policies issued to 51 insureds. Most of the policies are universal life insurance policies and were purchased by Highland Capital about one year ago. The total face amount is about \$751 million. The value of a policy is defined as the actuarial present value of death benefit less the actuarial present value of future premium payments at an appropriate discount rate.

This report is not an appraisal of the market value of the HFP portfolio, but rather a valuation of the portfolio using generally accepted actuarial assumptions and methodologies. The market value of any block of business is a matter of informed judgment. The parties involved determine purchase or sale price based on their respective evaluations of all relevant factors, including:

1. The perspective of the buyer and the seller and the level of confidence they feel with respect to the assumptions underlying the projected earnings.
2. The desired rate of return.
3. The degree of urgency attached to the sale or acquisition.
4. Any significant tax or other consequences, unique to the proposed transaction, which can have an effect upon fair market value.
5. The value placed on potential synergy between the company and the purchaser’s existing organization.

## Source of Data

Information provided by Highland Capital includes the following items:

- Name of the Insured, Date of Birth, Policy Issue Date, Policy Type
- Underwriting Life Expectancy (“LE”) at purchase
- Actual premiums made since the purchase date through the valuation date
- Gender, Maturity Age and Death Benefit

- Pricing information at purchase generated from the Milliman pricing software version 7.1.1, which has expected Internal Rate of Return (IRR), Cost of Insurance (COI) rates derived from in force illustration, projected premiums based on the minimum funding principle

Our report is subject to the following qualification and limitations:

- We have assumed the genuineness and authenticity of the data
- We have relied solely on the data provided, have assumed the accuracy and completeness of the data, and have not undertaken any independent investigation or audits of the data.

### **Limitations on Use**

The distribution of our report is limited to the management of Highland Capital. Our report may not be distributed, disclosed, copied, or otherwise provided to any other party without the prior written consent of WWIFS.

Our report, or any other of our documents or work papers related to this engagement, may not be used or referenced in any filings with the Securities and Exchange Commission, the Internal Revenue Service, state insurance departments, or any other public bodies without the prior written consent of WWIFS.

Our report does not express any opinion on, or offer, or provide, any investment advice regarding the nature, merits, potential, value, suitability, or profitability of this portfolio.

Any authorized distribution of our report must be in its entirety. Questions regarding our report posed by any authorized recipient must be directed to WWIFS for review and response.

## **Section 2: Methodologies**

### **Mortality**

For each policy, our model calibrates the mortality curve to match the given LE at the time of purchase based on the 2001 VBT Ultimate tables. The 2001 VBT table is the most up-to-date mortality table that is currently being used in the pricing and valuation of life settlement policies. The choice of an appropriate base mortality table is important to ensure that the mortality slope most closely represents the actual mortality pattern of a newly-underwritten life.

We derived the impaired mortality rates for each life using the following steps.

- Based on the attained age as of the purchase date, we obtained the base mortality rates from the 2001 VBT table.
- We determined the force of mortality for each year from the base mortality rates.
- We solved for a constant multiple to the force of mortality so that the resultant impaired mortality rates produce the re-underwritten LE at the attained age as of the purchase date.
- The derived annual mortality rates are converted to monthly rates

Note that the specific impairments for each life could have varying impacts on the slope of the mortality rates, and therefore ultimate valuation. The method we have used is a common approach in valuing life settlements, but there is a range of practices and other approaches could be considered. Highland Capital adopted “sample factors” mortality improvement in the Milliman pricing software for the initial pricing at the purchase date. According to the pricing information provided to us and Vincent Lui’s conversation with Milliman, the incorporation of the “sample factors” mortality improvement only adjusts the shape of the mortality curve, not the overall indicated LE. The adjustment on the shape resulted in worse mortality in the earlier years and better mortality in the later years while the LE remains unchanged. This adjustment to the mortality slope causes the unintended result of increasing the purchase value of the policy. We have therefore removed the Milliman “sample factors” mortality improvement in our valuation of the portfolio.

We have assumed no additional mortality improvement in this analysis, since the base 2001 VBT table already encompasses mortality improvement in its construction. Also, we were not provided with any specific underwriting information on these policies other than the LE estimates at the purchase date to further refine the mortality improvement assumption in the 2001 VBT.

## Premiums

The latest in force illustrations available are as of the purchase dates. COI rates were reverse engineered in the Milliman pricing software based on the illustrated premiums and account value progression. As agreed with Highland Capital, we relied on the COI rates derived by the Milliman pricing software when they look reasonable. However, 68 out of the total 84 policies have exhibited some unusual patterns of the COI rates, such as the rates increases to a certain age and then levels off, or the rates decline etc. According to a conversation Vincent Lui had with Milliman, when there is not enough information available in the illustration to derive COI rates, the Milliman pricing software extrapolates to complete the COI rates for all ages, which might result in some unusual COI patterns. Hence, in our valuation, we applied the following rules to smooth the COI rates while maintaining a reasonably increasing pattern:

- Linear interpolation between two ages to smooth out any declining COI rates in the middle
- When linear interpolation does not produce a reasonable increasing pattern of COI rates, use 70% of the corresponding 2001 VBT Select-Ultimate base rates to

replace the Milliman COI rates, or use the relationship between the Milliman COI rates and the 2001 VBT Select-Ultimate base rates to estimate COI rates at the tails

Similar to the Milliman pricing software, future premiums are projected based on the minimum funding principle, which means at any time, the account value has to stay above the surrender charge plus a fixed dollar threshold.

Highland Capital has paid out about \$8.6 million of premiums since purchase. Our model incorporated the paid premiums into the account value progression since purchase and projected future premiums from the valuation date. Please note that for some policies, although premiums paid by Highland capital within the past year have been below the minimum needed premiums as projected in the Milliman pricing software from the purchase dates, those policies are staying in force. For these cases, to reflect the fact that the policy is still in force, we revised the starting account value as of the valuation date from negative to be equal to the surrender charge plus a fixed dollar threshold.

For multiple policies issued to the same insured, since we were only provided with historical premium payments in aggregate, we allocated premiums based on the weight of the face amount of each policy.

### **Discount Rates**

Highland Capital provided us with rates of return information associated with each policy at initial pricing. However, since our valuation process utilizes different mortality and premium assumptions as described above, the implied rate of return based on the purchase price is thus different from that as of the purchase date. We solved for the implied rates of return at purchase, and then applied them in our valuation.

## **Section 3: Results**

Highland Capital paid \$150,720,000 for the acquisition of the HFP portfolio about a year ago. Policies were acquired at different dates. Since purchase, premium payments of \$9,368,586 have been paid on this portfolio to keep policies in force. As of Oct 1<sup>st</sup>, 2008, the value of the portfolio is estimated to be \$168,217,305.

The individual policy valuation results are as follows. Please note that the filename referred in the first column is used to identify policies in our valuation process.

FILENAME	Face Amount	Purchase Price	Value as of 10/01/2008	LE at purchase (months)	Paid Premium since purchase
HFP_WW_Belzberg \$15M.xls	\$15,000,000	\$1,700,000	\$1,592,890	116.0	\$107,441
HFP_WW_Belzberg \$4M.xls	\$4,000,000	\$1,550,000	\$1,698,747	116.0	\$28,651
HFP_WW_Belzberg MET \$10M.xls	\$10,000,000	\$800,000	\$1,004,918	116.0	\$71,628
HFP_WW_Belzberg PHX \$10M.xls	\$10,000,000	\$3,400,000	\$3,811,289	116.0	\$71,628
HFP_WW_Block.xls	\$8,250,000	\$3,050,000	\$3,104,657	104.0	\$0
HFP_WW_Bonham 1 same policy.xls	\$3,500,000	\$560,000	\$912,900	127.5	\$55,283
HFP_WW_Bonham.xls	\$3,500,000	\$560,000	\$912,900	127.5	\$55,283
HFP_WW_Boschetto.xls	\$5,000,000	\$1,825,000	\$1,924,620	95.5	\$174,050
HFP_WW_Bronner.xls	\$5,000,000	\$1,500,000	\$1,656,364	70.0	\$107,038
HFP_WW_Brown.xls	\$15,000,000	\$3,175,000	\$3,054,412	114.0	\$0
HFP_WW_Chase \$13.785M.xls	\$13,785,000	\$2,700,000	\$2,810,436	93.0	\$205,537
HFP_WW_Chase \$15M.xls	\$15,000,000	\$2,500,000	\$2,774,442	100.0	\$223,652
HFP_WW_Considine (IncPremium Whole Life).xls	\$5,000,000	\$1,350,000	\$1,407,178	106.0	\$0
HFP_WW_Danzig.xls	\$5,000,000	\$1,150,000	\$1,362,855	96.0	\$111,971
HFP_WW_Davis.xls	\$15,000,000	\$3,460,000	\$3,630,420	95.5	\$40,873
HFP_WW_Deutsch 1.xls	\$12,000,000	\$1,800,000	\$2,063,801	105.5	\$468,046
HFP_WW_Deutsch 2.xls	\$5,000,000	\$1,450,000	\$1,728,283	105.5	\$195,019
HFP_WW_Deutsch 2 same policy.xls	\$5,000,000	\$1,450,000	\$1,728,283	105.5	\$195,019
HFP_WW_Diller 1.xls	\$5,000,000	\$500,000	\$654,438	111.5	\$78,000
HFP_WW_Diller 2.xls	\$5,000,000	\$500,000	\$654,438	111.5	\$78,000
HFP_WW_Diller 3.xls	\$5,000,000	\$550,000	\$706,456	111.5	\$78,000
HFP_WW_Diller 4.xls	\$5,000,000	\$1,600,000	\$1,765,190	111.5	\$78,000
HFP_WW_Exley.xls	\$29,000,000	\$11,180,000	\$11,564,697	78.0	\$0
HFP_WW_Fischer.xls	\$10,000,000	\$3,950,000	\$4,214,811	59.0	\$0
HFP_WW_Furr \$2.5M JH.xls	\$2,500,000	\$300,000	\$421,814	113.5	\$44,128
HFP_WW_Furr \$2.5M same policy.xls	\$2,500,000	\$1,100,000	\$1,311,925	113.5	\$44,128
HFP_WW_Furr \$2.5M.xls	\$2,500,000	\$1,100,000	\$1,311,925	113.5	\$44,128
HFP_WW_Furr \$5M.xls	\$5,000,000	\$900,000	\$1,134,585	113.5	\$88,257
HFP_WW_Furr \$6M.xls	\$6,000,000	\$900,000	\$1,136,660	113.5	\$105,908
HFP_WW_Glazer.xls	\$5,000,000	\$1,500,000	\$1,812,715	85.5	\$81,281
HFP_WW_Grossman.xls	\$5,000,000	\$1,310,000	\$1,478,165	110.0	\$22,600
HFP_WW_Grossman 1.xls	\$5,000,000	\$1,310,000	\$1,478,165	110.0	\$22,600
HFP_WW_Hack.xls	\$5,000,000	\$1,275,000	\$1,368,791	78.0	\$68,653
HFP_WW_Hollister.xls	\$55,000,000	\$11,860,000	\$12,506,019	130.0	\$214,203
HFP_WW_Iseli.xls	\$5,000,000	\$815,000	\$787,842	137.5	\$0
HFP_WW_Kempler_Lincoln.xls	\$5,000,000	\$1,200,000	\$1,326,642	68.5	\$172,278
HFP_WW_Kempler_NYLife.xls	\$5,000,000	\$2,350,000	\$2,439,422	68.5	\$172,278
HFP_WW_Kenly.xls	\$5,000,000	\$785,000	\$1,159,833	118.0	\$50,702
HFP_WW_King.xls	\$6,500,000	\$2,180,000	\$2,178,644	94.5	\$9,276
HFP_WW_Kivel \$10M diff pay.xls	\$10,000,000	\$1,300,000	\$1,597,297	153.0	\$116,223
HFP_WW_Kivel \$10M same policy 1.xls	\$10,000,000	\$500,000	\$789,501	153.0	\$116,223
HFP_WW_Kivel \$10M same policy 2.xls	\$10,000,000	\$500,000	\$789,501	153.0	\$116,223
HFP_WW_Kivel \$10M.xls	\$10,000,000	\$500,000	\$789,501	153.0	\$116,223
HFP_WW_Klein.xls	\$5,000,000	\$1,310,000	\$1,466,702	81.0	\$67,213
HFP_WW_Knopf \$10M.xls	\$10,000,000	\$4,800,000	\$5,239,787	101.5	\$159,109
HFP_WW_Knopf \$30M.xls	\$30,000,000	\$4,900,000	\$5,584,334	101.5	\$477,328
HFP_WW_Kolko.xls	\$5,000,000	\$1,000,000	\$1,282,061	106.5	\$90,697
HFP_WW_Krausz.xls	\$10,000,000	\$2,475,000	\$2,765,555	109.0	\$0
HFP_WW_Kriozere.xls	\$10,000,000	\$560,000	\$748,195	183.0	\$98,336
HFP_WW_Langsam.xls	\$5,000,000	\$2,150,000	\$2,450,907	62.5	\$349,823
HFP_WW_Lawson 1.xls	\$5,000,000	\$1,120,000	\$1,528,383	87.0	\$51,457
HFP_WW_Lawson 2.xls	\$5,000,000	\$1,240,000	\$1,393,642	87.0	\$51,457
HFP_WW_Leeds.xls	\$5,000,000	\$950,000	\$1,124,819	102.0	\$98,714
HFP_WW_Lesser 1 same policy 1.xls	\$5,000,000	\$900,000	\$1,037,088	92.5	\$54,114
HFP_WW_Lesser 1 same policy 2.xls	\$5,000,000	\$900,000	\$1,037,088	92.5	\$54,114
HFP_WW_Lesser 1.xls	\$5,000,000	\$900,000	\$1,037,088	92.5	\$54,114
HFP_WW_Lesser 2.xls	\$5,000,000	\$2,000,000	\$2,135,239	92.5	\$54,114
HFP_WW_Orcilly.xls	\$10,000,000	\$1,630,000	\$1,903,095	125.0	\$0
HFP_WW_Perlman.xls	\$5,000,000	\$2,100,000	\$2,250,719	55.5	\$47,271
HFP_WW_Pitt April.xls	\$10,000,000	\$2,000,000	\$2,417,797	126.5	\$25,398
HFP_WW_Pitt March.xls	\$10,000,000	\$700,000	\$1,086,390	126.5	\$25,398
HFP_WW_Poliquin.xls	\$10,000,000	\$1,925,000	\$1,822,974	134.0	\$1,347
HFP_WW_Popeil.xls	\$15,000,000	\$3,375,000	\$3,347,055	101.0	\$96,188
HFP_WW_Propheter.xls	\$10,000,000	\$2,850,000	\$2,759,957	92.0	\$0
HFP_WW_Sackler.xls	\$20,000,000	\$2,240,000	\$2,293,808	126.0	\$214,828
HFP_WW_Schwartz JH.xls	\$5,000,000	\$1,300,000	\$1,595,766	98.0	\$100,490
HFP_WW_Schwartz PHX.xls	\$5,000,000	\$500,000	\$716,403	98.0	\$100,490
HFP_WW_Shirley 1.xls	\$15,000,000	\$700,000	\$1,155,972	160.5	\$477,084
HFP_WW_Shirley 2.xls	\$15,000,000	\$800,000	\$1,268,738	160.5	\$477,084
HFP_WW_Shirley 3.xls	\$15,000,000	\$3,200,000	\$3,789,441	160.5	\$477,084
HFP_WW_Shirley 4.xls	\$25,000,000	\$900,000	\$1,333,433	160.5	\$795,140
HFP_WW_Silbiger.xls	\$5,000,000	\$950,000	\$966,445	112.0	\$39,600
HFP_WW_Singer \$3.25M.xls	\$3,250,000	\$1,225,000	\$1,436,959	70.0	\$98,162
HFP_WW_Singer \$5M.xls	\$5,000,000	\$1,125,000	\$1,508,518	70.0	\$151,018
HFP_WW_Sizer.xls	\$5,000,000	\$1,225,000	\$1,461,195	83.0	\$159,226
HFP_WW_Stawski.xls	\$5,000,000	\$610,000	\$665,565	114.0	\$70,927
HFP_WW_Stephanus 1.xls	\$10,371,931	\$2,550,000	\$2,542,011	163.0	\$0
HFP_WW_Stephanus.xls	\$10,371,931	\$650,000	\$569,873	163.0	\$0
HFP_WW_Striks \$3M.xls	\$3,000,000	\$1,100,000	\$1,293,444	85.5	\$55,548
HFP_WW_Striks \$5M same policy.xls	\$5,000,000	\$850,000	\$993,027	85.5	\$92,770
HFP_WW_Striks \$5M.xls	\$5,000,000	\$850,000	\$993,027	85.5	\$92,770
HFP_WW_White.xls	\$5,000,000	\$2,190,000	\$2,230,293	42.0	\$0
HFP_WW_Williams.xls	\$30,000,000	\$3,475,000	\$3,769,167	186.0	\$0
HFP_WW_Wynne.xls	\$5,000,000	\$550,000	\$656,971	165.5	\$81,744
<b>Total</b>	<b>\$751,028,862</b>	<b>\$150,720,000</b>	<b>\$168,217,305</b>		<b>\$9,368,586</b>



*EXECUTION COPY*

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HIGHLAND FINANCIAL PARTNERS, L.P.

\$315,970,681

10.00% Senior Secured Notes due November 15, 2018

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NOTE PURCHASE AGREEMENT

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Dated September 26, 2008

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HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% Senior Secured Notes due November 15, 2018

September 26, 2008

TO EACH OF THE PURCHASERS LISTED IN  
THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

Highland Financial Partners, L.P., a Delaware limited partnership (the  
“**Issuer**”), agrees with you as follows:

**1. AUTHORIZATION OF NOTES.**

The Issuer will authorize the issue and sale of \$315,970,681 aggregate principal amount of its 10.00% Senior Secured Notes due November 15, 2018 (the “**Notes**”, such term to include any such notes issued in substitution therefor pursuant to Section 13 of this Agreement). The Notes shall be substantially in the form set out in Exhibit 1, with such changes therefrom, if any, as may be approved by you and the Issuer. Certain capitalized terms used in this Agreement are defined in Schedule B; references to a “Schedule” or an “Exhibit” are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement. The Notes shall be secured by the Liens created by the Security Documents.

**2. SALE AND PURCHASE OF NOTES.**

Subject to the terms and conditions of this Agreement, the Issuer will issue and sell to you and you will purchase from the Issuer, at the Closing provided for in Section 3, Notes in the principal amount specified opposite your name in Schedule A at the purchase price of 100% of the principal amount thereof. The obligations of the Purchasers under this Agreement are several and not joint obligations and each Purchaser shall have no obligation to any Person for the performance or non-performance by any other Purchaser under this Agreement.

**3. CLOSING.**

The sale and purchase of the Notes to be purchased by you shall occur at the offices of the Issuer, 13455 Noel Road, 8th Floor, Dallas, Texas, 75240, at 11:59 p.m., Dallas time, at a closing (the “**Closing**”) on September 26, 2008 or on such other Business Day thereafter as may be agreed upon by the Issuer and you. At the Closing the Issuer will deliver to you the Notes to be purchased by you in the form of a single Note



(or such greater number of Notes in denominations of at least \$1 as you may request) dated the date of the Closing and registered in your name (or in the name of your nominee), against delivery by you to the Issuer (or its order) of the purchase price in the form of either immediately available funds by wire transfer, or in the form of assets having a market value equal to the purchase price as mutually agreed by the Issuer and you prior to the Closing. If at the Closing the Issuer shall fail to tender such Notes to you as provided above in this Section 3, or any of the conditions specified in Section 4 shall not have been fulfilled to your satisfaction, you may elect to be relieved of all further obligations under this Agreement, without thereby waiving any rights you may have by reason of such failure or such nonfulfillment.

#### **4. CONDITIONS TO CLOSING; COLLATERAL MATTERS; POST CLOSING DELIVERIES**

Your obligation to purchase and pay for the Notes to be sold to you at the Closing is subject to the fulfillment to your satisfaction, prior to or at the Closing, of the conditions set forth in Sections 4.1, 4.2, 4.3 and 4.4.

##### **4.1 Representations and Warranties.**

The representations and warranties of the Issuer Parties in this Agreement shall be correct when made and at the time of the Closing.

##### **4.2 Performance; No Default.**

The Issuer Parties shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing. After giving effect to the issue and sale of the Notes no Default or Event of Default shall have occurred and be continuing.

##### **4.3 Purchase Permitted By Applicable Law, etc.**

On the date of the Closing your purchase of Notes shall (i) be permitted by the laws and regulations of each jurisdiction to which you are subject and (ii) not violate any applicable law or regulation (including, without limitation, Regulation G, T or X of the Board of Governors of the Federal Reserve System). If requested by you, you shall have received an Officer's Certificate certifying as to such matters of fact as you may reasonably require to enable you to determine whether such purchase is so permitted.

##### **4.4 Proceedings and Documents.**

All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to you and your special counsel, and you and your special counsel shall have received all such counterpart originals or certified or other copies of such documents as you or they may reasonably request, which shall include but not be limited to the following:

(a) Note Purchase Agreement and Notes: This Agreement, duly executed and delivered by the Issuer Parties and Notes in favor of each holder at Closing executed and delivered by the Issuer Parties;

(b) Pledge Agreement: A share pledge agreement, pledging 100% of the Equity Interests of each Subsidiary which holds Collateral (or is contemplated to do so) and any associated certificated Equity Interests and stock powers executed in blank (to the extent applicable) as reasonably necessary to perfect a Lien on such equity interests, in addition to any evidence of registration of such pledge on the books and records of such Subsidiary, if required pursuant to Cayman law to perfect such pledge;

(c) Evidence of Authority: Such certified resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Issuer Party necessary to establish the identities of and verify the authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with any Related Document to which they are a party;

(d) Evidence of Ownership of Collateral: Such evidence of ownership of Collateral set forth on Schedule E by the Issuer Parties (or transfer to such Parties) as may be required by the holders in their reasonable judgment; and

(e) Constituent Documents: Such evidence as holders may reasonably require to verify that each Issuer Party is duly organized or formed, validly existing, in good standing and qualified to engage in business in each jurisdiction in which it is required to be qualified to engage in business, including certified copies of each such Person's Constituent Documents, certificates of good standing and/or qualification to engage in business and tax clearance certificates.

#### **4.5 Post Closing Deliveries; Further Assurances.**

(a) The items set forth on Schedule C hereto shall constitute post-closing deliveries and Issuer and its Subsidiaries shall be required to provide them on or before the dates specified for their delivery as set forth in such Schedule.

(b) The Issuer agrees, and agrees to cause its Subsidiaries to (a) enter into such documentation, post Closing as may be required such that the holders may hold any Liens in the Collateral through a collateral agent or other agent or nominee on their behalf, and shall re-execute or re-file any documentation relating to the Collateral (or make any transfers of Collateral) as may be necessary in the reasonable judgment of the holders, or any of them, to perfect Liens in favor of such agent on behalf of the holders; (b) to enter into any joinders or amendments to this Agreement or any Related Document to effectuate the same. The Issuer Parties and each holder hereby acknowledge and agree that should the holders designate such agents or nominees in writing, that such agents and nominees shall be deemed to be a "nominee" for all purposes set forth in this agreement as specified in such designation and (c) pay all fees, expenses and other amounts due and payable by Issuer in connection with the Closing, including the reasonable fees and disbursements invoiced by the holders' special counsel, Haynes and Boone, LLP.

## **5. REPRESENTATIONS AND WARRANTIES OF THE ISSUER**

The Issuer Parties each represent and warrant to you as follows, as of the date of the Closing with respect Section 5.1 through Section 5.13, and as of the effective date of the applicable Security Document with respect to Section 5.14:

### **5.1 Organization; Power and Authority.**

Such Issuer Party is a limited partnership or company limited by shares duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign company and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Issuer has the power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement, the Notes and any Related Documents it is a party to and to perform the provisions hereof and thereof. Each of the Issuer Parties on the date of Closing other than the Issuer, is a wholly-owned subsidiary of the Issuer.

### **5.2 Authorization, etc.**

Each of the Related Documents have been duly authorized by all necessary action on the part of the Issuer Parties, and this Agreement constitutes, and upon execution and delivery thereof each Note (and such other Related Documents) will constitute, a legal, valid and binding obligation of the Issuer Parties party thereto, enforceable against such Issuer Party in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### **5.3 Compliance with Laws, Other Instruments, etc.**

The execution, delivery and performance by the Issuer Parties of the Related Documents to which it is a party will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of the Issuer or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other Material agreement or instrument to which the Issuer Parties is bound or by which the Issuer Parties or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to the Issuer or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Issuer Parties.

#### **5.4 Governmental Authorizations, etc.**

No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Issuer Parties of the Related Documents, other than UCC or other similar filings to perfect security interests.

#### **5.5 Litigation; Observance of Statutes and Orders.**

(a) There are no actions, suits or proceedings pending or, to the knowledge of any Issuer Party, threatened against or affecting the Issuer Parties or any Subsidiary or any property of the Issuer Parties or any Subsidiary in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(b) Neither the Issuer Parties nor any Subsidiary is in default under any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

#### **5.6 Jurisdiction of Issuer Parties.**

The jurisdiction of organization of the Issuer is Delaware, the jurisdiction of organization of the other Issuer Parties on the Closing is the Cayman Islands, the chief executive office and principal place of business of each of the Issuer Parties is 13455 Noel Road, 8th Floor, Dallas, Texas, 75240.

#### **5.7 Taxes.**

The Issuer and its Subsidiaries have filed all income tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments payable by them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which is not individually or in the aggregate Material or (ii) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Issuer or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. The Federal income tax liabilities of the Issuer and its Subsidiaries have been determined by the Internal Revenue Service and paid for all fiscal years up to and including the fiscal year ended November 30, 2007.

#### **5.8 Title to Property; Leases.**

The Issuer Parties have good and sufficient title to their respective Material properties, in each case free and clear of Liens prohibited by this Agreement, except for those defects in title and Liens that, individually or in the aggregate, would not have a



Material Adverse Effect. All Material leases are valid and subsisting and are in full force and effect in all material respects.

#### **5.9 Licenses, Permits, etc.**

The Issuer Parties own or possess all licenses, permits, franchises, authorizations, patents, copyrights, service marks, trademarks and trade names, or rights thereto, that are Material, without known conflict with the rights of others, except for those conflicts that, individually or in the aggregate, would not have a Material Adverse Effect.

#### **5.10 Private Offering by the Issuer.**

Neither the Issuer nor anyone acting on its behalf has offered the Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers, each of which has been offered the Notes at a private sale for investment. Neither the Issuer nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of Section 5 of the Securities Act.

#### **5.11 Use of Proceeds; Margin Regulations.**

The Issuer Parties will apply the proceeds of the sale of the Notes to buy and hold certain assets for investment purposes. Such acquired assets may be held by any subsidiary of the Issuer which is wholly-owned and who enters into appropriate Security Documents related hereto, and agrees to be bound by a joinder to the terms of this Agreement. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation G of the Board of Governors of the Federal Reserve System (12 CFR 207), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve the Issuer in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). As used in this Section, the terms “margin stock” and “purpose of buying or carrying” shall have the meanings assigned to them in said Regulation G.

#### **5.12 Foreign Assets Control Regulations, etc.**

Neither the sale of the Notes by the Issuer hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto.

#### **5.13 Solvency.**

Issuer is, individually and together with its Subsidiaries on a consolidated basis, Solvent.



#### **5.14 Ownership of Collateral; Collateral Documents.**

Except as set forth in the Security Documents and upon the payment of the purchase price for the Notes contemplated in Section 3 hereof and the completion of any associated asset transfers, the Issuer Parties are legal and beneficial owners of the Collateral free and clear of any Lien or adverse claim. The provisions of the Security Documents are effective to create in favor of the holders a legal, valid and enforceable first priority Lien on all right, title and interest of the respective Issuer Parties in the Collateral described therein. Except for filings completed prior to the Closing or as contemplated to be done post closing in accordance with Section 4.5, no filing or other action will be necessary to perfect or protect such Liens.

#### **6. REPRESENTATIONS OF THE PURCHASER.**

You represent that you are purchasing the Notes for your own account or for one or more separate accounts maintained by you or for the account of one or more pension or trust funds and not with a view to the distribution thereof, provided that the disposition of your or their property shall at all times be within your or their control. You understand that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Issuer is not required to register the Notes.

#### **7. INSPECTION.**

The Issuer Parties shall permit the representatives of each holder of Notes:

(a) No Default -- if no Default or Event of Default then exists, at the expense of such holder and upon reasonable prior notice to the Issuer, to visit the principal executive office of any Issuer Party, to discuss the affairs, finances and accounts of the Issuer and its Subsidiaries with the Issuer Parties' officers, and, with the consent of the Issuer Parties (which consent will not be unreasonably withheld) to visit the other offices and properties of the Issuer and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) Default -- if a Default or Event of Default then exists, at the expense of the Issuer to visit and inspect any of the offices or properties of the Issuer Parties, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants or valuation experts] (and by this provision the Issuer authorizes said accountants and valuation experts to discuss the affairs, finances and accounts of the Issuer and its Subsidiaries), all at such times and as often as may be requested.

## **8. PREPAYMENT OF THE NOTES.**

### **8.1 Optional Prepayments.**

The Issuer may, at its option and in its sole discretion, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, at 100% of the principal amount so prepaid. The Issuer will give each holder of Notes written notice of each optional prepayment under this Section 8.1 not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid (determined in accordance with Section 8.2), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid.

### **8.2 Allocation of Partial Prepayments.**

In the case of each partial prepayment of the Notes, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

### **8.3 Maturity; Surrender, etc.**

In the case of each prepayment of Notes pursuant to this Section 8, the principal amount of each Note to be prepaid as indicated in the notice from Issuer shall mature and become due and payable on the date fixed in such notice for such prepayment, together with interest on such principal amount accrued to such date. From and after such date, unless the Issuer shall fail to pay such principal amount when so due and payable, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Issuer and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

### **8.4 Mandatory Prepayments.**

If on any date, any Collateral (other than Collateral consisting of any Life Settlements) is Disposed of or redeemed in full, or in part the Issuer shall be required to prepay Notes in an amount equal to 10% of the market value of any such Disposed or redeemed Collateral. If on any date, an Issuer Party receives any payments or other amounts in respect of any Collateral consisting of any Life Settlements, the Issuer shall be required to prepay the Notes in an amount equal to 100% of the amount of such payment or amount.

## **9. AFFIRMATIVE COVENANTS.**

The Issuer covenants that so long as any of the Notes are outstanding:

### **9.1 Compliance with Law.**

The Issuer will and will cause each of its Subsidiaries to comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

### **9.2 Payment of Taxes.**

The Issuer will and will cause each of its Subsidiaries to file all income tax or similar tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies payable by any of them, to the extent such taxes and assessments have become due and payable and before they have become delinquent, provided that neither the Issuer nor any Subsidiary need pay any such tax or assessment if (i) the amount, applicability or validity thereof is contested by the Issuer or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Issuer or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Issuer or such Subsidiary or (ii) the nonpayment of all such taxes and assessments in the aggregate would not reasonably be expected to have a Material Adverse Effect.

### **9.3 Legal Existence, etc.**

The Issuer will at all times preserve and keep in full force and effect its legal existence. The Issuer will at all times preserve and keep in full force and effect the corporate existence of each of its Subsidiaries (unless merged into the Issuer or a Subsidiary) and all rights and franchises of the Issuer and its Subsidiaries unless, in the good faith judgment of the Issuer, the termination of or failure to preserve and keep in full force and effect such corporate existence, right or franchise would not, individually or in the aggregate, have a Material Adverse Effect.

### **9.4 Reports.**

(a) Issuer and its Subsidiaries, if applicable shall provide to the holders, notice of (i) any voluntary or involuntary Disposition of Collateral, whether or not permitted hereunder; and (ii) recoveries relating to any Collateral consisting of Life Settlements; (iii) at the request of any Holder, provide copies of all other financial statements,

appraisal reports, notices, and other matters at any time or from time to time prepared by Issuer, its Subsidiaries or in the case of any Collateral subject to a servicing arrangement, any servicer of such Collateral.

(b) Issuer, on a quarterly basis, shall provide valuation reports provided by persons that are reasonably acceptable to the Majority Holders relating to all Collateral consisting of (a) securities and (b) Life Settlements.

(c) Issuer and its Subsidiaries will provide to holders, promptly upon becoming aware of (a) the existence of any condition or event which constitutes an Event of Default or a Default a written notice specifying the nature and period of existence thereof and the action which the Issuer or such Subsidiary is taking or proposes to take with respect thereto; any (b) the existence of any condition or event which would trigger a default or potential default pursuant to Indebtedness described in Section 10(e).

#### **9.5 Compliance with Law.**

Issuer and its Subsidiaries will comply in all material respects with all material laws, rules, regulations, and all orders of any Governmental Authority, including without limitation, Environmental Laws.

#### **9.6 Proceeds of Collateral.**

Issuer and its Subsidiaries shall from time to time deposit and instruct any and all third parties who may receive proceeds of any Collateral whether income, interest or principal, to deposit all proceeds or distributions of such Collateral into an account the "*Collateral Account*", pledged in favor of the holders or their agent, until such distribution in any manner permitted hereunder.

#### **9.7 Covenant to Maintain and Give Security.**

Upon the formation or acquisition of any new Issuer Party holding Collateral:

(a) within 10 days after such formation or acquisition or transfer, cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the holders a description of the Collateral to be transferred to it, in detail satisfactory to the holders or their nominee,

(b) within 15 days after such formation or acquisition, cause such Subsidiary and each direct and indirect parent of such Subsidiary (if it has not already done so) to duly execute and deliver to the agent which is a party to the Security Documents, as specified by and in form and substance satisfactory to the holders or their nominee (including delivery of 100% of the Equity Interests of such Issuer Party, and other instruments of the type specified in Section 4) and take whatever action (including the recording of mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the holders or their nominee to vest in the holders or such

nominee valid and subsisting Liens on the properties purported to be subject to such Security Documents, and such opinions of counsel and other documents relating to the same as were given at the Closing or required post-Closing pursuant to Section 4 hereof.

Additionally, notwithstanding anything to the contrary in this Agreement or any Related Document, at any time upon request of any holder, or their nominee, promptly execute and deliver any and all further instruments and documents and take all such other action as any holder may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such Security Documents relating to any Collateral.

## **10. NEGATIVE COVENANTS.**

The Issuer covenants that so long as any of the Notes are outstanding:

### **10.1 Transactions with Affiliates.**

The Issuer will not and will not permit any Subsidiary to enter into directly or indirectly any Material transaction or Material group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than the Issuer or another Subsidiary), except in the ordinary course of the Issuer's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Issuer or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

### **10.2 Merger, Consolidation, etc.**

The Issuer shall not consolidate with or merge with any other entity or convey, transfer or lease substantially all of its assets in a single transaction or series of transactions to any Person unless:

(a) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease substantially all of the assets of the Issuer as an entirety, as the case may be, shall be a Solvent corporation organized and existing under the laws of the United States or any State thereof (including the District of Columbia), and, if the Issuer is not such entity, such entity shall have executed and delivered to each holder of any Notes its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and the Notes; and

(b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

No such conveyance, transfer or lease of substantially all of the assets of the Issuer shall have the effect of releasing the Issuer or any successor corporation that shall theretofore have become such in the manner prescribed in this Section 10.2 from its liability under this Agreement or the Notes. Additionally, no merger, consolidation or conveyance of substantially all of the Issuer's assets permitted hereby shall be effected without



concurrent notice to the holders or their nominee, and the Issuer Parties shall do all things necessary prior to, simultaneously with or promptly thereafter to preserve liens in favor of the holders or their nominee on all Collateral consistent with Section 4.5(b) of this Agreement.

### **10.3 Dispositions of Collateral.**

The Issuer Parties shall not make any Disposition of any Collateral (other than Collateral consisting of any Life Settlements) unless substantially simultaneously with such Disposition, the Issuer (or any Issuer Party on Issuer's behalf) shall make a mandatory prepayment pursuant to Section 8.4, if any. The Issuer Parties shall not make any Disposition of any Collateral consisting of any Life Settlements.

### **10.4 Investments.**

The Issuer Parties (other than the Issuer) shall not make or hold any Investments, except:

- (a) Investments held by such Issuer Parties and its Subsidiaries in the form of cash;
- (b) Investments such Issuer Parties' respective Subsidiaries on the date hereof;
- (c) Investments constituting Collateral hereunder or the proceeds of such Collateral.

### **10.5 Negative Pledge.**

Without the approval of each holder or their nominee, none of the Issuer nor any Subsidiary will create or suffer to exist any Lien upon the Collateral, other than a first priority security interest in and upon the Collateral in favor of the holders (or their nominee). Issuer will not pledge any of its Equity Interests in any of its Subsidiaries to any Person other than the holders.

### **10.6 Indebtedness.**

Without the approval of each holder, none of the Issuer Parties (other than the Issuer) will create or suffer to exist any Indebtedness except Indebtedness outstanding on the date hereof, the Notes and any PIK Notes.

### **10.7 Restricted Payments.**

Without the approval of each holder, none of the Issuer Parties (other than the Issuer) will declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom,

each such Issuer Party may make Restricted Payments to the Issuer and any other Subsidiary.

#### **10.8 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by the Issuer and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

#### **10.9 Payments relating to Life Settlements.**

Issuer shall make all payments, or cause all payments to be made such that the Life Settlements (and any underlying insurance policies and agreements relating to the servicing of such policies) owned by any Issuer Party which constitute Collateral hereunder remain in full force and effect from time to time.

### **11. EVENTS OF DEFAULT.**

An “Event of Default” shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Issuer defaults in the payment of any principal on any Note when the same becomes due and payable, whether at maturity or at a date fixed for repayment, prepayment or by declaration or otherwise; or

(b) the Issuer defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) any Issuer Party defaults in the performance of or compliance with any term contained herein or in any Related Document (other than those referred to in paragraphs (a), (b) and (d) of this Section 11) and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer of such Issuer Party obtaining actual knowledge of such default and (ii) the Issuer receiving written notice of such default from any holder of a Note (any such written notice to be identified as a “notice of default” and to refer specifically to this paragraph (d) of Section 11); or

(d) any representation or warranty made in writing by or on behalf of any Issuer Party or by any officer of any Issuer Party in any Related Document or other writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made; or

(e) (i) the Issuer or any Subsidiary which is an Issuer Party is in default (as principal or as guarantor or other surety) in the payment of any principal or premium or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least \$10,000,000 beyond any period of grace provided with respect thereto, or (ii) the Issuer or any Subsidiary which is an Issuer Party is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least \$10,000,000 or of any mortgage, indenture or

other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared due and payable before its stated maturity or before its regularly scheduled dates of payment; or

(f) any Issuer Party (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(g) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by the Issuer or any of its Significant Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Issuer or any of its Significant Subsidiaries, or any such petition shall be filed against the Issuer or any of its Significant Subsidiaries and such petition shall not be dismissed within 60 days; or

(h) a final judgment or judgments for the payment of money aggregating in excess of \$10,000,000 are rendered against one or more of the Issuer and its Significant Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay;

(i) if any Lien intended to be created by any Security Document shall at any time be invalidated, subordinated or otherwise cease to be in full force and effect, for whatever reason, or any security interest purported to be created by any Security Document shall cease to be, or shall be asserted by any holder of a Note not to be, a valid, first priority (except as expressly otherwise provided in this Agreement or such Security Document) perfected Lien in the collateral described on Schedule E;

(j) default shall occur in the performance of the covenants and agreements of any Issuer Party contained in Sections 9.3, 9.7, 10.2 and 10.3; or

(k) any provision of any Related Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Notes, ceases to be in full force and effect (other than as a result of a substitution of a similar document in the case of any post Closing matters relating to the Security Documents as approved by the Required Holders or their nominee); or any Issuer Party or any other Person contests in any manner the validity or enforceability of any provision of any Related Document; or any Issuer Party denies that

it has any or further liability or obligation under any provision of any Related Document, or purports to revoke, terminate or rescind any provision of any Related Document.

## **12. REMEDIES ON DEFAULT, ETC.**

### **12.1 Acceleration.**

(a) If an Event of Default with respect to the Issuer described in paragraph (f) or (g) of Section 11 has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by one or more notices to the Issuer, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in paragraph (a) or (b) of Section 11 has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Issuer, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable pursuant this Section 12.1, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus all accrued and unpaid interest thereon (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case with out presentment, demand, protest or further notice, all of which are hereby waived.

### **12.2 Other Remedies.**

If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any Note (or such holder's nominee) at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise. Notwithstanding anything to the contrary set forth in this Agreement, to the extent a holder receives any cash, assets or rights in connection with its enforcement of a remedy against an Issuer Party, such cash, asset or right shall be shared *pari passu* with the other holders.

### **12.3 Rescission.**

At any time after any Notes have been declared due and payable pursuant to clause (b) or (c) of Section 12.1, the holders of not less than Required Holders, by written notice to the Issuer, may rescind and annul any such declaration and its consequences if (a) the Issuer has paid all overdue interest and principal on the Notes that are due and



payable and are unpaid (other than by reason of such declaration) plus all interest on such overdue amounts and (to the extent permitted by applicable law) additional interest in respect of the Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 16, and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

#### **12.4 No Waivers or Election of Remedies, Expenses, etc.**

No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Issuer under Section 14, the Issuer will pay to the holder of each Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

### **13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

#### **13.1 Registration of Notes.**

The Issuer shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Issuer shall not be affected by any notice or knowledge to the contrary. The Issuer shall give to any holder of a Note promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

#### **13.2 Transfer and Exchange of Notes.**

Upon surrender of any Note at the principal executive office of the Issuer for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof), the Issuer shall execute and deliver, at the Issuer's expense (except as provided below), one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of Exhibit 1. Each such new Note shall be dated and



bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. Notes shall not be transferred in denominations of less than \$1, provided that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than \$1. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in Section 6. Notwithstanding anything to the contrary provided herein, the Issuer shall not be required to transfer any Note if in the reasonable judgment of the Issuer, it would violate applicable law.

### **13.3 Replacement of Notes.**

Upon receipt by the Issuer of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be notice from such holder of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it, or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Issuer at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

## **14. PAYMENTS ON NOTES.**

### **14.1 Place of Payment.**

Subject to Section 14.2, payments of principal, and interest becoming due and payable on the Notes shall be made in Dallas, Texas at the principal office of the Issuer in such jurisdiction. The Issuer may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Issuer in such jurisdiction or the principal office of a bank or trust company in such jurisdiction, and such jurisdiction is located in the United States of America.

### **14.2 Home Office Payment.**

So long as you or your nominee shall be the holder of any Note, and notwithstanding anything contained in Section 14.1 or in such Note to the contrary, the Issuer will pay all sums becoming due on such Note for principal, and interest by the method and at the address specified for such purpose below your name in Schedule A, or by such other method or at such other address as you shall have from time to time specified to the Issuer in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of

the Issuer made concurrently with or reasonably promptly after payment or prepayment in full of any Note, you shall surrender such Note for cancellation, reasonably promptly after any such request, to the Issuer at its principal executive office or at the place of payment most recently designated by the Issuer pursuant to Section 14.1. Prior to any sale or other disposition of any Note held by you or your nominee you will, at your election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Issuer in exchange for a new Note or Notes pursuant to Section 13.2. The Issuer will afford the benefits of this Section 14.2 to any holder that is the direct or indirect transferee of any Note purchased by you under this Agreement and that has made the same agreement relating to such Note as you have made in this Section 14.2.

#### **14.3 Timing of Payments of Principal and Interest.**

(a) On each Quarterly Payment Date the Issuer will pay to each holder of a Note, such holder's share of the Quarterly Payment Amount, which payment shall be in cash, except for payments permitted to be paid in kind pursuant to Section 14.4 hereof.

(b) If the Issuer makes a prepayment in accordance with Section 8 or exercises a PIK Option (as defined below) in accordance with Section 14.4, the Issuer shall recalculate the remaining Quarterly Payment Amounts for each Note by using the Amortization Formula and update Schedule C. Upon the Issuer's delivery of such updated Schedule C to the holders, such Schedule C shall be deemed amended and restated accordingly and shall become a part of this Agreement.

#### **14.4 Payment in Kind Option.**

The Issuer may, at its option on up to five (5) occasions (the "PIK Option"), in lieu of making payments of principal or interest due on the Notes (and principal or interest due on any PIK Notes, as defined below, outstanding) in cash, pay the principal due and the accrued and unpaid interest on the Notes (and any PIK Notes outstanding) by capitalization of such amounts (the "PIK Amount"), and executing and delivering to each holder additional Notes (the "PIK Notes") in accordance with this Section 14.2. Subject to the terms and conditions of this Agreement, each holder of a PIK Note agrees to make loans (collectively the "PIK Loans") to the holders of the related Note upon exercise by the Issuer of the PIK Option in an aggregate principal amount equal to the PIK Amount on such date calculated at 10% per annum. Each PIK Loan shall be evidenced by a PIK Note (a "PIK Note") in the form of the Notes annexed hereto as Exhibit 1 (adjusted to reflect the terms of this Section 14.2) payable to each holder of a Note and representing the obligation of the Issuer to pay the principal amount of the PIK Loan with interest thereon. The PIK Note shall bear interest from the date of issuance, upon the same terms and conditions as the Notes. The Issuer shall deliver in accordance with this Agreement to each holder executed PIK Notes on such Quarterly Payment Date in an aggregate principal amount equal to the respective PIK Loan.

**15. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.**

All representations and warranties contained herein by the Issuer Parties shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by you of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of you or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Issuer pursuant to this Agreement shall be deemed representations and warranties of the Issuer under this Agreement. Subject to the preceding sentence, this Agreement and the Notes embody the entire agreement and understanding between you and the Issuer and supersede all prior agreements and understandings relating to the subject matter hereof.

**16. AMENDMENT AND WAIVER.**

**16.1 Requirements.**

This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Issuer and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 4.1, 4.2, 4.3 or 4.4 hereof, or any defined term (as it is used therein), will be effective as to you unless consented to by you in writing, and (b) no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any regularly scheduled payment of principal (but not a mandatory prepayment), or reduce the rate or change the time of payment or method of computation of interest on, the Notes, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (iii) amend any of Sections 8.1, 8.2, 8.3, 11(a), 11(b), 12 or 16.

**16.2 Solicitation of Holders of Notes.**

(a) Solicitation. The Issuer will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, but in any event at least seven (7) Business Days to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Issuer will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 16 to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. The Issuer will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes or any waiver or amendment of

any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

### **16.3 Binding Effect, etc.**

Any amendment or waiver consented to as provided in this Section 16 applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Issuer without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Issuer and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term "**this Agreement**" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

### **16.4 Notes held by Company, etc.**

Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Issuer or any of its Subsidiaries shall be deemed not to be outstanding.

## **17. NOTICES.**

All notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to you or your nominee, to you or it at the address specified for such communications in Schedule A, or at such other address as you or it shall have specified to the Issuer in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Issuer in writing, or

(iii) if to the Issuer, to the Issuer at its address set forth at the beginning hereof to the attention of 13455 Noel Road, 8th Floor, Dallas, Texas, 75240, or at such other address as the Issuer shall have specified to the holder of each Note in writing.

Notices under this Section 17 will be deemed given only when actually received.



## **18. REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by you at the Closing (except the Notes themselves) or otherwise required pursuant to this Agreement after the date of the Closing, and (c) financial statements, certificates and other information previously or hereafter furnished to you, may be reproduced by you by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and you may destroy any original document so reproduced. The Issuer agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by you in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 18 shall not prohibit the Issuer or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

## **19. MISCELLANEOUS.**

### **19.1 Successors and Assigns.**

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

### **19.2 Payments Due on Non-Business Days.**

Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

### **19.3 Severability.**

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

### **19.4 Construction.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that



compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

#### **19.5 Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

#### **19.6 Governing Law.**


This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

\* \* \* \* \*

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Issuer, whereupon the foregoing shall become a binding agreement between you and the Issuer.

Very truly yours,

HIGHLAND FINANCIAL PARTNERS, L.P.

By   
Name: Highland Financial Partners, L.P.  
Title: By its General Partner HFP GP, LLC  
Todd Travers  
Chief Executive Officer

The foregoing is hereby agreed to  
as of the date thereof.

HFP ASSET FUNDING II, LTD.

By \_\_\_\_\_  
Name:  
Title:

HFP ASSET FUNDING III, LTD.

By \_\_\_\_\_  
Name:  
Title:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Issuer, whereupon the foregoing shall become a binding agreement between you and the Issuer.


Very truly yours,

HIGHLAND FINANCIAL PARTNERS, L.P.


By \_\_\_\_\_  
Name:  
Title:

The foregoing is hereby agreed to  
as of the date thereof.

HFP ASSET FUNDING-II, LTD.

By   
Name: James Dandero  
Title: Director

HFP ASSET FUNDING III, LTD.

By   
Name: James Dandero  
Title: Director

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The foregoing is hereby agreed to as of the date hereof.

**HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.**

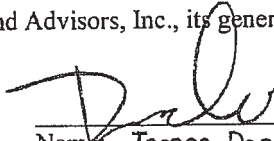
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By: Highland CDO Opportunity Fund GP, LLC., its general partner

By: Highland Capital Management, L.P. its sole member

By: Strand Advisors, Inc., its general partner

By:

  
Name: James Dandera  
Title: President

**HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.**

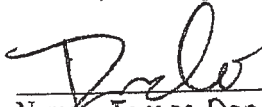
By: Highland General Partner LP, its general partner

By: Highland GP Holdings LLC, its general partner

By: Highland Capital Management, L.P., its sole member

By: Strand Advisors, Inc., its general partner

By:

  
Name: James Dondero  
Title: President



**HIGHLAND CREDIT OPPORTUNITIES CDO L.P.**

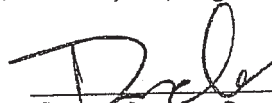
By: Highland Credit Opportunities CDO GP, L.P., its general partner

By: Highland Credit Opportunities CDO GP, LLC, its general partner

By: Highland Capital Management, L.P., its sole member

By: Strand Advisors, Inc., its general partner

By:

  
Name: James Dendero  
Title: President

**HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.**


By: Highland Crusader Fund GP, L.P., its general partner

By: Highland Crusader GP, LLC, its general partner

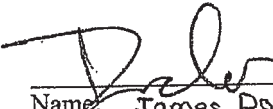
By: Highland Capital Management, L.P. its sole member

By: Strand Advisors, Inc., its general partner

By:

  
Name: James Dondoro  
Title: President

**HIGHLAND CRUSADER HOLDING CORPORATION**

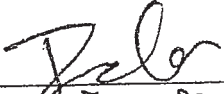
By:   
Name: James Dendero  
Title: President

*Signature Page to  
Note Purchase Agreement*

UBSPUG040805  
005011

**HIGHLAND CREDIT OPPORTUNITIES HOLDING CORPORATION**

By:

  
Name: James Dondoro  
Title: President

*Signature Page to  
Note Purchase Agreement*

005012

SCHEDULE A

INFORMATION RELATING TO PURCHASERS

Name and Address of Purchaser*	Description of Purchase Price Asset	Market Value of Purchase Price Asset	Principal Amount of Notes to be Purchased
Highland CDO Opportunity Master Fund, L.P.	Each of the assets listed under the name "CDO Opportunity Fund" on page 1 of Schedule E	\$52,834,564.00**	\$47,734,564.00
Highland Credit Opportunities CDO, L.P.	Each of the assets listed under the name "CREDIT OPS" on page 1 of Schedule E	\$6,616,429.00	\$6,616,429.00
Highland Credit Strategies Master Fund, L.P.	Each of the assets listed under the name "CREDIT STRAT" on page 1 of Schedule E	\$34,106,429.00	\$34,106,429.00
Highland Crusader Offshore Partners, L.P.	Each of the assets listed under the name "CRUSADER" on page 2 of Schedule E	\$59,295,955.00	\$59,295,955.00
Highland Crusader Holding Corporation	Each of the assets listed under the name "Crusader" on page 2 of Schedule E	\$138,625,041.00	\$138,625,041.00
Highland Credit Opportunities Holding Corporation	Each of the assets listed under the name "Credit Ops" on Schedule E	\$29,592,263.00	\$29,592,263.00

\* The address for each Purchaser is 13455 Noel Road, 8th Floor, Dallas, Texas, 75240.

\*\* Highland CDO Opportunity Master Fund, L.P. is transferring purchase price assets with a market value that is higher than the principal amount of the Note it is purchasing in exchange for the Issuer's forgiveness of a prior loan that is not a part of this transaction.

A-1

Schedule A



SCHEDULE B

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

**"Affiliate"** means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of the Issuer.

**"Amortization Formula"** means the following formula which shall be used to recalculate Quarterly Payment Amounts: 
$$\text{Quarterly Payment Amount} = \frac{L[c(1+c)^n]}{[(1+c)^n - 1]}$$

L = the current outstanding principal amount of the Note.

c = quarterly interest rate, after the first payment period 2.5% (10%/4).

n = remaining payment periods on the Notes.

**"Business Day"** means any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in Dallas, Texas or New York, New York are required or authorized to be closed.

**"Capital Lease"** means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

**"Closing"** is defined in Section 3.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

**"Collateral"** means (i) the items identified on Schedule E as debt securities, loans or life settlement contracts, (ii) the Equity Interests of HFP Asset Funding II, Ltd., (iii) the Equity Interests of HFP Asset Funding III, Ltd., (iii) the Collateral Account and (iv) any item from time to time included as collateral under any Security Document, provided, however, that any item or asset that is transferred or disposed in accordance with the terms of this Agreement shall no longer be Collateral as of the date of such transfer or disposal.

**"Collateral Account"** is defined in Section 9.6.

**"Default"** means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

**“Default Rate”** means that rate of interest that is the greater of (i) 2.00% per annum above the rate of interest stated in clause (a) of the first paragraph of the Notes.

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

**“Environmental Laws”** means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

**“Equity Interests”** means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

**“Event of Default”** is defined in Section 11.

**“GAAP”** means generally accepted accounting principles as in effect from time to time in the United States of America.

**“Governmental Authority”** means

(a) the government of

(i) the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which the Issuer or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Issuer or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

**“Guaranty”** means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Issuer pursuant to Section 13.1.

**“Indebtedness”** with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable Preferred Stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) Swaps of such Person; and

(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

**“Investment”** means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

**“Issuer”** is defined in the first sentence of this Agreement.

**“Issuer Party”** means the Issuer, and each of its Subsidiaries that from time to time beneficially owns or holds any Collateral.

**“Lien”** means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock, stockholder agreements, voting trust agreements and all similar arrangements).

**“Life Settlements”** means the items identified on Schedule E as life settlement contracts.

**“Material”** means material in relation to the business, operations, affairs, financial condition, assets, or properties of the Issuer and its Subsidiaries taken as a whole.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, operations, financial condition, assets or properties of the Issuer and its Subsidiaries taken as a whole, or (b) the ability of any Issuer Party to perform its obligations under the Related Documents, or (c) the validity or enforceability of the Related Documents.

**"Notes"** is defined in Section 1.

**"Officer's Certificate"** means a certificate of a Senior Financial Officer or of any other officer of the Issuer whose responsibilities extend to the subject matter of such certificate.

**"Person"** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

**"PIK Loan"** is defined in Section 14.2.

**"PIK Option"** is defined in Section 14.2.

**"PIK Notes"** is defined in Section 14.2.

**"Preferred Stock"** means any class of capital stock of a corporation that is preferred over any other class of capital stock of such corporation as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such corporation.

**"property"** or **"properties"** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**"Purchaser"** means a purchaser listed on Schedule A.

**"Quarterly Payment Amount"** means the amount of principal and interest on the Notes for each Quarterly Payment Date as set forth in the amortization table attached hereto as Schedule C.

**"Quarterly Payment Date"** means commencing with February 15, 2009 and ending with November 15, 2018, each February 15, May 15, August 15 and November 15.

**"Related Documents"** means, the Security Documents, the Notes, the Guarantees and this Agreement.

**"Required Holders"** means, at any time, the holders of more than 50%, by principal amount, of the Notes at the time outstanding.

**"Responsible Officer"** means any Senior Financial Officer or any other officer of the Issuer with responsibility for the administration of the relevant portion of this agreement.

**"Restricted Payment"** means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of



any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

**"Securities Act"** means the Securities Act of 1933, as amended from time to time.

**"Security Documents"** means the Security Agreement; the Assignment of Account/Control Agreement; the Pledge Agreement, and such other agreements, instruments or documents executed from time to time, that create or purports to create a Lien in favor of the holders, in each case in a form that is reasonably acceptable to the holders necessary to grant a security interest to in the collateral described on Schedule E.

**"Senior Financial Officer"** means the chief financial officer, principal accounting officer, treasurer or comptroller of the Issuer.

**"Subsidiary"** means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of the Issuer.

**"Swaps"** means, with respect to any Person, payment obligations with respect to interest rate swaps, currency swaps and similar obligations obligating such Person to make payments, whether periodically or upon the happening of a contingency. For the purposes of this Agreement, the amount of the obligation under any Swap shall be the amount determined in respect thereof as of the end of the then most recently ended fiscal quarter of such Person, based on the assumption that such Swap had terminated at the end of such fiscal quarter, and in making such determination, if any agreement relating to such Swap provides for the netting of amounts payable by and to such Person thereunder or if any such agreement provides for the simultaneous payment of amounts by and to such Person, then in each such case, the amount of such obligation shall be the net amount so determined.

**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary one hundred percent (100%) of all of the equity interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Issuer and the Issuer’s other Wholly-Owned Subsidiaries at such time.

SCHEDULE C

POST CLOSING DELIVERIES

1. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive Guarantees, duly executed and delivered by each Subsidiary of Issuer.
2. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive a Security Agreement duly executed and delivered by the relevant Issuer Parties holding Collateral.
3. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive evidence of creation of a Collateral Account in the name of one or more Issuer Parties;
4. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive duly executed and delivered assignments of accounts and/or control agreements relating to any deposit or securities account of Issuer or any Subsidiary in which Collateral is to be held including the Collateral Account in favor of holders.
5. As soon as practicable (but no longer than 60 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive assignments as collateral of the Life Settlements in favor of the holders.
6. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive searches of Uniform Commercial Code ("UCC") filings (or their equivalent) in each jurisdiction where a filing has been or would need to be made in order to perfect the holders' security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist, or, if necessary, copies of proper financing statements, if any, filed on or before the date hereof necessary to terminate all security interests and other rights of any Person in any Collateral previously granted.
7. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Issuer shall cause duly authorized UCC financing statements, and any amendments thereto, for each appropriate jurisdiction as is necessary, in holder's discretion, to perfect the security interests of holders in the Collateral.
8. As soon as practicable (but no longer than 30 days after the Closing, unless mutually agreed to by the Issuer Parties and the Purchasers) the Purchasers shall receive a favorable opinion of each of Orrick Herrington and Maples and Calder, counsel to the Loan Parties and General Partner, covering such matters relating to the transactions contemplated hereby as reasonably requested by counsel to the holders, and in a form reasonably acceptable to holders.

SCHEDULE D

AMORTIZATION TABLE

[SEE ATTACHMENT]

		Payment	Principal	Interest	10% Note Interest Rate
	9/26/2008				315,970,680 Principal Balance
40	2/15/2009	12,833,549	370,261	12,463,288	315,600,419
39	5/15/2009	12,833,549	5,031,206	7,802,344	310,569,213
38	8/15/2009	12,833,549	4,896,780	7,936,769	305,672,433
1	11/15/2009	12,833,549	5,021,920	7,811,629	300,650,513
2	2/15/2010	12,833,549	5,150,258	7,683,291	295,500,254
3	5/15/2010	12,833,549	5,528,126	7,305,423	289,972,128
4	8/15/2010	12,833,549	5,423,150	7,410,399	284,548,978
5	11/15/2010	12,833,549	5,561,742	7,271,807	278,987,235
6	2/15/2011	12,833,549	5,703,875	7,129,674	273,283,360
7	5/15/2011	12,833,549	6,077,377	6,756,172	267,205,983
8	8/15/2011	12,833,549	6,004,952	6,828,597	261,201,031
9	11/15/2011	12,833,549	6,158,412	6,675,137	255,042,619
10	2/15/2012	12,833,549	6,315,793	6,517,756	248,726,826
11	5/15/2012	12,833,549	6,615,379	6,218,171	242,111,447
12	8/15/2012	12,833,549	6,646,257	6,187,293	235,465,190
13	11/15/2012	12,833,549	6,816,106	6,017,444	228,649,085
14	2/15/2013	12,833,549	6,990,295	5,843,254	221,658,790
15	5/15/2013	12,833,549	7,353,651	5,479,898	214,305,138
16	8/15/2013	12,833,549	7,356,862	5,476,687	206,948,276
17	11/15/2013	12,833,549	7,544,871	5,288,678	199,403,405
18	2/15/2014	12,833,549	7,737,684	5,095,865	191,665,720
19	5/15/2014	12,833,549	8,095,147	4,738,403	183,570,574
20	8/15/2014	12,833,549	8,142,301	4,691,248	175,428,273
21	11/15/2014	12,833,549	8,350,382	4,483,167	167,077,890
22	2/15/2015	12,833,549	8,563,781	4,269,768	158,514,109
23	5/15/2015	12,833,549	8,914,728	3,918,821	149,599,381
24	8/15/2015	12,833,549	9,010,454	3,823,095	140,588,927
25	11/15/2015	12,833,549	9,240,721	3,592,828	131,348,206
26	2/15/2016	12,833,549	9,476,873	3,356,676	121,871,333
27	5/15/2016	12,833,549	9,786,766	3,046,783	112,084,567
28	8/15/2016	12,833,549	9,969,166	2,864,383	102,115,401
29	11/15/2016	12,833,549	10,223,933	2,609,616	91,891,468
30	2/15/2017	12,833,549	10,485,212	2,348,338	81,406,256
31	5/15/2017	12,833,549	10,821,006	2,012,544	70,585,250
32	8/15/2017	12,833,549	11,029,704	1,803,845	59,555,546
33	11/15/2017	12,833,549	11,311,574	1,521,975	48,243,972
34	2/15/2018	12,833,549	11,600,648	1,232,902	36,643,325
35	5/15/2018	12,833,549	11,927,645	905,904	24,715,680
36	8/15/2018	12,833,549	12,201,926	631,623	12,513,753
37	11/15/2018	12,833,549	12,513,753	319,796	0



SCHEDULE E

DESCRIPTION OF COLLATERAL

[SEE ATTACHMENT]

E-1

Schedule E

HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2018

No. 2  
\$6,616,429.00

September 26, 2008

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to HIGHLAND CREDIT OPPORTUNITIES CDO, L.P., or registered assigns, the principal sum of SIX MILLION SIX HUNDRED SIXTEEN THOUSAND FOUR HUNDRED AND TWENTY NINE DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240 or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of September 26, 2008 (as from time to time amended, the "Note Purchase Agreement"), between the Issuer and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By 

Name: Highland Financial Partners, L.P.

Title: By its General Partner HFP GP, LLC

Todd Travers

Chief Executive Officer

HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2018

No. 6  
\$29,592,263.00

September 26, 2008

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to HIGHLAND CREDIT OPPORTUNITIES HOLDING CORPORATION, or registered assigns, the principal sum of TWENTY NINE MILLION FIVE HUNDRED NINETY TWO THOUSAND TWO HUNDRED AND SIXTY THREE DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240 or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of September 26, 2008 (as from time to time amended, the "Note Purchase Agreement"), between the Issuer and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By 

Name: Highland Financial Partners, L.P.

Title: By its General Partner HFP GP, LLC

Todd Travers

Chief Executive Officer



HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2018

No. 3  
\$34,106,429.00

September 26, 2008

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P., or registered assigns, the principal sum of THIRTY FOUR MILLION ONE HUNDRED AND SIX THOUSAND FOUR HUNDRED AND TWENTY NINE DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240 or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of September 26, 2008 (as from time to time amended, the "Note Purchase Agreement"), between the Issuer and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By 

Name: Highland Financial Partners, L.P.  
Title: By its General Partner HFP GP, LLC  
Todd Travers  
Chief Executive Officer

HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2018

No. 5

September 26, 2008

\$138,625,041.00

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to HIGHLAND CRUSADER HOLDING CORPORATION, or registered assigns, the principal sum of ONE HUNDRED THIRTY EIGHT MILLION SIX HUNDRED TWENTY FIVE THOUSAND AND FORTY ONE DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240 or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of September 26, 2008 (as from time to time amended, the "Note Purchase Agreement"), between the Issuer and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By 

Name: Highland Financial Partners, L.P.  
Title: By its General Partner HFP GP, LLC  
Todd Travers  
Chief Executive Officer

HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2018

No. 4  
\$59,295,955.00

September 26, 2008

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., or registered assigns, the principal sum of FIFTY NINE MILLION TWO HUNDRED NINETY FIVE THOUSAND NINE HUNDRED AND FIFTY-FIVE DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240 or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of September 26, 2008 (as from time to time amended, the "Note Purchase Agreement"), between the Issuer and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.



This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By 

Name: Highland Financial Partners, L.P.

Title: By its General Partner HFP GP, LLC

Todd Travers

Chief Executive Officer

HIGHLAND FINANCIAL PARTNERS, L.P.

10.00% SENIOR SECURED NOTE DUE NOVEMBER 15, 2018

No. 7  
\$55,488,000.00

October 10, 2008

FOR VALUE RECEIVED, the undersigned, HIGHLAND FINANCIAL PARTNERS, L.P. (herein called the "Company"), a limited partnership organized and existing under the laws of the State of Delaware, hereby promises to pay to HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P., or registered assigns, the principal sum of FIFTY FIVE MILLION FOUR HUNDRED EIGHTY EIGHT THOUSAND DOLLARS in accordance with the Note Purchase Agreement referred to below.

Payments of principal of, interest on this Note are to be made in lawful money of the United States of America at 13455 Noel Road, 8th Floor, Dallas, Texas, 75240 or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note is one of a series of Senior Secured Notes (herein called the "Notes") issued pursuant to the Note Purchase Agreement, dated as of September 26, 2008 (as from time to time amended, the "Note Purchase Agreement"), between the Issuer and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have made the representation set forth in Section 6 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney-in-fact duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to an option to pay principal and interest in kind, mandatory prepayments and optional prepayments, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement.

If an Event of Default, as defined in the Note Purchase Agreements, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

HIGHLAND FINANCIAL PARTNERS, L.P.

By 

Name: **Highland Financial Partners, L.P.**  
Title: **By its General Partner HFP GP, LLC**  
**Todd Travers**  
**Chief Executive Officer**

**AMENDMENT NO. 1 TO NOTE PURCHASE AGREEMENT**

This Amendment No.1 to Note Purchase Agreement (this “**Amendment**”) is entered into as of October 10, 2008, by and among HIGHLAND FINANCIAL PARTNERS, L.P. (the “**Issuer**”), HIGHLAND ASSET FUNDING II, LTD. (“**HAF II**”), HIGHLAND ASSET FUNDING III, LTD. (“**HAF III**,” and together with the Issuer and HAF II, the “**Issuing Parties**”), HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P. (“**CDO Opportunities**”), HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P. (“**Credit Strategies**”), HIGHLAND CREDIT OPPORTUNITIES CDO L.P. (“**Credit Opportunities**”), HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P. (“**Crusader Partners**”), HIGHLAND CRUSADER HOLDINGS CORPORATION (“**Crusader Corporation**”), and HIGHLAND CREDIT OPPORTUNITIES HOLDINGS CORPORATION (“**Credit Opportunities Corporation**,” together with CDO Opportunities, Credit Strategies, Credit Opportunities, Crusader Partners and Crusader Corporation, the “**Purchasers**”).

WHEREAS, the Issuing Parties and the Purchasers entered into the Note Purchase Agreement, dated as of September 26, 2008 (the “**Agreement**”);

WHEREAS, the defined terms used in this Amendment and not defined herein shall have the meanings ascribed to such terms in the Agreement;

WHEREAS, the Issuing Parties and the Purchasers desire to amend the Agreement as is set forth below;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, it is hereby agreed as follows:

1. AMENDMENTS.

(a) The Agreement is hereby amended to replace the references to \$315,970,681 on the cover page of the Agreement and Section 1 of the Agreement with \$371,458,681.

(b) The Agreement is hereby amended to replace Schedules A, D and E with Schedules A, D and E to this Amendment.

2. EFFECTIVENESS OF AMENDMENT. The amendments set forth in Section 1 above shall be effective upon (a) the execution and delivery of this Amendment by the Issuing Parties and the Purchasers, (b) the issuance by the Issuer of a new Note in favor of Crusader Partners in the amount of \$55,488,000.00 and (c) the transfer by Crusader Partners to HAF II of purchase price assets with a market value of at least \$55,488,000.00.

3. CONTINUATION OF OTHER TERMS. Each of the provisions of the Agreement shall continue to apply and remain in full force and effect, except as specifically set forth herein.

4. REPRESENTATIONS AND WARRANTIES: The Issuing Parties hereby confirm that the representations and warranties contained in Section 5 of the Agreement are correct on and as of the date of this Amendment as though made on and as of such date.

5. MISCELLANEOUS PROVISIONS. The parties may execute this Amendment in counterparts which, when duly executed, shall together constitute one binding agreement. Delivery of an executed counterpart of this Amendment by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Amendment. This Amendment may be modified or amended only by a writing signed by all of the parties hereto. This Amendment shall bind and benefit the parties hereto and their respective successors and assigns.

[Signature pages to follow]




IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment No. 1 to Note Purchase Agreement to be executed on its behalf by its officer thereunto duly authorized, all on or as of the day and year first above written.

HIGHLAND FINANCIAL PARTNERS, L.P.


By   
Name: Todd Travers  
Title: President

The foregoing is hereby agreed to  
as of the date thereof.

HFP ASSET FUNDING II, LTD.

By   
Name: Todd Travers  
Title: President

HFP ASSET FUNDING III, LTD.

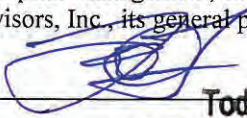
By   
Name: Todd Travers  
Title: President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The foregoing is hereby agreed to  
as of the date thereof.

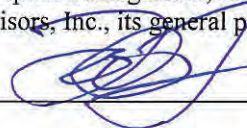
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.

By: Highland CDO Opportunity Fund GP, L.P., its general partner  
By: Highland CDO Opportunity Fund GP, LLC., its general partner  
By: Highland Capital Management, L.P. its sole member  
By: Strand Advisors, Inc., its general partner

By:   
Name: **Todd Travers**  
Title: **Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

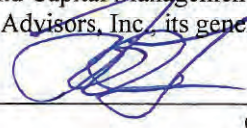
HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.

By: Highland General Partner LP, its general partner  
By: Highland GP Holdings LLC, its general partner  
By: Highland Capital Management, L.P., its sole member  
By: Strand Advisors, Inc., its general partner

By:   
Name: **Todd Travers**  
Title: **Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

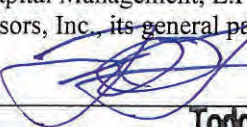
HIGHLAND CREDIT OPPORTUNITIES CDO L.P.

By: Highland Credit Opportunities CDO GP, L.P., its general partner  
By: Highland Credit Opportunities CDO GP, LLC, its general partner  
By: Highland Capital Management, L.P., its sole member  
By: Strand Advisors, Inc., its general partner

By:   
Name: **Todd Travers**  
Title: **Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

HIGHLAND CRUSADER OFFSHORE PARTNERS, L.P.

By: Highland Crusader Fund GP, L.P., its general partner  
By: Highland Crusader GP, LLC, its general partner  
By: Highland Capital Management, L.P. its sole member  
By: Strand Advisors, Inc., its general partner

By:   
Name: **Todd Travers**  
Title: **Senior Portfolio Manager**  
**Highland Capital Management, L.P.**

HIGHLAND CREDIT OPPORTUNITIES  
HOLDING CORPORATION

By

Name:

Title:



**Todd Travers**

**Senior Portfolio Manager**

**Highland Capital Management, L.P.**

HIGHLAND CRUSADER HOLDING  
CORPORATION

By

Name:

Title:



**Todd Travers**

**Senior Portfolio Manager**

**Highland Capital Management, L.P.**

SCHEDULE A

## INFORMATION RELATING TO PURCHASERS

<b>Name and Address of Purchaser*</b>	<b>Description of Purchase Price Asset</b>	<b>Market Value of Purchase Price Asset</b>	<b>Principal Amount of Notes to be Purchased</b>
Highland CDO Opportunity Master Fund, L.P.	Each of the assets listed under the name "CDO Opportunity Fund" on page 1 of Schedule E	\$52,834,564.00**	\$47,734,564.00
Highland Credit Opportunities CDO, L.P.	Each of the assets listed under the name "CREDIT OPS" on page 1 of Schedule E	\$6,616,429.00	\$6,616,429.00
Highland Credit Strategies Master Fund, L.P.	Each of the assets listed under the name "CREDIT STRAT" on page 1 of Schedule E	\$34,106,429.00	\$34,106,429.00
Highland Crusader Offshore Partners, L.P.	Each of the assets listed under the name "CRUSADER" on page 2 of Schedule E and denoted with "***"	\$59,295,955.00	\$59,295,955.00
Highland Crusader Offshore Partners, L.P.	Each of the assets listed under the name "CRUSADER" on page 2 of Schedule E and denoted with "***"	\$55,488,000.00	\$55,488,000.00
Highland Crusader Holding Corporation	Each of the assets listed under the name "Crusader" on page 2 of Schedule E	\$138,625,041.00	\$138,625,041.00
Highland Credit Opportunities Holding Corporation	Each of the assets listed under the name "Credit Ops" on Schedule E	\$29,592,263.00	\$29,592,263.00

\* The address for each Purchaser is 13455 Noel Road, 8th Floor, Dallas, Texas, 75240.

\*\* Highland CDO Opportunity Master Fund, L.P. is transferring purchase price assets with a market value that is higher than the principal amount of the Note it is purchasing in exchange for the Issuer's forgiveness of a prior loan that is not a part of this transaction.

A-1

Schedule A

OHS West:260529608.5

UBSDUG000853

005042

AMORTIZATION TABLE

[SEE ATTACHMENT]



## HFP NOTE AMORTIZATION SCHEDULE

Cumulative Amortization Schedule					HFP NOTE AMORTIZATION SCHEDULE					10% Note Interest Rate				
Date	Payment	Principal	Interest		Date	Payment	Principal	Interest		Date	Payment	Principal	Interest	
2/15/2009	15,078,833	642,638	14,436,195	371,458,680	9/26/2008	FIRST CLOSE				10/10/2008	SECOND CLOSE			
5/15/2009	15,078,833	5,911,436	9,167,397	370,816,042	2/15/2009	12,833,549	370,261	12,463,288	315,970,619	2/15/2009	2,245,284	272,377	1,972,907	55,488,000
8/15/2009	15,078,833	5,753,493	9,325,340	364,904,606	5/15/2009	12,833,549	5,031,206	7,802,344	315,600,419	5/15/2009	2,245,284	880,231	1,365,053	55,215,623
11/15/2009	15,078,833	5,590,527	9,178,306	359,151,113	8/15/2009	12,833,549	4,896,780	7,936,769	310,569,213	8/15/2009	2,245,284	856,712	1,388,571	54,335,393
2/15/2010	15,078,833	6,051,318	9,027,515	353,250,587	11/15/2009	12,833,549	5,021,920	7,811,629	305,672,433	11/15/2009	2,245,284	878,606	1,366,677	53,478,680
5/15/2010	15,078,833	6,495,295	8,583,537	347,199,269	2/15/2010	12,833,549	5,150,258	7,683,291	300,650,513	2/15/2010	2,245,284	901,059	1,344,224	52,600,074
8/15/2010	15,078,833	6,371,953	8,706,879	340,703,974	5/15/2010	12,833,549	5,528,126	7,305,423	289,972,128	5/15/2010	2,245,284	967,169	1,278,115	51,699,015
11/15/2010	15,078,833	6,534,792	8,544,041	332,797,228	8/15/2010	12,833,549	5,423,150	7,410,399	284,548,978	8/15/2010	2,245,284	948,803	1,296,480	50,731,846
2/15/2011	15,078,833	6,701,793	8,377,040	321,095,435	11/15/2010	12,833,549	5,561,742	7,271,807	278,987,235	11/15/2010	2,245,284	973,050	1,272,233	49,783,043
5/15/2011	15,078,833	7,140,640	7,938,193	313,954,795	2/15/2011	12,833,549	5,703,875	7,129,674	273,283,360	2/15/2011	2,245,284	997,917	1,247,366	48,809,992
8/15/2011	15,078,833	7,055,544	8,023,289	306,899,252	5/15/2011	12,833,549	6,004,952	6,828,597	267,205,983	5/15/2011	2,245,284	1,063,263	1,182,021	47,812,075
11/15/2011	15,078,833	7,235,852	7,842,981	299,663,400	8/15/2011	12,833,549	6,158,412	6,675,137	261,201,031	8/15/2011	2,245,284	1,050,592	1,194,692	46,748,813
2/15/2012	15,078,833	7,420,768	7,658,065	292,242,632	11/15/2011	12,833,549	6,315,793	6,517,756	255,042,619	11/15/2011	2,245,284	1,077,440	1,167,843	45,698,221
5/15/2012	15,078,833	7,772,767	7,306,066	284,469,865	2/15/2012	12,833,549	6,315,793	6,517,756	248,726,826	2/15/2012	2,245,284	1,104,975	1,140,309	44,620,781
8/15/2012	15,078,833	7,809,047	7,269,785	276,660,817	5/15/2012	12,833,549	6,615,379	6,218,171	242,111,447	5/15/2012	2,245,284	1,157,388	1,087,895	43,515,806
11/15/2012	15,078,833	8,008,612	7,070,221	268,652,206	8/15/2012	12,833,549	6,646,257	6,187,293	235,465,190	8/15/2012	2,245,284	1,162,791	1,082,493	42,358,418
2/15/2013	15,078,833	8,213,276	6,865,556	260,438,929	11/15/2012	12,833,549	6,816,106	6,017,444	228,649,085	11/15/2012	2,245,284	1,192,506	1,052,777	41,195,627
5/15/2013	15,078,833	8,640,294	6,438,629	251,798,725	2/15/2013	12,833,549	6,990,295	5,843,254	221,658,790	2/15/2013	2,245,284	1,222,982	1,022,302	40,003,121
8/15/2013	15,078,833	8,643,976	6,434,856	243,154,749	5/15/2013	12,833,549	7,353,651	5,479,898	214,305,138	5/15/2013	2,245,284	1,286,552	958,731	38,780,139
11/15/2013	15,078,833	8,864,878	6,213,955	234,289,871	8/15/2013	12,833,549	7,356,862	5,476,687	206,948,276	8/15/2013	2,245,284	1,287,114	958,169	37,493,587
2/15/2014	15,078,833	9,091,425	5,987,408	225,198,446	11/15/2013	12,833,549	7,544,871	5,288,678	199,403,405	11/15/2013	2,245,284	1,320,007	925,277	36,206,473
5/15/2014	15,078,833	9,511,427	5,567,406	215,687,019	2/15/2014	12,833,549	7,737,684	5,095,865	191,665,720	2/15/2014	2,245,284	1,353,741	891,543	34,886,466
8/15/2014	15,078,833	9,566,831	5,512,002	206,120,188	5/15/2014	12,833,549	8,095,147	4,738,403	183,570,574	5/15/2014	2,245,284	1,416,280	829,003	33,532,725
11/15/2014	15,078,833	9,811,317	5,267,516	196,308,871	8/15/2014	12,833,549	8,142,301	4,691,248	175,428,273	8/15/2014	2,245,284	1,424,530	820,754	32,116,445
2/15/2015	15,078,833	10,062,051	5,016,782	186,246,821	11/15/2014	12,833,549	8,350,382	4,483,167	167,077,890	11/15/2014	2,245,284	1,460,935	784,349	30,691,915
5/15/2015	15,078,833	10,474,397	4,604,435	175,772,423	2/15/2015	12,833,549	8,563,781	4,269,768	158,514,109	2/15/2015	2,245,284	1,498,270	747,014	29,230,981
8/15/2015	15,078,833	10,586,871	4,491,962	165,185,552	5/15/2015	12,833,549	8,914,728	3,918,821	149,599,381	5/15/2015	2,245,284	1,559,669	685,614	27,732,711
11/15/2015	15,078,833	10,857,424	4,221,409	154,328,128	8/15/2015	12,833,549	9,010,454	3,823,095	140,588,927	8/15/2015	2,245,284	1,576,417	668,867	26,173,042
2/15/2016	15,078,833	11,134,432	3,943,941	143,193,236	11/15/2015	12,833,549	9,240,721	3,592,828	131,348,206	11/15/2015	2,245,284	1,616,703	628,580	24,596,625
5/15/2016	15,078,833	11,499,002	3,579,831	131,694,234	2/15/2016	12,833,549	9,476,873	3,356,676	121,871,333	2/15/2016	2,245,284	1,658,019	587,265	22,979,922
8/15/2016	15,078,833	11,713,313	3,365,519	119,980,921	5/15/2016	12,833,549	9,786,766	3,046,783	112,084,567	5/15/2016	2,245,284	1,712,236	533,048	21,321,903
11/15/2016	15,078,833	12,012,654	3,066,179	107,968,267	8/15/2016	12,833,549	9,969,166	2,864,383	102,115,401	8/15/2016	2,245,284	1,744,148	501,136	19,609,667
2/15/2017	15,078,833	12,319,644	2,759,189	95,648,624	11/15/2016	12,833,549	10,223,933	2,609,616	91,891,468	11/15/2016	2,245,284	1,788,720	456,563	17,865,520
5/15/2017	15,078,833	12,714,186	2,364,647	82,934,437	2/15/2017	12,833,549	10,485,212	2,348,338	81,406,256	2/15/2017	2,245,284	1,834,432	410,852	16,076,799
8/15/2017	15,078,833	12,959,397	2,119,436	69,975,040	5/15/2017	12,833,549	10,821,006	2,012,544	70,585,250	5/15/2017	2,245,284	1,893,181	352,103	14,249,368
11/15/2017	15,078,833	13,290,582	1,788,251	56,684,458	8/15/2017	12,833,549	11,029,704	1,803,845	59,555,546	8/15/2017	2,245,284	1,929,693	315,590	12,349,187
2/15/2018	15,078,833	13,630,230	1,448,603	43,054,229	11/15/2017	12,833,549	11,521,975	1,521,975	48,243,972	11/15/2017	2,245,284	1,979,008	266,276	10,419,494
5/15/2018	15,078,833	14,014,437	1,064,396	29,039,792	2/15/2018	12,833,549	11,600,648	1,232,902	36,643,325	2/15/2018	2,245,284	2,029,582	215,701	8,440,486
8/15/2018	15,078,833	14,336,705	742,128	14,703,087	5/15/2018	12,833,549	11,927,645	905,904	24,715,680	5/15/2018	2,245,284	2,086,792	158,492	6,410,904
11/15/2018	15,078,833	14,703,087	375,746	0	8/15/2018	12,833,549	12,201,926	631,623	12,513,753	8/15/2018	2,245,284	2,134,778	110,505	4,324,112
					11/15/2018	12,833,549	12,513,753	319,796	0	11/15/2018	2,245,284	2,189,334	55,950	2,189,334
														0

005044

DESCRIPTION OF COLLATERAL

[SEE ATTACHMENT]

E-1

Schedule E

Crusader	253,408,996	Crusader	253,408,996
CDO Fund	47,734,564	CDO Fund	52,834,564
Credit Strat	34,106,429	Credit Strat	34,106,429
Credit Ops	36,208,692	Credit Ops	36,208,692
	371,458,680		376,558,680

Issuer Name	Asset Name	Commitment	Mark	MV	M	S	Spread
CDO OPPORTUNITY FUND - CLO Mezz							
EASTL 2007-1A	Floating 5/2022-B-277345AJ3	10,000,000.00	53.6400	5,364,000.00	A2	A	0.70%
DFRMM 2007-1A	Floating - 07/2019 - C - 23326YAF	8,000,000.00	71.9200	5,753,600.00	A2	A	2.30%
ACACL 2007-1A	Floating - 06/2022 - E - 00082XA/	7,000,000.00	47.3500	3,314,500.00	Ba2	BB	4.75%
PRIM 2007-2A	Floating - 07/2021 - C - 74163HAI	10,000,000.00	50.1900	5,019,000.00	A2	A	0.95%
SYMP 2007-4A C	Floating - 07/2021 - 871556AD8	10,000,000.00	51.5000	5,150,000.00	A2	A	1.25%
Duane 2007 - 4A C	Class C	10,000,000.00	51.3600	5,136,000.00	A2	A	1.00%
STRAF 2007-1A	Floating - 11/2021 - C - 86280AAf	6,100,000.00	59.8700	3,652,070.00	A2	A	2.00%
GSC 2007-8A	Floating - 04/2021 - B - 3622MQA	10,000,000.00	54.3100	5,431,000.00	A2	A	0.75%
SHINN 2006-1A	Floating - 07/2018 - D - 824612AC	500,000.00	48.9727	244,863.50	Baa2	BBB	1.80%
HICDO 2004-1X B1A	Floating - 12/2016 - BCC0HCRN6	350,000.00	85.3600	298,760.00	A1	A+	1.10%
Red River CLO, Ltd.	Floating - 07/2018 - E - 75686XA/	9,500,000.00	41.8900	3,979,550.00	Ba2	BB	3.75%
AMMC 2007-8A	Floating - 11/2022 - E - 00175YA/	5,858,000.00	58.2500	3,412,285.00	Ba2	BB	7.75%
GCLO 2006-1X	Floating - 11/2021 - C - G40763AE	5,000,000.00	44.6000	2,230,000.00	Baa2	BBB	1.55%
SHINN 2006-1A	Floating - 07/2018 - E - 824608AA	500,000.00	45.1200	225,600.00	Ba2	BB	4.25%
CLYDS 2004-1A	Floating - 08/2016 - D - 18971SAI	250,000.00	55.6800	139,200.00	Ba2	BB	6.50%
STRAF 2007-1A	Floating - 11/2021 - D - 86280AAf	1,500,000.00	52.5000	787,500.00	Baa2	BBB	3.50%
FOURC 2006-2A	Floating - 01/2020 - D - 35084EA	500,000.00	54.1470	270,735.00	Baa2	BBB	1.85%
NAVIG 2006-1A	Floating - 05/2019 - D - 63937BAI	500,000.00	49.9800	249,900.00	Baa2	BBB	1.90%
STRAF 2007-1A	Floating - 11/2021 - E - 86280AAC	4,000,000.00	54.4000	2,176,000.00	Baa3	BBB-	4.00%
		99,558,000.00		52,834,563.50			2.28%
CREDIT OPS - CLO Mezz							
ROCKW 2007-1A B2L	Floating - 08/2024 - B-2L	4,250,000.00	44.94068	1,909,978.69	Ba2	BB	4.25%
STAMC 2007-1A B2L	Class B2L	3,000,000.00	51.5200	1,545,600.00	Ba2	BB	4.50%
SYMP 2007-4A E	Floating - 07/2021 - 871556AF3	2,000,000.00	45.9800	919,600.00	Ba2	BB	5.50%
VENTR 2007-9A	Floating - 10/2021 - D - 92329EA.	2,000,000.00	55.7500	1,115,000.00	Baa2	BBB	4.15%
WITEH 2006-4A	Floating - 01/2020 -96524UAD0	2,500,000.00	45.0500	1,126,250.00	Baa2	BBB	1.45%
		13,750,000.00		6,616,428.69			3.96%
CREDIT STRAT - CLO Mezz							
ROCKW 2007-1A B2L	Floating - 08/2024 - B-2L	4,250,000.00	44.94068	1,909,978.69	Ba2	BB	4.25%
CRUSADER - CLO Mezz							
GCLO 2006-1A D.	Floating - 11/2021 - 389668AA2	5,000,000.00	41.2700	2,063,500.00	Ba2	BB	3.60%
CIFC 2006 1A	Floating - 10/2020 - 17178PAD6	10,000,000.00	57.8200	5,782,000.00	A2	A	0.77%
MOCLO 2005-1A A3L	Class A3L	2,000,000.00	53.5406	1,070,812.00	A2	A	0.75%
AVCLO 2006-3A A3L	Floating - 07/2018 - 05357TAD6	1,470,000.00	60.3348	886,921.56	A2	A	0.75%
		18,470,000.00		9,803,233.56			1.53%
Total		136,028,000.00	52.3158	71,164,204.44	Baa3	BBB	2.41%

CREDIT STRAT - CLO Equity							
Aberdeen Loan Funding Ltd Preferred Shares Class II		12,000,000.00	66.0000	7,920,000.00	NA	NA	
Armstrong Loan Funding Ltd Preferred Shares Class II		10,845,000.00	71.0000	7,699,950.00	NA	NA	
Grayson	Preferred Shares Class II	10,000,000.00	54.0000	5,400,000.00	NA	NA	
Greenbriar	Preferred Shares Class II	11,000,000.00	47.0000	5,170,000.00	NA	NA	
Highlander IV	Preferred Shares Class II	10,000,000.00	41.0000	6,006,500.00	NA	NA	
		53,845,000.00		32,196,450.00			

CRUSADER - CLO Equity							
* Aberdeen Loan Funding Ltd Preferred Shares Class II		24,000,000.00	66.0000	15,840,000.00	NA	NA	
* Armstrong Loan Funding Ltd Preferred Shares Class II		14,845,000.00	71.0000	10,539,950.00	NA	NA	
* Highlander IV		14,140,000.00	41.0000	8,493,191.00	NA	NA	
* Stratford		13,370,000.00	46.5000	6,217,050.00	NA	NA	
* Greenbriar		8,200,000.00	47.0000	3,854,000.00	NA	NA	
* LANDM 2005 - 6A	Floating - 01/2018 - IN - 51507VAI	2,500,000.00	43.8700	1,096,750.00	NA	NA	
* Brentwood CLO Ltd	Class I Preference Shares	1,200,000.00	52.1900	626,280.00	NA	NA	
* Eastland CLO Ltd	Preferred Share	5,000,000.00	56.5100	2,825,500.00	NA	NA	
		83,255,000.00		49,492,721.00			

CRUSADER - Additional CLO Equity - Amendment 1							
** Grayson	Preferred Shares Class II	32,500,000.00	46.0000	14,950,000.00	NA	NA	
** Eastland	Preferred Shares Class II	38,500,000.00	38.0000	14,630,000.00	NA	NA	
** Stratford	Preferred Shares Class II	32,130,000.00	40.0000	12,852,000.00	NA	NA	
** Greenbriar	Preferred Shares Class II	40,800,000.00	32.0000	13,056,000.00	NA	NA	
		143,930,000.00		55,488,000.00			
Total Face Value		281,030,000.00		137,177,171.00			

converted to USD at 1.465

Credit Ops - Life Settlement	
Multiple Contracts (2nd Tab)	29,592,263

CRUSADER - Life Settlement	
Multiple Contracts (2nd Tab)	138,625,041

TRADE	FACE	Mark	Market Value	Projected IRR*	Life Expectancy (in Months)	
BELZBERG FRANCES	39,000,000	20.79	8,107,842.74	25.15%	116	Crusader
BLOCK	8,250,000	37.63	3,104,656.70	14.02%	104	Crusader
BONHAM	7,000,000	26.08	1,825,800.27	14.48%	127	Crusader
BOSCHETTO	5,000,000	38.49	1,924,620.36	14.02%	96	Crusader
BRONNER	5,000,000	33.13	1,656,364.13	13.14%	70	Crusader
BROWN	15,000,000	20.36	3,054,412.25	14.87%	114	Crusader
CHASE	28,785,000	19.40	5,584,878.23	17.39%	100	Credit Ops 66
CONSIDINE	5,000,000	28.14	1,407,178.04	15.36%	106	Crusader
DANZIG	5,000,000	27.26	1,362,855.39	14.21%	96	Crusader
DAVIS	15,000,000	24.20	3,630,420.45	13.10%	95	Crusader
DEUTSCHE	22,000,000	25.09	5,520,367.41	17.71%	105	Crusader
DILLER	20,000,000	18.90	3,780,522.73	17.31%	111	Crusader
EXLEY	29,000,000	39.88	11,564,696.79	18.05%	78	Crusader
FISCHER	10,000,000	42.15	4,214,811.04	15.62%	59	Credit Ops 62
FURR	18,500,000	28.74	5,316,908.75	21.36%	113	Crusader
GLAZER	5,000,000	36.25	1,812,715.21	14.67%	85	Crusader
GROSSMAN	10,000,000	29.56	2,956,330.76	14.40%	110	Crusader
HACK	5,000,000	27.38	1,368,790.76	14.31%	78	Crusader
HOLLISTER	55,000,000	22.74	12,506,018.59	16.01%	130	Crusader
ISELI	5,000,000	15.76	787,841.84	15.82%	137	Crusader
KEMPLER	10,000,000	37.66	3,766,063.07	16.47%	68	Crusader
KENLY	5,000,000	23.20	1,159,833.04	16.10%	118	Crusader
KING	6,500,000	33.52	2,178,643.73	13.54%	94	Credit Ops 60
KIVEL 2	40,000,000	9.91	3,965,799.30	20.29%	153	Credit Ops 57
KLEIN	5,000,000	29.33	1,466,702.40	15.38%	81	Crusader
KNOPF	40,000,000	27.06	10,824,121.59	17.20%	101	Crusader
KOLKO	5,000,000	25.64	1,282,060.88	13.53%	106	Crusader
KRAUSZ	10,000,000	27.66	2,765,554.79	14.53%	109	Crusader
KRIOZERE	10,000,000	7.48	748,195.39	17.80%	183	Credit Ops 63
LANGSAM	5,000,000	49.02	2,450,906.70	13.67%	62	Crusader
LAWSON	10,000,000	29.22	2,922,025.40	14.47%	87	Crusader
LEEDS	5,000,000	22.50	1,124,819.17	12.99%	102	Credit Ops 59
LESSER	20,000,000	26.23	5,246,502.52	18.13%	92	Crusader
OREILLY	10,000,000	19.03	1,903,094.60	14.59%	125	Crusader
PERLMAN	5,000,000	45.01	2,250,718.66	14.88%	55	Credit Ops 58
PITT	20,000,000	17.52	3,504,186.89	17.82%	126	Credit Ops 65
POLIUIN	10,000,000	18.23	1,822,973.73	14.00%	135	Crusader
POPEIL	15,000,000	22.31	3,347,054.68	18.12%	101	Crusader
PROPHETER	10,000,000	27.60	2,759,957.26	14.07%	92	Credit Ops 56
SACKLER	20,000,000	11.47	2,293,808.48	18.07%	126	Credit Ops 61
SCHWARTZ	10,000,000	23.12	2,312,169.05	17.52%	98	Crusader
SHIRLEY	70,000,000	10.78	7,547,585.22	21.19%	160	Crusader
SILBIGER	5,000,000	19.33	966,445.19	16.70%	112	Credit Ops 64
SINGER	8,250,000	35.70	2,945,477.35	16.52%	70	Crusader
SIZER	5,000,000	29.22	1,461,194.54	13.53%	83	Crusader
STAWSKI	5,000,000	13.31	665,564.93	15.80%	114	Crusader
STEPHANUS	20,743,862	15.00	3,111,883.93	22.09%	163	Crusader
STRIKS	13,000,000	25.23	3,279,499.00	18.33%	85	Crusader
WHITE	5,000,000	44.61	2,230,292.53	16.51%	42	Crusader
WILLIAMS	30,000,000	12.56	3,769,167.13	24.28%	186	Crusader
WYNNE	5,000,000	13.14	656,971.04	12.03%	165	Crusader
Totals	\$ 751,028,862	22.40	168,217,305	17.96%	118	Credit Ops 29,592,263.35 Crusader 138,625,041.30

\*IRR modeled from initial investment

September 26, 2008

**HFP Asset Funding III, Ltd.**

c/o Highland Capital Management, L.P.  
Two Galleria Tower  
13455 Noel Road, Suite 800  
Dallas, TX 75240  
Attn: General Counsel  
Tel: 972-628-4100  
Fax: 972-628-4147

Re: Sale of Assets to HFP Asset Funding III, Ltd.

Ladies and Gentlemen:

This letter confirms that the undersigned shall take all action necessary to grant, assign and convey, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to HFP Asset Funding III, Ltd. (the “**Transferee**”), effective as of the date of “Closing” as such term is defined under that certain Note Purchase Agreement dated as of September 26, 2008 by and between Highland Financial Partners, L.P., as issuer, and Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO L.P., Highland Crusader Offshore Partners, L.P., Highland Crusader Holding Corporation and Highland Credit Opportunities Holding Corporation, as purchasers, all of the right, title and interest of Highland Crusader Holding Corporation and Highland Credit Opportunities Holding Corporation (the “**Transferors**”) in and to certain assets listed on ***Schedule I*** hereto (the “**Transferred Assets**”), together with their rights in all contracts, servicing agreements, related agreements (including those with third parties) (collectively, the “**Related Agreements**”) and any other rights held by them in association with the ownership of said Transferred Assets.

All rights, title and interest to the Transferred Assets shall pass to the Transferee on the date of “Closing”. To the extent the transfer of said Transferred Assets may require the consent of the owner of such Transferred Assets or of any third party pursuant to the Related Agreements or otherwise, it is agreed that the parties shall obtain such approval and consent as soon as possible and that, to the extent necessary, the Transferors shall remain the record, but not beneficial, owners of said Transferred Assets until such consent and approval is obtained and solely for purposes of maintaining the ownership and rights of the Transferred Assets for the benefit of the Transferee. Notwithstanding the foregoing, as between the Transferors and the Transferee, the grant, assignment and conveyance of the Transferred Assets shall be valid and binding for all other intents and purposes.

The Transferors hereby covenant and agree that they shall, within a reasonable period from the date hereof, execute and deliver definitive agreements, associated contracts, servicing agreements, and such other and further instruments and documents including obtaining any necessary third party consents, including but not limited to consents from issuers of insurance policies, as may be reasonably necessary to carry out, give effect to or to evidence further the transfer of the Transferred Assets of the Transferors to the Transferee, all expenses, costs, taxes and similar charges of such documentation and transfer to be for Transferors’ account.




The construction, interpretation and enforcement of this letter shall be governed by the laws of the State of New York.


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Truly yours,

HIGHLAND CRUSADER HOLDING CORPORATION

By:   
Name: James Dondora  
Title: President

HIGHLAND CREDIT OPPORTUNITIES HOLDING  
CORPORATION

By:   
Name: James Donders  
Title: President

Acknowledged and Agreed:

HFP ASSET FUNDING III, LTD.

By:   
Name: James Donders  
Title: Director

**SCHEDULE I**  
**TRANSFERRED ASSETS**

<b>TRADE</b>	<b>FACE</b>	<b>Mark</b>	<b>Market Value</b>	<b>Projected IRR*</b>	<b>Life Expectancy (in Months)</b>	<b>TRANSFEROR</b>
BELZBERG FRANCES	39,000,000	20.79	8,107,842.74	25.15%	116	Highland Crusader Holding Corporation
BLOCK	8,250,000	37.63	3,104,656.70	14.02%	104	Highland Crusader Holding Corporation
BONHAM	7,000,000	26.08	1,825,800.27	14.48%	127	Highland Crusader Holding Corporation
BOSCHETTO	5,000,000	38.49	1,924,620.36	14.02%	96	Highland Crusader Holding Corporation
BRONNER	5,000,000	33.13	1,656,364.13	13.14%	70	Highland Crusader Holding Corporation
BROWN	15,000,000	20.36	3,054,412.25	14.87%	114	Highland Crusader Holding Corporation
CHASE	28,785,000	19.40	5,584,878.23	17.39%	100	Highland Credit Opportunities Holding Corporation
CONSIDINE	5,000,000	28.14	1,407,178.04	15.36%	106	Highland Crusader Holding Corporation
DANZIG	5,000,000	27.26	1,362,855.39	14.21%	96	Highland Crusader Holding Corporation
DAVIS	15,000,000	24.20	3,630,420.45	13.10%	95	Highland Crusader Holding Corporation
DEUTSCHE	22,000,000	25.09	5,520,367.41	17.71%	105	Highland Crusader Holding Corporation
DILLER	20,000,000	18.90	3,780,522.73	17.31%	111	Highland Crusader Holding Corporation
EXLEY	29,000,000	39.88	11,564,696.79	18.05%	78	Highland Crusader Holding Corporation
FISCHER	10,000,000	42.15	4,214,811.04	15.62%	59	Highland Credit Opportunities Holding Corporation
FURR	18,500,000	28.74	5,316,908.75	21.36%	113	Highland Crusader Holding Corporation
GLAZER	5,000,000	36.25	1,812,715.21	14.67%	85	Highland Crusader Holding Corporation
GROSSMAN	10,000,000	29.56	2,956,330.76	14.40%	110	Highland Crusader Holding Corporation
HACK	5,000,000	27.38	1,368,790.76	14.31%	78	Highland Crusader Holding Corporation
HOLLISTER	55,000,000	22.74	12,506,018.59	16.01%	130	Highland Crusader Holding Corporation
ISELI	5,000,000	15.76	787,841.84	15.82%	137	Highland Crusader Holding Corporation
KEMPLER	10,000,000	37.66	3,766,063.07	16.47%	68	Highland Crusader Holding Corporation



TRADE	FACE	Mark	Market Value	Projected IRR*	Life Expectancy (in Months)	TRANSFEROR
KENLY	5,000,000	23.20	1,159,833.04	16.10%	118	Highland Crusader Holding Corporation Highland Credit Opportunities
KING	6,500,000	33.52	2,178,643.73	13.54%	94	Highland Crusader Holding Corporation Highland Credit Opportunities
KIVEL 2	40,000,000	9.91	3,965,799.30	20.29%	153	Highland Crusader Holding Corporation
KLEIN	5,000,000	29.33	1,466,702.40	15.38%	81	Highland Crusader Holding Corporation
KNOPF	40,000,000	27.06	10,824,121.59	17.20%	101	Highland Crusader Holding Corporation
KOLKO	5,000,000	25.64	1,282,060.88	13.53%	106	Highland Crusader Holding Corporation
KRAUSZ	10,000,000	27.66	2,765,554.79	14.53%	109	Highland Crusader Holding Corporation Highland Credit Opportunities
KRIOZERE	10,000,000	7.48	748,195.39	17.80%	183	Highland Crusader Holding Corporation
LANGSAM	5,000,000	49.02	2,450,906.70	13.67%	62	Highland Crusader Holding Corporation
LAWSON	10,000,000	29.22	2,922,025.40	14.47%	87	Highland Crusader Holding Corporation Highland Credit Opportunities
LEEDS	5,000,000	22.50	1,124,819.17	12.99%	102	Highland Crusader Holding Corporation
LESSER	20,000,000	26.23	5,246,502.52	18.13%	92	Highland Crusader Holding Corporation
OREILLY	10,000,000	19.03	1,903,094.60	14.59%	125	Highland Crusader Holding Corporation Highland Credit Opportunities
PERLMAN	5,000,000	45.01	2,250,718.66	14.88%	55	Highland Crusader Holding Corporation Highland Credit Opportunities
PITT	20,000,000	17.52	3,504,186.89	17.82%	126	Highland Crusader Holding Corporation
POLIQVIN	10,000,000	18.23	1,822,973.73	14.00%	135	Highland Crusader Holding Corporation
POPEIL	15,000,000	22.31	3,347,054.68	18.12%	101	Highland Crusader Holding Corporation Highland Credit Opportunities
PROPHETER	10,000,000	27.60	2,759,957.26	14.07%	92	Highland Crusader Holding Corporation Highland Credit Opportunities
SACKLER	20,000,000	11.47	2,293,808.48	18.07%	126	Highland Crusader Holding Corporation
SCHWARTZ	10,000,000	23.12	2,312,169.05	17.52%	98	Highland Crusader Holding Corporation
SHIRLEY	70,000,000	10.78	7,547,585.22	21.19%	160	Highland Crusader Holding Corporation
SILBIGER	5,000,000	19.33	966,445.19	16.70%	112	Highland Credit Opportunities

TRADE	FACE	Mark	Market Value	Projected IRR*	Life Expectancy (in Months)	TRANSFEROR
SINGER	8,250,000	35.70	2,945,477.35	16.52%	70	Holding Corporation Highland Crusader
SIZER	5,000,000	29.22	1,461,194.54	13.53%	83	Holding Corporation Highland Crusader
STAWSKI	5,000,000	13.31	665,564.93	15.80%	114	Holding Corporation Highland Crusader
STEPHANUS	20,743,862	15.00	3,111,883.93	22.09%	163	Holding Corporation Highland Crusader
STRIKS	13,000,000	25.23	3,279,499.00	18.33%	85	Holding Corporation Highland Crusader
WHITE	5,000,000	44.61	2,230,292.53	16.51%	42	Holding Corporation Highland Crusader
WILLIAMS	30,000,000	12.56	3,769,167.13	24.28%	186	Holding Corporation Highland Crusader
WYNNE	5,000,000	13.14	656,971.04	12.03%	165	Holding Corporation
Totals	\$ 751,028,862	22.40	168,217,305**	17.96%	118	

\*IRR modeled from initial investment

\*\*Total is sum of transfers from Highland Crusader Holding Corporation with a market value of \$138,625,041.30 and from Highland Credit Opportunities Holding Corporation with a market value of \$29,592,263.35.

## **Exhibit 27**

**See Debtor's Exhibit No. 9**

J. SEERY

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

In Re: )  
 )  
HIGHLAND CAPITAL MANAGEMENT, ) Chapter 11  
LP, )  
 ) Case No.  
Debtor, ) 19-34054-SGJ 11  
 )  
 )  
HIGHLAND CAPITAL MANAGEMENT, )  
LP, )  
 ) Adversary Proceeding  
Plaintiff, ) No. 21-03000-SGJ  
 )  
v. )  
 )  
HIGHLAND CAPITAL MANAGEMENT )  
FUND ADVISORS, LP; NEXPOINT )  
ADVISORS, LP, )  
 )  
Defendants. )

CONFIDENTIAL PURSUANT TO THE PROTECTIVE ORDER

REMOTE VIDEO-RECORDED DEPOSITION OF

JAMES P. SEERY, JR.

FRIDAY, MAY 14, 2021

Reported by:

DEBRA A. DIBBLE, RDR, CRR, Notary Public

JOB NO. 193985

J. SEERY

May 14, 2021

10:08 a.m.

Remote video-recorded deposition of  
JAMES P. SEERY, JR., held at the location of the  
witness, pursuant to the Federal Rules of Civil  
Procedure before Debra A. Dibble, Registered  
Diplomate Reporter, Certified Realtime Reporter  
and Notary Public.



J. SEERY

A P P E A R A N C E S:

ON BEHALF OF DUGABOY INVESTMENT TRUST:

BY: DOUGLAS DRAPER, ESQ.

HELLER, DRAPER, HAYDEN, PATRICK, & HORN

650 Poydras Street

New Orleans, Louisiana 70130

ON BEHALF OF DEBTOR AND THE WITNESS:

BY: ROBERT FEINSTEIN, ESQ.

GREGORY DEMO, ESQ.

JOHN MORRIS, ESQ.

PACHULSKI STANG ZIEHL & JONES

780 Third Avenue

New York, New York 10017

ON BEHALF OF UBS:

BY: ANDREW CLUBOK, ESQ.

KIMBERLY POSIN, ESQ.

LATHAM & WATKINS

555 Eleventh Street, NW

Washington, D.C. 20004

J. SEERY

ON BEHALF OF CREDITORS COMMITTEE:

BY: ALYSSA RUSSELL, ESQ.

PAIGE MONTGOMERY, ESQ.

SIDLEY AUSTIN

One South Dearborn

Chicago, Illinois 60603

J. SEERY

-----  
P R O C E E D I N G S

May 14, 2021, 10:08 a.m. EDT

-----  
COURT REPORTER: All parties to this deposition are appearing remotely and have agreed to the witness being sworn in remotely. Due to the nature of remote reporting, please pause briefly before speaking to ensure all parties are heard completely.

-----  
JAMES P. SEERY, JR.,  
having been duly sworn,  
testified as follows:

-----  
EXAMINATION  
-----

BY MR. DRAPER:

Q. Mr. Seery, as you know, my name is Douglas Draper and I represent Dugaboy Investment Trust in connection with the settlement motion that's before the Court.

I've noticed the deposition of the debtor who is a -- in essence a party to the

J. SEERY

motion and listed certain areas of inquiry. Are you the party designated by the debtor who can best identify or address the areas of inquiry?

A. Yes.

Q. The first area is the Highland Credit Opportunity CDOLP, now known as Highland MultiStrat Credit Fund LP subscription agreement and any operating agreement, partnership agreement, including any amendments, addendums or modifications thereof.

So you're the party best able with respect to that item?

A. To generally discuss that item, yes.

Q. Okay. And I will note that those documents have -- the documents that give rise to those -- that issue have already been provided to me.

The next --

MR. MORRIS: Douglas, I apologize for interrupting, but I just want to make sure the record is clear. You can go through all of these and it's just subject to the objections that I sent to you yesterday. Agreed?

MR. DRAPER: That's fine.

J. SEERY

MR. MORRIS: Okay. Thank you.

Q. (BY MR. DRAPER) Then the next area was the investment advisor agreement between MultiStrat and the debtor. I note that rather than there being an investment advisor agreement, there's an investor management agreement.

Is that correct, Mr. Seery?

A. That's correct.

Q. And that is between both the debtor and what I'll call MultiStrat and then MultiStrat's general partner; is that correct?

A. I'd have to go back and look. It would certainly be between the debtor and MultiStrat. Typically the GP would be on it as well.

Q. All right.

I'll note, I have here before me -- just so we can be clear, if you look at the document -- I was provided a Third Amended and Restated Investment Management Agreement by and among Highland Multi Strategy Credit Fund, Limited, Highland Multi Strategy Fund, L.P. and Highland Credit Management L.P.

Just, out of curiosity, who is



J. SEERY

Highland Multi Strategy Credit Fund, Limited?

A. Do you not -- you don't know?

Q. I've asked you the question. This is not you to ask me questions. I'm asking you the question: Who is that entity?

A. It's a limited Cayman Island company.

Q. Okay. This will be a whole lot easier if you just answer my questions and don't ask me questions like you don't know. That's not necessary.

A. I answered your question.

Q. Thank you. The assertion that the debtor has the corporate authority to settle the claim as proposed in the settlement motion, I gather you're the party with respect to that? And I have been provided documents that I've -- I can ascertain the authority of the debtor to do that.

The next area is any notice or analysis of the UBS claim and/or the May 20th -- May 2020 settlement you sent to MultiStrat or any of the limited partners or owners of an interest in MultiStrat that discusses the UBS claim, the May 2020 settlement agreement, and the settlement

J. SEERY

proposed in the settlement motion.

I note that in the documentation produced, there's nothing sent to any -- to MultiStrat or any of its limited partners or owners.

Is that fair to say?

MR. MORRIS: I'm going to object to the --

THE WITNESS: Yeah, I don't understand what you just asked me.

Q. (BY MR. DRAPER) I basically asked you, is there -- in looking at the documents that have been produced, I see nothing that was sent to any limited partner in MultiStrat advising them of the May 2020 settlement, the UBS claim and analysis of the UBS claim or the settlement agreement. Is it fair to say that there was no correspondence between the MultiStrat limited partners, the MultiStrat owners, and Highland as investment manager?

A. Other than the notices in the case.

Q. Well, the notices in the case, are the MultiStrat limited partners parties in interest in the bankruptcy?

J. SEERY

A. I don't know, but you're here.

Q. That's not my question. You got --

A. Hold on a second, Mr. Draper. You asked me a question. I answered it, I told you the notice is in the case. You represent Dugaboy, which is -- I think is some kind of partner in -- limited partner in MultiStrat, and you're here. So somehow you got notice and I believe others got notice; but other than that, I'm not -- I don't know of any notices.

Q. Okay. Let me ask the question in a different way.

May 2020, there was a settlement involving MultiStrat and UBS. Correct?

A. Yes.

Q. And you signed that agreement.

A. I did.

Q. Do you know if that agreement was brought before the bankruptcy court?

A. Yes.

Q. And the answer is?

A. No.

Q. And did Dugaboy receive any notice of the May 2020 settlement agreement at the time it

1 J. SEERY

2 was entered into?

3 A. I don't know.

4 Q. Well, did you send it -- anything to  
5 them?

6 A. No.

7 Q. Did the debtor as investment manager  
8 of MultiStrat send anything to them?

9 A. Not to my knowledge.

10 Q. Okay. You're the person best able to  
11 discuss the May 2020 settlement agreement?

12 MR. MORRIS: Douglas, I'm just going  
13 to interrupt and see if we can cut through a  
14 little bit of this.

15 Mr. Seery is being tendered today as  
16 the debtor's 30(b)(6) witness to cover all topics  
17 on your list subject to the objections that I  
18 provided to you. I hope that's helpful.

19 MR. DRAPER: Okay. That's fine.

20 And, Mr. Seery, just so you know, if  
21 I ask you a question and you think there's  
22 somebody else who has better knowledge than you  
23 and you don't know, please advise as to who that  
24 party is. Okay? That's a question.

25 A. Oh, it wasn't phrased as a question.

1 J. SEERY

2 What's the question?

3 Q. Okay. Will you -- it's a statement,  
4 then. We'll do it this way.

5 A. Okay.

6 Q. Please, if in fact there is a party  
7 at the debtor who has better knowledge than you  
8 about an area of inquiry, please identify for me  
9 who that party may be.

10 A. Okay.

11 Q. Thank you.

12 (Technical discussion off the  
13 record.)

14 Q. (BY MR. DRAPER) Now, let me move  
15 with respect to the documents that I've asked you  
16 to produce. Again, I've gone through this, and  
17 just to sift my way through this, I notice that  
18 there was no notice or analysis sent to  
19 MultiStrat's limited partners relative to the UBS  
20 claim, the May 2020 settlement agreement, and the  
21 settlement proposed in the settlement motion.

22 Is that correct, Mr. Seery?

23 A. I believe so.

24 Q. That there is no material regarding  
25 the specific transfers by the debtors or the



J. SEERY

funds of the assets that were transferred to MultiStrat giving rise to the UBS claim. There's no listing.

A. I'm sorry, I didn't understand the --

Q. What I'm trying to find out is, is there a list of the assets that were alleged to be fraudulently transferred to MultiStrat?

A. Is there a list? Yes.

Q. Do you know the list?

A. Yes. Not the -- I can't off the top of my head recite the policies that were in it as well as the CLOs; yes.

MR. DRAPER: Can I get that list, Mr. Morris? I don't have that list.

MR. MORRIS: If we have it, Mr. Draper, I promise to give it to you.

MR. DRAPER: Okay.

Q. (BY MR. DRAPER) Do you have documentation as to what MultiStrat paid for the assets that were transferred to it?

A. The 2009 transfers?

Q. Yes.

A. Yes.

MR. DRAPER: Can I also get that

1 J. SEERY

2 list, Mr. Morris?

3 MR. MORRIS: I'll take it under  
4 advisement.

5 A. And also, paid to whom?

6 Q. (BY MR. DRAPER) Whoever they paid to,  
7 whoever they made a payment to.

8 A. Yeah, they -- when they got them  
9 back, they didn't make a payment to anybody.

10 Q. No, let me ask the question.

11 There were assets that were  
12 transferred by somebody to MultiStrat that gave  
13 rise to the UBS lawsuit; correct?

14 A. Correct.

15 Q. Is it your -- is it -- did MultiStrat  
16 pay anything or give anything for those assets?

17 A. No. It satisfied a note.

18 Q. Okay. Can I have a copy of the note  
19 that was satisfied?

20 A. Yes. Referred to as the note unwind  
21 transaction.

22 MR. DRAPER: Mr. Morris can I have a  
23 copy of that also?

24 MR. MORRIS: I'll take that under  
25 advisement too, Mr. Draper.

1 J. SEERY

2 Q. (BY MR. DRAPER) I've asked for a  
3 list of the entities that own an interest in  
4 MultiStrat. Nothing has been provided in  
5 connection with that.

6 Do you have a list, Mr. Seery?

7 A. Yes.

8 MR. DRAPER: Mr. Morris, I've asked  
9 for that also. And again, whatever  
10 confidentiality you need.

11 MR. MORRIS: I think it's something  
12 that we have to create for you, Doug. I don't  
13 think an actual list exists. I think what  
14 Mr. Seery is referring to may be the information  
15 in his head, but it's going to be included in our  
16 omnibus reply later this afternoon, but we'll get  
17 that to you either way.

18 MR. DRAPER: Right. And again, there  
19 is a reporting that they do and something they  
20 give to the limited partners on a yearly basis,  
21 so it -- there must be something there separate  
22 and apart from a new creation.

23 MR. MORRIS: Okay. Well, you're  
24 going to have that information before the end of  
25 the day, I promise.

J. SEERY

MR. DRAPER: Okay.

Q. (BY MR. DRAPER) Was there a third-party analysis of the UBS claim on behalf of MultiStrat?

A. Third-party analysis on behalf of MultiStrat --

(Technical interruption.)

A. We did innumerable analyses of the claim -- I think you said of the claims? Yes.

Q. (BY MR. DRAPER) Let me ask the question in a different way.

You did an analysis, your staff did an analysis; is that correct?

(Technical interruption.)

A. I believe I was asked did I and my team do analyses? The answer is yes.

Q. No, my question is a different question than that. Did a third party other than you or Pachulski do an analysis of the claim on behalf of -- against MultiStrat?

A. In the early part of the case, certainly UBS's expert did analyses of the claim, yes.

Q. Did somebody other than on behalf of

J. SEERY

UBS or Pachulski or your group do an analysis on behalf of MultiStrat? Was an independent contractor hired by MultiStrat to do an analysis of the claim?

A. Not recently, no.

Q. How about previously?

A. There may have been early in the litigation, yes.

Q. But do you have -- do you have a copy of that report?

A. No.

Q. You've never seen it?

A. I don't -- I believe I have, actually, but I haven't looked at it in a while.

MR. DRAPER: Can I get a copy of that, Mr. Morris?

MR. MORRIS: If we can find it, because I'm not familiar with that document either, but we'll follow up.

Q. (BY MR. DRAPER) Now, again, this is a rather complex transaction, and I am a latecomer to this, so I'm going to ask you a series of questions. You may look at me and do the same thing you did before, say, Douglas, why



J. SEERY

are you asking that question? But again, this is -- this is education for me also, so let's go through this.

I'm going to ask you a series of questions about the relationship of the debtor to certain entities that are called affiliates.

The first entity is Highland CDO Opportunity Master Fund LP.

Are you familiar with that entity?

A. I'd have to go back and check each of the evolving names of these entities, but clearly that was a Highland-related entity. CDO Fund was the -- one of the defendants, if that's the same one -- they have very similar names -- one of the defendants in the UBS litigation.

Q. And who was the general partner of that fund?

A. There would have been an intermediate general partner between CDO Fund and HCMLP, and then HCMLP.

Q. All right. Ultimately if you traced the lineage, the debtor would have been the general partner; correct? Or controlled the general partner?

1 J. SEERY

2 A. Yes.

3 Q. All right. What about Highland  
4 Select Opportunity Fund?

5 A. Similarly, but Highland Select is not  
6 involved in this particular dispute.

7 Q. Well, who is the other defendant that  
8 there's a judgment against?

9 A. SOHC. But you've already -- I think  
10 you brought an action related to Highland Select  
11 Opportunity Fund to pierce the veil.

12 Q. No, let me -- again, Highland Select  
13 Opportunity Fund is a defendant in this case  
14 also; correct?

15 A. I think it's a different name than  
16 that, but we call it SOHC.

17 MR. MORRIS: Objection --

18 Q. (BY MR. DRAPER) Now, the next entity  
19 is Highland Financial Partners. Who is that?

20 A. That was an intermediate holding  
21 company that Highland formed that owns certain of  
22 the defendants in this case.

23 Q. When I -- let me break up the term  
24 "defendants," because you have two classes of  
25 defendants or two groups. You have the

1 J. SEERY

2 defendants in Phase 1; and then you have the  
3 defendants, what I'll call in Phase 2.

4 Highland Financial Partners is a  
5 defendant in Phase 2; correct?

6 A. Yes. The answer is yes. I think it  
7 was also -- I'm not sure, but I thought it was a  
8 defendant added in Phase 1 as well. I don't  
9 recall off the top of my head.

10 Q. Right. Well, then --

11 All right. Who owns Highland  
12 Financial Partners?

13 A. It's owned by a combination of  
14 limited partners and its GP.

15 Q. Who is its GP?

16 A. It had intermediate companies,  
17 ultimately rolling up to Highland, HCMLP.

18 Q. Now, in some of the pleadings I've  
19 read, HFP, which is Highland Financial Partners,  
20 is described as a parent corporation and alter  
21 ego of Highland Select Opportunity Fund; is that  
22 correct?

23 A. That is the -- that was one of the  
24 allegations, yes.

25 Q. Is that factually correct?

1 J. SEERY

2 A. That that is an allegation, yes.

3 Q. No, that -- no. I understand it's an  
4 allegation. What I'm asking you is the  
5 allegation correct?

6 A. There is a heck of a lot of evidence  
7 to support it. There are also defenses.

8 Q. No, that -- again, let me ask the  
9 question just from a document point of view.  
10 Just looking at the face of the documents, is  
11 Highland Financial Partners the parent  
12 corporation of Highland Select Opportunity Fund?

13 A. Yes, but you asked me if it was the  
14 alter ego.

15 Q. No, I asked you both. Now I'm  
16 focusing on parent.

17 A. Yeah, parent is easy. Yes.

18 Q. Now, in terms of alter ego, you made  
19 the statement that there's a lot of evidence to  
20 support the concept that it is the -- or the  
21 allegation that it is the alter ego. What facts  
22 give rise to your statement?

23 A. The way that Highland HFP was managed  
24 by Highland, but really by Mr. Dondero for years  
25 and years, moving money in and out, moving money

J. SEERY

and assets in and out without real consideration to people like MultiStrat. Hiding assets in the subsidiaries, stripping those assets out in a criminal fraud. We could go on, but it's innumerable. There are defenses, but it's pretty bad.

Q. So your basis to saying it's an alter ego deals with the transfer of assets between entities; correct?

A. I didn't say it was an alter ego. You asked me if it was an alter ego and a parent, and I said that there was evidence to support that claim.

Q. Okay. Well, the parent would be just by documentation; correct?

A. That's correct, and that's when you asked me that. I said yes, it's the parent.

Q. Okay. And with respect to the alter ego, the things that concern you with respect to the alter ego claim deal with the movement of assets in and out of that entity; correct?

A. Among other things, yes.

Q. Now, they did in fact have separate books and records and separate bank accounts;



J. SEERY

correct?

A. Separate books and records.

Sometimes. Separate bank accounts, sometimes.

Q. UBS in its complaint alleges that the debtor devised an elaborate scheme to not just impede UBS's ability to recover what it was owed but to prevent UBS from recovering any of such amounts; correct? That's a -- that's a statement? Is that what your understanding of the UBS claim against the debtor is?

A. That's one of the claims in the large ten-year litigation, yes.

Q. What -- do you understand the scheme to mean that assets were transferred out of either Highland Select, HFP, or Highland CDO Opportunity Master Fund to impede the ability of UBS to collect on its judgment?

A. Among other things, that's the allegation, yes.

Q. Now, what I'd asked you to look at -- and we sent it up -- there is a chart that was in one of the UBS pleadings. It shows the recipient and the market value of assets.

Do you have that in front of you?

J. SEERY

A. No.

Q. Okay.

MR. MORRIS: It's the first e-mail that I sent to you this morning, Jim. I think it's one of the three documents in the first e-mail that I sent to you.

THE WITNESS: Hold on.

I want to make sure I open the right e-mail, John. Is that 9:07? Or was there a --

MR. MORRIS: That sounds right.

A. What am I looking for, Mr. Draper?

Q. (BY MR. DRAPER) There's a chart that's there. Do you see it?

A. Of the recipient market values?

Q. Yes.

A. Yes.

Q. If you note in there, it says MultiStrat entities, which implies two entities or more than one. Do you know what entities are referred to here?

A. I don't recall. I thought that the credit fund was the recipient. The MultiStrat credit fund has 10, 12 entities at least in it.

Q. Do you know how much of the

J. SEERY

25,000,782 was transferred to the settling party under the settlement agreement?

A. I believe all of it.

Q. So the reference to MultiStrat entities is incorrect, in essence that the \$25 million should just go to the settling party?

A. No, the -- it could have been to one of its 100 percent owned and controlled subsidiaries.

Q. So again, do you know which went to the settling party versus one of its wholly-owned or controlled subsidiaries?

A. I don't recall specifically.

Q. Do you have any information in your list that is going to be provided to me that tells you who got what?

A. I don't know. I'd have to look back at the list. I'm not sure if there's specifics as to whether it went directly to the credit fund, which is the LP, or it went to one of its 100 percent owned SPVs, which were not really SPVs.

Q. When you say they're not really SPVs, can you give me the names of the entities you're

J. SEERY

talking about?

A. There's at least eight of them.

Q. Okay. And why do you say they're not SPVs?

A. Because they sometimes were used for more than one purpose.

Q. Okay. Where were these SPVs incorporated or set up?

A. Different places.

Q. Delaware?

A. I believe there's some Delaware.

Q. Caymans?

A. I believe there's some Caymans.

Q. And have you been able to track which assets went into what MultiStrat entity?

A. We certainly have had that information. I don't recall off the top of my head whether it went to one of those subs or whether it went directly to the credit fund.

MR. DRAPER: John, if you have that documentation -- I realize -- I'm not asking the witness to remember everything, but if there's documentation with respect to that, I'm entitled to that.

1 J. SEERY

2 MR. MORRIS: Okay. If we have it,  
3 we'll give it to you.

4 Q. (BY MR. DRAPER) Now, with respect to  
5 the assets that were transferred, I think earlier  
6 you said that they were life settlement amount --  
7 life settlement amounts? Life settlement claims?

8 A. No.

9 Q. Okay. What were the assets that were  
10 transferred to MultiStrat?

11 A. Life settlement policies.

12 Q. Okay.

13 A. They were life policies.

14 Q. And so there would be a list of the  
15 people? Or the policies; correct?

16 A. There would be a list of the policies  
17 that -- the personal information is confidential.  
18 And then there is a -- but it's available subject  
19 to confidentiality agreements. And then there  
20 were some CDO assets as well.

21 Q. Okay. What were the CDO assets that  
22 were transferred?

23 A. There were a couple of CDO assets.  
24 Off the top of my head, I don't recall the  
25 specific assets that were transferred.



J. SEERY

Q. All right. Let me ask you a question. If you go to the May 2020 settlement agreement, there's a list of assets in that document.

A. Do I have that document in front of me?

MR. MORRIS: I think you just received an e-mail. Let me see if I can figure out -- at 10:23 with a zip file.

THE WITNESS: Got it.

MR. MORRIS: And then another one a few minutes after that.

So, Douglas, can you please describe the document again that you want the witness --

MR. DRAPER: Yes, it's the May 2020 settlement agreement execution version. I don't know if this is my Bates number or yours. It's UBS 407.

And let me read you the first few items on it, and that may help. There's Metro-Goldwyn-Mayer Class A Common Stock, OmniMax International Inc.

A. Those are the assets that are held by MultiStrat.

J. SEERY

Q. (BY MR. DRAPER) Okay. So do you know what was transferred? Do you have that list?

A. Life settlement policies and some CDO assets.

Q. Okay. Can I get a list of the CDO assets that were transferred?

A. We should be able to find that.

Q. Okay. Now, in connection with the valuation, the \$25 million valuation that's in the UBS chart, do you know when that valuation was done?

A. I believe this was a valuation as of March 2009, by UBS's expert.

Q. And did Highland or MultiStrat do a valuation of the same assets as of that date?

A. I believe that Highland had the pleadings at the time.

Q. Do you have a copy of that valuation?

A. We would, yeah.

Q. What is the differential between the \$25 million that UBS contains and the Highland valuation?

A. I don't recall off the top of my

J. SEERY

head. There was -- there were some differences and they were different amounts in the various valuations depending on the time they were done.

Q. Well, if this \$25 million is March of 2009, I guess my question is, do you remember the extent of the differential? Is it 10 percent? 20 percent? 5 percent?

A. I don't recall. It's probably -- the variations are not huge, but I'm going to guess in the 10 percent-ish range.

Q. All right. Now, in this list also, the debtor received \$17 million; correct?

A. Correct.

Q. And is that -- what did it -- did it ever get cashed or something else?

A. I believe the debtor got CDO assets. I'd have to go back and look.

Q. Citibank?

A. I believe they also got assets.

Q. Are you aware of any claim against Citibank for the assets it received?

A. Yes.

Q. Who filed that claim?

A. I believe that UBS did. There was

J. SEERY

also litigation between the debtor and Citibank.

Q. When did the litigation with the debtor and Citibank take place?

A. Ten years ago. Eight years ago.

Q. Did it relate to the assets that Citibank received?

A. There were a number of disputes between Citibank and the debtor that were litigated.

Q. Is it fair to say that the facts that give rise to the claim against MultiStrat is MultiStrat's receipt of the assets from these entities?

A. From which entities?

Q. From the entity -- from HFP as well as the two defendants in the Phase 1 case.

A. Yes. That's fair.

Q. And that had --

A. Or entities they control.

Q. Had MultiStrat not received any of the transfers, it wouldn't be a defendant; correct?

A. I don't know that. That's the basis of it, but UBS may have claimed something else.

J. SEERY

Q. Whereas the claim against the debtor is the debtor devised a scheme as opposed to receiving assets.

A. Among other things.

Q. And just so we're clear, the party transferring assets to MultiStrat was not the debtor. It's either the two defendant funds or HFP; correct?

A. The actual transferor, yes, that's correct.

Q. Is it your contention that the actual transferor was an alter ego of the debtor?

A. That's UBS's contention.

Q. No, I'm asking you if you have that contention also.

A. I was a defendant. I didn't have a contention.

Q. Well, let me ask the question in a different way.

As the debtor, right now, do you believe the assets of MultiStrat and these other entities are the assets of Highland?

MR. MORRIS: Objection to the form of the question.



J. SEERY

A. Yeah, I think the question is a bit misplaced, but I think there's material risk that Highland and in particular your client, Mr. Dondero, controlled a scheme with other officers of Highland to defraud both Highland and UBS, and that scheme certainly ran over to defrauding investors in MultiStrat, including Highland.

Q. (BY MR. DRAPER) Let me ask the question a different way, because you didn't answer my question. And you may not have understood it.

What I'm asking you, you're representing -- you're the debtor; correct?

A. Correct.

Q. You're also going to be the reorganized debtor once the plan goes effective; correct?

A. Correct.

Q. Is it your contention that the assets of the funds as well as MultiStrat are in fact the assets of the debtor or the reorganized debtor under a theory of single business enterprise or alter ego?

J. SEERY

MR. MORRIS: Objection, asked and answered.

A. That is not my contention, no.

Q. (BY MR. DRAPER) Okay. Great.

Now, let me ask you a question.

As -- you're the investment manager of MultiStrat; correct?

A. No.

Q. The debtor is?

A. Correct.

Q. Is it your belief that the actions of the debtor as investment manager are subject to the rules and regulations contained in the Investment Advisor Act?

A. Yes.

Q. And, in fact, the limited partnership agreement for MultiStrat refers to the Investment Advisor Act.

Have you reviewed that document?

A. I have.

Q. And is my statement correct?

A. I believe so. I'd have to go back and check. Do you have a specific reference?

Q. Okay.

J. SEERY

Do you consider the Investment Advisor Act to be something -- there's a term in the documents, it says otherwise prescribed by applicable law.

Does the Investment Advisor Act in fact require the investment advisor to do certain things?

MR. MORRIS: Objection to the extent it calls for a legal conclusion.

Q. (BY MR. DRAPER) Is it your understanding?

MR. MORRIS: Objection, vague.

A. I don't know the phrase that you're referring to. Applicable law typically would have been some -- referring to something else. So I'm not sure what you're asking.

Q. (BY MR. DRAPER) I'll ask it in a different way.

Is it your view or your understanding that as the investment advisor for MultiStrat, the Investment Advisor Act requires that you take or that the investment advisor take certain actions that may not be prescribed by the documents such as the limited partnership

J. SEERY

agreement or the investment management agreement?

MR. MORRIS: Objection to the extent it calls for a legal conclusion and vague and ambiguous.

A. I believe the Investment Advisor Act actually prohibits certain actions. It doesn't necessarily give a prescription for what you are supposed to do, but it outlines a way that -- and a set of rules of which you are required to adhere.

Q. (BY MR. DRAPER) Great. Do you know what entity regulates the Investment Advisor Act?

MR. MORRIS: Objection to the form of the question.

A. No entity regulates the Investment Advisor Act.

Q. (BY MR. DRAPER) Well, let me put it -- who oversees its enforcement?

A. The SEC.

Q. Okay. That's fine.

In fact, the debtor and you in this settlement agreement are representing two parties; correct? Both MultiStrat and Highland, the debtor; correct?

J. SEERY

MR. MORRIS: Objection to the form of the question.

A. I am an officer of the debtor. The debtor is the manager of MultiStrat.

Q. (BY MR. DRAPER) Let me state it in a different way, though.

The -- there is a legal differentiation between the debtor and MultiStrat; correct?

A. Correct.

Q. And they're two separate legal entities?

A. Correct.

Q. They are co-defendants in a single lawsuit.

A. Yes.

Q. And that, in reality, the goal of each one of them is to pay as little as possible to UBS.

A. I don't know if it's fair to say that's the goal. I think that oftentimes entities like to pay as little as possible, but when entities have stolen or done damage, oftentimes they'll settle them for a fair amount.



J. SEERY

And if that fair amount is easy to determine,  
it's not for the entity or the entity's  
responsibility or even a fiduciary's  
responsibility to try to steal from a  
counterparty.

Q. That's -- my question is a different  
question.

When you have co-defendants, the goal  
of one defendant is to pass the settlement amount  
or the larger portion of the liability onto the  
other defendant; correct?

MR. MORRIS: Objection to the form of  
the question.

A. Not necessarily, no.

Q. (BY MR. DRAPER) Mr. Seery, have you  
read the subscription agreement for MultiStrat?

A. I've looked at it. I don't think  
it's fair to say that I've read it.

Q. Let me read you a portion of it: And  
the general partner on behalf of the fund may  
elect to serve on a creditors committee, equity  
holders committee, or other group to ensure  
preservation or enhancement of the fund's  
position as a creditor or equity holder.

J. SEERY

A member of such committee or group may owe certain obligations generally to all parties similarly situated to the -- that the committee represents. If the general partner concludes that its obligations owed to the other parties as a committee or a group member conflict with the duties owed to the funds, it will resign from that committee or group and the fund may not realize the benefits, if any, of a participation on the committee or group.

Do you understand what I just read to you?

A. Yes.

Q. So here, looking at the hat that the debtor has, it's a fiduciary to the creditors of Highland; correct?

A. No. It's fiduciary to the estate.

Q. Okay. And that involves the creditors; correct?

A. It does.

Q. Now, with respect to its role as investment manager of MultiStrat, its fiduciary duty is to look out for the best interests of MultiStrat?

J. SEERY

A. Correct.

Q. Now, have you brought in an advisory group to look at what's in the best interest of MultiStrat with respect to the settlement?

A. We have counsel, yes.

Q. And the counsel is Pachulski; correct?

A. And WilmerHale.

Q. Okay. Has WilmerHale, on behalf of -- well, let me ask the question.

Has MultiStrat retained WilmerHale?

A. No.

Q. Has MultiStrat retained Pachulski?

A. No.

Q. The sole retention agreement between the parties, i.e., WilmerHale and Pachulski, is through the debtor; correct?

A. They each have their own agreements with the debtor.

Q. No, I understand that, but the debtor is the retaining party.

A. Correct.

Q. Now, in connection with the May 2020 settlement agreement, as well as the settlement

J. SEERY

agreement before this Court, who represented  
MultiStrat?

A. The investment manager.

Q. Well, there is a statement in the  
agreements that they were represented by counsel.  
Who is the counsel that represented MultiStrat in  
connection with the two settlement agreements?

A. MultiStrat didn't have its own  
separate counsel for the -- for either of those  
agreements.

Q. So do you -- can you tell me why the  
agreements say that each party, MultiStrat being  
a party, has independent legal counsel?

A. The investment manager made the  
decisions on behalf of MultiStrat.

Q. No, it talks about independent  
counsel. So let's -- who was counsel for  
MultiStrat, and who was independent counsel for  
MultiStrat, or there was anyone?

A. Asked and answered, there was none.

Q. That's fine. So the statement in the  
settlement agreement is incorrect?

A. If you limit it to them having their  
own individual separate lawyer, then it would be

J. SEERY

incorrect.

Q. What does the word "independent" mean to you?

A. Not affiliated.

Q. Okay. Now, let me ask a question about the settlement agreement before the Court, just so I understand what's meant and what's intended.

Can you please look at the settlement agreement before the Court? And what I'd call your attention to is paragraph C on page 5.

A. Is this a document that you guys have put in front of me?

MR. DRAPER: John?

MR. MORRIS: I'm sorry, I was taking a note. Which document are you referring to?

MR. DRAPER: The settlement agreement that's before the Court.

MR. MORRIS: Yeah, that's one of the e-mails that I sent to you this morning, Jim. Maybe 923.

THE WITNESS: Okay. It's attached to Mr. Feinstein's declaration?

Q. (BY MR. DRAPER) What I'd ask you to



J. SEERY

look at is page 5.

A. Numbered page 5?

Q. Yes.

A. Yes.

Q. Paragraph (c).

A. Mm-hmm.

Q. So let me sort of set the table for this.

In connection with this settlement agreement, MultiStrat is paying \$18,500,000 to UBS; correct?

A. Yes.

Q. And there is, in the settlement agreement on page -- there's a release by Multi -- by UBS of claims against MultiStrat; correct?

A. Yes.

Q. There is no release, however, of claims by the debtor against MultiStrat.

A. Is that a question?

Q. Is that correct?

A. Yes, there's -- there is no such release, yes.

Q. And, in fact, in the retained claims

J. SEERY

section of your plan, the debtor has specifically retained its claims against MultiStrat.

A. Yes.

Q. Okay. Now, let's move on to page 5 of the settlement agreement.

Q. (BY MR. DRAPER) In the settlement agreement, it uses the term, and it requires HCMLP, the debtor, to: ... obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF interests.

What does that mean to you?

A. Can you point me to the provision you're talking about?

Q. Look at paragraph (c). Do you want to take a few minutes to read it, and it's --

A. It's two pages.

Q. Okay. Basically it says -- first of all, you're going to try to collect from Sentinel. And then it says if you can't collect from Sentinel, there's certain things that the debtor is going to do.

And one of the things it says, it says: ...in addition shall provide reasonable

J. SEERY

assistance to UBS in accordance with any legal action UBS takes to recover the insurance proceeds or to return the transferred assets to the fund to satisfy a Phase 1 judgment. Or -- it then goes on -- obtain rights to the MSCF interests, including but not limited to the redemption payments in connection with the MSCF interests.

What does that mean?

A. Can you point me to where you're reading from? In the --

Q. One, two, three, four, five, six, seven, eight, nine, ten. It's about nine or ten lines down in (c).

A. (c) (3) in the hole?

Q. Yes.

A. Okay.

Q. And it's before the three little Is. It's the sentence before that. So 2.

A. 2, Sentinel. Okay.

In addition shall provide reasonable assistance to UBS in connection with any action UBS takes to recover the insurance proceeds or to return the transferred assets to the funds to

J. SEERY

satisfy the Phase 1 judgment or obtain rights to the MSCF interests.

Q. Right. Now, what we know is MultiStrat received assets from -- that UBS claims are improperly given and were fraudulent conveyances; correct?

A. That's correct.

Q. And MultiStrat is paying \$18.5 million to UBS. Also correct?

A. That's correct.

Q. Does this also require MultiStrat to give back to UBS anything else it required?

MR. MORRIS: Objection to the form of the question.

A. No.

Q. (BY MR. DRAPER) What does this sentence mean or what does this -- what is this obligation that's here insofar as it affects the MultiStrat investors and the assets held by MultiStrat?

A. The investors? Which investors?

Q. The investors in MultiStrat.

A. The limited partners. The current limited partners?

J. SEERY

Q. Yes.

A. I don't think this specific sentence or phrase affects the current limited partners.

Q. Well, doesn't it require MultiStrat -- or limiting distributions MultiStrat can make to its limited partners?

A. I don't believe it does, no.

Q. What does this sentence do, then?

A. It says that HCMLP is going to provide reasonable assistance to UBS to help recover on the insurance proceeds, or get the transferred assets that were stolen from the subsidiaries back to satisfy the Phase 1 judgment or to obtain rights to the MSCF interests.

Q. What are the MSCF interests?

A. They're defined above.

Q. And what are they?

A. They are the interests that are -- that were transferred to Sentinel. They're part of the stolen interests.

Q. All right. So this has nothing to do with the assets that -- and -- that MultiStrat has today.

A. No, it does have to do with the



J. SEERY

assets that MultiStrat has today.

Q. What does it have to do with the assets that MultiStrat has today and the possibility that those assets are going to be used to pay UBS?

A. The settlement agreement requires \$18.5 million to be paid to UBS.

Q. Right.

A. That's pretty clearly an asset of MultiStrat.

Q. Yes.

A. The settlement agreement also requires HCMLP to assist in certain recoveries related to the stolen assets, as well as with respect to the MSCF interests.

Q. Okay. Does it require the debtor to go after MultiStrat in order to help satisfy the UBS claim?

A. No.

Q. Okay. Well, then let's move down further.

If you'll look in -- and what I'm looking at is 4 in the hole.

As well as 5, 6, and 7. Doesn't it

1 J. SEERY

2 require the debtor to take certain actions or  
3 file certain complaints or transfer certain  
4 claims the debtor has to UBS?

5 MR. MORRIS: I'm sorry, where are you  
6 referring to, Douglas?

7 MR. DRAPER: It's all in paragraph  
8 (c).

9 MR. MORRIS: Yeah. Okay.

10 A. No.

11 Q. (BY MR. DRAPER) Well, what about 7  
12 in the hole?

13 A. You asked me about 4 and 5, correct?  
14 So I'm getting to 7.

15 Q. No, I went past that.

16 A. Oh, okay. I think if we check the  
17 transcript, you said 4 or 5, but we'll go to 7  
18 now.

19 Okay.

20 Q. Doesn't it require the conveyance of  
21 certain assets that may belong to the debtor to  
22 UBS?

23 A. That may belong to the debtor?

24 Q. Yes.

25 A. If the debtor has assets that

J. SEERY

actually belong to UBS, you would transfer them to UBS, but this doesn't deal with that.

Q. Well, it basically says cooperate with UBS to assign or convey any such assets described to UBS.

MR. MORRIS: Objection to the form of the question.

A. Correct. I said "Correct." That's what it says.

Q. (BY MR. DRAPER) Okay. So it believes that there's a conveyance of debtor assets to UBS.

MR. MORRIS: Objection to the form of the question.

A. I'm sorry, it is a document. It doesn't believe anything. It's not sentient.

But the document says that we'll cooperate with UBS.

Q. (BY MR. DRAPER) It also says it will convey things to UBS.

A. The document says that, but the document doesn't convey. HCMLP will cooperate with UBS to assign or convey such assets described in the above section, which was 1(c), 6

J. SEERY

in the hole, or any other assets owned or controlled by the funds; those are the funds that it had the assets stolen from them, or HFP, including for the avoidance of doubt, assets currently unknown to the debtor that we discover in the future, or more theft, which we, you know, seem to come across on a relatively regular basis.

Q. So if I understand this, what's happening here is the conveyance by a debtor is in its capacity as investment manager or general partner of those entities as opposed to the conveyance of the -- by the debtor of its own assets.

A. It will depend on the particular asset.

Q. So there may in fact be an instance where the debtor is conveying its own asset to UBS?

A. If it's not -- if it's not the debtor's assets and it was in fact stolen from a subsidiary that was a counterparty or a defendant to UBS against whom UBS had a judgment, we would convey those back over, yes.

1 J. SEERY

2 Q. Well, wait. But that conveyance in  
3 that instance is in a representative capacity as  
4 investment manager or general partner; correct?

5 MR. MORRIS: Objection to the form.

6 A. You asked me if the -- yeah, you  
7 asked me if the debtor had the assets and owned  
8 the assets. That's different than in a  
9 representative capacity.

10 Q. (BY MR. DRAPER) No, I didn't ask that  
11 at all, Mr. Seery. Let's start over.

12 A. Let's read the question again. Come  
13 on, let's --

14 Q. No, let's not read the question.  
15 Let's start over. I'll ask it in a better way.

16 A. That would be nice.

17 Q. Thank you.

18 There are three instances here. One  
19 is the debtor can convey assets to UBS in a  
20 representative capacity on behalf of the funds or  
21 entities in which it's deemed investment manager  
22 or general partner; correct?

23 A. Are we talking about generally or in  
24 this 7 in the hole?

25 Q. Let's do generally.



J. SEERY

A. The debt -- if the debtor manages assets and it receives reasonably equivalent value, it can transfer assets from a fund it manages consistent with its investment management agreement.

Q. And now under this provision in this document, to the extent the debtor determines that there are assets in the funds that were stolen from UBS in its representative capacity as general partner -- general manager -- general partner or investment manager, it will convey those assets back to UBS; correct?

A. No. If they were stolen from the funds against whom UBS has a judgment, then the debtor would seek to return those to that fund so that UBS could collect against those assets.

Q. But what I'm trying to get at -- and what you're missing a step -- so we can go through this for a while -- is the debtor in that instant is acting as general partner and investment manager for those funds.

A. They may or may not be funds. You are conflating a whole bunch of different concepts. Certain of the companies are

J. SEERY

companies. They may or may not have an investment management. Certain others may be managed by the debtor as a general partner. Other -- and the general partner manages a limited partnership in a plenary fashion according to its limited partnership agreement, and they can satisfy creditors of that limited partnership.

The debtor also acts as an investment manager related to funds. It has authority under its investment management agreement to do certain things. Consistent with those things, if it was a fund, we would seek to transfer and satisfy this obligation. If it was a company that didn't have an investment management agreement but for whom we were the general partner and had management authority, we would seek to satisfy obligations that way.

Q. Okay. Now, under this provision, will the debtor be obligated to transfer its own assets as opposed to those it holds in a representative capacity to UBS?

MR. MORRIS: Objection to the form to the extent it calls for a legal conclusion.

J. SEERY

Document speaks for itself.

You can answer.

A. Potentially. I'd have to -- the paragraph in totality conceives of a number of assets that were stripped from these entities. If those assets ended up in the debtor and they were stripped out, I think we would have an obligation to return those to the entity against whom they were stripped from if we had not paid for them.

And then to the extent that entity had an obligation to UBS, we would seek to satisfy that obligation.

Q. (BY MR. DRAPER) Okay. That's fine. Next, under (c)(3) in the hole, if you look: Cooperate with UBS and participate, in the investigation or prosecution of claims or request for injunctive relief against the funds; then you see MultiStrat there.

So doesn't this envision litigation against MultiStrat with respect to assets that it has?

A. No.

Q. Well, doesn't it say in here,

J. SEERY

prosecution of claims against MultiStrat?

A. It says against a number of entities. I'm not -- claim against MultiStrat is being settled. If there are other assets, which we've talked about earlier, then they would -- they could be addressed in that cooperation provision.

Q. No, what it -- it doesn't only say cooperate. It also says participate as applicable in the prosecution of claims.

A. Yes, it says that.

Q. And doesn't this paragraph envision two things: One is UBS may prosecute claims against MultiStrat; and two, the debtor may prosecute claims against MultiStrat?

A. No, it does not envision that.

Q. Well, why is it they use the word "prosecution of claims" if it doesn't envision that?

A. There's a list of seven or eight different entities and people and then it has a further catchall at the end. Some of those are injunctive relief; we talked about it earlier.

Some of them will be direct claims.

Q. And so MultiStrat is included in that

1 J. SEERY

2 list of entities. I don't care about the others.  
3 I care about MultiStrat.

4 A. MultiStrat is included in the list.

5 Q. Right. So in connection with this  
6 paragraph (c), if UBS prosecutes claims against  
7 MultiStrat, it's inconsistent with the release  
8 that MultiStrat is getting in this document.

9 A. UBS is releasing MultiStrat. There  
10 will be no inconsistency. It does not have other  
11 claims against MultiStrat.

12 Q. Then isn't the language of 3 in a  
13 hole: Cooperate with UBS and participate (as  
14 applicable) in the prosecution of claims against  
15 MultiStrat? If there's a release, why would UBS  
16 be prosecuting claims against MultiStrat?

17 MR. MORRIS: Objection to the form of  
18 the question.

19 A. Again, it's a litany of a number of  
20 individuals --

21 Q. (BY MR. DRAPER) No, I -- I don't  
22 care about the other individuals. What I care  
23 about is --

24 MR. MORRIS: The document says what  
25 it says. You're arguing with the witness at this



J. SEERY

point. You can put that language in front of the judge and make the argument that you're making to Mr. Seery now.

MR. DRAPER: Okay.

Q. (BY MR. DRAPER) Now, can you explain to me the May 2020 settlement that you were a part of, what did that attempt to accomplish?

A. The May 2020 settlement?

Q. Yes.

And let me -- before you go, let me mark that as an exhibit to this deposition, as Exhibit 1.

(Seery Deposition Exhibit 1 marked.)

MR. DRAPER: And, John, we'll put that under seal.

MR. MORRIS: Yes, please. Thank you.

Q. (BY MR. DRAPER) Okay, Mr. Seery, you can answer.

A. I'm not looking at the document, but the document provided for a settlement with UBS. UBS had filed a claim, which is the ultimate settlement we have here involving MultiStrat. MultiStrat in the ordinary course of its business was looking to sell certain life settlement

J. SEERY

policies, the proceeds of which would be used partially to satisfy a loan to, surprise, surprise, NexBank -- is another interrelated, you know, whatever, with your client.

We needed to sell those policies because your client had left MultiStrat in a terrible position without any cash and unable to satisfy the payment obligations. Those policies had a value of north of \$30 million, and the challenge that we had is we didn't have cash to pay the premiums and they would expire worthless.

So UBS, having a claim against those assets, stood in the way of our being able to execute that transaction and certain of those assets were also pledged to, again, NexBank.

So that settlement permitted us to complete that sale of those assets, which was very advantageous to MultiStrat.

Q. All right. Let's talk about the settlement.

In looking at the settlement, \$8.9 million went to MultiStrat to pay operating costs of the funds; correct?

A. I believe that's the right number.

J. SEERY

It's not in front of me, but if you're reading it, I'll --

Q. So in connection with that settlement, UBS agreed, and the debtor participated in it, that \$8.9 million would go to MultiStrat for its use; correct?

A. If that's the amount. There were certain monies that were left, and there was a waterfall of money that went through to make sure MultiStrat had both cash to satisfy its then current obligations post the settlement -- or post the sale of the life policies. It had to be able to satisfy NexBank for the lien it had on the life settlement policies, and then, of course, NexBank held us up, so we had to reserve a sufficient amount to make sure we could service NexBank over the next year until the maturity of the NexBank loan.

Q. All right. Now, let's break this up.

Who was the borrower that NexBank made a loan to?

A. MultiStrat.

Q. And that's the \$15.8 million, if you want to look on page 3 of the document.

1 J. SEERY

2 A. I don't have the document in front of  
3 me. Where did this one come in? Is that in the  
4 zip?

5 MR. DRAPER: John?

6 MR. MORRIS: Yes. I'm sorry, I was  
7 on mute.

8 THE WITNESS: I was having trouble  
9 pulling up the zip. I could pull up the  
10 document.

11 For some reason I had trouble, John,  
12 opening that zip file.

13 Do you recall which number it is?  
14 There's 20 documents in here.

15 MR. MORRIS: What's the exact title  
16 of it, Douglas?

17 MR. DRAPER: It's the May 2020,  
18 May 11, 2020 settlement agreement that you  
19 produced for me. It's the last document in the  
20 material that you gave me.

21 THE WITNESS: Is it one of these  
22 Bates numbered documents?

23 MR. DRAPER: I have -- it's 395  
24 through -- I may have different Bates numbers  
25 than John.

J. SEERY

THE WITNESS: That's correct.

MR. MORRIS: That's the right

document.

So if you look at -- try and open up  
the second e-mail that I sent to you, Jim.

THE WITNESS: May 20th. I've got it.

MR. MORRIS: Go ahead, Douglas.

MR. DRAPER: If you look on page 3,  
is \$15.8 million going to NexBank Life's --  
NexBank; correct?

A. Correct.

Q. (BY MR. DRAPER) And that was a loan  
from NexBank to MultiStrat?

A. Correct.

Q. Then there's 1.7 going to the debtor.

A. Correct.

Q. And that is in connection with a loan  
by the debtor to MultiStrat?

A. A post-petition loan, correct.

Q. Was court approval sought for that  
post-petition loan?

A. No.

Q. And so the debtor transferred its own  
assets to a wholly-owned -- to a subsidiary?



J. SEERY

A. Correct.

Q. Was that authorized in the protocols?

A. It was approved by the committee.

Q. Was it approved by the Court?

A. You already asked me that, I said no.

Q. No, I'm talking about the settlement.

That's what I'm talking about. I'm talking about  
this loan of a million seven?

A. That's what you just asked me two  
questions ago, and I said no.

Q. Okay. Then you have money going to  
MultiStrat of \$8.9 million.

A. Correct.

Q. And then you have \$10.1 million being  
set aside in an escrow account.

A. Correct.

Q. And what was the -- there was a  
two-year hold on the escrow account being  
released?

A. Yeah, I'd have to go in and look at  
the specific terms, but that sounds correct.

Q. And the release of that did not go to  
the limited partners of MultiStrat; correct?

It couldn't be used to make

J. SEERY

distributions to them.

A. It was in escrow.

Q. No, I understand that, but after the escrow -- after the escrow, it couldn't go out.

A. I think after the escrow, it would be subject -- it could go wherever it was appropriate to go, but it wouldn't go to the limited partners, no. Because there's \$89 million of unredeemed nonpartner -- they're now treated not with partners, but they're nonredeemed because the debtor prepetition just decided not to pay those people back.

Q. Wait. I don't understand what you just said.

A. It couldn't go to the limited partners.

Q. It couldn't go to the MultiStrat limited partners?

A. No.

Q. So there are no distributions that can be made ever to the MultiStrat limited partners?

MR. MORRIS: Objection to the form of the question.

1 J. SEERY

2 A. No, not until the redeemed interests  
3 are satisfied.

4 Q. (BY MR. DRAPER) So there's  
5 \$89 million of MultiStrat redemptions that are  
6 unpaid?

7 A. Correct.

8 Q. All right. Do you have a list of  
9 those people?

10 A. Yes.

11 MR. DRAPER: Could I have that, John?

12 MR. MORRIS: Sure.

13 Q. (BY MR. DRAPER) Have those people  
14 been notified that the \$18 million -- eighteen  
15 five is being paid to UBS by MultiStrat?

16 A. No.

17 Q. Now, how did the eighteen five  
18 number -- settlement number be -- get arrived at?  
19 Because it's sort of looking coincidental that  
20 MultiStrat got 9 million, there's \$10 million set  
21 aside and, you know, the true numbers are roughly  
22 equivalent.

23 MR. MORRIS: Objection to the form of  
24 the question, if there was one.

25 Q. (BY MR. DRAPER) Mr. Seery, did you

1 J. SEERY

2 negotiate the \$18.5 million number?

3 A. I was part of negotiating it, yes.

4 Q. How was the number arrived at?

5 A. It was arrived at by negotiation.

6 Q. Okay. Is it a coincidence that the  
7 two numbers, the escrow and the money MultiStrat  
8 received from the May 2020 settlement and the  
9 settlement number are pretty close to each other?

10 A. I don't understand the question  
11 you're asking.

12 Q. In May 2020, there's \$10 million set  
13 aside in escrow.

14 A. Yes.

15 Q. And there is \$9 million going to  
16 MultiStrat.

17 A. Correct.

18 Q. In the settlement, there is  
19 \$18.5 million going to UBS from MultiStrat.

20 A. Yes.

21 Q. So the two numbers are within  
22 \$500,000 of each other.

23 A. You mean if you add 8.9 million and  
24 10.1 million, and then you compare it to the  
25 18.5, is that --

J. SEERY

Q. Right.

A. They have nothing to do with each other.

Q. That's fine. That was my question.

And again, the statement in the settlement that was independent counsel is incorrect vis-à-vis MultiStrat.

A. Which --

Q. Or at least it didn't -- MultiStrat didn't have independent counsel in connection with this one either.

A. MultiStrat did not have its own independent counsel, no.

Q. Great.

MR. MORRIS: Douglas, could I trouble you for a break at an appropriate time?

MR. DRAPER: Oh, no, that's fine.

MR. MORRIS: Not right at this moment but whenever it's convenient.

MR. DRAPER: No, I'm at a breaking point, John.

MR. MORRIS: We just -- my time is 11:23. Can we just come back in seven minutes? Or --



1 J. SEERY

2 MR. DRAPER: Take 10. Take 15.

3 MR. MORRIS: Okay, let's just make it

4 11:35 Eastern Time.

5 MR. DRAPER: Great.

6 (Recess taken, 11:23 a.m. to

7 11:36 a.m. EDT)

8 Q. (BY MR. DRAPER) Mr. Seery, you  
9 mentioned something that struck me. You said  
10 that the -- in exchange for the transfer of the  
11 assets to MultiStrat, the consideration that the  
12 transferor received was the cancellation of a  
13 note. Is that correct?

14 A. I'm sorry, you're going back to --  
15 we're off the 2020, we're going back to 2009?

16 Q. I'm going back to a question that I  
17 asked earlier, yes.

18 A. Okay.

19 Q. And I think your testimony was that  
20 in exchange for the assets that were transferred  
21 to MultiStrat that UBS contends were fraudulently  
22 transferred, the transferor was excused from a  
23 note that it owed to MultiStrat; correct?

24 A. Yeah, it was called the note unwind  
25 transaction. That's correct.

J. SEERY

Q. Okay. Did you happen to undertake any due diligence or investigation as to whether the note -- whether there was consideration for the issuance of the note?

A. Yes.

Q. And you concluded that there was no asset -- there was -- nothing gave rise to the note?

A. No.

Q. So in exchange -- in content -- in -- with respect to the note, what did the maker of the note receive?

A. The maker of the note received the assets.

Q. Okay. Let me sort of unpack that.

So at some point there was a note issued where the -- where HFP, or the -- executed a note in favor of MultiStrat; correct?

A. I'm sorry. I'm blown away.

Q. Okay. Then let's start all over again.

A. I'm blown away that you don't know this.

There was a -- and don't -- let's

J. SEERY

just -- we can leave that. I mean, some preparation would be appreciated.

There was a note in 2009 that's the underlying part of this transaction. MultiStrat transferred assets to HFP at the direction and control of Dondero. In exchange it gave a note. Eventually that was unwound in something that they called the note unwind transaction, and that was -- the assets were given back, and the note was unwound.

Q. Okay. Now let's -- let me ask the question.

In exchange for the assets that were transferred by MultiStrat to HFP in exchange for the note, did those assets have value or were they illusory?

A. They had value.

Q. What was the value of those assets that were transferred to HFP in exchange for the note?

A. I don't have it off the top of my head.

Q. Were the -- was there a reasonably equivalent value in exchange -- exchanged between

J. SEERY

the two parties?

MR. MORRIS: Objection to the form of the question to the extent it calls for a legal conclusion.

A. That really depends on whether the note was good, the provisions relating to the note. So it --

Q. (BY MR. DRAPER) I'm just looking at the assets that were transferred. If -- for example, if I give you a pen and you execute a note to me for \$10 million, we know it's not a good transfer. But if I give you \$10 million or give you \$10 million of MGM stock and you execute a note, then that's a fair transaction; correct?

MR. MORRIS: Objection to the form of the question.

A. It totally depends.

Q. (BY MR. DRAPER) What does it depend on? I'm giving you \$10 million of MGM stock and you're giving me a note. What --

A. It can depend on a ton of things.

Q. Okay. Have you done an analysis as to the reasonable equivalence of the consideration given to HFP in exchange for the

J. SEERY

note?

A. We did look at it, yes.

Q. And who looked at it, and was it your conclusion that it was fair value, not fair value, what was the value given in exchange for the note? What was the dollar value?

A. The dollar value was similar to the value of the note. There were a number of other questions around the note and then the unwind.

Q. Okay. So let's go to the unwind. In the unwind, the note goes back to get satisfied, and in exchange MultiStrat receives insurance policies; correct?

A. That's the argument, correct.

Q. Now, is that why initially your settlement with UBS was for a lower dollar figure, and then -- correct? That was announced by the Court -- to the Court in February of 2021.

MR. MORRIS: Objection to the form of the question.

A. That's not correct.

Q. (BY MR. DRAPER) Okay. Didn't you have an earlier settlement figure with Multi -- with UBS that was less than the settlement figure



1 J. SEERY

2 that you have today?

3 A. HCMLP did, yes.

4 Q. Okay. What was the reason for the  
5 increase?

6 A. Of the HCMLP?

7 Q. Settlement amount.

8 A. Correct. We uncovered a massive  
9 fraud committed by Dondero, Ellington, Leventon,  
10 Sevilla, DiOrio. I mean, it's 300 million face  
11 amount of securities related to transfers out of  
12 HFP and its subsidiaries and CDO Fund.

13 Q. Okay. So what you believe, then, is  
14 the amount was increased to take into account  
15 that the debtor's participation in the scheme was  
16 greater than you had originally believed?

17 MR. MORRIS: Objection to the form of  
18 the question.

19 A. No, that's incorrect.

20 Q. (BY MR. DRAPER) Tell me what's wrong  
21 with that.

22 A. We didn't know about the scheme at  
23 all.

24 Q. No, I understand that. That, I  
25 understand you didn't know. You ultimately

1 J. SEERY

2 learned --

3 Mr. Seery, the faces don't work.

4 A. Do you know what? Can you read back  
5 the question? You asked me if my belief was  
6 that -- we increased our belief that we were more  
7 involved in the scheme than we knew before. We  
8 didn't know about the scheme.

9 Can you be precise? Can you do a  
10 little bit of work before you get to the  
11 deposition, just a little bit so you don't waste  
12 everybody's time? Sorry, everybody.

13 Q. You know what? It's unprofessional  
14 and it's unwarranted.

15 A. No, it --

16 Q. Just answer my questions. Here's my  
17 question --

18 A. You are being unprofessional.

19 THE WITNESS: I'm sorry, John.

20 MR. MORRIS: Jim, all right, Jim.  
21 Let's get this done.

22 Go ahead, Mr. Draper.

23 THE WITNESS: I'm good.

24 Q. (BY MR. DRAPER) All right. You  
25 learned -- you had an original settlement with

J. SEERY

UBS for -- and I'm talking about you, "you" being Highland, the debtor, had an original settlement amount that you in fact announced to the Court; correct?

A. That is correct.

Q. All right. That amount ultimately got increased.

A. Correct.

Q. The increase was due to the fact that you uncovered a massive fraud that you felt warranted a greater recovery to UBS.

A. Not correct.

MR. MORRIS: Objection to the form of the question.

Why don't you just ask him why did you increase it?

Q. (BY MR. DRAPER) Why did you increase the amount, Mr. Seery?

A. We thought the -- we uncovered significant evidence of a fraud that put the estate at significantly more risk.

Q. Right. So, in fact, the amount of the assets that were transferred out were greater than you had originally thought.

J. SEERY

A. Incorrect.

MR. MORRIS: Object to the form of the question.

Q. (BY MR. DRAPER) What does the fraud have to do with the increase in the amount?

A. I'd go with asked and answered, but we thought that --

MR. DRAPER: Look, Mr. Morris can make that objection.

MR. MORRIS: Yeah, let him finish.

A. When we uncovered the fraud, we believed that that evidence significantly increased the risk to the estate of a larger judgment or claim ultimately found against the estate in favor of UBS.

Q. (BY MR. DRAPER) That's because the estate -- I'm not talking about the estate -- the former management of the debtor had significantly moved additional assets away from UBS and their ability to collect on their judgment; correct?

A. Completely different set of facts, but the reason was because we uncovered this fraud that related to UBS's defendants, and we believed that that significantly increased our

1 J. SEERY

2 risk of an adverse finding and an adverse  
3 amount -- and a higher amount.

4 Q. Right. Because the amount of the  
5 scheme to move assets away from them was greater  
6 than you had originally anticipated.

7 MR. MORRIS: Objection to the form of  
8 the question.

9 A. Incorrect.

10 MR. MORRIS: If I may, Douglas, it's  
11 a completely different transaction, so every time  
12 you use the word "increase," I'm going to object  
13 and Jim's going to tell you that you're not --

14 MR. DRAPER: Okay.

15 MR. MORRIS: It's a new -- we  
16 discovered a new transaction. So it's not an  
17 increase. It's not -- it changed the risk  
18 profile because we uncovered a new fraud.

19 MR. DRAPER: Right. Understand what  
20 I'm saying. So it may be -- what I'm saying is  
21 you uncovered one fraud for, let's say,  
22 \$100 million. You then uncovered a new fraud for  
23 \$200 million. So, in fact, the total fraud  
24 amount was \$300 million. That's -- "a new fraud"  
25 just means they moved additional assets.



J. SEERY

MR. MORRIS: Yeah, but it's --

THE WITNESS: They're unrelated.

MR. MORRIS: They're completely  
separate.

THE WITNESS: They're completely  
separate things.

Q. (BY MR. DRAPER) All right. Can you  
explain to me what the new fraud you uncovered  
was that gave rise to increasing the amount of  
the claim?

A. Yes, we uncovered the fact that HFP,  
CDO Fund, SOHC and their direct subsidiaries in  
the two different lines had significant assets.

And in 2017, when the walls were  
caving in on Highland and Mr. Dondero, from the  
credit Strat lawsuit, Redeemer lawsuit, UBS's  
successful summary judgment motion, ultimately  
Terry began his litigations later. Dougherty had  
begun litigations. He decided to direct the team  
to strip the assets, 300 million face amount of  
securities out of those subsidiaries and away  
from UBS who had a claim against those entities.

Q. Right. So, in fact, assets were  
moved out of entities that could previously have

J. SEERY

answered to any judgment.

A. Correct.

Q. And that is the reason for the increase in the amount of the UBS claim.

MR. MORRIS: Objection to the form of the question.

A. Yes.

MR. DRAPER: Okay. That's fine.

Q. (BY MR. DRAPER) Now, in connection with the defenses and the analysis of your defenses to the UBS claim, was a large presentation made to the board of the debtor with respect to the ultimate liability?

MR. MORRIS: Objection to the form of the question.

A. We had many, many presentations to the board of the debtor regarding the risk and the ultimate liability.

Q. (BY MR. DRAPER) Did you in fact tell creditors that UBS really didn't have a claim against the debtor and that you had dealt with a lot of warehouse agreements and that, you know, you believed that there was no liability?

A. I didn't say that.

J. SEERY

Q. What did you say?

A. UBS clearly had a claim against the debtor. They filed it. My belief was that UBS was not entitled to recover against the debtor because of the structure of the agreement and my extensive conversations with the in-house legal team at Highland and Mr. Dondero and how that structure related to those claims.

Q. And what I also gather from what you are saying or implicit in what you are saying is what they told you was incorrect?

A. That is correct. What they told me was incorrect.

Q. That's fair.

Now, with respect to the bankruptcy court approval that you're seeking, who required that the MultiStrat limited partners part of the transaction be brought before the bankruptcy court?

A. Certainly we did, the debtor.

Q. Now, you haven't brought before the bankruptcy court other transactions involving nondebtors. You haven't brought --

A. That's not correct.

J. SEERY

Q. You haven't brought before -- sales of nondebtor assets before the bankruptcy court, have you?

A. That's incorrect.

Q. What sale of a nondebtor asset did you bring before the bankruptcy court?

A. Post-petition, Mr. Dondero ill-advisedly sold 1.7 million shares of our -- of MGM out of RCP. He did that transaction by attempting to steal from underlying investors, by buying from them at 67.50 and selling it to MGM where he sits on the board and knowing that he had that trade at 72.50. For reference to stock trades around 102 right now, one -- par to 101, 102 right now. So that's about a \$55 million fiduciary duty breach by Mr. Dondero.

We brought that transaction in front of the bankruptcy court because there was significant exposure as manager, as Mr. Dondero had control of the entity at that time, and the Court ultimately approved the transaction to sell the stock but not to rip off the underlying investors in RCP.

Q. Right. Now, in fact, though, there

J. SEERY

are other transactions that you've not brought before the bankruptcy court; correct?

A. Each one depends on the circumstances with respect to the particular transaction, yes.

Q. And, in fact, the May 2020 agreement, you did not bring before the bankruptcy court?

A. No, we did not.

Q. And, in fact, you have not filed your 30 -- your bankruptcy rule requirements with respect to what's going on in the subsidiaries, have you?

MR. MORRIS: Objection to form.

Q. (BY MR. DRAPER) The 2015 -- Bankruptcy Rule 2015.3, have you filed any reports?

A. We've filed innumerable reports.

Q. No, have you filed the reports of the underlying subsidiaries in compliance with Bankruptcy Rule 2015.3?

A. I don't believe we've filed those reports, no.

Q. And, in fact, that was brought to your attention in February, and you said it slipped through the cracks; correct?



J. SEERY

A. I believe I said something to that effect, yes.

Q. Have you done anything to rectify what slipped through the cracks since then?

A. With respect to those filings?

Q. Yes.

A. No.

Q. If in fact the Court does not approve the MultiStrat portion of the settlement, does the entire UBS settlement fall?

MR. MORRIS: Objection to the form of the question. Calls for a legal conclusion.

A. I don't know the answer to that. That would be a legal conclusion. We can go through the document.

Q. (BY MR. DRAPER) Don't you in fact possibly have the authority under the general partnership agreements under the investment manager agreement to do this without bankruptcy court approval on behalf of MultiStrat?

A. Did you say "potentially"?

Q. Don't you believe you have the authority to do it without bankruptcy court approval?

J. SEERY

MR. MORRIS: Object to the form of  
the question.

Go ahead.

A. Yeah, I think this was a -- this was  
a more difficult call because it's a material  
exercise of the debtor's property right as the  
manager to settle this claim, and I think it's  
appropriate to bring it before the Court.

Q. (BY MR. DRAPER) In fact, though,  
didn't you cite to the Court cases that say,  
look, the debtor's property right is only the  
right to manage the asset and it's not the right  
to control the underlying assets that the asset  
has?

A. I don't think that's what those cases  
say. I don't think you're correct.

Q. I suggest you -- you do your due  
diligence and read the case as cited by Pachulski  
in connection with the judgment motion.

MR. MORRIS: I move to strike, and  
please don't speak to my client and my witness  
that way. Thank you.

MR. DRAPER: Notwithstanding the fact  
that it's gone the other way?

1 J. SEERY

2 MR. MORRIS: Excuse me. You're --  
3 that's what comes -- that's what you -- that's  
4 the job that you and I get to do. And that's  
5 the -- that's what we have to take. The client  
6 is --

7 MR. DRAPER: Oh, I understand that,  
8 John.

9 MR. MORRIS: Yeah. I know.

10 MR. DRAPER: I've done this --

11 MR. MORRIS: I've taken my bullets  
12 too.

13 MR. DRAPER: That's fine. All right.  
14 I have nothing further.

15 MR. MORRIS: Okay. I appreciate  
16 that, Douglas.

17 Is there anybody from the Bonds Ellis  
18 firm on the line?

19 MR. DRAPER: No.

20 MR. MORRIS: Okay. We've got no  
21 questions.

22 So, Douglas, I will follow up and try  
23 to get to you the various documents that you've  
24 asked for. I've tried to take notes. If there's  
25 any way that you or any colleague who might be on

J. SEERY

the line could send us a list so that I don't miss anything, that would be appreciated.

MR. DRAPER: Great. All right.  
Thank you.

MS. POSIN: We would like a copy of the transcript, yes. Whenever the debtor gets it, we would like a copy concurrently, please.

MR. DRAPER: Our hearing is what, Friday?

MR. MORRIS: Yes.

MR. DRAPER: When can you get it to me?

COURT REPORTER: The transcript will be prepared in probably an hour, hour and a half.

MR. DRAPER: That's fine. I'm good, then.

COURT REPORTER: You want it today?

MR. DRAPER: Yes.

(Time noted: 11:59 a.m. EDT)

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\_\_\_\_\_  
JAMES P. SEERY, JR.

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.



C E R T I F I C A T E

I, DEBRA A. DIBBLE, RDR, CRR, Notary  
Public, do hereby certify:

That JAMES P. SEERY, JR., the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by such  
witness;

That pursuant to FRCP Rule 30,  
signature of the witness was not requested by the  
witness or other party before the conclusion of  
the deposition;

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage; and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand on May 14th, 2021.



DEBRA A. DIBBLE, RDR, CRR, CRC

NOTARY PUBLIC

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BY MR. DRAPER

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DEPOSITION EXHIBITS

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1 ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg. No. Now Reads Should Read Reason

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

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21 \_\_\_\_\_ Signature of Deponent

22 SUBSCRIBED AND SWORN BEFORE ME

23 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

24 \_\_\_\_\_

25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

Seery - Direct/Hayward

65

1 fiduciary duties to the estate in the opening statement. Do  
2 you think that by presenting this motion the debtor -- does  
3 this motion contemplate protecting the fiduciary duties that  
4 the debtor owes to the estate?

5 A To me, it absolutely does. But to be fair, I think that  
6 the rhetorical flair and opening remarks and missing the duties  
7 to the estate, we're very conscious as a board of our duties to  
8 the estate. We're also very conscious of our duties as an  
9 asset manager. And what is in the pleadings is absolutely the  
10 case, it's been -- it's my experience, my understanding of the  
11 law, and it's being confirmed by both Cayman counsel, and by  
12 fund counsel in the U.S. separate from bankruptcy counsel.

13 We owe a duty under the Advisor's Act to the funds  
14 and to the investors in those funds. That duty actually  
15 supercedes the benefit to the estate, but it doesn't undercut  
16 it because by vindicating the duty to the funds, you actually  
17 vindicate the duty to the estate. If you create liability at  
18 the funds, it will roll to the estate. So by exercising your  
19 duty correctly, you do in fact, vindicate the duty of the  
20 estate.

21 And what's important in the Advisor's Act, and it's  
22 an interesting part of U.S. law. At least my understanding,  
23 it's been confirmed by outside counsel, is if the manager,  
24 which would be Highland, has an interest, it's actually  
25 required to subordinate that interest to the interest of the



Seery - Direct/Hayward

66

1 investors in the funds it managed. And it makes sense.

2 If you have funds invested in a fund with an outside  
3 investor, you want to make sure that that investor is not --  
4 that manager is not using your funds to aggrandize itself as  
5 opposed to looking out for your best interest. And so, I think  
6 by vindicating our obligations with respect to the funds, we  
7 actually enhance our obligations with respect to the estate.

8 Q Let's talk a little bit about the funds now. So  
9 originally, the motion pertained to three different funds.  
10 Could you just briefly explain to the Court the status of those  
11 funds and how they got there?

12 A Yeah. I'll try to go quickly, and if I skip something or  
13 I go too quickly, Your Honor, please let me know.

14 The Highland Dynamic Fund, which is the primary one  
15 we're talking about now, I think you'll see at the end of Tab 1  
16 how it's set up right before Tab 2. And I haven't looked at  
17 these exhibits in a long time, so I apologize. I didn't know I  
18 was getting this. But it's really straightforward.

19 These funds are set up, and this is a pretty typical  
20 structure. It's a limited partnership structure. It's got a  
21 master feeder structure. And what does that mean? The master  
22 is the main fund. That's the King Exemptive Limited  
23 Partnership at the bottom.

24 It's fed by two feeders, a domestic feeder and an  
25 offshore feeder. Why is it done that way? Purely tax.

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

**In Re: Highland Capital Management LP** § Case No. **19-34054-sgj-11**

The Dugaboy Investment Trust and Get Good Trust

Appellant §

vs. §

**Highland Capital Management LP** § **3:21-CV-01295-X**

Appellee §

**[2389] Order approving Debtor's settlement with UBS Securities LLC and UBS AG  
London Branch and authorizing actions consistent therewith)**

**Entered on 5/27/2021**

**APPELLANT RECORD**

**VOLUME 22**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE:

\*

Chapter 11

\*

\*

Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

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**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation of the record on appeal of the *Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]*:

*Vol. 1*  
1. Notice of Appeal

- 000001*  
a. Notice of Appeal and Statement of Election filed on June 2, 2021 at Docket # 2398 for Bankruptcy Case No. 19-34054-sgj 11

2. The Judgment, Order, or Decree Appealed from:

- 000004*  
a. Order Approving Debtor’s Settlement with UBS AG London Branch and Authorizing Actions Consistent Therewith [Dkt. # 2389]

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. To the extent included in or underlying the documents identified in part 5 and part 6 herein

- Vol. 1  
000025
4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

Vol. 2  
000422  
000488  
000649

DATE	DKT. #	DESCRIPTION
01/22/2021	1808	Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan).
2/22/2021	1943	Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)1472 Chapter 11 plan filed by Debtor Highland Capital Management, L.P., 1808 Chapter 11 plan filed by Debtor Highland Capital Management, L.P.).
04/15/2021	2199	Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P.
04/15/2021	2200	Declaration re: (Declaration of Robert J. Feinstein in Support of Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG, London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith))
05/04/2021	2268	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) Limited Preliminary Objection filed by Get Good Trust, The Dugaboy Investment Trust.
05/12/2021	2293	Supplemental Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) with Certificate of Service filed by Creditor The Dugaboy Investment Trust.

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000752  
000761

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000811  
000815  
Thru Vol. 4  
Vol. 4  
001144  
001158

05/12/2021	2295	Objection to (related document(s): 2199 Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero.
05/14/2021	2305	Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/14/2021	2308	Omnibus Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.
05/14/2021	2310	Reply to (related document(s): 2268 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 2293 Objection filed by Creditor The Dugaboy Investment Trust, 2295 Objection filed by Interested Party James Dondero) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.
05/17/2021	2320	Certificate of service re: 1) Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief; and 2) Notice of Change of Hearing Date

6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:

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001174  
001181  
Thru Vol. 9  
{00375974-1}

Date	Dkt. #	Description
05/14/2021	2314	Witness and Exhibit List with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith)).
05/18/2021	2330	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy



		with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Dondero Ex. A # <a href="#">2</a> Dondero Ex. B # <a href="#">3</a> Dondero Ex. C # <a href="#">4</a> Dondero Ex. D # <a href="#">5</a> Dondero Ex. E # <a href="#">6</a> Dondero Ex. F # <a href="#">7</a> Dondero Ex. G # <a href="#">8</a> Dondero Ex. H # <a href="#">9</a> Dondero Ex. I # <a href="#">10</a> Dondero Ex. J # <a href="#">11</a> Dondero Ex. K # <a href="#">12</a> Dondero Ex. L # <a href="#">13</a> Dondero Ex. M # <a href="#">14</a> Dondero Ex. N # <a href="#">15</a> Dondero Ex. O # <a href="#">16</a> Dondero Ex. P # <a href="#">17</a> Dondero Ex. Q # <a href="#">18</a> Dondero Ex. R # <a href="#">19</a> Dondero Ex. S # <a href="#">20</a> Dondero Ex. T # <a href="#">21</a> Dondero Ex. U # <a href="#">22</a> Dondero Ex. V # <a href="#">23</a> Dondero Ex. W # <a href="#">24</a> Dondero Ex. X) (
Vol. 10  002491  Thru Vol. 17	05/18/2021 2331	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch. ( <i>Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith</i> )). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2 # <a href="#">3</a> Exhibit 3 # <a href="#">4</a> Exhibit 4 # <a href="#">5</a> Exhibit 5 # <a href="#">6</a> Exhibit 6 # <a href="#">7</a> Exhibit 7 # <a href="#">8</a> Exhibit 8 # <a href="#">9</a> Exhibit 9 # <a href="#">10</a> Exhibit 10 # <a href="#">11</a> Exhibit 11 # <a href="#">12</a> Exhibit 12 # <a href="#">13</a> Exhibit 13 # <a href="#">14</a> Exhibit 14 # <a href="#">15</a> Exhibit 15 # <a href="#">16</a> Exhibit 16 # <a href="#">17</a> Exhibit 17 # <a href="#">18</a> Exhibit 18 # <a href="#">19</a> Exhibit 19 # <a href="#">20</a> Exhibit 20 # <a href="#">21</a> Exhibit 21 # <a href="#">22</a> Exhibit 22 # <a href="#">23</a> Exhibit 23 # <a href="#">24</a> Exhibit 24 # <a href="#">25</a> Exhibit 25 # <a href="#">26</a> Exhibit 26 # <a href="#">27</a> Exhibit 27 # <a href="#">28</a> Exhibit 28 # <a href="#">29</a> Exhibit 29 # <a href="#">30</a> Exhibit 30 # <a href="#">31</a> Exhibit 31 # <a href="#">32</a> Exhibit 32 # <a href="#">33</a> Exhibit 33 # <a href="#">34</a> Exhibit 34 # <a href="#">35</a> Exhibit 35 # <a href="#">36</a> Exhibit 36 # <a href="#">37</a> Exhibit 37 # <a href="#">38</a> Exhibit 38 # <a href="#">39</a> Exhibit 39 # <a href="#">40</a> Exhibit 40 # <a href="#">41</a> Exhibit 41 # <a href="#">42</a> Exhibit 42 # <a href="#">43</a> Exhibit 43 # <a href="#">44</a> Exhibit 44 # <a href="#">45</a> Exhibit 45 # <a href="#">46</a> Exhibit 46 # <a href="#">47</a> Exhibit 47 # <a href="#">48</a> Exhibit 48 # <a href="#">49</a> Exhibit 49 # <a href="#">50</a> Exhibit 50 # <a href="#">51</a> Exhibit 51 # <a href="#">52</a> Exhibit 52 # <a href="#">53</a> Exhibit 53 # <a href="#">54</a> Exhibit 54 # <a href="#">55</a> Exhibit 55 # <a href="#">56</a> Exhibit 56 # <a href="#">57</a> Exhibit 57 # <a href="#">58</a> Exhibit 58 # <a href="#">59</a> Exhibit 59 # <a href="#">60</a> Exhibit 60 # <a href="#">61</a> Exhibit 61 # <a href="#">62</a> Exhibit 62 # <a href="#">63</a> Exhibit 63 # <a href="#">64</a> Exhibit 64 # <a href="#">65</a> Exhibit 65 # <a href="#">66</a> Exhibit 66 # <a href="#">67</a> Exhibit 67 # <a href="#">68</a> Exhibit 68 # <a href="#">69</a> Exhibit 69 # <a href="#">70</a> Exhibit 70 # <a href="#">71</a> Exhibit 71 # <a href="#">72</a> Exhibit 72 # <a href="#">73</a> Exhibit 73)
Vol. 18 004119	05/20/2021 2339	Amended Exhibit List Supplemental Exhibit List for the May 12, 2021 Hearing with Certificate of Service filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2314</a> List (witness/exhibit/generic))
004126 Thru Vol. 21	05/20/2021 2342	Amended Exhibit List Supplemental Exhibit List filed by Creditor The Dugaboy Investment Trust (RE: related document(s) <a href="#">2339</a> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit

Vol. 22		11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29)
005150	05/21/2021 2368	Court admitted exhibits date of hearing May 21, 2021 (RE: related document(s) <a href="#">2199</a> Motion to compromise controversy with UBS Securities LLC and UBS AG London Branch, (Debtor's Motion for Entry of an Order Approving Settlement with UBS Securities LLC and UBS AG London Branch and Authorizing Actions Consistent Therewith) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1 THROUGH #17 BY ANDREW CLUBOK FOR UBS, EXHIBIT'S #1 THROUGH #40 & #65 THROUGH #73 BY JOHN A. MORRIS FOR THE DEBTOR/HCMPL, EXHIBIT'S #1 THROUGH #29 BY DOUGLAS S. DRAPER FOR DUGABOY INVESTMENT TRUST & EXHIBIT'S #A THROUGH #X BY CLAY M. TAYLOR FOR JAMES DONDERO
005164	05/26/2021 2375	Transcript regarding Hearing Held 05/21/2021 (191 pages) RE: Motion to Compromise Controversy (#2199). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/24/2021

July 12, 2021

/s/Douglas S. Draper.

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**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on July 12, 2021, the *Amended Designation of Record Pursuant to Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

BTXN 208 (rev. 07/09)

IN RE: Highland Capital Management, L.P.  
Debtor's Motion For Entry of an Order Approving Settlement with UBS Securities LLC  
and UBS AG London Branch and Authorizing Actions Consistent Therewith Doc.  
#2199

DEBTOR

TYPE OF HEARING

Highland Capital Management, L.P. & UBS  
Securities LLC & UBS AG London Branch

VS

Dugaboy Investment Trust &  
James Dondero

PLAINTIFF / MOVANT

DEFENDANT /  
RESPONDENT

John A. Morris & Andrew Clubok  
ATTORNEY

Defendant Attorney  
ATTORNEY

EXHIBITS

SEE EXHIBIT LIST

SEE EXHIBIT LIST

Exhibit's #1 through #40 & #65 through #73 By John A. Morris

Exhibit's #1 through #29 by Douglas S. Draper

Exhibit's #1 through #17 By Andrew Clubok

Exhibit's #A through #X by Clay T. Taylor For James Dondero

Michael Edmond

May 21, 2021

Stacey G. Jernigan

REPORTED BY

HEARING  
DATE

JUDGE PRESIDING

005150

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

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
4	UBS's Omnibus Response to Objections to the UBS Proofs of Claim ( <b>FILED UNDER SEAL</b> )	1250



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UNITED STATES BANKRUPTCY COURT FOR THE  
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 DALLAS DIVISION

IN RE:

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Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.

Case No. 19-34054sgj11

Debtor

- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in
		19-34054
9	March 20, 2009 Termination, Settlement and Release Agreement (FILED UNDER SEAL)	1189-25 & 1237-10

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
10	January 27, 2009 Letter from Highland Financial Partners, L.P. to Investors <b>(FILED UNDER SEAL)</b>	1346-9

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DALLAS DIVISION

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
11	March 16, 2009 Board Minutes of Highland Financial Partners, L.P. [Docket No. 1346-9] <b>(FILED UNDER SEAL)</b>	1346-9

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
12	June 2015 email chain between counsel for UBS, counsel for Highland Crusader Offshore Partners, L.P., and counsel for Highland Crusader Holding Corporation ( <b>FILED UNDER SEAL</b> )	1254

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DALLAS DIVISION

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
13	June 2015 Settlement Agreement between UBS, Highland Crusader Offshore Partners, L.P., and Highland Crusader Holding Corporation ( <b>FILED UNDER SEAL</b> )	723 & 1251



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

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
14	June 2015 email chain between counsel for UBS and counsel for Highland Credit Strategies Master Fund, L.P. <b>(FILED UNDER SEAL)</b>	1184-14

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

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Debtor

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
15	June 2015 Settlement Agreement between UBS and Highland Credit Strategies Master Fund, L.P. <b>(FILED UNDER SEAL)</b>	723 & 1252

005158

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UNITED STATES BANKRUPTCY COURT FOR THE  
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IN RE:

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Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.

Case No. 19-34054sgj11

Debtor

- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
21	NY D.I. 242: May 11, 2011 Second Amended Complaint Against Non-Debtor Defendants in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct.) <b>(FILED UNDER SEAL)</b>	723

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

IN RE:

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Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.

Case No. 19-34054sgj11

Debtor

A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
23	Excerpt from March 8, 2013 report of a UBS designated expert witness (L. Dudney) in <i>UBS v. Highland Capital Management, L.P., et al.</i> , Index No. 650097/2009 (N.Y. Sup. Ct (FILED UNDER SEAL))	1255

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

IN RE:

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Chapter 11

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Case No. 19-34054sgj11

HIGHLAND CAPITAL MANAGEMENT, L.P.

\*

\*

Debtor

\*

- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
30	June 28, 2010 Complaint, <i>UBS v. Highland Capital Management, L.P.</i> , Index No. 650752/2010 (N.Y. Sup. Ct.) (REDACTED)	30

005161



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

IN RE:

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Chapter 11

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from Dkt. # 2331

Exh. #	Document Name	Dkt. # in
72	Dugaboy Subscription Agreement (UBSDUG000426 - UBSDUG000461) (REDACTED)	19-34054 2308-7

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- A. Debtor – Highland Capital Management, LP Admitted Exhibits #1-40 & #65-73, from  
Dkt. # 2331

Exh. #	Document Name	Dkt. # in 19-34054
73	May 20, 2020 Settlement Agreement (LTBSDUG000395 - LTBSDUG000425) (REDACTED)	2308-8

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

In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P. and ) Friday, May 21, 2021  
CLO HOLDCO, LTD., ) 9:00 a.m. Docket  
)  
Debtors. ) DEBTORS' MOTION FOR ENTRY OF  
) AN ORDER APPROVING SETTLEMENT  
) WITH UBS SECURITIES, LLC AND  
) UBS AG LONDON BRANCH AND  
) AUTHORIZING ACTIONS CONSISTENT  
) THEREWITH [2199]  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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1 APPEARANCES, cont'd.:

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5 For James Dondero: Bryan C. Assink  
6 Clay M. Taylor  
7 BONDS ELLIS EPPICH SCHAFFER  
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10 Recorded by: Michael F. Edmond, Sr.  
11 UNITED STATES BANKRUPTCY COURT  
12 1100 Commerce Street, 12th Floor  
Dallas, TX 75242  
(214) 753-2062

13 Transcribed by: Kathy Rehling  
14 311 Paradise Cove  
Shady Shores, TX 76208  
(972) 786-3063

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24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

1                   DALLAS, TEXAS - MAY 21, 2021 - 8:57 A.M.

2           (Proceedings called to order at 8:57 a.m. Counsel  
3 appearances made by Robert Feinstein and Jeffrey Pomerantz for  
4 the Debtors; by Andrew Clubok and Kimberly Posin for UBS  
5 Securities; by Douglas Draper for Dugaboy Trust; and by Clay  
6 Taylor and Bryan Assink for James Dondero. Andrew Clubok  
7 announced stipulated agreement on admission of parties'  
8 exhibits. Audio recording begins at 9:10 a.m.)

9           THE COURT: All right.

10          MR. DRAPER: This is Douglas Draper.

11          THE COURT: Okay.

12          MR. DRAPER: I'm sorry. I have no objection, just so  
13 the record is clear.

14          (Interruption.)

15          MR. DRAPER: I think the agreement is I will  
16 stipulate for the Debtors' exhibits and the Debtors can  
17 stipulate with respect to my exhibits, that all of these are  
18 in solely for purposes of this hearing today.

19          THE COURT: Okay. Thank you. So, the UBS exhibits,  
20 which are at Docket Entry 2336, are admitted by stipulation.

21          (UBS's exhibits at Docket Entry 2336 are received into  
22 evidence.)

23          THE COURT: And let's talk about where everyone  
24 else's appear. I just want to double-check, because sometimes  
25 amendments are filed.



1 MR. MORRIS: Your Honor, this is John Morris for the  
2 Debtor.

3 THE COURT: Okay.

4 MR. MORRIS: So the Debtors' exhibit list appears at  
5 Docket 2331.

6 THE COURT: All right.

7 MR. MORRIS: And after conferring with Mr. Draper, we  
8 do -- we do have an agreement that all of the exhibits will  
9 come in, with the following exception.

10 THE COURT: Okay.

11 MR. MORRIS: The Debtor is not going to offer into  
12 evidence Exhibits 41 to 64.

13 THE COURT: I'm sorry.

14 MR. MORRIS: They were just --

15 THE COURT: I didn't hear the first number you said.

16 MR. MORRIS: 41. Four-one.

17 THE COURT: Okay.

18 MR. MORRIS: Through 64. They were mistakenly  
19 included.

20 THE COURT: Okay. 41 through 64 are not being  
21 offered?

22 MR. MORRIS: Correct. But the Debtor is offering and  
23 I think Mr. -- I think the Objectors have no objection to the  
24 introduction into evidence of Exhibits 1 through 40 and 65  
25 through 73.

1 THE COURT: All right. Anyone disagree there's a  
2 stipulation on those?

3 MR. TAYLOR: No, Your Honor.

4 THE COURT: All right. So Debtors' Exhibits 1  
5 through 40 and 65 through 73 are admitted, and they are at  
6 Docket Entry 2331.

7 (Debtors' Exhibits 1 through 40 and 65 through 73 are  
8 received into evidence.)

9 THE COURT: All right. Next?

10 MR. DRAPER: Your Honor?

11 THE COURT: Mr. Draper, you were going to tell me  
12 where your exhibits are. (No response.) Mr. Draper, are you  
13 on mute?

14 THE CLERK: He is, Judge.

15 THE COURT: Yes. You're on mute.

16 MR. DRAPER: Can you hear me now?

17 THE COURT: Yes.

18 MR. DRAPER: Okay. Thank you. I apologize. This  
19 technology stuff is a little bit beyond me. I'm too old for  
20 this. My documents are in Supplemental Exhibit List 2339.

21 THE COURT: Okay.

22 MR. DRAPER: And it's Exhibits 1 through 29.

23 THE COURT: All right. Anyone have any disagreement  
24 about those? (No response.) All right.

25 MR. MORRIS: Your Honor? Your Honor, this is John

1 Morris.

2 THE COURT: Go ahead.

3 MR. MORRIS: I apologize. I don't have the exhibit  
4 in front of me, but I think Mr. Draper's last exhibit is an  
5 excerpt of a transcript, and I forgot to reach out to him to  
6 ask what the transcript is from and could we possibly put the  
7 whole transcript in the record so that I could see the context  
8 in which the proffered testimony is being offered.

9 MR. DRAPER: I have no problem --

10 MR. MORRIS: Other than that --

11 MR. DRAPER: I have no problem with that.

12 MR. MORRIS: Okay. Other than that, the Debtor has  
13 no objections.

14 THE COURT: All right.

15 MR. DRAPER: And Your Honor, just --

16 THE COURT: Okay.

17 MR. DRAPER: Just for the record, that's from Docket  
18 571.

19 THE COURT: Okay. So the full transcript is at  
20 Docket 571?

21 MR. DRAPER: Yes.

22 THE COURT: Okay. So the Trust's Exhibits 1 through  
23 29, which appear at Docket Entry 2339, are all admitted, but  
24 we'll supplement, I guess you're saying it's Exhibit 29, an  
25 excerpt --

1 MR. DRAPER: Yes, Your Honor.

2 THE COURT: -- excerpt from a transcript, with the  
3 full transcript, which appears at Docket Entry 571. Okay.

4 (Dugaboy Investment Trust's Exhibits 1 through 29 are  
5 received into evidence as supplemented.)

6 THE COURT: Any Dondero exhibits?

7 MR. TAYLOR: Yes, Your Honor. They are found at  
8 2330. And they are actually all pleadings in this case, so we  
9 -- I don't believe there's any objection from any party as to  
10 their admission.

11 THE COURT: All right. Anyone want to speak up on  
12 that? Okay. So, --

13 MR. MORRIS: No objection from the Debtor.

14 THE COURT: So it looks like there are Exhibits 1  
15 through 72; is that correct? Or 73. 73.

16 MR. TAYLOR: Your Honor, I'm looking at 2330. We  
17 actually --

18 THE COURT: Oh, wait, wait, wait. I'm sorry. I'm  
19 sorry. I'm looking at the wrong one. Go back.

20 MR. TAYLOR: I think you were looking at the  
21 Debtors', maybe.

22 THE COURT: I was. I was. So let me go back.

23 MR. TAYLOR: We have ours A through X. We were  
24 trying to keep it different, --

25 THE COURT: Thank you.

1 MR. TAYLOR: -- since they had numbers.

2 THE COURT: Okay. A through X at 2330 are admitted  
3 as Dondero's exhibits. All right.

4 (Dondero's Exhibits A through X are received into  
5 evidence.)

6 THE COURT: Well, let's go to closing -- I mean,  
7 opening. Wow, my brain was way ahead. Let's hear opening  
8 statements, please. So, --

9 (Interruption.)

10 THE COURT: All right. I don't know what I'm  
11 hearing. If you're -- please put your device on mute if  
12 you're not the one talking. All right.

13 Mr. Feinstein, would you like to go first?

14 MR. FEINSTEIN: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. FEINSTEIN: Thank you, Your Honor. Good morning.

17 Just a bit of housekeeping, Your Honor, just to let you  
18 know how we intend to proceed today. We plan on presenting  
19 our opening argument. I believe UBS has opening argument as  
20 well. I would then turn to deal with certain documents that  
21 have just been admitted into evidence. And we have  
22 demonstratives to bring out what those documents signify in  
23 terms of the Multi-Strat co-authority issue. And then we  
24 intend to put on Mr. Seery for direct examination and  
25 obviously present him for cross.



1           My review of the witness statements from the Objectors,  
2   Your Honor, they listed Mr. Seery as a witness and Dugaboy  
3   Trust listed, quote, a representative of the trust that they  
4   may call, but they didn't name anybody, so that's -- that  
5   wasn't particularly helpful. And no other witnesses. So it  
6   could very well be that Mr. Seery is our only witness today.  
7   With that, Your Honor, I'm ready to proceed.

8           THE COURT: All right.

9           OPENING STATEMENT ON BEHALF OF THE DEBTORS

10          MR. FEINSTEIN: So, Your Honor, we are obviously very  
11   pleased to be here today to present a motion to settle the UBS  
12   matter pursuant to Bankruptcy Rule 9019. And also we've  
13   sought authority, pursuant to Section 363 of the Bankruptcy  
14   Code, for Highland Capital, as the investment manager of  
15   Multi-Strat, to have its decision to act on Multi-Strat's  
16   behalf and settle the claim against it that's part of the UBS  
17   state court litigation also approved by the Court.

18          I want to note that we're not seeking the Court's approval  
19   of the Multi-Strat settlement so much as, if you will,  
20   blessing the Debtors' conduct, arguably outside the ordinary  
21   course of business, acting as investment manager for Multi-  
22   Strat, to settle litigation. And that branch of the motion is  
23   governed by Section 363(b) and, of course, the business  
24   judgment rule.

25          So, Your Honor, I'm sure Your Honor is very well aware of

1 the UBS litigation, the claims that were presented into it, in  
2 it, because Your Honor has held extraordinary hearings in this  
3 case, first on a stay relief motion, and then in last December  
4 there were motions for a partial summary judgment by the  
5 Debtor and a motion by UBS pursuant to Bankruptcy Rule 3018 to  
6 allow its claim for voting purposes of the -- for the -- for  
7 the plan.

8 So Your Honor has already heard significant argument,  
9 significant description, of a state court litigation that's  
10 over a decade long. And we now come to Your Honor to settle  
11 that litigation.

12 And just briefly, the terms of the settlement are set  
13 forth in the motion. UBS filed two proofs of claim for over a  
14 billion dollars arising out of the state court judgment  
15 against the Funds and the continuing claims that remained  
16 against the Debtor for breach of an implied duty of --  
17 covenant of good faith and fair dealing and for fraudulent  
18 transfer.

19 So the settlement terms, briefly, Your Honor, is that, in  
20 full satisfaction of UBS's proofs of claim, they would receive  
21 an allowed Class 8 general unsecured claim under the plan in  
22 the amount of \$65 million and a Class 9 subordinated claim of  
23 \$60 million.

24 In addition, with respect to the Multi-Strat settlement,  
25 Multi-Strat will pay \$18-1/2 million to UBS in satisfaction of

1 the UBS fraudulent transfer claim against Multi-Strat asserted  
2 in the state court action.

3 This settlement, if approved, Your Honor, will effectively  
4 resolve all of the New York state court action. There are  
5 obviously judgments out there against the Funds. There may be  
6 post-judgment proceedings. But I believe, as a result of the  
7 settlement, the pending unresolved claims will be fully  
8 resolved, ending a dispute that started in 2009. And we think  
9 that's a remarkable achievement.

10 The settlement, if approved today, will pave the way for  
11 the Debtor to begin making distributions to creditors  
12 following the effective date of the plan, with this disputed  
13 billion-dollar claim resolved to a more manageable size of \$65  
14 million and then \$60 [million] in Class 9.

15 It is, we believe, Your Honor, a very important  
16 achievement in this case. The UBS claim was certainly the  
17 largest filed proof of claim in the case. As Your Honor,  
18 knows from the history in this court, this claim has been the  
19 subject of over a decade of litigation in state court, it has  
20 prompted litigation in this court, surrounding some very  
21 complicated issues. The claims in the state court action  
22 sounding in a breach of implied covenant, fraudulent transfer,  
23 alter ego against HFP, and, you know, just the complexity of  
24 the underlying contractual and legal arrangements, made this a  
25 very complicated litigation.

1       So we're really pleased that we've managed to sort through  
2       the issues. And of tremendous help, Your Honor, was the  
3       hearing held last December on the Debtors' motion for partial  
4       summary judgment on what we believed were gating issues that  
5       had been unresolved. Those favorable rulings led to continued  
6       negotiations between the Debtor and UBS. We involved the  
7       mediators. There was obviously a mediation session. But  
8       after Your Honor's rulings, we went back, talked to the  
9       mediator some more. There were client-to-client discussions.  
10      And finally, after all that, we reached this deal.

11       And Your Honor, notably, with the exception of our  
12      Objectors, no creditor in the bankruptcy case has objected to  
13      the settlement. The only objections come, as one would expect  
14      in this case, from Mr. Dondero and one of his entities, the  
15      Dugaboy Trust, and the -- his other trust as well. So those  
16      objections, Your Honor, you can see just -- they don't have  
17      any merit to them. They appear to be yet another effort by  
18      Mr. Dondero to throw sand in the gears of the Debtors' plan  
19      and distributions to creditors and its major settlement. So  
20      there's not a motion that goes by in this case, Your Honor,  
21      that doesn't draw an objection from Mr. Dondero or one of his  
22      proxies, and this motion is no exception. Nor is it an  
23      exception that the objections don't have merit. And we're  
24      going to -- we're going to turn to that shortly, Your Honor.

25       But before we do that, I think it's worth noting just the

1 issue of standing, just how tenuous the Objectors' standing is  
2 in this matter.

3 I mean, Mr. Dondero's objection rather defensively spends  
4 the first five pages trying to justify that he does have  
5 standing to appear today, and the Dugaboy Trust is not a whole  
6 lot better. I mean, they have a limited partnership interest  
7 in Multi-Strat. But arguments could well be made, Your Honor,  
8 that these objections are not appropriate to be considered  
9 because of the standing issue.

10 But, obviously, we're not going to stop there, Your Honor.  
11 We'll assume, for the sake of argument, that they have  
12 standing, and we'll give them the benefit of the doubt, and  
13 then go to the merits of the objections, which are severely  
14 lacking.

15 First of all, you know, the objections really kind of  
16 focus on Multi-Strat and there's very little said about the  
17 UBS settlement. And certainly the Objectors, and you'll hear  
18 this today, the Objectors could not possibly dispute the fact  
19 that this settlement is the product of substantial arm's-  
20 length negotiations between the Debtor and UBS and their  
21 principals and their counsel, following years and years of  
22 litigation in the state court and then in this court. And as  
23 I noted, Your Honor, the parties worked with the mediator and  
24 they continued to work after Your Honor's rulings to reach the  
25 settlement that's now before the Court.



1           We'd submit to Your Honor that the evidence will bear out  
2           today that the proposed settlement is fair and reasonable,  
3           that it results from a valid and proper exercise of the  
4           Debtors' business judgment, and represents a successful  
5           resolution of an incredibly complicated and substantial claim  
6           asserted in this bankruptcy case.

7           Equally clear, Your Honor, we believe that the Multi-Strat  
8           settlement is also fair, reasonable, and appropriate, and in  
9           the context of 363(b), the sound exercise of the Debtors'  
10          business judgment, acting as investment manager for Multi-  
11          Strat.

12          So, Your Honor, I'd like to provide really just an  
13          overview of the facts. I know Your Honor's intimately  
14          familiar with them, but I do think it would be helpful to set  
15          the table and just, you know, recite some of the basic factual  
16          background. I don't think any of it is really in dispute, but  
17          I think it'll provide a good introduction to the rest of our  
18          evidence for the hearing.

19          So, as Your Honor well knows, the two funds, CDO Fund and  
20          SOHC, were parties to warehouse agreements that were breached  
21          in late 2008. Litigation was commenced in 2009 in the New  
22          York state court. And fast-forwarding to November of 2019,  
23          UBS obtained a judgment in the state court action against just  
24          the two Funds, CDO Fund and SOHC, on account of their breach  
25          of the warehouse agreement, for approximately \$500 million,

1 and then add to that interest and you get to a little over one  
2 billion dollars.

3 Again, as Your Honor knows, the remainder of the  
4 litigation, the Phase II of the litigation was stayed by the  
5 bankruptcy, but that was to try the claims, among others,  
6 against the Debtor for breach of implied covenant of good  
7 faith and fair dealing, for fraudulent transfer.

8 The allegations in that regard are that -- UBS alleged  
9 that a number of entities controlled by the Debtor, who at the  
10 time was controlled by Mr. Dondero, including Multi-Strat,  
11 engaged in a series of orchestrated transfers they've attacked  
12 as fraudulent transfers, with the goal of moving assets away  
13 from the Funds and then to put them beyond the reach of UBS.  
14 And as you'll see, Your Honor, there's certainly merit to  
15 that, and we've discovered there's even more merit to that  
16 based on the recent revelations regarding the Sentinel matter,  
17 which I'm sure Your Honor will hear about today, particularly  
18 from Mr. Seery when he testifies.

19 The allegation of breach of implied covenant and good  
20 faith against the Debtor was that the Debtor was interfering  
21 with UBS's ability to recover its -- on its judgment and its  
22 claims against the two Funds. And the matter -- again, that  
23 Phase II trial, those issues were stayed by the bankruptcy.

24 As noted, in this court, UBS moved for relief from the  
25 stay to continue the state court action. The Debtor opposed

1 that on a variety of grounds, including, at the time, that the  
2 New York state court system was essentially shut for jury  
3 trials. Since that time, the presiding judge in the New York  
4 State Supreme Court retired. But fortunately, Your Honor  
5 denied the stay relief motion and then entertained our partial  
6 judgment -- summary judgment motions, and here we are with a  
7 settlement to be presented to the Court.

8 In respect of the partial summary judgment motion, Your  
9 Honor's ruling was stated on the record in December. And  
10 also, importantly for today's purposes, Your Honor, at the  
11 same time that motion was heard, UBS -- Your Honor held a  
12 hearing on UBS's motion for allowance of their claim for  
13 voting purposes under the Debtors' plan. And Your Honor  
14 issued a fairly detailed ruling. In the aggregate, Your Honor  
15 allowed UBS's claim for voting purposes at \$94.7 million, and  
16 Your Honor broke that \$94 million number down into component  
17 parts based on the various claims that were asserted against  
18 the Debtor and the various allegations that UBS had made.

19 And what's notable today, Your Honor, is that among those  
20 determinations that you made was that the -- with respect to  
21 the fraudulent transfer claim against Multi-Strat that's part  
22 of the settlement today, there were \$25 million of payments  
23 made to Multi-Strat that were challenged as fraudulent  
24 transfers in the complaint. Your Honor determined that UBS  
25 had a 90 percent chance of success on that \$25 million, so on

1 a risk-adjusted basis, \$25 million became \$23 million, and  
2 then you add interest to that, so -- and generally that  
3 doubles things. So now we're looking at a potential claim  
4 against Multi-Strat in the approximate amount of \$46 million,  
5 call it \$47 million. And, as noted, the settlement amount  
6 that Multi-Strat will pay to settle that claim is \$18.5  
7 million. So, on its face, that's a good settlement, and  
8 you'll hear more about that today.

9 So then things got a little crazy, Your Honor. We had --  
10 we had an agreement in principle reached with UBS after Your  
11 Honor's rulings to settle the claims. And again, the mediator  
12 was very helpful in this regard. So the original agreement in  
13 principle provided for an allowed claim of \$50 million, a  
14 general unsecured claim to UBS, and then a subordinated claim  
15 of \$25 million. And Multi-Strat would make a payment, as  
16 noted, of \$18-1/2 million.

17 In early February, Your Honor -- well, let me just go back  
18 a step. So, the aggregate of those claims against the Debtor  
19 was \$75 million. So, relative to Your Honor's ruling on the  
20 voting allowance motion of \$94 million, an aggregate claim of  
21 \$75 million is a pretty good deal. Certainly, is well above  
22 the lowest point in the range of reasonableness, in that it  
23 was less than the amount Your Honor determined in the context  
24 of that motion.

25 So that, we think, would have breezed through the Court,

1 given Your Honor -- you know, the unusual fact that, you know,  
2 we're settling a matter that Your Honor has already heard a  
3 substantive hearing on.

4 So, on that basis, Your Honor, at the confirmation hearing  
5 held in the beginning of February, with UBS's agreement, we  
6 put the proposed, you know, the settlement-in-principle terms  
7 on the record for the \$75 settlement and \$18-1/2 [million] to  
8 -- for Multi-Strat.

9 But then, Your Honor, interesting things happened. As we  
10 were documenting the settlement and investigating --  
11 responding to UBS's questions about the historic facts, we  
12 found something that was truly astounding. And you'll hear  
13 Mr. Seery testify about that today in some detail. What we  
14 uncovered, Your Honor, was a scheme -- there's no other way to  
15 describe it -- a scheme by the Debtors' former management that  
16 includes Mr. Dondero and Mr. Ellington as in-house counsel,  
17 Mr. Leventon and others to cause a transaction to take place  
18 in 2017 whereby the Funds who -- and again, these were funds  
19 who had been sued for a billion dollars in state court --  
20 transferred more than \$300 million in face amount of  
21 securities to Sentinel. Sentinel is a Cayman-based  
22 reinsurance company that we now know is owned by Mr. Dondero  
23 and by Mr. Ellington, a former in-house lawyer for the  
24 company. And on top of that, that there were ongoing efforts  
25 to hide those transactions from the independent directors and



1 to us as outside counsel.

2 And it's frustrating, Your Honor, I guess to put it  
3 mildly, that at the hearing on summary judgment we were  
4 repeating things that our in-house lawyers told us that  
5 weren't true. And I apologize to the Court for being misled  
6 and for spreading the misinformation, the misinformation being  
7 that there was nothing left in those funds, that there --  
8 money was spent on legal fees but that there were no material  
9 assets. And yet we now know in 2017 that there were \$300  
10 million face amount of securities that had a street value, if  
11 you will, in excess of \$100 million that was transferred to an  
12 entity owned and controlled by Mr. Dondero and by Mr.  
13 Ellington. And, as I said, there was a concerted effort  
14 postpetition by confederates of Mr. Dondero's who continued to  
15 work for the company to hide this information from the board  
16 and from counsel.

17 And their lack of candor, Mr. Ellington and Mr. Leventon,  
18 led to their being terminated. And then after they were  
19 terminated, the Debtor, as you'll hear from Mr. Seery,  
20 continued to dig and found all sorts of troubling, very  
21 troubling information, more of the details, the operative  
22 documents in regard to the Sentinel transaction, that there  
23 was a supposed insurance policy, the premium for which was  
24 paid by this asset transfer. And, you know, from the  
25 perspective of those were not in the know, including the board

1 and outside counsel, you know, we were told, oh, there's --  
2 you know, Sentinel, we don't know who Sentinel is. Well, we  
3 know who Sentinel is now. It's a related party owned by Mr.  
4 Dondero and Mr. Ellington that was used to perpetrate a fraud.  
5 There's no other way to put it. And as Your Honor is aware,  
6 there's now litigation pending by UBS with regard to those  
7 transactions.

8 So where did that leave our settlement? One could imagine  
9 UBS, after learning that one of its judgment debtors -- and  
10 now, again, there's -- there are judgments entered against the  
11 Funds -- that prior to the entry of that judgment, their  
12 Defendants transferred over a hundred million dollars in value  
13 of assets out of harm's way, meaning out of UBS's grasp as the  
14 Plaintiff, that maybe UBS is going to pull out of the deal.  
15 And again, given the importance of this settlement to the  
16 bankruptcy case, to resolve the largest claim in the case, we  
17 were certainly concerned that this might lead to the demise of  
18 a very favorable settlement.

19 Fortunately, UBS -- and you'll hear from Mr. Seery -- was  
20 still willing to engage, but we had to take into account the  
21 reality that these transfers were game-changers, for lack of a  
22 better word. That, number one, the existence of these  
23 transfers strengthen the merits of UBS's claims that there was  
24 a breach of implied covenant, that HFP was an alter ego,  
25 because here was ongoing conduct eight years after the lawsuit

1 was brought, and as you'll see in our papers and hear from Mr.  
2 Seery, the transfers came at a time when the Debtor wasn't  
3 faring very well in litigation. Hence, you know, this looks  
4 like an intentional fraudulent transfer to get assets out of  
5 harm's way before judgment day comes.

6 So we continued to engage with UBS. We had -- oh, the  
7 other thing, I guess, Your Honor, is that, aside from  
8 strengthening the claims, it also increased the *ad damnum*  
9 on the breach of implied covenant claim because of the  
10 magnitude of the transfers that were made, fitting in with  
11 UBS's theory of breach of implied covenant, which was that Mr.  
12 Dondero, acting on behalf of Highland, was orchestrating a  
13 series of transfers over time to take assets out of the reach  
14 of the Funds and out of the reach of UBS as it was progressing  
15 towards obtaining a judgment against those Funds in the  
16 litigation.

17 So, the parties reengaged. We reached new settlement  
18 terms that are now embedded in -- embodied in the settlement  
19 agreement attached to the motion. The new terms are the  
20 general unsecured claim, Class 8 claim, instead of \$50  
21 million, is now \$65 million, and the Class 9 subordinated  
22 claim, instead of \$25 million, is now \$60 million. The Multi-  
23 Strat settlement payment of \$18-1/2 million is unchanged.

24 And you'll see, Your Honor, that, you know, this  
25 settlement is more than fair and reasonable. It was, once

1 again, negotiated at arm's length. And, you know, we think  
2 it's beyond doubt, Your Honor, that the settlement meets the  
3 Rule 9019 standards and that it's fair and reasonable and it's  
4 certainly in the best interest of creditors.

5 I do note that the Objectors really don't take on the  
6 settlement amount. I'll talk about that in a moment. But  
7 they really focused more on Multi-Strat, Your Honor, and  
8 before the day is out you'll see documentary evidence, Your  
9 Honor, that addresses that objection head on, that the Debtor  
10 does have authority to act on Multi-Strat's behalf as the  
11 investment manager. Also, through the corporate structure and  
12 ownership, it has the ability to manage Multi-Strat's matters.  
13 And that the wild allegations of conflict of interest are  
14 baseless. And, in fact, you'll see, Your Honor, the private  
15 placement memorandum for the Multi-Strat interests that were  
16 basically drafted when Mr. Dondero was in control have  
17 extensive disclaimers about conflict of interest, that  
18 Highland has a variety investments, et cetera, et cetera, and  
19 there is just -- there's just no merit to any suggestion that  
20 this settlement on behalf of Multi-Strat is somehow infected  
21 by conflict of interest.

22 With regard to the -- and again, I'll just, I'll be brief,  
23 Your Honor, and then I'll stop. With regard to the UBS  
24 settlement claim amount, Dugaboy doesn't address it at all,  
25 but Mr. Dondero does, and he doesn't -- he really can't

1 challenge and doesn't challenge the fact that there was a  
2 settlement of \$55 million and \$25 million in claims before the  
3 Sentinel revelations. Rather, he's arguing, after those  
4 revelations were made, why'd the settlement go up? I mean,  
5 it's remarkable in its lacking in any sense of shame or irony  
6 that it would be Mr. Dondero who would question why the  
7 settlement amounts went up after a fraud that he orchestrated  
8 came to light.

9 So, Your Honor, I'm going to stop and turn the podium over  
10 to UBS, who I know wants to make an opening statement. But we  
11 hope to persuade Your Honor through the evidence --

12 (Interruption.)

13 THE COURT: Okay. Please -- I know you've all --

14 (Interruption.)

15 THE COURT: -- been through this many times. Put  
16 your device on mute. If you're not speaking, put your device  
17 on mute.

18 MR. FEINSTEIN: This is a good place for me to stop  
19 anyway, Your Honor. You'll hear plenty more in closing  
20 arguments. So I'm going to yield the podium to Mr. Clubok.

21 THE COURT: Okay.

22 MR. FEINSTEIN: Thank you.

23 THE COURT: The technology version of the hook. All  
24 right. Mr. Clubok?

25 (Interruption.)



1 THE COURT: Mike, can you figure out who that is?

2 (Court confers with Clerk.)

3 THE COURT: Okay. Apparently, we're having multiple  
4 people calling in and not immediately putting their devices on  
5 mute, I guess.

6 All right. Mr. Clubok? (No response.)

7 THE CLERK: He's on mute, Judge.

8 THE COURT: You're on mute, Mr. Clubok.

9 MR. CLUBOK: Thank you, Your Honor. I was trying to  
10 adhere to the keep-on-mute. So I guess I overshot that  
11 slightly.

12 THE COURT: Okay.

13 MR. CLUBOK: I apologize.

14 THE COURT: Okay.

15 OPENING STATEMENT ON BEHALF OF UBS SECURITIES, LLC

16 MR. CLUBOK: Your Honor, good morning. I will say --  
17 Mr. Feinstein started out by saying he was very pleased to be  
18 here to announce a settlement, and in one sense we certainly  
19 agree with that. It's been 12 long years of hard-fought  
20 litigation. It's clear that this is the time to settle with  
21 the Debtor and with Multi-Strat. We have heard loud and clear  
22 the Court's justifiable, appropriate reminders to all the  
23 parties to think hard and to try hard to settle the case, and  
24 we appreciated the assistance of the mediators who, you know,  
25 we spent many formal sessions and countless informal sessions

1 with to help reach a very hard-negotiated, I'd say many, many  
2 arm's length, in terms of the negotiation, as the evidence  
3 would show, and is apparent from what Your Honor has witnessed  
4 throughout the course of these proceedings, and obviously the  
5 fact that UBS was the last major creditor, I believe, to reach  
6 a settlement, or one of the last.

7 And in that sense, we are pleased to be here and to  
8 resolve the case with Highland Capital Management and with  
9 Multi-Strat.

10 In another sense, you know, it reminded me of my judge  
11 that I clerked for always said that a great settlement is one  
12 where neither side is happy with the amount. That's what  
13 makes a good settlement. And I'd say, with respect to that,  
14 certainly also UBS would probably agree that they are not  
15 terribly happy with the amount, because you'll see the  
16 evidence and the record will show there's a real question as  
17 to why the settlement is as low as it is with the Debtor. And  
18 there are reasons for that, particularly given the change in  
19 -- now controlled by the Debtor and the fact that UBS retained  
20 its judgment and ability to hopefully collect as much as  
21 possible in that judgment from the Funds and their alter egos  
22 themselves.

23 But I would guess that -- and you heard Mr. Feinstein a  
24 few times refer to the original deal being a very good deal,  
25 and this one you'll hear, too, and you'll see easily meets the

1 fair and reasonable standard I think by any measure, given the  
2 evidence you're going to see today, given the evidence that's  
3 already in the record, given the evidence that is reflected in  
4 the documents that you, Your Honor, can consider, and that  
5 clearly the Debtor has considered in terms of evaluating the  
6 settlement from the Debtors' perspective and from the other  
7 creditors of the estate, this would be an extremely good  
8 settlement, certainly easily meets the fair and reasonable  
9 test, given the amount, given the fact that it resolves claims  
10 that, as Mr. Feinstein said, you know, clearly have merit to  
11 them, and the merit grows and is made more clear by the  
12 recent, you know, uncovering of evidence of, you know, even  
13 greater fraud and greater concealment of fraud than any of us  
14 were aware of, including that led there to be misstatements  
15 made to this Court in the context of a summary judgment  
16 proceeding, which we very much appreciate Mr. Feinstein and  
17 would not -- of course, don't blame him or his colleagues.  
18 But that is all in the background.

19 As a result of that, and, frankly, even before that, given  
20 what UBS believed it has suffered at the hands of the -- of  
21 Highland Capital Management, it was -- it was difficult to  
22 come to the settlement. But you'll see, in the evidence  
23 you're going to see the rest of today and from all the papers,  
24 that it certainly is, from the estate's perspective, a very  
25 good settlement.

1 And beyond that, I'm just going to rest, at least for the  
2 opening statement. I'm just going to refer to the statements  
3 we made in our reply to the objections, and will save any  
4 remarks, if any, for closing argument.

5 THE COURT: All right. Thank you. Mr. Taylor or Mr.  
6 Draper, who wants to go next?

7 MR. DRAPER: Yes, Your Honor. I'll go first.

8 Firstly, let me clear up something for the record. The --  
9 my exhibits are at 2342. That's where they're -- they are  
10 located. We had filed without the exhibits attached at the  
11 docket entry I gave you, but the exhibits are located at 2342.

12 THE COURT: Okay. I'll note that.

13 MR. DRAPER: All right. Thank you.

14 CLOSING ARGUMENT ON BEHALF OF THE DUGABOY INVESTMENT TRUST

15 MR. DRAPER: The omnibus opposition they filed starts  
16 from the proposition that Dugaboy has a minimal interest in  
17 both Multi-Strat, the Delaware limited partnership, and then  
18 has a limited interest in the Debtor. Well, the truth is, I  
19 am a limited partner and Multi-Strat's a limited partnership,  
20 and this transaction and this settlement affects me as a  
21 limited partner in Multi-Strat.

22 I am also an equity owner in the Debtor, as well as a  
23 creditor of the Debtor at this moment, though my claim is  
24 objected to.

25 So, again, I do have standing. Whether it's classified as

1 minimal or not, I am a party in interest. I have a vested  
2 interest in the settlement. And I don't think my rights are  
3 dependent on the size of my claim. I think they're dependent  
4 upon the actual claim that I have.

5 So let me start with -- and I truly agree -- there's a lot  
6 of things that have been said by counsel for the Debtor as  
7 well as counsel for UBS. My focus with respect to this  
8 settlement goes to Multi-Strat. It goes to a number of items.  
9 Number one, no matter how they package this, this Court has no  
10 jurisdiction, under 363(b) or otherwise, to address the Multi-  
11 Strat settlement. I don't think the Court has jurisdiction to  
12 rule on the propriety of Mr. Seery acting on behalf of or in  
13 his representative capacity as either the investment manager  
14 or general partner of Multi-Strat. I think that's a separate  
15 matter that the Court has no jurisdiction over, and I think  
16 we've cited cases to it.

17 But they've -- they've sort of packaged it up, and today  
18 in oral argument they've ship-shaped their argument that he's  
19 -- they're now only seeking his authority as a reasonable  
20 businessperson to make that decision. But I still think the  
21 jurisdiction of this Court is lacking with respect to that.

22 And honestly, the Court can approve this settlement and  
23 strip out the Multi-Strat portion of it. They're two separate  
24 settlements and they're two separate matters. And whatever  
25 happens with Multi-Strat afterwards and Mr. Seery does in



1 whatever capacity will just go forward without the immunity  
2 grant he is seeking from this Court and the court order.

3 Number two. I believe that the settlement on the Multi-  
4 Strat side is an awful settlement. I believe when you look at  
5 the documentation we -- that will be put before you, you will  
6 see that Multi-Strat, LP -- and you have to focus solely on  
7 Multi-Strat, LP, the entity, as to Multi-Strat, Limited or the  
8 other Multi-Strat entities. When this matter came before you  
9 in November and you calculated a 90 percent chance, if you  
10 look carefully at what they presented to you, it was Multi-  
11 Strat entities. That's a plural term, not a singular term.  
12 And in fact, there may be other distributions that have been  
13 made to other Multi-Strat entitles such as Multi-Strat,  
14 Limited. I don't -- you'll see some evidence today that  
15 Multi-Strat entity -- Limited, in fact, received money. That  
16 is not the party who's settling or paying \$18-1/2 million.  
17 So, yes, you may have looked at certain things, but you have  
18 to understand that the term is plural, not singular, and we  
19 have a singular party here.

20 Number three. I believe, quite frankly, that there's an  
21 inherent conflict here. The settlement agreement in Paragraph  
22 11 has a provision saying that Multi-Strat was represented by  
23 independent counsel. That's absolutely not true. Multi-Strat  
24 didn't have independent counsel according to Mr. Seery's  
25 deposition. Pachulski appeared before them. There was no

1 independent counsel for Multi-Strat.

2 And, quite frankly, under the partnership agreements and  
3 the subscription agreements, what the proper methodology that  
4 should have been done in connection with this case or the  
5 Multi-Strat portion of the settlement was Mr. Seery could have  
6 gone out, gotten an independent advisory committee, had the  
7 independent advisory committee look at the receipt by Multi-  
8 Strat, the limited partner, and then made a recommendation. I  
9 think, had that been done, my issue of conflict would have  
10 fallen by the wayside.

11 I also believe, had that been done, the representation  
12 that Multi-Strat was represented by independent counsel would  
13 have been accurate.

14 But, in fact, that was not done. It was a simple task,  
15 but it wasn't done. So Mr. Seery and Highland is sitting on  
16 all sides of this transaction. They're sitting on -- as  
17 investment manager and general partner for the other Multi-  
18 Strat entities, they're sitting there as Highland counsel, as  
19 general partner and investment manager. They are sitting  
20 there in a number of other capacities.

21 So it is not whether an actual conflict exists. It's as  
22 the Court, you know, reached back yesterday and looked at her  
23 earlier days as a law student, and it's -- the question is, is  
24 there an apparent conflict? And I think clearly, with being  
25 on all sides of this transaction, there is an apparent

1 conflict, and for that reason alone the Court should just  
2 strip away the Multi-Strat part and let Multi-Strat do what it  
3 needs to do under applicable state law to avail itself of  
4 either settling with UBS or not or renegotiating.

5 The last part deals with the settlement. And honestly, I  
6 cannot honestly state before this Court in good faith that the  
7 settlement before the Court is not the product of good-faith  
8 negotiations between capable counsel on the UBS side, on the  
9 Debtors' side. I think they've done a good job and done a  
10 number of things. What I am concerned about are two things,  
11 and I think they're important.

12 Number one is this settlement has the potential to be a  
13 modification of the Debtors' plan. I'd ask the Court -- and  
14 look, I've done this a long time, as the Court is aware.  
15 Please read and just spend the same mind-numbing hours that I  
16 did over Paragraph -- Page 5, Paragraph C, and what the Debtor  
17 is obligated to do and what the Debtor is obligated to  
18 transfer, which, in effect, means that the Debtor is  
19 transferring assets or acting on behalf of UBS, when, again,  
20 if you look at this conflict issue, they also must act on  
21 behalf of Highland.

22 So they are taking or acting in some fashion under  
23 Paragraph -- Page 5, Paragraph C, where assets of the Debtor  
24 or potential assets of the Debtor are going to UBS. And I'd  
25 ask you, when you read it again, to focus on the term "or

1 prosecute." It's not cooperate. It's not give them  
2 information. It's prosecute claims and turn over assets.  
3 That's the problem with this settlement.

4 Again, it's something that can be fixed. But again, that  
5 paragraph, I hate to tell you, is mind-numbing. Whoever wrote  
6 it should be writing IRS regulations. But it's just  
7 difficult.

8 So, again, this -- my objections are limited. They are  
9 focused. It is not to throw water or blow something up.  
10 There are pieces of this that are enormously problematic.  
11 They start with the Court's jurisdiction. They end up in  
12 connection with Multi-Strat. And nobody's really done an  
13 analysis as to what Multi-Strat, the payer, the party paying  
14 \$18-1/2 million, got in terms of fraudulent conveyances. And  
15 then it goes to Paragraph 5 -- Page 5, Paragraph C as to  
16 exactly what their settlement means vis-à-vis Highland, the  
17 Debtor, and its obligations to both UBS under the document as  
18 well as its obligations to the estate.

19 So this, this is not a blow-it-up. This is a focused  
20 objection for things that can be fixed and need to be fixed.

21 THE COURT: All right. Thank you.

22 Mr. Taylor?

23 OPENING STATEMENT ON BEHALF OF JAMES DONDERO

24 MR. TAYLOR: Yes, Your Honor. We have heard Your  
25 Honor loud and clear over the past few weeks, and even months,

1 that your time is very valuable. We do respect that time.  
2 And as such, we have conferred with Mr. Draper and our client  
3 and allowed Mr. Draper to be our speaking voice today, and he  
4 is going to be the lead presenter. And as such, I'm not going  
5 to belabor the points that he has made and will just wait  
6 until closing arguments, Your Honor.

7 THE COURT: All right. Thank you, Mr. Taylor.

8 All right. Mr. Morris, I think we heard you're going to  
9 present the evidence today. Are you ready to call your  
10 witness?

11 MR. MORRIS: Yes, I am, Your Honor. Thank you very  
12 much. John Morris; Pachulski, Stang, Ziehl & Jones; for the  
13 Debtor. The Debtor calls James P. Seery, Jr. to the stand.

14 THE COURT: All right. Mr. Seery, we'll ask you to  
15 say, "Testing, one, two" so we can hear and see you.

16 MR. SEERY: Testing, one, two.

17 THE COURT: All right. Let's see. Can everyone see  
18 him? I can hear him but not see him, but it usually takes my  
19 screen -- there you are. Okay. Got you now. My screen seems  
20 to be a little slower than the computer screens.

21 All right. Please raise your right hand.

22 (The witness is sworn.)

23 THE COURT: All right. Thank you. Mr. Morris?

24 MR. MORRIS: Thank you, Your Honor. I appreciate Mr.  
25 Draper's opening in which he made it clear that his singular



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1 focus is on Multi-Strat. But nevertheless, the Debtor does  
2 have the burden and the obligation to put forth sufficient  
3 evidence to meet the 9019 motion, so I would ask your Court to  
4 just -- ask the Court to just be a little patient because I do  
5 want to make that evidentiary record so that -- so that  
6 there's a solid basis for the granting of the motion.

7 JAMES P. SEERY, JR., DEBTORS' WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. MORRIS:

10 Q Mr. Seery, can you hear me okay?

11 A I can, yes.

12 Q Okay. Let's begin with just a discussion about your  
13 understanding of the nature of the UBS claim. Is it fair to  
14 say that you, over the last year-plus, have familiarized  
15 yourself with that claim?

16 A Yes, I have.

17 Q And do you understand that the claim is based in  
18 substantial part on certain prepetition litigation claims?

19 A Yes.

20 Q And are you generally familiar with those prepetition  
21 litigation claims?

22 A Very much so.

23 Q Okay. Can you describe for the Court your understanding  
24 of the nature and scope of those claims?

25 A Yes. From a high level, and I'll go quickly, and if Your

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1 Honor wants to dig in deeper, we can. But, in essence, UBS  
2 and the Debtor had entered into an arrangement whereby UBS was  
3 going to be the banker, underwriter, structuring agent for a  
4 CDO square fund that the Debtor (garbled) together in 2007 and  
5 ultimately with a revised agreement in the beginning of 2008.  
6 That was structured with two warehouse agreements. The  
7 counterparties to those warehouse agreements were CDO Fund and  
8 SOHC, which is the Highland Special Opportunity Fund. Both  
9 were Highland funds owned, directly or indirectly, by  
10 Highland.

11 The structure of the warehouse was, in essence, that the  
12 Debtor would direct, as the manager, UBS to buy certain  
13 assets. UBS would buy those assets into the warehouse. The  
14 Debtor had equity in the warehouse. And then they would  
15 continue to build the portfolio. Ultimately, the idea was  
16 that when the portfolio was built, they would sell notes, and  
17 the Debtor, through various vehicles, would own the equity.  
18 UBS would receive fees. And that would be the structured  
19 vehicle, with the noteholders being the debt, and ultimately  
20 the SOHC, CDO Fund, and other Debtor entities or related  
21 entities owning the equity, unless they could sell some of  
22 that equity off. And that was the structure of the fund  
23 originally structured in 2007, revised in 2008.

24 When the financial crisis hit in 2008, there were defaults  
25 or margin calls, because the way the structure, as I alluded

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1 to, was set up was UBS was, in essence, providing the debt,  
2 Highland was providing the equity, and UBS was looking for a  
3 certain debt-to-equity ratio to make sure that they were  
4 protected. When market values of the assets moved, UBS would  
5 call a margin. When the margin was called, the Debtor had an  
6 obligation to assure that the equity cushion was topped up.  
7 The Debtor made some margin calls, but ultimately defaulted on  
8 those calls. And then in two thousand -- at the end of 2008,  
9 UBS called a default and terminated the agreements.

10 Litigation ensued in the beginning of 2009, basically  
11 claiming that UBS lost money on the transaction with respect  
12 to the warehouse and that CDO Fund and SOHC were responsible  
13 for that loss, which was pretty clear from the documents. But  
14 in addition, Highland was a party to the documents, and UBS  
15 alleged that Highland breached its covenant of good faith and  
16 fair dealing by actively working to prevent CDO Fund and SOHC  
17 from paying back the debt.

18 Litigation ensued. There are at least -- at least five to  
19 seven reported decisions. Some are -- some reported, some not  
20 reported, but there are numerous that are reported. And the  
21 litigation was meandering for considerable time. More efforts  
22 to settle. But ultimately, UBS received a judgment in its  
23 favor against CDO Fund and SOHC in the fall of 2019 for five  
24 hundred and -- approximately \$550 million, which, with New  
25 York State prejudgment interest of 9 percent, doubled the

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1 judgment to \$1.04 billion.

2 Q Okay. And was that judgment obtained against the Debtor  
3 itself?

4 A It was not. The judgment was against CDO Fund and SOHC.  
5 And the way the trial court in New York had structured the  
6 litigation was that there would be a Phase I on the  
7 immediately liability on the contract. Highland raised  
8 numerous and sundry defenses, procedural arguments, and that's  
9 what took the 10 years to get to the judgment against the two  
10 clear counterparties who were clearly liable under the  
11 contract. There's really no dispute about that. The contract  
12 was clear. In fact, it said CDO Fund and SOHC will bear one  
13 hundred percent of the losses on the warehouse.

14 What was going to be tried in Phase II were a number of  
15 ancillary claims that UBS had brought, including implied  
16 covenant of good faith and fair dealing breached by Highland  
17 for preventing SOHC and CDO Funds from paying the judgment,  
18 claims by UBS to pierce the veil against HFP, Highland  
19 Financial Partners, which was another entity in the Highland  
20 chain that sat above SOHC and some other entities. Basically,  
21 that claim was that that entity engaged in actual fraud, and  
22 that included transfers to Multi-Strat, Credit-Strat,  
23 Redeemer, Citibank, and HCMLP.

24 Q We heard mention in the opening statements about Multi-  
25 Strat. How does Multi-Strat -- what's your under --

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1 withdrawn.

2 Do you have an understanding as to whether Multi-Strat is  
3 implicated by the prepetition UBS litigation?

4 A Yes, it is. Yes, it was a defendant. And so just to --  
5 to level-set it, I think there was a little bit of discussion,  
6 but Multi-Strat is a fund, a -- really, a master feeder fund,  
7 but it's set up with a limited partnership that was an  
8 investor with third-party investors in various assets. The  
9 allegation is that in 2008 Multi-Strat contributed assets to  
10 HFP to prop up the -- HFP and its ability to put money into  
11 SOHC, and ultimately CDO Fund, to make margin payments.  
12 Notwithstanding the current state of the markets then, HCMLP  
13 was somehow still bullish on the markets and moved the assets  
14 in to support the structure of the CDO square that was being  
15 worked on by UBS and the Debtor.

16 That when -- the allegation is that when the financial  
17 crisis hit and the deal defaulted, that UBS alleges that  
18 Highland, directing HCMLP, and there's no question that  
19 Highland dominated and controlled HFP, moved the assets out in  
20 an actual fraud to prevent UBS being able to pierce into HFP  
21 to recover its losses against CDO Fund and SOHC.

22 Q Okay. So I just want to make sure that I understand who  
23 the Defendants were in the UBS litigation. I think you've  
24 identified CDO Fund, correct?

25 A Correct. CDO Fund was one of the funds that the Debtor

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1 had set up. It's also a structure with limited partners and  
2 partners that's controlled by Highland.

3 Q And what about SOHC?

4 A SOHC --

5 Q Is --

6 A -- is another fund that sat below HFP. HFP was also  
7 dominated and controlled by Highland. It did have out --  
8 originally had outside investors, which were a lot of the  
9 investment banks on Wall Street that Highland pressured to put  
10 money into HFP as a way of getting business. And that  
11 structure -- it was a defendant, and it was one of the  
12 counterparties to the UBS warehouse agreements.

13 Q Was HCMLP a defendant?

14 A HCMLP was a defendant. HCMLP was the manager of those  
15 funds, but also the investment manager of the vehicle, and was  
16 responsible for both structuring and purchase -- picking the  
17 assets that would go into the CDO square.

18 Q Was HFP a defendant?

19 A HFP was a defendant. So, HFP was the parent of SOHC. It  
20 had an indirect relationship with CDO Fund. It was -- that's  
21 the -- I mentioned. It had outside investors, but was  
22 dominated and controlled by Highland as the controlling party  
23 of the GP and the special limited partner.

24 Q How about Multi-Strat? Was Multi-Strat a defendant in any  
25 of the prepetition UBS litigation?

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Seery - Direct

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1 A Multi-Strat was a defendant in that litigation, yes.

2 Q Okay. Are there any defendants that I have forgotten to  
3 mention that you can recall?

4 A I don't have the caption, but it was pretty fulsome.

5 Q Do you understand who represented each of the Defendants  
6 in the prepetition UBS litigation?

7 A Yes.

8 Q And who was that?

9 A Well, Highland controlled it, but we had various --  
10 various law firms, including Lackey Hershman, and then  
11 ultimately Reid Collins.

12 Q Did Multi-Strat have independent counsel in connection  
13 with the UBS lawsuit?

14 A No. That would be extremely unusual.

15 Q And did, at the time of the UBS lawsuit, was Mr. Dondero  
16 in control of the Debtor?

17 A Yes.

18 Q And are you aware of any independent counsel that was  
19 obtained for any of the Defendants you just identified,  
20 separate and apart from Highland's counsel?

21 A I am not aware, but to be fair, I read the decisions, not  
22 the -- I didn't go through them and review every counsel that  
23 was involved. But I think Highland had one counsel. The  
24 litigation was directed by Highland. So, notwithstanding  
25 outside counsel, it was directed by Leventon and Ellington and

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1 Dondero.

2 Q And are you aware of any independent analysis that was  
3 done to assess the risk to Multi-Strat, separate and apart  
4 from whatever Highland was doing?

5 MR. DRAPER: Your Honor, object to the form of the  
6 question. It's irrelevant. What we're focusing on now is  
7 whether Highland and Multi-Strat had independent counsel when  
8 it entered into the settlement. What Mr. Dondero did in 2009  
9 and 2010 has no relevancy to this.

10 THE COURT: Response, Mr. Morris?

11 MR. MORRIS: If I may? Yes. The fact that the same  
12 person objecting is the person who didn't care about the  
13 conflicts when he was in control I think goes to the  
14 credibility of the entire argument.

15 The fact is, it's not 2008 and 2009. It's 2008 and 2009  
16 up until at least the petition date. Frankly, up until  
17 January 9th, 2020, Mr. Dondero was in control. And at no time  
18 did he ever take any steps to get independent counsel or an  
19 independent assessment for Multi-Strat. And I think it's -- I  
20 think it's highly relevant and it goes to undermine the  
21 credibility of the whole argument.

22 THE COURT: Okay. I overrule the objection.

23 THE WITNESS: I apologize, I've forgotten the  
24 question.

25 BY MR. MORRIS:

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1 Q There was no question pending.

2 Okay. So, can you describe for the Court your  
3 understanding of the exposure that just the Debtor, HCMLP,  
4 faced in terms of the claims that were asserted against it  
5 prior to the petition date?

6 A Well, prior to the petition date, it was pretty clear that  
7 the allegation by UBS was that the Debtor should be  
8 responsible for the entire amount of the judgment. And the  
9 reason for that was its argument that, through either alter  
10 ego or breach of the implied covenant of good faith and fair  
11 dealing, that the Debtor controlled, dominated, SOHC and CDO  
12 Fund. It caused those entities to not pay UBS, or not pay as  
13 much as it could to UBS. It actively engaged in thwarting  
14 UBS's recovery. And UBS's allegation was that, because of  
15 those actions, and because those entities likely had assets,  
16 at least in UBS's view, that the Debtor should be liable  
17 because it controlled, dominated, and caused that failure to  
18 pay.

19 The reason that HCMLP could be gotten that way is it was a  
20 party to the contract. So, notwithstanding that the  
21 counterparties were CDO Fund and SOHC, they were managed and  
22 controlled by Highland, and Highland was the party driving  
23 everything. There's no -- there were no people at SOHC and  
24 CDO Fund. This was a Highland-dominated and controlled  
25 entity.

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1 Q All right. Let's fast forward --

2 A That's the allegation.

3 Q Let's fast forward just a bit. Postpetition.

4 MR. MORRIS: I apologize for the leading questions.

5 If anybody wants to object, they should feel free, but I'm

6 trying to be efficient here.

7 BY MR. MORRIS:

8 Q On or about January 9th, you were one of three people  
9 appointed as independent directors at Strand, Inc.; is that  
10 right?

11 A That's correct.

12 Q Okay. And you subsequently became the CEO of the Debtor;  
13 is that right?

14 A That's correct.

15 Q Okay. In your capacity as an independent director and as  
16 the CEO, did you and the Debtor undertake any analysis to  
17 determine the strengths and weaknesses of UBS's claim?

18 A Yes.

19 Q Okay.

20 A So, when we joined in January of 2020, it was pretty clear  
21 that there were three or four main claims that had to be dealt  
22 with in order for the case to be resolved. Redeemer, there  
23 wasn't that much to defend, because, frankly, the arbitration  
24 decision was very full and very damning. So we thought we had  
25 some defenses there and we spent a lot of time trying to

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1 figure them out, but we thought the bigger thrust of our fight  
2 would be with the Acis group as well as with UBS. I  
3 personally read every underlying agreement. These are  
4 agreements with which I'm familiar. I read every decision. I  
5 reread every agreement. I spent countless hours with the  
6 Highland legal team.

7 Recall that I said that the Highland legal team directed  
8 this litigation. Everything from start to finish. I spent  
9 countless hours with them going through the defenses, the  
10 asset transfers, the fact that, in their opinion, which they  
11 expressed to me multiple times, there were no assets at CDO  
12 Fund and SOHC, that they were what they called "ghost funds,"  
13 that they couldn't -- they couldn't satisfy any judgments, and  
14 there -- but there were always some puzzling questions,  
15 including, well, if they were ghost funds and they had no  
16 assets, then why did you fight so hard? And the answer was,  
17 well, UBS was trying to pierce through. And, in fact, I was  
18 told that Highland even offered to give UBS everything that  
19 was in SOHC and CDO Fund, and that wasn't accepted.

20 We actually spent days going through each of the  
21 documents. In-house counsel laid out charts of the various  
22 defenses. It's a short way of saying -- and I know it took a  
23 little extra time -- but a short way of saying we spent  
24 countless hours reviewing and analyzing the claims, the  
25 defenses, the prior litigation. And it wasn't just me. I

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1 spent considerable time with Russ Nelms, who's a former  
2 bankruptcy judge and an independent director with me, very  
3 experienced in these matters -- analyzing each of the  
4 underlying agreements, each of the allegations, each of the  
5 underlying transfers, and with John Dubel, who's the third  
6 director, who's got significant experience in managing and  
7 settling these kinds of litigations. So that, that was the  
8 basis of our work, and it formed the basis of our defense and  
9 our litigation strategy against UBS.

10 Q And just to complete the picture, did you obtain any  
11 outside counsel with respect to the analysis of the strengths,  
12 weaknesses, and merits of the UBS claim?

13 A Absolutely. We spent a significant amount of time, I  
14 would venture to say millions and millions of dollars' worth  
15 of legal time, with your firm and multiple lawyers at your  
16 firm, looking at virtually every aspect of the case,  
17 reviewing, as I did, every one of the underlying decisions,  
18 considering particular bankruptcy strategies to attack the  
19 decisions that were against the Debtor and to enhance the ones  
20 that were in the Debtors' favor.

21 Q Did you form a view as to the strengths and weaknesses and  
22 the Debtors' exposure, risk exposure, let's say as of last  
23 summer?

24 A I did. I formed it before that, but yes.

25 Q Can you just describe for the Court what your impressions

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1 were as of that time?

2 A My belief was that the Debtor had very strong defenses to  
3 these claims. Ultimately, I thought the Debtor would prevail.  
4 My basis -- the basis for my view was, number one, the  
5 contract was very clear that CDO Fund and SOHC were the  
6 counterparties, that UBS did not have the right to rely on  
7 other third parties, that their only counterparties were SOHC.  
8 And I was told by in-house counsel that SOHC and CDO Fund  
9 didn't have any assets.

10 So the idea that UBS could claim that it could reasonably  
11 rely on something more than that, I thought, to me, was a very  
12 strong defense, or a weak argument by UBS and a strong defense  
13 for us.

14 I didn't think much of the implied covenant of good faith  
15 and fair dealing argument that UBS had because, in our view  
16 and the work we had done, there was no there there, that UBS  
17 had not been thwarted, that there weren't other assets that  
18 had been transferred, that there was a significant defense to  
19 what I felt was a pretty weak claim.

20 The alter ego claim, I thought was not a strong claim  
21 either, because while Highland dominated and controlled HFP,  
22 there's no doubt about that, the other aspect of alter ego,  
23 which is that the corporate vehicle was used to abuse the  
24 counterparty, I didn't think was strong. And I didn't think  
25 it was strong because I didn't have an appreciation as to

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1 assets that were moved out and UBS's reliance on -- on HFP or  
2 any other part of the corporate structure, including HCMLP, to  
3 support the UBS claim.

4 UBS, to be fair, UBS took the opposite view. They said we  
5 did -- we did get information about the financial wherewithal  
6 of HFP. There were public filings that HFP had made. HCMLP  
7 had made certain representations to UBS regarding support of  
8 CDO Fund and SOHC. And they had deposition testimony of  
9 former Highland officers that, again, to be fair, was quite  
10 damning. We discounted it a fair bit because we thought that  
11 those folks had a negative view of Highland's former  
12 management and that's perhaps why they were taking a view that  
13 was negative to Highland.

14 So that was my perspective when we -- you know, by the  
15 late spring, early to late spring and into the beginning of  
16 the summer. And it wasn't just mine. Mr. Draper made some  
17 remarks earlier that show he doesn't understand our corporate  
18 structure. We have a board of directors. It's not Jim Seery  
19 who directs this. I just --

20 MR. DRAPER: Your Honor?

21 THE WITNESS: -- happen to be the CEO --

22 MR. DRAPER: Your Honor, I'd ask that that part of  
23 the record be stricken. It's gratuitous and unnecessary.

24 THE COURT: Overruled.

25 THE WITNESS: I'm the CEO. All of these analysis

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1 were done -- analyses were done with the full board of  
2 directors and with outside counsel's support. So these are  
3 not decisions that I make. This -- these are the decisions  
4 that the board made.

5 And to be fair, on the board we had different views about  
6 the strengths and merits of the case. I probably thought most  
7 strongly that HCMLP had the best arguments. And I tend to get  
8 to my rationale and my position slowly, through a lot of work,  
9 but when I get to it, I do understand the shortcoming of being  
10 pretty firmly wed to it, and I thought we had a very strong  
11 case going into what we've designed as our litigation strategy  
12 as a summary judgment -- would be ultimately a summary  
13 judgment motion.

14 Q Now, before that happened, did the Debtor participate in  
15 mediation with UBS and other parties in late August and early  
16 September?

17 A In late August or early December -- I think it was August  
18 -- approximately August 25th, the Court ordered the Debtor and  
19 related parties to engage in mediation regarding three things,  
20 really: the UBS claim, front and center; the Acis claim,  
21 which was, at that point, you know, equally important; and to  
22 some degree around the grand bargain to the extent that we  
23 could potentially get a deal done using the offices of the  
24 mediators.

25 And so we prepared for a mediation with, you know, former

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1 Bankruptcy Judge Allan Gropper and former Weil Gotshal  
2 bankruptcy partner Sylvia Mayer. We -- again, the amount of  
3 documents that we reviewed, once again, the detailed mediation  
4 submissions, I thought we actually put together some pretty  
5 outstanding pieces, and we took a pretty aggressive view with  
6 respect to the UBS claim, similar to what I just outlined in  
7 terms of, you know, the fact that we thought HCMLP had minimal  
8 liability.

9 Q And without disclosing any numbers or anything like that,  
10 is it fair to say that the mediation ended unsuccessfully?

11 A It did end unsuccessfully. I think that it was not  
12 because of the mediators. It was probably because the  
13 parties, both ourselves and UBS, were a bit dug into our  
14 positions and not really willing to move.

15 We did make some progress around certain of the issues.  
16 We identified at least one asset that had been really hidden  
17 from us coming into the mediation, and we started working on  
18 that asset, which was an asset out of CDO Fund, preference  
19 shares in a CLO called Greenbrier. UBS hadn't been able to  
20 get any discovery, notwithstanding some orders prepetition,  
21 and we felt going into the mediation that we needed to respond  
22 to some of their requests, and we did, and we tasked the legal  
23 department, Ellington and Leventon, with reviewing some of  
24 these assets, because UBS had claims, and echoed them  
25 strongly, but they -- they were contrary to what the legal

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1 department told us, that CDO Fund and SOHC had assets and that  
2 those assets should be available for their judgment.

3 So, we -- we did work on that, and it was reported to us  
4 that there were some shares in -- which were valued at  
5 somewhere between \$8 million and \$10 million at the time,  
6 which were valuable, called Greenbrier preference shares, that  
7 somehow Highland couldn't locate, which was a very unusual  
8 answer. But that came out in the mediation and we discussed  
9 it.

10 Right around that time, Mr. Dondero told me that he  
11 thought those shares had been subject to a participation  
12 agreement and there were no assets there, so I shouldn't worry  
13 about it. I tended to take that with a bit of a grain of salt  
14 because that was an extremely remote thing for that specific a  
15 memory. And that changed our dynamic negotiating with UBS  
16 around that piece.

17 But that was, I think, a relatively successful part. And  
18 it was small, the mediation with UBS, in that we identified  
19 that if there were assets in CDO Fund, including these  
20 Greenbrier shares, those were clearly going to be UBS's assets  
21 because they had a judgment against that entity.

22 Q And after being unable to reach a settlement at mediation,  
23 did the Debtor make the decision to file its motion for  
24 partial summary judgment?

25 A We did.

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1 Q And what was the purpose of that? What was the Debtors'  
2 goal in filing that motion?

3 A Well, suffice it to say, at least on paper, our bid ask  
4 was zero billion. We certainly moved some degree closer than  
5 that in mediation, but we didn't have any -- any agreement.  
6 And so our strategy was to try to narrow as many of the  
7 issues, using a summary judgment motion, to narrow those  
8 issues as much as we could.

9 So we were looking for very specific rulings on Debtor  
10 liability with regard to alter ego, with regard to certain of  
11 the transfers, particularly a release provision that was in  
12 the Redeemer settlement, and how that would then shrink the  
13 litigation number into what we thought would be a manageable  
14 number, where we could then, post-confirmation, litigate with  
15 UBS about that or determine that there was -- worthwhile  
16 getting to a settlement.

17 Q All right. And you understood at the time -- withdrawn.  
18 Did you understand at the time that UBS had filed its  
19 competing motion for an estimate of their claim for voting  
20 purposes under Bankruptcy Rule 3018?

21 A Yes. So, we expected that, because -- because we were  
22 trying to move towards a plan and confirmation. We were  
23 negotiating with the Committee, of which UBS is a part, and  
24 they certainly would need to move to have their claim allowed,  
25 at least for voting purposes.

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1           So we did anticipate that, and ultimately the hearings  
2           were merged into one hearing.

3           Q     And do you recall the outcome of the hearing?

4           A     I do. It was, in our view, extremely successful for the  
5           Debtor. We felt that we had narrowed a significant number of  
6           issues, including alter ego, on a proof of claim argument, the  
7           release provision with respect to the Redeemer release, which  
8           really reduced a significant amount of what we thought was  
9           probably the higher-level risk that we had, and narrowed a  
10          certain number of other issues, that made it, we thought, much  
11          more difficult for UBS to prevail.

12          So the headline number of a billion at that point, coming  
13          into the hearing, while it was an estimation, we really felt  
14          like \$95 million, roughly, that Judge Jernigan ruled on in a  
15          combination of pieces to reach that number was effectively a  
16          ceiling for us at that point. We felt very strongly about our  
17          success at that hearing.

18          Interestingly, UBS had a -- not surprisingly, because of  
19          the nature of our dealings -- the opposite view. They felt  
20          that they had prevailed on a significant number of issues,  
21          that the Court had not gotten the full briefing on assets at  
22          HFP and other transfers that were going to be kept alive,  
23          particularly the implied covenant of good faith, which they  
24          continued to believe was an extremely strong claim for them  
25          because of what they -- some of the evidence they had from

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1 prior testimony of certain employees about assets moving  
2 around, the domination and control, and that that domination  
3 and control, even if it didn't get alter ego up to the Debtor,  
4 would get alter ego to HFP, and then hold the Debtor liable  
5 for the implied covenant because of the way assets were moved  
6 in and out of those entities.

7 So they looked, they looked at the \$95 million, I think,  
8 what we looked at as a ceiling, they looked at it as a floor,  
9 and so -- but we did feel very good about where we came out of  
10 that hearing.

11 Q And do you recall if the Court made any determination with  
12 respect to UBS's claims against Multi-Strat?

13 A It did. So, the Court looked -- recall that -- that --

14 MR. DRAPER: Your Honor, let me object. What the  
15 Court -- the Court ruling is the Court's ruling, and it  
16 is -- the question is unclear because the ruling goes to  
17 Multi-Strat entities as opposed to Multi-Strat, LP.

18 THE COURT: Mr. Morris, what's your response?

19 MR. MORRIS: I'll just use the phrase Multi-Strat. I  
20 don't have the decision in front of me. But I think, I think  
21 we're asking for the witness's understanding, and we're going  
22 to later find out how the witness's understanding comports  
23 with the proposed settlement. Mr. Draper, --

24 THE COURT: Okay.

25 MR. MORRIS: -- whatever objection -- you know, he

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1 can make whatever argument he wants.

2 THE COURT: Okay. I overrule. He can answer.

3 THE WITNESS: So, with respect to the Multi-Strat  
4 transfer, recall there were a number of transfers, including  
5 some direct transfers to Highland. The original number was --  
6 it included Redeemer, Credit-Strat, Citibank, Highland, Multi-  
7 Strat. I think the original number was around \$233 million of  
8 transfers. The transfers to Multi-Strat really left what the  
9 judge, from my recollection of the decision, was looking at  
10 those transfers, what was the likelihood that we -- that UBS  
11 would prevail?

12 Recall that the claim that UBS has is for actual fraud.  
13 This is not -- so their recovery could be from Multi-Strat,  
14 but their recovery could also be from Highland. Remember the  
15 implied covenant of good faith and fair dealing and the  
16 domination and control and moving the assets in and out.  
17 Highland could be liable for that amount as well. But that  
18 would reflect on what the transfers were and what the  
19 likelihood of success against Multi-Strat would be, too.

20 The number was around twenty -- the ultimate court number  
21 was around \$23 million, but it's a higher number of \$25  
22 million and change, with a 90 percent likelihood of success.  
23 That was without interest. So if you factored in the  
24 interest, it would have been around mid-60s, discounted 90  
25 percent likelihood of success. But I believe it was right

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1 around \$24 million, \$23,700,000, some -- a number like that.  
2 I don't recall the exact number.

3 Q Okay. After the Court issued its rulings on the  
4 preliminary -- on the partial summary judgment motion and the  
5 3018 motion, did the Debtor and UBS engage in further  
6 discussions and negotiations about a possible settlement?

7 A We did. We actually reengaged with the mediators. So, so  
8 both former Judge Gropper as well as Sylvia Mayer held at  
9 least -- there was one session -- I believe it was one  
10 session, but we prepped before it, and a significant  
11 discussion with principals, including the principals of UBS,  
12 at the -- at the mediation. We then had a number of  
13 discussions with just principals, where we took lawyers out  
14 and decided to try to see if there was a way to cut a deal.

15 Recall that around the \$25 million, UBS felt really  
16 strongly about this claim. I think they thought that this  
17 was, in their view, as close to a slam dunk as you could get.  
18 In my view, I thought the Debtor had significant defenses.  
19 And I think, with the mediators' help, you know, both their  
20 slam dunk got trimmed back and our significant defenses maybe  
21 got -- got shaken a little bit. And ultimately, towards the  
22 end of December, we started coalescing around what could be a  
23 potential structure of a deal, with multiple pieces.

24 Without going into specifics, UBS had felt so good about  
25 this position that they had that they were willing to settle

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1 and not settle against Multi-Strat, which we thought would  
2 have been terrible because the facts, as they kept evolving,  
3 you know, would have been problematic, and on a standalone  
4 basis, with the testimony that they had, it was going to be  
5 very difficult, without what we think is a view around the  
6 estate and the impact on creditors, to defend against some of  
7 the prior employees' testimony in the original UBS case, which  
8 they had on videotape.

9 Q Does the Debtor have an interest in Multi-Strat?

10 A It does. The Debtor has about 58 percent of the, directly  
11 and indirectly, of the partnership interest in Multi-Strat.

12 Q So it's a majority owner; is that right?

13 A Yes.

14 Q Okay. Going back to the negotiations --

15 A Well, it's the majority owner of the limited partnership  
16 units. We also control a hundred percent the general partner.

17 Q Okay. Just going back to the negotiations, I want to make  
18 sure that we've touched all the bases. Did Mr. Dubel play any  
19 direct role in the negotiations with UBS?

20 A Well, as I mentioned earlier, both Mr. Nelms and Mr. Dubel  
21 were extremely active. This was a big claim, and it was key,  
22 one, to getting it to a manageable number postpetition, but  
23 even at \$95 million, whether you look at that as a ceiling or  
24 a floor, it was going to be significant litigation,  
25 significant expense, and a significant hindrance to any kind

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1 of distributions in the case.

2 In addition, if UBS was voting against the plan, we might  
3 not have gotten it done. And so this was critical to the  
4 board and was front and center of everything we did.

5 When we broke out into the mediation, we started -- we  
6 were trying to figure out who were the best parties to have  
7 more direct discussions, to see if we could get a transaction  
8 done. Because I was probably the most strong in favor of  
9 litigating, it -- we determined that it probably made more  
10 sense to have -- to have Mr. Dubel take the lead in trying to  
11 work through the negotiations around the framework to see if  
12 there was something that we could get done. But any of those  
13 decisions would be subject to full board approval, after  
14 analysis with counsel and sufficient -- a review of what the  
15 pros and cons of that settlement might be.

16 Q And did there come a time in January, prior to the  
17 confirmation hearing, when the Debtor and UBS reached an  
18 agreement in principle?

19 A Yes. So, as I said, late December, we started getting the  
20 framework of what a decision could -- could -- or, a  
21 settlement could be. We had already had some idea based upon  
22 the multiple mediation sessions that we'd had, and then the --  
23 and the direct negotiations among the principles. I think it  
24 was around January 5th that we reached an agreement in  
25 principle on what the terms of the settlement could be with

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1 UBS.

2 Q And can you just describe for the Court, to the extent  
3 that you can recall, what the terms were that were presented  
4 at the confirmation hearing, the principle terms of the  
5 settlement?

6 A Yes. After going through significant back-and-forth and  
7 offers and counteroffers, we reached an agreement where UBS  
8 would get a claim in Class 8 of \$50 million, they would get a  
9 claim in Class 9, which is the subordinated class, of \$25  
10 million, they would have a claim and a settlement with Multi-  
11 Strat in the amount of \$18,500,000, and then they would -- we  
12 would use our best efforts to help them recover the Greenbrier  
13 preference shares and any other assets that might be in CDO  
14 Fund or SOHC.

15 So, at that point, as I mentioned, what -- we had proposed  
16 different things around those assets, which included that we  
17 would buy those assets from them so they could get payment.  
18 That was going to be a little bit difficult for cash crunch,  
19 but we thought it -- we would be best able to manage those  
20 assets and find the upside in them. We would just give those  
21 assets to them.

22 And then they kept pushing us on, okay, if you're going to  
23 just give them to them, then just give them. That made me,  
24 frankly, nervous. And so, from a mechanical standpoint, I  
25 urged our counsel and our financial advisors to go find these

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1 preference shares. It shouldn't be very hard. If we own  
2 them, they should be sitting with a custodian. Make sure  
3 they're there. Are they owned by CDO Fund? Just, are there  
4 any other claims against CDO Fund?

5 What I didn't want to do is turn assets over to UBS and  
6 then find out that we are accused of a fraudulent conveyance  
7 or a preference down in the Caymans. Actually, CDO Fund is  
8 Bermuda. But, so I was a little bit nervous about those  
9 assets, particularly because we couldn't get a straight answer  
10 out of our legal department at all as to where these were, and  
11 it should have been very, very easy.

12 Q Well, --

13 A The ultimate -- the settlement on that piece was we'll do  
14 what we can, best efforts, to get those to you when I figure  
15 out what we have.

16 Q And at the time of confirmation, did the board and the  
17 Debtor generally believe that that proposed settlement was in  
18 the Debtors' best interests and was favorable to the estate?

19 A Yes. I think, you know, referring back to Mr. Clubok's  
20 opening remarks, it certainly didn't feel good. I thought it  
21 was expensive. But versus the risk of the downside and versus  
22 the costs of litigation and versus the impact on the estate  
23 and the ability to actually confirm and then consummate a  
24 plan, we thought it was a good deal.

25 Q And did there come a time after the confirmation hearing

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1 that negotiations with UBS were reopened?

2 A Yes.

3 Q Can you describe for the Court the circumstances that  
4 caused the Debtor to reopen negotiations with UBS?

5 A Well, after we reached the agreement, we started working  
6 on documenting that with UBS. And as maybe the flavor gives  
7 you a little bit of past as prologue, negotiations around the  
8 document were not easy. It was extremely difficult. We were  
9 concerned about risks in the document and wanted to make sure  
10 it was tied up very tightly. UBS, similarly, they just had a  
11 different -- wanted a different way to tie it up. And so  
12 those negotiations took some time. While that was going on,  
13 we were also working on trying to figure out these Greenbrier  
14 shares independently.

15 Separately, right around I think it was the beginning of  
16 January, we terminated Ellington and Leventon for cause, and  
17 that termination really related to some very -- didn't relate  
18 to this issue. It related to specific things we found with  
19 respect to their work with Mr. Dondero to try to thwart the  
20 plan and inflict damage on the Debtor in the fall and the  
21 winter -- beginning in the winter of 2020.

22 When we terminated Mr. Leventon, in the course of sending  
23 him an email, the auto-populate in Outlook filled in something  
24 called LeventonSASManagement.com. Basically, an email of  
25 something I'd never heard of. That sent us looking for what

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1 the heck is SAS Management. So, while we were going towards  
2 confirmation, separate from UBS, we had our professionals  
3 doing some work around what -- what is this thing that -- the  
4 secret company that is on our server, at least to some degree,  
5 that I haven't heard of in a year and no one's mentioned it to  
6 me.

7 It turns out, shortly after confirmation, I think it was  
8 actually just a day or two after confirmation, counsel came to  
9 me and said, we've got a problem, and described what was found  
10 going through the SAS Management issues and CDO Fund issues,  
11 of a massive transfer of \$300 million face amount of  
12 securities in 2017 for basically what appeared to be no  
13 consideration to a Cayman Island entity.

14 We did a fair amount of digging, as we're not trained  
15 investigators, but we did a fair amount of digging on these  
16 issues. And really, it was -- we discovered it because there  
17 was one employee that we had not yet terminated, Matt DiOrion,  
18 who kept giving us a runaround on where the Greenbrier  
19 preferred shares are.

20 Again, this is a very simple thing. Shares are, when  
21 they're physical, are kept in a -- with a custodian. They're  
22 kept in a vault. They don't leave the vault. Bank of New  
23 York doesn't lose shares. These were moved out as part of  
24 this transfer in 2017, which just happened to occur in August  
25 of 2017, a few months after UBS had had a significant win in a

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1 summary judgment motion in the New York state court. It also  
2 coincided with the Credit-Strat settlement, the Redeemer  
3 litigation, the Josh Terry litigation commencing, the Pat  
4 Daugherty HERA litigation commencing. So things were coming  
5 apparently a little bit unraveled at Highland at that time.  
6 And we discovered this massive transfer right out of the  
7 counterparties SOHC, CDO Fund, and then certain subsidiaries  
8 of -- of HFP, that were really in the crosshairs of UBS's  
9 litigation.

10 So there's a lot of detail we have on that. It involves  
11 tax schemes and frauds. It's -- I've never actually been  
12 around something like this. But we'll get to that, I suppose,  
13 at some due course. But we couldn't cut the deal with UBS  
14 without telling them this.

15 So, within a few days, we -- we didn't have a great  
16 roadmap, but we called them up and told them what we knew, and  
17 said, look, this is what we've discovered with your  
18 counterparty, and, you know, we'd still like to go forward  
19 with the settlement. What do you think? They thought about  
20 it, came back to us. Our analysis, and we did a lot of  
21 analysis very quickly, is it significantly impacted our risk.  
22 And why did it significantly impact our risk? Recall the  
23 implied covenant of good faith and fair dealing. They're the  
24 basis of UBS's claim against Highland. Highland would have no  
25 liability whatsoever under this contract if Highland just did

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1 what the contract said. UBS specifically brought a claim  
2 saying, you dominated and controlled these entities, they were  
3 our counterparty, and you made it so we couldn't recover.

4 We had been told by Highland's legal team that that was  
5 nonsense, that those funds didn't have anything, they were  
6 shell corporations. Turns out that wasn't true. And so UBS's  
7 claim that Highland dominated and controlled this -- and this  
8 was done by a small cabal of the folks at Highland, including  
9 Dondero, Ellington, Leventon, and others in the legal  
10 department to move these assets out from UBS -- that made the  
11 claim against HCMLP way better.

12 In addition, it made the actual fraud claim regarding HFP  
13 against Multi-Strat way better, because where I thought we  
14 could argue around the transfer or the satisfaction of the  
15 notes and so-called note unwind transaction, now we were  
16 getting into a realm where no, you knew that UBS was  
17 progressing with a claim against you, you saw it coming  
18 against HFP, and you stripped the assets out because you were  
19 an LP in Multi-Strat. So you, rather than leave them there to  
20 help satisfy the judgment or defend against the piercing of  
21 the veil of HFP, you stripped them out. And so we thought  
22 that that materially increased the risk that UBS could prevail  
23 on that claim as well.

24 Q And having done the risk assessment and having shared the  
25 preliminary findings with UBS, did the Debtor and UBS continue

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1 negotiations and ultimately reach a revised settlement?

2 A We did. So, the negotiations continued. You know,  
3 frankly, the Debtor was in a difficult position. Because we  
4 had a confirmed plan. If we were really litigating with UBS  
5 about a billion-dollar claim, it would have been very  
6 difficult to consummate the confirmed plan. You know, as I  
7 said, it materially increased our risk. We still had defenses  
8 and we don't throw away our defenses, but this was a material  
9 body blow, if you will, to a boxing analogy, you know, in a --  
10 what we had hoped was a late round, and it certainly weakened  
11 our position and our case.

12 But I think we were fortunate that we had set up our case  
13 well from the start. UBS had certain risk based upon the  
14 summary judgment motion and the limited parts -- certain parts  
15 of their claim that had gotten knocked out. And so we recut  
16 the deal. Where we had a \$50 million Class 8 claim, we agreed  
17 to a 68 -- oh, I'm sorry, a \$65 million Class 8 claim. Where  
18 we had a \$25 million Class 9 claim, we agreed to a \$60 million  
19 Class 9 claim for UBS.

20 The \$18-1/2 million, we kept at \$18-1/2 million. And the  
21 reason for that was I felt really strongly that there were  
22 still some defenses, I had to think about third parties in  
23 that one, and I really didn't want to increase that,  
24 notwithstanding that the risk to Multi-Strat had been  
25 increased. Certainly, UBS had argued for an increase, a

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1 material increase in that amount, because they thought, as  
2 they had previously, that they had a great claim, and this  
3 certainly augmented the position that they had.

4 And then we agreed to use our best efforts, similar to the  
5 decision -- the original settlement, which is our best efforts  
6 with regard to CDO Fund, but we agreed to use our best efforts  
7 to help figure out what happened with the assets down at CDO  
8 Fund and SOHC or with their counterparties that we dominated  
9 and controlled and help them recover on those to the extent  
10 that they were valid claims. And we agreed to actually expend  
11 funds to do that, up to \$3 million, which would be -- we would  
12 be reimbursed for, the estate would be reimbursed for,  
13 depending on which assets they came out of.

14 And that was a -- the -- so that, that was the settlement  
15 that we reached. The board analyzed again the risks of going  
16 forward with the litigation, what we thought the benefits of  
17 prevailing, where we would end up with respect to the estate  
18 and the expenses that we would have to incur. We thought  
19 about the New York state litigation, the cost there, as well  
20 as the costs in the bankruptcy estate, and then any issues  
21 with respect to CDO Fund, SOHC, HFP. We did that analysis  
22 with outside professionals, both DSI and your firm, with the  
23 Pachulski firm.

24 We also had engaged as fund counsel Wilmer Hale, and they  
25 have been active in reviewing what we do with respect to each

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1 of the funds, including the Multi-Strat settlement, and  
2 they've been an active part of those.

3 Q All right. Let's just finish up with a discussion about  
4 Multi-Strat. Can you describe for the Court your  
5 understanding of how the Multi-Strat family of entities is  
6 related, what the corporate structure is?

7 A It's a pretty straightforward mini master fund, with  
8 limited partners in a Cayman Island -- it's a Delaware LP, a  
9 Cayman Island feeder, which is -- which is pretty typical, and  
10 then a GP structure. So we had various limited partners, a  
11 Cayman Island feeder, and then a multilevel general partner  
12 structure.

13 So the -- I don't recall the actual names, but there's two  
14 entities between Highland and Multi-Strat on the GP side, and  
15 they're either LPs or -- they -- they're GP structured as an  
16 LP or an LLC, so we control a hundred percent of those.

17 Q And as part of the settlement, can you just remind the  
18 Court what Multi-Strat will be paying to UBS?

19 A Multi-Strat is going to pay \$18-1/2 million to UBS. We  
20 had escrowed money in the spring, in a dispute with UBS, at  
21 Multi-Strat. We were selling some life insurance policies  
22 because we didn't have funds to continue to pay the premiums,  
23 and if you don't pay the premiums they expire worthless. We  
24 sold those for \$32 million. UBS took the position that you  
25 can't -- you can't give a good rep, and the buyer wanted a

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1 clean rep, because UBS had a claim against Multi-Strat for  
2 either the policies or their value, plus interest. So we  
3 reached a deal with UBS at that time which allowed us to --  
4 and there were certain of the policies were also subject to a  
5 secured lien in favor of, and it's always the same, NexBank.  
6 And so we reached a deal where we could sell those policies,  
7 pay off the piece to NexBank, escrow \$10 million, and satisfy  
8 certain other obligations at Multi-Strat, including reserving  
9 so that we knew we could pay the P&I to Multi-Strat, principal  
10 and interest to Multi-Strat, over the -- to NexBank over the  
11 next year.

12 So that money had already been put in escrow, but we  
13 hadn't agreed with anything. We figured, with UBS, we would  
14 litigate. But their litigation would tie up any distributions  
15 out of Multi-Strat until it was concluded. So we will settle  
16 with UBS at \$18-1/2 million. We'll use the \$10-plus million  
17 cash at Multi-Strat, and we have additional significant assets  
18 at Multi-Strat.

19 Multi-Strat is a little bit unusual. In my experience,  
20 actually, extremely unusual. There are \$90 million of  
21 redeemers, they redeemed from the Multi-Strat fund, and they  
22 hadn't been paid for years. They get very little information.  
23 We're now providing information to them. But the Debtor  
24 treated them pretty much as an afterthought. They were sort  
25 of treated as if you would treat a non-(inaudible) threat,

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Seery - Direct

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1 that they have a fixed claim, but their -- the value of their  
2 claim or the dollar amount of their claim doesn't rise and  
3 fall with the assets. And then we had 58 percent at HCMLP of  
4 the limited partnership, with the other partnerships in  
5 Dondero-controlled entities. I suspect there were will be  
6 litigation around that because of the damages they have caused  
7 to Multi-Strat. But the assets in Multi-Strat are  
8 approximately a hundred --

9 MR. DRAPER: Your Honor? Your Honor, let me -- let  
10 me ask that that part be stricken. That has nothing to do  
11 with this case, either. That's just an extemporaneous comment  
12 made by Mr. Seery --

13 (Overspeaking.)

14 MR. DRAPER: -- future litigation.

15 THE WITNESS: -- so we can make distributions.

16 THE COURT: All right. I sustain that objection.

17 MR. MORRIS: Yeah.

18 BY MR. MORRIS:

19 Q Mr. Seery, can we just -- who is -- who is the Multi-Strat  
20 investment manager?

21 A It's Highland Capital Management, --

22 Q It's not you --

23 A -- the Debtor.

24 Q It's not you personally, is it?

25 A No.

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1 Q Okay. And you mentioned the redeemed interest holders.  
2 Will this settlement, based on your understanding, will this  
3 settlement have any impact whatsoever on any redeemed interest  
4 holder?

5 A No. Other than \$32 million of redemptions which are in  
6 Sentinel, a large portion of which came out of the CDO Fund  
7 transfer, those -- those redeemers won't be affected. And the  
8 reason I say that is because the assets in Multi-Strat are  
9 approximately \$135, \$136 million today, so that, of the  
10 approximately \$66 million of third-party redeemers, I don't  
11 anticipate any issue ultimately paying them, although there's  
12 -- the Fund is not currently in liquidation, so they're not  
13 required to be paid now. And the assets far exceed the value  
14 of the amount of their redemption claims.

15 Q Okay. Did the Debtor, as the investment manager for  
16 Multi-Strat, seek or obtain an independent view on behalf of  
17 Multi-Strat with respect to this settlement?

18 A Not a -- not separate from the view that we get from your  
19 firm, from Wilmer Hale, and from DSI. We didn't go out and  
20 get a third party specifically for Multi-Strat, no.

21 Q And why didn't you do that?

22 A That would be very unusual. We're the controlling -- we  
23 have a majority of the limited partnership interest and we are  
24 the investment manager of the fund, as well as being the GP.  
25 We have plenary authority as the general partner to dictate

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1 the affairs of Multi-Strat. In addition, we have significant  
2 authority under the investment management agreement to handle  
3 the affairs of Multi-Strat and engage in or settle  
4 litigations.

5 Q And is that investment management agreement an agreement  
6 that has been assumed by the Debtor as part of the bankruptcy?

7 A I believe it has, yes.

8 Q Okay.

9 MR. MORRIS: Your Honor, can we just take a short  
10 break? I may be finished, but I just want to check my notes.

11 THE COURT: All right. Let's do it. Let's take a  
12 10-minute break.

13 THE CLERK: All rise.

14 MR. MOORE: Come back at--?

15 THE COURT: 11:01, we'll come back.

16 (A recess ensued from 10:51 a.m. until 11:03 a.m.)

17 THE CLERK: All rise.

18 THE COURT: All right. Please be seated. We're back  
19 on the record in the Highland matter. Mr. Morris, are you  
20 ready to resume your direct?

21 MR. MORRIS: I am. And I just have a bit more, Your  
22 Honor.

23 THE COURT: Okay. You may proceed.

24 DIRECT EXAMINATION, RESUMED

25 BY MR. MORRIS:

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1 Q Okay. Mr. Seery, are you ready? Can you hear me?

2 A Yes.

3 Q Does -- to the best of your knowledge, does Mr. Dondero  
4 have any direct ownership interest in any part of the Multi-  
5 Strat group of families?

6 A No. He does not have that.

7 Q Okay. Do you have an understanding as to whether Dugaboy,  
8 the Dugaboy Investment Trust has any interest in any aspect of  
9 the Multi-Strat family?

10 A I believe they have 1.7 percent of the limited partnership  
11 units.

12 Q Okay. I'm trying to see if we can establish what  
13 Dugaboy's interest in -- is in the \$18-1/2 million. Does that  
14 mean that, if you rounded it up to 2 percent, that Dugaboy  
15 would have an interest in the settlement amount that would be  
16 valued at \$37 million -- \$370,000?

17 A You know, you can do that math. I think that the --  
18 that's not how a limited partnership works. They have a  
19 limited partnership interest, and claims get paid before  
20 limited partners receive distributions. And in our structure,  
21 as I mentioned earlier, first you pay the claims, then you pay  
22 the redeemers, then the residual interests go to limited  
23 partners.

24 Q Okay. So in my hypothetical, the maximum that Dugaboy  
25 could get if you rounded it up to 2 percent would be

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Seery - Direct

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1 approximately \$370,000, and that assumes that there are no  
2 claims; is that fair?

3 A That's correct.

4 Q Okay. And if the Court excised this part of the  
5 settlement -- withdrawn.

6 MR. MORRIS: I'd like to -- I'd like to put up on the  
7 screen Exhibit 68, which I believe is the organizational chart  
8 for Multi-Strat.

9 BY MR. MORRIS:

10 Q Are you familiar with this document, sir?

11 A I am, yes.

12 Q Can you just describe generally what role Highland Capital  
13 Management plays in connection with the management of the  
14 entities on this page?

15 A Sure. When we talk about Multi-Strat, we're talking about  
16 the Credit Fund, which is a limited partnership. That's the  
17 long box slightly below the middle of the page. Highland  
18 Multi-Strat Credit Fund Limited Partnership.

19 A limited partnership is managed by its general partner.  
20 Its general partner is a Delaware limited partnership called  
21 Highland Multi-Strategy Credit Fund GP, LP.

22 As a limited partnership, it has limited partners, which  
23 are HCMLP, is all the limited partners. And it has a GP,  
24 which is Highland Multi-Strategy Credit GP, LLC. The LLC,  
25 being an LLC, is managed by its managing members, or its

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1 members if it doesn't have a managing member. All of the  
2 membership units are controlled and owned by HCMLP.

3 In addition, HCMLP is the investment manager of the  
4 Highland Multi-Strategy Credit Fund, LP, what we call Multi-  
5 Strat today. It's also the investment manager of the offshore  
6 fund, which is a limited partnership fund called Highland  
7 Multi-Strategy Credit Fund. However, it doesn't have any real  
8 authority over that fund because that's hard -- its  
9 investments are hardwired. It invests into the Highland  
10 Multi-Strat Credit -- Multi-Strategy Credit Fund, LP, and it  
11 can do nothing else.

12 Q Okay. Are these -- are these -- are these organized on a  
13 consolidated basis for reporting purposes?

14 A Yes. This is -- this is really treated as one fund, and  
15 the entities below Highland Multi-Strategy Credit Fund, LP are  
16 various subsidiaries where certain assets were put at certain  
17 times.

18 MR. MORRIS: I have no further questions, Your Honor.

19 THE COURT: All right. Pass the witness.

20 Mr. Clubok, I'll stick with friendlies first. Do you have  
21 examination?

22 MR. CLUBOK: Very brief, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. CLUBOK:

25 Q Mr. Seery, just one clarifying point. You referred you

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1 generally to this entity as Highland Multi-Strat. I think at  
2 one point it had a different name, that it was Highland Credit  
3 Opportunities. Is that correct?

4 A Yes. And if you look at the chart that Mr. Morris put up,  
5 below Highland Multi-Strategy Credit Fund, a lot of those  
6 entities have the old name. So, Highland Credit Opportunities  
7 CDO Fund; HCOF, which would be Highland Credit Opportunity  
8 Fund Preferred; et cetera. So you'll see that that older name  
9 is reflected down below. I believe there was a -- I don't  
10 have the exact date, but there's an amended and restated  
11 limited partnership agreement that dealt with the changing of  
12 the name.

13 Q And that name change occurred after the New York  
14 litigation was filed. So when you said repeatedly things to  
15 the effect that Multi-Strat was a defendant in New York, you  
16 mean Multi-Strat and/or the entity that it was formerly known  
17 as, Highland Credit Opportunities, correct?

18 A Yes. It was a name change. It's not a -- it's not a  
19 complete change of the entity.

20 Q Okay.

21 A It's not a successor. It was a name change.

22 Q Thank you. Sir, you also referred at one point to the  
23 warehouse agreements. Those were agreements that involved the  
24 Funds. And you, kind of just very briefly paraphrasing, said  
25 something to the effect that there was a provision that

1 required the Funds to pay a hundred percent of the losses as  
2 part of the -- which is sort of part of the underlying  
3 litigation with UBS. Do you recall that testimony?

4 A Yes.

5 Q And I believe, for the record, that those warehouse  
6 agreements are exhibits of the Debtors, Exhibits 6 and 7 to  
7 this proceeding, just for reference.

8 I just wanted to note that in -- well, first of all, those  
9 -- those warehouse agreements, in addition to being signed by  
10 the Funds, were also signed by Highland Capital Management,  
11 correct?

12 A Yes. Highland was clearly a party to those agreements as  
13 the manager.

14 Q And there was a third document that collectively formed  
15 the contract between the parties at the time that was known as  
16 the engagement letter, which I believe the Debtor has  
17 identified as Exhibit 8 to this proceeding. Are you familiar  
18 with that?

19 A I'm familiar with that document, yes.

20 Q And that document, which was an agreement that was just  
21 between Highland and UBS, generally governed the terms of the  
22 warehouse agreements and so forth, correct?

23 A Yes. A very standard structure, where the manager  
24 organizing the funds signs that document. The underlying  
25 funds don't sign it because they're not -- they're not the

1 structurer, they're not the manager, they're not really --  
2 they're not -- they're just shell -- typically, they're just  
3 shell entities here obviously that had assets.

4 Q And that engagement letter that was signed on behalf of  
5 HCM also referenced obligation for the Funds to cover a  
6 hundred percent of the losses, correct?

7 A Correct. It laid out the, really, it's the master  
8 agreement, if you will, though it doesn't dominate the other  
9 agreements. It just lays out the entire structure of the  
10 transaction and the agreements between Highland and UBS on how  
11 the transaction would go forward.

12 Q And in the New York proceeding, the Court has now  
13 determined that those Funds have owed UBS over \$500 million  
14 since at least going back to 2009, when UBS first filed the  
15 lawsuit in New York, correct?

16 A That's correct. Plus interest.

17 Q Right. It was originally some -- a little over \$500  
18 million, and since then, because of interest, it's over a  
19 billion. Correct?

20 A Yes.

21 Q But in all the time since UBS filed its lawsuit in  
22 February of 2009 through today, has Highland ever caused  
23 either of the Funds to pay a single dollar to UBS with respect  
24 to these losses?

25 A Not to my knowledge. And we certainly -- Highland did not

Seery - Cross

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1 pay anything to UBS during the case.

2 MR. CLUBOK: That's all I have, Your Honor. Just,  
3 although I would like to note that I believe technically this  
4 witness has been called by both the Debtor and the Objectors,  
5 and I think we're combining the testimony all into one, so I  
6 just would ask to reserve the right to potentially ask follow-  
7 up questions based on different questions that are asked by  
8 the Objectors' counsel.

9 THE COURT: All right. Thank you. And I'll just  
10 clarify with everyone. Mr. Draper, I guess you'll go next,  
11 but if you all have named Mr. Seery as a witness, then I  
12 guess, rather than, you know, having you all recall him after  
13 we're finished here, we'll just let you go beyond the scope of  
14 direct with your examination. And if you do, that means, I  
15 guess, the Debtor and the UBS are going to get the last shot  
16 at questioning, because, instead of direct/cross/redirect/  
17 recross, there would be your -- you know what I'm saying. So  
18 I'm allowing you to go beyond the scope of direct if you so  
19 choose, but that means that Movants get the last word on  
20 examination.

21 Whoops, you must be on mute.

22 MR. DRAPER: Can you hear me now?

23 THE COURT: I can hear you now.

24 MR. DRAPER: Okay. I promised Mr. Clubok that I  
25 would try to make this end rather quickly and try to -- try to

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Seery - Cross

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1 walk my way through things. And a lot, look, a lot of my  
2 stuff is based on documentation, Your Honor.

3 THE COURT: Okay.

4 MR. DRAPER: So, I'm ready. Can you put back up  
5 Debtors' 68, Bryan, the Multi-Strat org chart?

6 CROSS-EXAMINATION

7 BY MR. DRAPER:

8 Q Mr. Seery, you've identified this chart. What I'd ask you  
9 to look at is the entity Highland Multi-Strategy Credit Fund,  
10 LP. That is the Delaware entity that is paying the \$18-1/2  
11 million, correct?

12 A Yes.

13 Q Now, in looking at this org chart, in your pleadings you  
14 made the statement that the Debtor owns 58.7 percent of the  
15 Delaware LP?

16 A I don't recall if I gave a point-something, but it's right  
17 in that range, 58.67, 58.7.

18 Q Okay. So is that under the various limited partners'  
19 percentage? Or is that something else?

20 A It's consolidated, but it's -- it's under the limited  
21 partnership percentage, I believe.

22 Q All right. Well, how much does Highland Multi-Strat  
23 Credit Fund, Limited, the Cayman entity, own in Highland  
24 Multi-Strat Credit Fund, LP?

25 And let me make a statement. What I'm trying to do, and

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Seery - Cross

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1 I'll go through this, when I refer to LP, I'm talking about  
2 Highland Multi-Strat Credit Fund, LP. When I'm talking about  
3 Limited, I'm talking about Highland Multi-Strategy Credit  
4 Fund, Limited. Do you understand that?

5 A I'll figure it out.

6 Q All right. So, one's a Cayman entity. How much -- what  
7 is the limited partnership interest that Limited owns in LP?

8 A Right now, I believe that's extremely small. Not -- we  
9 look at it on a consolidated basis. But that offshore would  
10 be the foreign investors. And so I don't recall. I think  
11 virtually all of them have redeemed. So we wouldn't treat  
12 them as limited partners. We'd treat them as redeemers. So  
13 when it mentions the Japanese feeder on this chart, there were  
14 also Australian superannuation funds, all of them have  
15 redeemed.

16 Q Let me --

17 A The only --

18 Q Let me try to piece that together. Aren't they only  
19 owners of or members of Credit Fund, Limited, not Credit Fund,  
20 LP?

21 A They -- they would have been, but they're redeemers, and  
22 the fund they're in is hardwired to Credit Fund, LP.

23 Q All right. And so since one's a limited partner of the  
24 other, LTD can take no role in the management or operation of  
25 LP, correct?

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1 A That's correct.

2 Q All right. And in terms of raising money, both -- LTD had  
3 its own separate subscription agreement, correct?

4 A Yes.

5 Q And LP had its own separate subscription agreement?

6 A I believe that's correct.

7 Q So, basically, though you may report them together, they  
8 both have different investors, they both have different  
9 subscription agreements, one's a Cayman company and one's a  
10 Delaware company; is that correct?

11 A The master fund is a Delaware company.

12 Q Right.

13 A And it -- these are limited -- the Cayman company is a  
14 limited partner in the Delaware company.

15 Q Right.

16 A And the offshore investors invest in the Cayman company.  
17 That's a pretty standard structure.

18 Q Okay. And is there a written agreement with respect to  
19 the redemption, the \$89 million of redeemers that exist or  
20 that existed?

21 A There's no separate written agreement. They redeemed and  
22 submitted redemptions, but there's no separate redemption  
23 agreement.

24 Q Let me ask the question a different way. Is there an  
25 agreement that they will be paid when certain assets are sold?

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1 A That's part of the underlying documentation of the fund,  
2 yes.

3 Q And what -- what assets were they to be paid out of under  
4 that agreement?

5 A Any assets of the fund after claims are paid.

6 Q So your testimony is that there was no specific assets set  
7 aside to satisfy the claims of the parties making a  
8 redemption?

9 A I don't believe so, no.

10 Q Is that a no, or you don't know?

11 A I don't know.

12 Q Okay. And, again, just so we're very clear, when we look  
13 at the defendants to the UBS lawsuit, and I'll -- when I use  
14 the term UBS lawsuit, I'll talk about the second amended  
15 complaint -- the defendant in that lawsuit is Highland Multi-  
16 Strategy Credit Fund, LP. It is not Highland Multi-Strategy  
17 Credit Fund, Limited?

18 A I believe that's correct, yes.

19 Q Now, in connection with the deposition and my  
20 documentation, you produced the fourth amended articles of  
21 partnership for the Highland Multi-Strategy Credit Fund, LP.  
22 Is that the last document in connection with the  
23 organizational structure of LP?

24 MR. MORRIS: Objection to the form of the question.

25 THE WITNESS: I -- I'm not sure.

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1 THE COURT: Overruled.

2 THE WITNESS: I believe it is. We would -- we would  
3 have produced -- sorry, Your Honor. We would have produced  
4 the most recent one we had.

5 BY MR. DRAPER:

6 Q So, so the operative document for the organizational  
7 structure for LP is the -- is the fourth amended that's been  
8 produced and is part of my exhibits?

9 A I believe so.

10 Q All right. And the -- Highland Multi-Strategy Credit  
11 Fund, Limited has its own operating agreement and its own  
12 organizational documents?

13 A I believe so, yes.

14 Q And that's also been produced and you've given me the  
15 latest copy of those documents?

16 A I believe so, yes.

17 Q And you've also given to me a third amended investment  
18 management agreement that covers the Debtor as investment  
19 manager for Highland Multi-Strategy Credit Fund, Limited as  
20 well as Highland Multi-Strategy Credit Fund, LP. Has that  
21 document been -- been amended?

22 A I'm sorry. Has that document been--?

23 Q Amended. The one I have is the third amended document.

24 A I believe we gave you the most recent ones.

25 Q All right. Now, you did a mathematical calculation before

1 as to the Dugaboy interest, but let's -- let's sort of break  
2 that down. If I understand your mathematics, you had a  
3 hundred -- roughly \$140 million of assets in what I'll call  
4 LP?

5 A \$135 to \$136 million.

6 Q Okay. Let's use \$135 million.

7 A (overspoken) exhibits.

8 Q Okay. Let's use \$135 million. In terms of the  
9 redemption, what -- how much is being redeemed or pending  
10 redemption?

11 A Approximately \$89 million.

12 Q Okay. And of that, Sentinel has a piece, but there are  
13 others separate and apart from Sentinel who -- who have  
14 redeemed, correct?

15 A That's correct.

16 Q How much is the Sentinel redemption versus the other --  
17 outside redemption?

18 A I believe the Sentinel is about a third. \$32 million-ish.

19 Q Okay. So if you take the redemptions out, what's the net  
20 equity value in LP?

21 A It's about \$45 million right now.

22 Q So if you multiplied the Dugaboy 2 percent interest in the  
23 -- in LP, it's much greater than \$360,000, correct?

24 A That's correct.

25 Q And that the effect of the settlement reduces the Dugaboy



1 interest or value of our interest by \$360 million? \$360,000?

2 A Again, based on that math. Whatever the claims are at the  
3 Credit Fund, including the -- first, the claims have to get  
4 paid first. All the expenses and claims. Then the redeeming  
5 partners get paid. Then the non-redeeming partners get paid.

6 Q So, my math reflects that, correct?

7 A I'm not sure which math you're talking about.

8 Q I --

9 A It would have a partnership interest and it would get a  
10 distribution on the net equity.

11 Q Right. Thank you. Now, Debtors' 73.

12 MR. DRAPER: Can you put that up, Bryan?

13 BY MR. DRAPER:

14 Q That is a settlement agreement that was entered into May  
15 11th, 2020 between Multi-Strat, LP and UBS, correct? And you  
16 -- you've testified about that earlier.

17 A That's correct.

18 Q And that's where various life settlements were sold by  
19 Multi-Strat to raise money?

20 A They -- they were sold for money, yes. It wasn't -- we  
21 didn't have an obligation to raise money. We sold them  
22 because --

23 Q Okay.

24 A -- we thought it was good value and we sold them because  
25 we didn't have the money to pay the premiums.

1 Q And court authority was not -- not sought for this  
2 transaction?

3 A That's correct.

4 Q Does Multi-Strat, in its ordinary course of business, sell  
5 these life policies?

6 A Yes, it sells assets.

7 Q No. Does it sell -- in the ordinary course of its  
8 business, does it sell these policies?

9 A Yes.

10 Q Okay. And how many has it sold in the last year other  
11 than this transaction?

12 A These were all of them.

13 Q Okay. Now, doesn't it also get money in from people dying  
14 and benefit -- as a beneficiary under the policy?

15 A If people died. But they didn't.

16 Q Okay. Over the time period the prior five years, how many  
17 life policies did Multi-Strat, LP sell?

18 A I don't believe it sold any. There may -- there are two  
19 that expired worthless. I don't believe it sold any.

20 Q So, really, in connection with your testimony, for the  
21 five years prior it didn't sell any life policies?

22 A It did not sell any, no.

23 Q Okay. Now, in looking -- let me go back to the org chart  
24 that we had. Each one of those entities on that org chart,  
25 Highland has some relationship to -- and I'm talking about

1 Highland, the Debtor -- either as a fiduciary, as a general  
2 partner, or through an investment management agreement; is  
3 that correct?

4 A If you mean directly or indirectly, yes.

5 Q Okay. So, indirectly or indirectly, it owes a fiduciary  
6 duty to everybody on here?

7 A I'd have to go through each one, so I wouldn't make that  
8 as a blanket statement.

9 Q Which ones -- let's do it this way. Which ones doesn't it  
10 owe a fiduciary duty to? There are not that many entities on  
11 here, so you can pick out the ones that it doesn't directly or  
12 indirectly owe a fiduciary --

13 A I can't get down to the -- to the bottom interests. But,  
14 for example, I don't know that -- I think it's a legal  
15 conclusion -- I don't know, starting up at the top, that --  
16 well, I know we -- that we don't owe a fiduciary duty --  
17 Highland Capital Management doesn't owe a fiduciary duty to  
18 Strand Advisors.

19 I don't know whether Highland owns a fiduciary -- owes a  
20 fiduciary duty to GP, LLC, Highland Multi-Strategy GP, LLC,  
21 notwithstanding that it owns a hundred percent of the  
22 membership units. It -- that would act as a break, then, with  
23 respect to whether it owes a fiduciary duty to Highland Multi-  
24 Strategy Credit Fund GP, LP, because the LLC, if it serves  
25 effectively as a blocker, doesn't owe a -- the L -- as an LP,

1 you don't owe a duty to the limited partnership.

2 So, I mean, we could go through each of these if you'd  
3 like, but I'd be just speculating.

4 Q Okay. And I think you've testified before that Highland,  
5 the Debtor, is subject to the Advisers Act?

6 A Highland, the --

7 Q Investment Act?

8 A Highland, the Debtor, as an investment manager, is subject  
9 to the Advisers Act, yes.

10 Q And didn't you testify that, under the Advisers Act,  
11 you're required to put the interests of the entity you're the  
12 management advisor for over the interests of any other  
13 Highland entity where it's a fiduciary?

14 A I think where it's a fiduciary you owe a fiduciary duty to  
15 that entity. Then if you have two fiduciary duties, you  
16 balance those -- those interests. So, while you have  
17 fiduciary duties to -- Highland Capital Management has a  
18 fiduciary duty to Highland Multi-Strategy Credit Fund, LP, it  
19 may have fiduciary duties to other entities as well.

20 Q And just looking at this, it would have a fiduciary duty  
21 to Highland Multi-Strategy Credit Fund, Limited as investment  
22 manager as well as Highland Multi-Strategy Credit Fund, LP as  
23 investment manager?

24 A I believe that's the case, yes.

25 Q And how would you rank the fiduciary duty to those

1 entities where you're the investment manager to the duty that  
2 Highland has to the estate?

3 A I think they're similar. Again, I think you have to  
4 balance those fiduciary duties. Certainly, in the disclosure  
5 that Highland made, there can be conflicting -- potentially  
6 conflicting interests, and it represents that it will balance  
7 those interests.

8 In certain other instances, it's -- it's more easy to  
9 balance, but, for example, Highland Multi-Strategy Credit  
10 Fund, Limited is hardwired to invest in Highland Multi-  
11 Strategy Credit Fund, LP, so there are no real decisions that  
12 get made at Highland Multi-Strategy Credit Fund, Limited  
13 because it has to invest in Highland Multi-Strategy Credit  
14 Fund, LP.

15 Q Okay. And let me ask a question. In connection with the  
16 May 2020 settlement agreement, did UBS have a lien on the  
17 assets of Highland Multi-Strategy Credit Fund, LP?

18 A No, it did not.

19 Q Did it have a -- was there an injunction prohibiting  
20 Highland Multi-Strategy Credit Fund, LP from selling those  
21 life settlements?

22 A No, there was not.

23 Q And are you sure that the life settlements that you sold  
24 in May of -- or, not you sold -- Multi -- LP sold in May of  
25 2020 were, in fact, owned by LP, as opposed to owned by



1 Limited?

2 A They were owned by a subsidiary of LP.

3 Q Which subsidiary owned them?

4 A They were owned by Highland Credit Opportunities CDO Asset  
5 Holdings, LP, Delaware.

6 Q Okay. Are you aware at any point of Highland Multi-  
7 Strategy Credit Fund, Limited owning life settlement policies?

8 A Limited? No, I'm not.

9 Q And both LP and Limited issue their own financial  
10 statements, correct?

11 A Typically, the offshore fund would do its own. I haven't  
12 looked at the financial statements from Limited.

13 Q And they would have to do that because they have separate  
14 investors, correct?

15 A They do. Again, they're mirrors, because it's hardwired.  
16 There are no other investments that it made. But typically  
17 they would -- they would report separately.

18 Q Well, let me go back to when you say they're hardwired.  
19 The various limited partners in the org chart for LP are not  
20 investors in Limited, correct? For example, Dugaboy doesn't  
21 own an interest in Limited; it owns an interest in LP.

22 A I think that's correct. And I think the ones in Limited  
23 have all been redeemed.

24 Q Okay. So, again, just so we're clear, the Debtor owns an  
25 interest in LP; it doesn't own an interest in Limited?

1 A I believe that's correct, but to be fair, we do look at it  
2 on a consolidated basis.

3 Q All right. So, --

4 A For example, to be -- to be -- one of our interests that  
5 the Debtor controls is owned through -- I think it's an entity  
6 called Stark. And so we hundred-percent own that entity, and  
7 it owns the limited partnership interests. So when I give the  
8 58-and-change percent, that's an aggregated amount.

9 Q Where is Stark on this org chart?

10 A It's not on this org chart. It would be a limited  
11 partner.

12 Q But -- okay. Now, in connection with the Defendants in  
13 the -- what I'll call the Highland -- the UBS Complaint No. 2,  
14 and let me just read through them, because it may be easier.  
15 If you'll look on the org chart, is Highland Capital  
16 Management, LP on the org chart?

17 A Yes.

18 Q Okay. And that's -- that's the Debtor, correct?

19 A That's correct.

20 Q Is Highland Special Opportunities Fund Holding Company on  
21 the org chart?

22 A Not on the Multi-Strat org chart, no.

23 Q Okay. Is Highland CDO Opportunity Master Fund, LP on the  
24 org chart?

25 A No.

1 Q Is Highland Financial Partners, LP on the org chart?

2 A No.

3 Q Same question. Highland Strategies Master Fund, LP.

4 A I'm not -- I'm not aware of that entity. I don't see it  
5 on this chart.

6 Q Same question for Highland Crusader Offshore Partners.

7 A No.

8 Q And we know Strand is the general partner of the Debtor,  
9 correct?

10 A Correct.

11 Q Okay. Now, how did you arrive at paying the \$18.5 million  
12 to UBS in connection with the Multi-Strat settlement?

13 A Arm's-length negotiations with UBS.

14 Q Well, you had to have some -- some analysis. Did you  
15 review the transfers that were made to Multi-Strat, LP by the  
16 prohibited entities?

17 A Yes. Multi-Strat, LP and its -- and its affiliated  
18 entities, yes.

19 Q And you concluded -- you say affiliated entities. I am  
20 just asking right now for Highland Multi-Strat, LP  
21 specifically. I'm focusing on that entity and that entity  
22 alone. Did you did review the transfers that were received by  
23 Highland Multi-Strategy Credit Fund, LP from the Debtors to  
24 UBS?

25 A The predicate is not correct. And as I testified, the

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1 policies, for example, went to a-hundred-percent-owned  
2 subsidiaries. So there are -- certain of the transfer -- the  
3 assets went to different places within the structure. I don't  
4 recall whether they went directly to LP or one of those  
5 entities below LP.

6 Q Okay. Now, you've testified or you referenced that there  
7 are two transactions within the UBS lawsuit, correct, that  
8 affect what I'll refer to as LP? And if you want, I'd ask --  
9 I'll pull up and please look at Paragraph 109 of the UBS  
10 second amended complaint.

11 MR. DRAPER: And that's Debtor 21. (Pause.) It's  
12 Paragraph 109, so you need to go a little bit further down.

13 BY MR. DRAPER:

14 Q If you'll note in the last sentence of that paragraph, it  
15 talks about Debtor and Highland Capital tried to hide this  
16 fraudulent conveyance by tying it to the cancellation of the  
17 Fall 2008 notes. Do you see that reference?

18 A Yes.

19 Q Have you looked at the Fall 2008 note transaction?

20 A Yes.

21 Q And how -- what were the dollar amount of the notes that  
22 were issued to LP?

23 A I don't recall specifically.

24 Q Okay. Well, let's pull up the document. And if you'll --

25 MR. DRAPER: Bryan, can -- I think it's Exhibit 24.

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1 BY MR. DRAPER:

2 Q This is the -- the note purchase agreement in September  
3 26, 2008. Is this the note purchase agreement that you've  
4 reviewed?

5 A Yes. It looks like it.

6 Q Okay.

7 MR. DRAPER: Okay. Can you go to Page 47 of that  
8 document, Bryan?

9 BY MR. DRAPER:

10 Q What was the note that was issued in favor of LP?

11 A According to this, \$6.6 million.

12 Q And if you'll go on, please look at Page 49 through 59.

13 A Hold on a second. (Pause.) Yeah. This is one of the  
14 prior names of -- of LP.

15 Q Right. This is -- this is -- this is L -- this is, in  
16 essence, the note LP got in connection with the note  
17 transaction, correct?

18 A At least it appears to be, yes.

19 Q And then if you'll look at Exhibit Pages 49 through 59,  
20 there were other notes issued. Can you read -- can you look  
21 and see, the first one is \$29 million. Who received that?

22 A Highland Credit Opportunity Holding Corporation.

23 Q All right. Then the next one?

24 A Highland Credit Strategies Master Fund.

25 Q The next one?



Seery - Cross

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1 A Highland Crusader Holding Corporation.

2 Q How much?

3 A \$138,625,041.

4 Q All right. The next one?

5 A Highland Crusader Offshore Partners, LP.

6 Q How much did they get?

7 A The note, the face amount of the note is \$59,295,955.

8 Q And I think there's one other note, or is that it?

9 (Pause.)

10 All right. Now, Mr. Seery, did you review what was  
11 transferred by LP in exchange for the notes?

12 A Yes.

13 Q And what was transferred?

14 A The life policies that were ultimately sold, two other  
15 life policies that expired, and some CDO assets.

16 Q Those were transferred upstream, correct?

17 A Correct.

18 Q They were transferred to the -- to the maker of the note?

19 A I think the maker -- what --

20 Q Correct?

21 A I don't understand your question.

22 Q The question is, LP, in exchange for the note, transferred  
23 assets to the maker of the note?

24 A Correct.

25 Q And did you review the assets that were transferred up to

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1 the maker of the note?

2 A They -- they were transferred down, if you will.

3 Q No, that -- I'm talking about this transaction where LP  
4 got the note and the maker of the note received assets.

5 A Correct. Highland Financial Partners received the assets  
6 from Multi-Strat.

7 Q Right. What was the value of the assets that were  
8 transferred from Multi-Strat up to Highland Financial  
9 Partners?

10 A I would say down, that's the direction I would -- doesn't  
11 make -- doesn't make a difference. But they -- I don't recall  
12 the value off the top of my head, but it was insurance --  
13 these life policies and CDO assets.

14 Q And didn't you, in fact, look at it and conclude that the  
15 value of the assets transferred were equal to the value of the  
16 -- the amount of the note?

17 A I don't -- I don't think I ever looked at that and made  
18 that conclusion, sir.

19 Q All right. I'd ask you to look at your deposition. And  
20 let me -- let me ask it in a different way. Have you seen,  
21 Mr. Seery, have you seen two valuations that were performed in  
22 the Debtors' records as to the value of the Credit Fund  
23 assets, the life policies that were going upstream?

24 A I've seen a number of valuations, yes.

25 Q One done by -- let me just get this straight. One by

1 Silver Group and one -- and then another complete analysis  
2 done of those assets?

3 A I don't recall the specific documents or analyses that  
4 you're referring to.

5 Q Did you draw the conclusion that the value of the assets  
6 going up were -- going to the maker were not equal to the  
7 amount of the note?

8 A At the time that LP put them in, I didn't make a -- I  
9 didn't make a determination of that, no.

10 Q Okay. All right. Next. Now, that transaction was  
11 subsequently unwound, correct?

12 A That's correct.

13 Q And in connection with that, what I'd ask you to look at  
14 is Exhibit 29, which -- I'm sorry. It's Debtor 9.

15 MR. DRAPER: Go to the next page.

16 BY MR. DRAPER:

17 Q And this is the unwind transaction that you've reviewed,  
18 correct?

19 A Yes. It appears to be.

20 Q All right. Now, take a look. Who received the assets  
21 when the transaction was unwound?

22 A They went to various entities who were the original  
23 recipients of the notes.

24 Q Is that true, Mr. Seery?

25 A I believe so.

1 Q Well, why don't you look at Highland Credit Opportunities  
2 CDO, LTD, as successor in interest for the notes previously  
3 purchased by LP?

4 A Okay.

5 Q So, in fact, in the unwind transaction, LP received  
6 nothing and its limited partner, Limited, received the assets  
7 that were transferred?

8 A I see that that may appear here. That's not my  
9 understanding.

10 Q But this is what the document is that you reviewed and  
11 analyzed. This is -- this is the documentation for that,  
12 isn't it, Mr. Seery?

13 A This is the unwind transaction.

14 Q Right. And --

15 A (overspoken) when we sold the policies. We know exactly  
16 where they sat.

17 Q I understand that. But when the policies came down in the  
18 unwind transaction, it was not LP who received them, it was  
19 Limited that received them, correct?

20 A I don't know that from this document.

21 Q Do you want to read the document? Or do you want to just  
22 let the document stand --

23 A I would --

24 Q -- on its own?

25 MR. MORRIS: Objection. Argumentative, Your Honor.

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1 THE COURT: Sustained.

2 MR. DRAPER: Okay.

3 BY MR. DRAPER:

4 Q Now, what I'd ask you to look at, Mr. Seery, in your  
5 exhibits you had an expert report that was prepared by the UBS  
6 expert, Mr. Dudney. Correct?

7 MR. DRAPER: And can you put up, Bryan, the expert  
8 report, Debtor 23?

9 BY MR. DRAPER:

10 Q Have you reviewed this report, Mr. Seery?

11 A I have certainly looked at it in the course of our  
12 examination of the UBS claims.

13 Q All right. Well, let's --

14 MR. DRAPER: Please turn to Page 23, Bryan.

15 BY MR. DRAPER:

16 Q Do you see that chart?

17 A I do, yes.

18 Q How much did Credit Opportunities Fund receive in the  
19 issuance of the note?

20 A According to this, 29.6.

21 Q Well, does this say \$6.6 million? The one you read is  
22 Credit Opportunities Holding. That's not LP. LP is Credit  
23 Opportunities Fund. Correct?

24 A Oh, you -- I thought you were asking Credit Opportunities.

25 Q No, I was not.

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1 A Then I read -- the one at the bottom, I don't recall this  
2 chart, but I see \$6.6 million at least on this chart going to  
3 Credit Opportunities Fund.

4 Q All right. And then if you'll look of the next chart,  
5 that confirms the Credit Opportunities Fund getting \$6.6  
6 million?

7 A I'm sorry, it's far too small for me to read.

8 Q All right. Then if you'll look at Page 28. See where it  
9 says Original Notes Issuance, Face -- For Face of Assets  
10 Exchanged, Market Value of Assets Exchanged? If you see  
11 Credit Opportunities Fund, it's listed at \$6.6 million? Or  
12 you can't read that, either?

13 A No, I can see that, yes.

14 Q Moving on to the next chart on Page 29, if you'll note, it  
15 shows the recipient to be Highland Credit Opportunities CDO  
16 Limited, which is the Cayman Island entity.

17 A Of the CLOs and cash, correct.

18 Q And that's the same six point some-odd million dollars?

19 A With respect to the CLOs and cash. Not obviously to life  
20 settlement contracts.

21 Q All right. Now, if you'll look on the next chart, it says  
22 CLO Notes Terminate -- Termination, Assets Returned. How much  
23 did the UBS expert determine that Highland Credit  
24 Opportunities CDO Limited, the Cayman Island entity, receive?

25 A CDO Limited, it says \$3.6 million.

Seery - Cross

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1 Q So, based upon this report, what we have is HFP satisfied  
2 a \$6 million note and Limited received \$3.6 million worth of  
3 assets?

4 A With respect to Limited only, yes.

5 Q Right. And, in fact, you don't see on this chart LP?

6 A No, you don't see LP.

7 Q All right. And then, moving on, you'll see --

8 MR. DRAPER: And let's move on to Page 32.

9 BY MR. DRAPER:

10 Q What the UBS expert says is that Highland Credit  
11 Opportunities CDO Limited terminated \$3.6 million worth of  
12 remaining amount of notes.

13 A I'm just looking at the chart. I don't -- is that a  
14 question?

15 Q Well, I'm just -- what the chart -- do you agree that the  
16 chart shows that the notes that were terminated had a value of  
17 \$3.6 million?

18 A I don't -- I don't agree that the chart shows that. I'll  
19 agree that the chart says that's what they did with respect to  
20 those Limited assets, not with respect to --

21 Q Okay.

22 A -- life policies.

23 Q Well, tell me. They're talking about assets in here.  
24 There's no distinction. This is an unwind transaction. So --

25 A It's incorrect.

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Seery - Cross

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1 Q Okay. Mr. Seery, what does this -- okay. The Court will  
2 read this.

3 Tell me what other assets, what other value went to LP, as  
4 opposed to Limited, in the unwind transaction. Because the LP  
5 is never mentioned in the unwind transaction.

6 A I'm not -- I'm not sure exactly what your question is, but  
7 this chart and the previous charts you gave separated the CLOs  
8 and the cash from the life policies. The overall consolidated  
9 transaction was the transact... the transfer of both.

10 Q Okay. And --

11 A But they went to Credit Fund, Limited, that's what this  
12 said. We treat it as consolidated. We had the policies. I  
13 know where they were. We sold them. So I know -- I know  
14 exactly where those policies are.

15 Q Well, --

16 A 'Til we sold them.

17 Q Mr. Seery, again, what does it show -- let's go to Page  
18 33. What does it show that the total received by Limited was?

19 A By Limited?

20 Q Yes. By --

21 A It says \$6.6 million.

22 Q Okay. So, again, in connection with this report that was  
23 done by the UBS expert, it shows that LP got nothing in  
24 connection with the unwind transaction?

25 MR. MORRIS: Objection to the form of the question.

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Seery - Cross

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1 THE COURT: Overruled.

2 THE WITNESS: I -- I think it -- I think it got the  
3 \$6.6 million, just to LP. I forget --

4 BY MR. DRAPER:

5 Q No, it doesn't -- doesn't this show that it went to  
6 Limited and the unwind transaction, in and of itself, is  
7 written that it went to Limited?

8 A This shows that it -- that it went to Limited, at least  
9 with respect to the CLO and the cash assets.

10 MR. DRAPER: Your Honor, can we take a few-minute  
11 break here, or can we take a lunch break, and then -- I don't  
12 have that much longer, but it would be helpful.

13 THE COURT: Well, --

14 MR. DRAPER: It may shorten where we're going.

15 THE WITNESS: Can -- can I --

16 THE COURT: Mr. Seery, are you trying to comment?

17 THE WITNESS: I'm trying to read this, this chart,  
18 and I apologize, but Highland Credit Opportunities Holding  
19 Corporation, if we go back to the original chart with the LP,  
20 it's a hundred-percent owned by LP. I'm sort of -- I  
21 apologize for my confusion, but this is a -- it's an odd -- I  
22 just couldn't -- I couldn't understand where Mr. Draper was  
23 going.

24 THE COURT: All right. Fair enough.

25 MR. DRAPER: Well, let --

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1 THE COURT: And I'll just -- Mr. Draper, I'll let you  
2 know that I'm kind of confused about all of this questioning  
3 as well. But let's take a 30-minute break. It's 11:55  
4 Central. We'll come back at 12:25 and finish up. All right.

5 MR. DRAPER: Thank you.

6 THE CLERK: All rise.

7 (A luncheon recess ensued from 11:55 a.m. until 12:28  
8 p.m.)

9 THE CLERK: All rise.

10 THE COURT: All right. Please be seated. We are  
11 going back on the record in the Highland-UBS motion to  
12 compromise.

13 When we took a break, Mr. Draper was examining Mr. Seery.  
14 Mr. Draper, are you ready to proceed? (No response.) Are you  
15 on mute, Mr. Draper?

16 THE CLERK: No, he's not on mute, Judge.

17 THE COURT: You're not on mute. Mr. Draper, can you  
18 hear me? Are you ready to proceed? Oh, what's going on? Is  
19 he frozen?

20 Mr. Seery, can you hear me?

21 Is it me? Oh, I'm on mute. All right. The Court was on  
22 mute. Sorry about that. So, I don't know if you heard  
23 anything I said. I guess you didn't. I said, we're going  
24 back on the record in the Highland-UBS proposed compromise.  
25 When we broke at lunch, Mr. Draper was examining Mr. Seery.

005266



Seery - Cross

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1 Mr. Draper, are you ready to proceed?

2 MR. DRAPER: Yes, Your Honor.

3 THE COURT: All right. Mr. Seery, are you ready to  
4 proceed?

5 THE WITNESS: I am, Your Honor.

6 THE COURT: All right. So, --

7 BY MR. DRAPER:

8 Q Mr. Seery, I asked --

9 THE COURT: Go ahead.

10 MR. DRAPER: I'm sorry.

11 THE COURT: Go ahead.

12 MR. DRAPER: I'm sorry, Your Honor. It -- this  
13 electronic stuff, at times I can't tell what's going on. But  
14 I apologize.

15 BY MR. DRAPER:

16 Q Mr. Seery, I asked you earlier if you evaluated the value  
17 of the assets that were being transferred in exchange for the  
18 note, and I think your testimony was you didn't.

19 A I don't think -- I don't think that was my testimony. We  
20 didn't do a separate valuation. We looked at the life  
21 policies and the CLO transfers that were initially exchanged  
22 for the note, and then we looked at them when they got  
23 transferred back, and then we looked at the value of the  
24 policies, because we sold them, so we could know exactly what  
25 they were worth in fair market value.

005267

1 Q Let's take dates. The date of the first note transfer was  
2 2008, correct?

3 A That's correct.

4 Q The unwind was 2009?

5 A Early 2009. Correct.

6 Q You sold them roughly 11 years later?

7 A I -- I didn't sell anything. The Debtor made those  
8 transfers.

9 Q Okay. They were sold -- they were sold 11 years later?

10 A Correct.

11 Q Okay. So, obviously, there's an 11-year change in value.  
12 Correct?

13 A There is, yes.

14 Q Okay. Now, let's go back. Let's look at the transfer in  
15 2008. Is your testimony we looked at it or we didn't look at  
16 it?

17 A We looked at it.

18 Q And what was your conclusion?

19 A That the original transfer, I forget the exact numbers,  
20 but roughly in line, I think it was five -- five-ish million,  
21 five or six million dollars on the CLO assets and right around  
22 \$15 to \$20 million for the life settlement assets.

23 Q Well, let's talk about LP. That's where I'm focusing  
24 right this moment. Did you look at what LP transferred in  
25 exchange for the note?

1 A Yeah, but I didn't break it down in the -- in the  
2 particular boxes, I don't recall, that you're saying. But we  
3 looked at it very closely, and this has been looked at  
4 extensively by Highland legal. And so --

5 Q Well, --

6 A -- there was significant documentation and support for the  
7 numbers.

8 Q Well, and this is fair. I asked you this question at your  
9 deposition: "What was the value of the assets that were  
10 transferred to HFP in exchange for the note?" Your answer, "I  
11 don't have it off the top of my head." "Were there -- was  
12 there a reasonably equivalent value in exchange exchanged  
13 between the note?" Your answer, "We did look at it."  
14 Question, "And who looked at it, and was it your conclusion  
15 that it was fair value, not fair value? What was the value  
16 given in exchange for the note? What was the dollar value?"  
17 Your answer, "The dollar value was similar to the value of the  
18 note. There were a number of other questions around the note  
19 and then the unwind."

20 So, basically, what you're saying is that the assets that  
21 went up were equivalent in value to the note that was  
22 received, correct?

23 A The face amounts were, yes.

24 Q All right. And have you seen a valuation done by Sterling  
25 Valuation Group dated September 26, 2008?

Seery - Cross

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1 A I don't recall it specifically.

2 MR. DRAPER: Well, can you pull up Exhibit No. 18,  
3 Bryan?

4 BY MR. DRAPER:

5 Q Mr. Seery, have you seen this document?

6 A I don't recall -- I don't recall this document  
7 specifically, no.

8 Q And this went to Highland Capital Management, LP, correct?

9 A I'm sorry?

10 Q This went to Highland Capital Management, LP? This is in  
11 your records? And quite frankly, we got it from you.

12 A I see that we were the addressee, yes.

13 Q And the Bates number is your Bates number?

14 A Okay.

15 Q All right. If you look at the document, this is basically  
16 contemporaneous with the purchase agreement, correct?

17 A In and around that time. You'll note -- you'll note that  
18 that was right after being filed.

19 Q And if you'll look, this is a certificate of consent to  
20 trade. So, in fact, under this document, Highland Capital  
21 Management went to a third party outsider, under the  
22 Advisement Act -- Advisers Act and other things, and said,  
23 look, is this a fair trade? And it got back something saying,  
24 yes, there's a consent to the trade. Correct?

25 A I don't -- I don't know that to be true.

005270

Seery - Cross

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1 Q Okay. But the document will speak for itself. Correct?

2 A The document says what it says.

3 Q Okay. Now, also in connection with that, there was a  
4 valuation done of the life settlement policies by Watson  
5 Wyatt. Have you seen that?

6 A I don't recall it specifically, no.

7 MR. DRAPER: Can you pull up, Bryan, Exhibit 23?

8 BY MR. DRAPER:

9 Q Again, this is -- have you seen this document?

10 A I believe I have, but I don't recall it specifically.

11 Q And this is a valuation of the life settlement policies?  
12 It's an actuarial valuation?

13 A That's correct.

14 Q Right. Now, let me go back to the report by Mr. Dudney,  
15 which is Exhibit 23. And what I'd ask you to look at, I think  
16 it's on Page 3 of 3. I'm sorry. (Pause.)

17 MR. DRAPER: Bear with me a moment, Your Honor.

18 BY MR. DRAPER:

19 Q Doesn't basically Table 4 -- Table 5 and Table 6 show that  
20 what's going on here is that the assets that were previously  
21 transferred a year earlier are coming back in exchange for the  
22 cancellation of the notes?

23 A That's -- that was the position, yes.

24 Q That's what happened, isn't it?

25 A That is what happened, yes.

005271



Seery - Cross

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1 Q So let me ask you a question. If I transfer you a car in  
2 exchange for a note, and the car -- I give you the car, and  
3 you give me a note for \$10,000, and one year later you give me  
4 the car back and I cancel the note, you wouldn't have had the  
5 car but for the note, and now I've canceled the note in  
6 exchange for the car. How have -- how has HFP been harmed  
7 when it wouldn't have had the assets in the first place but  
8 for the note and then the note was transferred and it just  
9 gave back the same assets?

10 MR. MORRIS: Objection to the form of the question.

11 THE COURT: Overruled.

12 MR. MORRIS: He's not an expert. Okay.

13 THE WITNESS: That's a position one could take.

14 BY MR. DRAPER:

15 Q And that's a logical position, isn't it, Mr. Seery,  
16 because basically you got back exactly what you gave up and  
17 you just canceled the indebtedness?

18 A That's not -- that's not necessarily logical where you  
19 control both sides of the transaction. UBS --

20 Q Ahh.

21 A -- was that -- that it was really an equity contribution  
22 that moved the assets into HFP to bolster HFP's position in  
23 the -- in the CDO assets that they were -- they were trying to  
24 turn into the CDO square.

25 Q But, in fact, there is a note that was issued, there were

005272

Seery - Cross

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1 assets transferred, and in fact, the assets came back. So  
2 what you're saying is, in order to get to this position, you  
3 have to ignore the fact that, but for the note, they wouldn't  
4 have gotten the assets?

5 A You have to ignore that there's a note that papers the  
6 transaction and you have to disregard it and treat it as  
7 equity.

8 Q Okay. And I think you used the term earlier, you looked  
9 at this flowchart, Highland Credit Opportunities Holding  
10 Corp.?

11 A Yes.

12 Q Which -- but that's a hundred-percent owned by Multi-  
13 Strat? It's a separate corporation, isn't it?

14 A It appears to be, yes.

15 Q Now, let's look at the settlement agreement. And what I'd  
16 ask you to look at, unfortunately, is Page 6, Paragraph C.

17 (Pause.) The first question I have for you, and it's not  
18 related to Paragraph C, but just there is no release by the  
19 Debtor of Multi-Strat, LP or any of its subsidiaries.

20 Correct?

21 A I don't recall specifically. I think there is a  
22 satisfaction of all claims. I don't really recall if we have  
23 a special release provision.

24 Q No. I'm asking in a different -- between two different  
25 parties. I'm talking about the Debtor and Multi-Strat. Is --

005273

Seery - Cross

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1 does the Debtor -- does the release in this agreement release  
2 Multi-Strat from all claims by the Debtor?

3 A Does the Debtor release Multi-Strat? No.

4 Q Okay. And in fact, the Debtor has retained all of its  
5 claims against Multi-Strat in the claims retention section of  
6 the plan?

7 A To the extent that the Debtor has claims against Multi-  
8 Strat, the entity that it manages, I suppose so. I don't  
9 recall a specific provision in the plan that --

10 Q Did you --

11 A -- addressed --

12 Q Did you look at -- did you look at the retained claims  
13 section?

14 A Of the plan?

15 Q Yes.

16 A When we were working on the plan, yes.

17 Q And are you aware that Multi--Strat, both LP and Limited,  
18 are included in that list?

19 A I wasn't cognizant of it currently, but if it -- if it is,  
20 it is.

21 Q And so, in fact, there -- the Debtor has claims against  
22 Multi-Strat?

23 MR. MORRIS: Objection to the form of the question.

24 THE COURT: Sustained.

25 THE WITNESS: Not to my knowledge.

005274

Seery - Cross

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1 THE COURT: Sus...

2 THE WITNESS: I'm sorry. Not -- sustained. I'm  
3 sorry.

4 THE COURT: Sustained.

5 THE WITNESS: Okay.

6 THE COURT: Just, you can rephrase.

7 BY MR. DRAPER:

8 Q All right. The Debtor has retained its claims against  
9 Multi-Strat, correct?

10 MR. MORRIS: Objection to the form of the question.

11 THE COURT: Overruled. If he knows.

12 THE WITNESS: To the extent that the Debtor has  
13 claims against Multi-Strat.

14 BY MR. DRAPER:

15 Q So there's a possibility that the Debtor will assert  
16 claims against Multi-Strat?

17 A It would be pretty infinitesimal unless it was done as a  
18 nominal defendant, because the Debtor manages Multi-Strat.  
19 It's kind of difficult to have claims against Multi-Strat,  
20 save -- save for there could be -- there could be  
21 indemnification claims down the road with the amount of  
22 litigation going on in this case.

23 Q And I also note in Paragraph C there are a list of  
24 entities in here, and that's down in the middle. Does the  
25 Debtor manage each one of those? And I'm talking about

005275

1 (inaudible) Breyers, CLO, Aberdeen, Eastland, Grayson.

2 A Yes.

3 MR. MORRIS: Objection. Objection to the form of the  
4 question. Your Honor, this is well beyond the scope of the  
5 objection that's been filed by Dugaboy.

6 MR. DRAPER: Your Honor, Dugaboy --

7 THE COURT: Well, it's a relevance objection.

8 MR. MORRIS: Please let me finish.

9 MR. DRAPER: Okay.

10 THE COURT: Okay.

11 MR. MORRIS: Please let me finish. His objection is  
12 focused solely, as is both his papers and his opening  
13 statement said, on Multi-Strat. And so I think questions  
14 beyond Multi-Strat are irrelevant to his objection.

15 THE COURT: Okay. Mr. Draper?

16 MR. DRAPER: Your Honor, that's incorrect. That's  
17 incorrect. We mentioned in our opposition that this  
18 transaction may, in fact, be a plan modification. And these  
19 questions go to that issue.

20 THE COURT: Okay. Overruled.

21 BY MR. DRAPER:

22 Q Now, Mr. Seery, in Paragraph C, is the Debtor required to  
23 participate in the prosecution of claims against certain  
24 people and entities? And what I call your attention to is  
25 C(iii).



1 A It says we're supposed to cooperate with UBS and  
2 participate as applicable in the investigation or prosecution  
3 of claims or requests for injunctive relief against the Funds,  
4 Multi-Strat, Sentinel, Dondero, Leventon, Ellington, Dean,  
5 Walter, Sevilla, DiOrio, and Irving. And then it -- it has a  
6 catchall.

7 Q And the two operative words are cooperate and prosecution  
8 of claims. Correct?

9 MR. MORRIS: Objection to the form of the question.

10 THE WITNESS: I would say it's --

11 THE COURT: Overruled.

12 THE WITNESS: -- the operative words are cooperate  
13 and participate as applicable. And then it's either cooperate  
14 or participate in what.

15 BY MR. DRAPER:

16 Q All right. And then later on in the document it basically  
17 says -- and you can read this, please -- that if funds -- if  
18 the Debtor receives funds or has funds that were stripped out  
19 of other entities, it will take those funds or assets and give  
20 them to UBS. Is that correct?

21 MR. DRAPER: Objection.

22 THE WITNESS: I don't believe that's exactly true.  
23 Where are you pointing me to?

24 THE COURT: Overruled.

25 BY MR. DRAPER:

1 Q Well, look at the bottom. (vii). Cooperate with UBS to  
2 assign or convey such assets described in Section 1C(iv) or  
3 any other assets owned or controlled by the Funds and/or HFP,  
4 including, for the avoidance of doubt -- so what I'm asking  
5 you to look at is (vii).

6 A Yes. I'm looking at it.

7 Q Okay. So is that -- is that correct?

8 A With respect to the assets in Section 1C(vi).

9 Q And basically I think it was your testimony when I took  
10 your deposition that if assets -- if you discovered there were  
11 assets that were transferred to the Debtor that were stripped  
12 out of other entities, it would be your obligation under this  
13 agreement to return them to UBS.

14 A I -- I think that's right. I think this has a very  
15 specific reference to 1C(vi), and so you should -- should go  
16 back and consult that. But I think that if we determined that  
17 assets were stolen or stripped out of other entities, we would  
18 -- we would return those assets to UBS if they were defendants  
19 of UBS's.

20 Q And in fact, that -- would it also include assets that  
21 went into the Debtor?

22 A It -- it potentially could, if they were stolen out of  
23 those entities. But we have a release of the Debtor, so I  
24 don't think there's really a backdoor claim in for the Debtor.  
25 We didn't find any such assets. But I don't think that really

Seery - Cross

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1 contemplates that, that specific --

2 Q But isn't that what the document says and that's what you  
3 testified to at your deposition, Mr. Seery?

4 A I don't think that's what the document says. I think that  
5 might be an interpretation one might have, but we have a  
6 release.

7 Q Okay. Now, wait. You have a release, but you have to  
8 comply with this agreement. There's an exclusion in this  
9 release that requires you to comply with the agreement,  
10 correct?

11 A Correct.

12 Q So, if, in fact, the Debtor has an asset that was stripped  
13 out of another entity, under this agreement, notwithstanding  
14 that release, it's required to give that asset back to UBS?

15 A That's not the case. It's the Funds and/or HFP.

16 Q Well, okay.

17 MR. MORRIS: Your Honor, I object. I mean, the  
18 document speaks for itself. Mr. Draper can make whatever  
19 argument he wants, but I don't know why we're wrestling over  
20 what the language means when that's for Mr. Draper to argue  
21 and for the Court to decide.

22 THE COURT: Okay. I'll overrule --

23 MR. DRAPER: Well, that -- Your Honor?

24 THE COURT: I'll let you continue to some extent.

25 MR. DRAPER: All right. Bryan, can you pull up Mr.

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Seery - Cross

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1 Seery's deposition?

2 MR. MORRIS: Your Honor, I object. Until -- until  
3 he's impeaching the witness, I just don't think it's  
4 appropriate. He did it once before and I remained quiet. I  
5 think he ought to just ask the question, and if he thinks that  
6 he's deviating from prior testimony, he's welcome to cross-  
7 examine.

8 MR. DRAPER: Your --

9 THE COURT: Okay. I sustain.

10 MR. DRAPER: Your Honor, I have asked the -- I have  
11 asked the question. I asked him, was it his view of this  
12 document that, if assets were stripped out of a fund and then  
13 transferred to the Debtor, whether the Debtor would be  
14 obligated to transfer it, and he said he didn't know.

15 THE WITNESS: That's not what you asked me. You said  
16 any -- any entity. Out of --

17 MR. DRAPER: Okay.

18 THE WITNESS: -- the Funds and HFP, I said that's  
19 what the sentence says.

20 MR. DRAPER: So, so my question, Your Honor, is: Mr.  
21 Seery, if an asset was stripped out of the HFP and transferred  
22 into the Debtor, the Debtor would be required under this  
23 agreement to transfer it back to UBS?

24 THE WITNESS: We would be required to cooperate, if  
25 you have that language back up, exactly what -- what it says.

005280

1 BY MR. DRAPER:

2 Q And it's your view, based -- and I asked you this  
3 question, that if that was the case, you would be required to  
4 transfer it to HFP? I mean, to --

5 A Right.

6 Q -- to UBS?

7 A I think it's a fair -- fair reading. We do, as I said,  
8 have a release. But if there is an asset that we determine  
9 was stripped out of one of these entities, that's our  
10 cooperation provision, yes.

11 Q All right. Now, in connection with the -- you mentioned a  
12 subscription agreement. Isn't there a provision in the  
13 subscription agreement for LP that gives an example where, if  
14 in fact the general partner is a member of the Creditors'  
15 Committee -- of a Creditors' Committee and also owns -- owes a  
16 fiduciary duty to the partnership, that it will resign from  
17 one -- one of those roles? It'll step down?

18 A I don't recall the specific provision. There's something  
19 to that effect. I'm not sure if it says it will resign or it  
20 may.

21 Q Okay. It says it will. But the Court can read that in  
22 the subscription agreement.

23 Mr. Seery, don't these partnership agreements, each one of  
24 them, have the ability for the general partner, where it faces  
25 a conflict or a potential conflict, to hire an -- bring in an



Seery - Cross

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1 advisor and make its recommenda... and base its actions based  
2 upon the hiring of that advisor?

3 A The GP has complete control over the partnership. It can  
4 do that if it thinks that's appropriate.

5 Q And, in fact, in connection with the note transaction in  
6 September of 2008, Highland did that? They hired Sterling to  
7 obtain a valuation?

8 A They did that, yes.

9 Q Okay. Now, in connection with the settlement agreement,  
10 and I may have asked you, it says -- and look at Paragraph 11.  
11 It discusses advice of counsel. Do you see that?

12 MR. MORRIS: Can we just --

13 THE WITNESS: Not yet.

14 MR. MORRIS: -- give him a moment?

15 (Pause.)

16 BY MR. DRAPER:

17 Q And basically it uses the term, instead of legal counsel,  
18 it uses the term "independent legal counsel." In connection  
19 with this transaction, who represented Multi-Strat? Was it  
20 Pachulski?

21 A Not -- not separately, no.

22 Q Who -- did -- who else represented Multi-Strat?

23 A WilmerHale and Pachulski represented HCMLP in doing the  
24 transaction for Multi-Strat.

25 Q And so Multi-Strat never had separate independent legal

005282

Seery - Cross

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1 counsel?

2 A Not independent from counsel that HCMLP has, no.

3 Q And that would be the same thing in connection with the  
4 May 20 -- May 11, 2020 agreement?

5 A That's correct.

6 Q Now, isn't it true that Highland -- when you have  
7 codefendants in a case, one of the goals of one of the  
8 defendants is to have the other defendant pay a larger share  
9 of the settlement?

10 A Not necessarily, no.

11 Q Well, why do you say that? If I'm a defendant, wouldn't I  
12 want to pay as little as possible?

13 A Some people reach settlements for what they owe. They  
14 don't try to chisel their obligations.

15 Q Well, in this case, you're on two sides of the settlement  
16 group. As a matter of fact, you're on multiple sides of the  
17 settlement group. You're on the Multi-Strat side and you're  
18 on the Highland side.

19 A I disagree. We're on the same side.

20 Q You're on the same side? Aren't you both codefendants?

21 A Highland is a codefendant, yes, with Multi-Strat.

22 Q And -- and the claims against Highland are far more  
23 extensive than the claims against Multi-Strat, LP?

24 MR. MORRIS: Objection to the form of the question.

25 THE COURT: Sustained.

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Seery - Cross

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1 THE WITNESS: I think that's probably --

2 THE COURT: Sustained.

3 THE WITNESS: I think that's fair.

4 BY MR. DRAPER:

5 Q Mr. Seery, how many counts -- in looking at the agreement,  
6 Multi-Strat, LP is not liable for the entire amount, but  
7 Highland may be. Correct?

8 A Correct.

9 Q All right.

10 MR. DRAPER: Your Honor, I think I have nothing  
11 further for the witness.

12 THE COURT: All right. Pass the witness.

13 Mr. Taylor, I think you indicated earlier you were  
14 deferring to Mr. Draper today, but I'll double-check that.

15 MR. TAYLOR: I largely am. I'm just, if the Court  
16 will indulge me, I just have about probably five to ten  
17 minutes, Your Honor.

18 THE COURT: All right. Go ahead.

19 CROSS-EXAMINATION

20 BY MR. TAYLOR:

21 Q Good afternoon, Mr. Seery. When did you start to control  
22 the Debtor?

23 MR. MORRIS: Objection to the form of the question.

24 MR. TAYLOR: Your Honor, --

25 THE COURT: Well, it was a little garbled. I

005284

Seery - Cross

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1 couldn't hear. Repeat the question or rephrase it.

2 MR. TAYLOR: Sorry. Is it -- can everybody hear me  
3 okay?

4 THE COURT: That's better.

5 BY MR. TAYLOR:

6 Q Mr. Seery, when did you -- when did you start controlling  
7 the Debtor?

8 MR. MORRIS: Objection to the form of the question.

9 THE COURT: Sustained.

10 MR. TAYLOR: Okay.

11 BY MR. TAYLOR:

12 Q What is your role with the Debtor?

13 A I'm an independent director. I was appointed in January.  
14 In July -- in July, I was appointed as CEO and CRO.

15 Q Okay. So, in August, did you direct your attorneys to  
16 file an objection to the UBS claim, as found -- found at  
17 Docket No. 928 and has been admitted as Exhibit A in this  
18 case?

19 A I don't think it's fair to say that I did. The board  
20 certainly did, and authorized it.

21 Q Okay. It was filed by your -- the Debtors' attorneys in  
22 this case, Pachulski Stang, correct?

23 A That's correct.

24 Q And in its claim for relief in that objection, the Debtor  
25 asked for the UBS claim to be valued at zero. Is that

005285

1 correct?

2 A That's correct.

3 Q Okay. In fact, later on, you filed a partial motion for  
4 summary judgment against UBS, saying that, as a matter of law,  
5 all of UBS's claims should be disallowed, except for \$61  
6 million worth, which you said or the Debtor said needed to --  
7 it needed to go to trial on. Is that correct?

8 A I believe that's correct. The Debtor, not me.

9 Q Right. When I say you, I'm talking about you in your  
10 representative capacity for the Debtor.

11 A Again, it wasn't in my representative capacity. The  
12 Debtor did it. It's authorized by the board. I'm the CEO and  
13 a board member.

14 Q Okay. And in fact, the Redeemer Committee actually filed  
15 their own motion for summary judgment against UBS, correct?

16 A They did, yes.

17 Q And this Court entered an order granting UBS's motion for  
18 temporary allowance in this case, and found at Docket No.  
19 1518. Is that correct?

20 A I'm not aware of the docket numbers.

21 Q Okay. But you are aware of the order, correct?

22 A Yes, I am.

23 Q Okay. And what did this Court value the UBS claims at?

24 A Approximately \$95 million.

25 Q Okay. Which is substantially less than what -- the amount



1 of claims that they're getting in cash today, correct?

2 A Than they're getting in cash? No, that's incorrect.

3 Q No. Than they would be awarded today in their Class 8 and  
4 9 and cash? When you total all that up, it's substantially  
5 more than \$95 million, correct?

6 A Yes. Sixty plus sixty-five plus eighteen and a half is  
7 more than \$95 million.

8 Q Okay. This settlement agreement, as you just went through  
9 with Mr. Draper, requires the Debtor to cooperate with UBS; is  
10 that correct?

11 A In specific instances, yes.

12 Q Okay. And in fact, you have to return any securities by  
13 the certain list of the Funds that you may recover; is that  
14 correct?

15 A It's -- it's a very specific document as to what we have  
16 to do. So if there's a specific question, I'd prefer to read  
17 the document.

18 Generally, we have a cooperation provision related to the  
19 theft of the securities from CDO Fund, SOHC, and the related  
20 entities. And if we find other things, that may also be  
21 implicated by those cooperation provisions.

22 Q Okay. And will this settlement, if approved, take care of  
23 all disputes between UBS and the Debtor?

24 A I believe it will, yes.

25 Q Okay. Then -- then I have to ask, what is the live

1 dispute that is ongoing by and between the Debtor and UBS,  
2 such that there was the necessity of the filing of an  
3 adversary?

4 A The Debtor is the manager of Multi-Strat. So, with  
5 respect to UBS's disputes with Multi-Strat and Funds, we have  
6 certain obligations under the documents that -- that were  
7 touched on a little bit today, but only a very little bit, in  
8 isolated, specific instances. So we have obligations as the  
9 manager.

10 You may recall that when there was an issue with  
11 distributions early in the case which were going to Dondero-  
12 related entities and the Committee didn't want those  
13 distributions to be made, we took a strong position that we  
14 would go to court and seek to have the distributions made.  
15 Subsequently, they were put into the Court registry by a  
16 settlement agreed to by Mr. Dondero. But the Committee  
17 objected and we took the position that that was our duty under  
18 the docs.

19 So we have certain obligations, which Mr. Draper touched  
20 on but didn't go through, to do certain things. And we will  
21 continue to adhere to those obligations.

22 Q Okay. Thank you. Does your agreement to cooperate and --  
23 and/or prosecute any causes of action that it needs to  
24 participate in, would that include Highland Capital breaking  
25 privilege and giving documents to UBS?

Seery - Cross

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1 A I don't -- I don't think there's a requirement in there.  
2 It will depend. There will be a significant amount, in my  
3 opinion, of overlap on actions that the estate has, and there  
4 may be good reason in certain of those actions to work  
5 together. There may be other instances where it was -- our --  
6 they may not agree with how we're cooperating under the  
7 document.

8 It was slightly unnerving to have Judge Jernigan refer to  
9 Mr. Clubok and yourself as friendlies, because those who have  
10 seen our deliberations, with all respect, will know that  
11 they're -- they're often heated and contentious.

12 Q Okay. So, thank you for your response, and I'm sorry, you  
13 cut out just a little bit. So I'm just going to ask a very  
14 similar question because I'm not exactly sure I got the direct  
15 answer to my question. Are you or are you not going to have  
16 to provide what would otherwise be privileged documents to UBS  
17 in this -- under the cooperation agreement?

18 A I don't believe there's a specific requirement to, in  
19 answer.

20 Q Okay.

21 MR. TAYLOR: All right, Your Honor. I have no  
22 further questions.

23 THE COURT: All right. Mr. Morris, this will be, I  
24 guess, both redirect and cross, technically.

25 MR. MORRIS: Right. I'll try and be narrow and I'll

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Seery - Redirect

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1 try to be quick.

2 REDIRECT EXAMINATION

3 BY MR. MORRIS:

4 Q Mr. Seery, do you recall being asked some questions about  
5 that settlement from May 2020?

6 A I do, yes.

7 Q Okay. Did the Debtor take any steps to inform the  
8 Unsecured Creditors' Committee about that document and that  
9 settlement?

10 A Yes, we did.

11 Q And why did the Debtor do that?

12 A Because we wanted to be open and transparent. We are a --  
13 a limited partnership holder, a limited partnership interest  
14 holder, in addition to being the manager. So there is value  
15 that rolls to the estate through Multi-Strat.

16 We had already worked on our sale and had consulted with  
17 Mr. Dondero about the sale of the life settlement policies, so  
18 he was aware of it. And we wanted to get those -- he  
19 disagreed with it, but we needed to get those sold because we  
20 didn't have the cash coming in to us to pay premiums, and  
21 otherwise, if we didn't pay the premiums, they would have  
22 expired worthless. And so we sold them for approximately \$32  
23 million.

24 Q And when you say that Mr. Dondero was aware of it, did you  
25 personally have conversations with him or communicate with him

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1 the terms upon which the Debtor was going to sell those  
2 assets?

3 A I believe he got the terms, but there may have been the  
4 terms after he was asked if he wanted to participate and he  
5 had declined through DSI.

6 Q Okay. And to the best of your knowledge, did Mr. Dondero  
7 ever object to the Debtors' -- at least the authority that it  
8 had to enter into that agreement in the ordinary course of its  
9 business?

10 A No. He -- he had certainly objected to us doing it. He  
11 would have preferred that we not sell the policy. But he was  
12 not willing to put in cash to pay the continuing premiums. He  
13 had already put in some, as had the Debtor. And he didn't  
14 otherwise file anything in court.

15 Q Did the Debtor reach a conclusion as to whether or not  
16 that transaction was in the ordinary course of its business?

17 MR. DRAPER: Object to the form of the question, Your  
18 Honor. It's a legal conclusion.

19 THE COURT: Overruled.

20 MR. DRAPER: It's -- this witness is --

21 THE COURT: I overrule.

22 THE WITNESS: Yeah. The sale -- the sale of the  
23 policies was clearly in the ordinary course of business. So  
24 the -- the Fund is a very elongated fund. As we talked about,  
25 \$90 million of redemptions. It manages just a very few assets



1 remaining, and we were looking for ways to monetize assets in  
2 the context of the market that we thought were favorable. If  
3 we had not been able to service those assets and pay for them,  
4 they would have expired worthless. So it's very much in the  
5 ordinary course of business as a manager to sell assets.

6 BY MR. MORRIS:

7 Q And is that why the Debtor didn't seek Court approval at  
8 that time?

9 A That's correct, yes.

10 Q And why is the Debtor seeking Court approval today of --  
11 of the Multi-Strat piece of the UBS transaction?

12 A Oh, I think this is a very different situation. We're  
13 settling claims that are combined, as we've seen today, with  
14 certain claims against the Debtor. Settling this claim is not  
15 out of the ordinary -- is not in the ordinary course, in my  
16 opinion. It's a -- it's a very material claim dating back to  
17 2009, and really relates to activities of the manager. So we  
18 are in seeking approval from the Court to advise with respect  
19 to -- not advise, but to tell us that we -- we've laid out our  
20 case and that our exercise of our business judgment here is  
21 eminently reasonable.

22 Q All right. Did the Debtor -- I believe you testified to  
23 this earlier, but just to be clear -- did the Debtor do any  
24 analysis to determine whether it had the authority to enter  
25 into this agreement on behalf of Multi-Strat?

Seery - Redirect

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1 A Yes. Absolutely.

2 Q All right.

3 MR. MORRIS: I'm going to just ask Ms. Canty to put  
4 up on the screen some demonstratives that we have, just to  
5 walk through them quickly, Your Honor.

6 THE COURT: Okay.

7 MR. MORRIS: And, as always, the demonstrative is  
8 tied to specific evidence that's already in the record.

9 THE COURT: Okay.

10 BY MR. MORRIS:

11 Q So let's just look at the first page. Can you tell --  
12 this is at Exhibit 65, Page 30. Can you tell from the left  
13 side of the page what document is Exhibit 65?

14 A Yeah, this is the private placement memorandum for -- for  
15 Multi-Strat Credit Fund.

16 Q And can you just read into the record the excerpt that we  
17 have from Page 30?

18 A "Investment Authority. Substantially all decisions with  
19 respect to the management of the Fund are made by the general  
20 partner and the investment manager. Limited partners have no  
21 right or power to take part in any management of the Fund.  
22 The investment manager also makes all of the trading and  
23 investment decisions of the Fund."

24 Q Okay. And is Highland -- is the Debtor the general  
25 partner?

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Seery - Redirect

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1 A Indirectly.

2 Q And is the Debtor the investment manager?

3 A It is.

4 Q And is the Debtor relying on this provision in coming to  
5 the conclusion that it believes it has the authority to enter  
6 into the agreement on behalf of Multi-Strat?

7 A This is a -- this is a disclosure provision in the PPM.  
8 The actual authority is in the -- in the corporate documents  
9 and the way a general partner is managed by its limited  
10 partnership, as well as any investment management agreement.

11 Q Okay. So this was the disclosure -- is it your  
12 understanding that this is the disclosure that was made to all  
13 prospective limited partners?

14 A Yes.

15 Q Okay.

16 MR. MORRIS: Let's go to the next slide, please.

17 Okay.

18 BY MR. MORRIS:

19 Q Can you describe for the Court, based on the document on  
20 the left, what this is?

21 A Again, this is another disclosure in the PPM to advise all  
22 partners that the Fund's management as well as investment  
23 decisions at the partnership level are effectively controlled  
24 by the investment manager or its affiliates.

25 Q Okay. And this is Exhibit 66 at Page 6. Can you just

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1 read what was disclosed in this offering memorandum?

2 A I actually did.

3 Q Verbatim?

4 A Yes.

5 Q I appreciate it.

6 MR. MORRIS: Let's go to the next slide, please.

7 BY MR. MORRIS:

8 Q Is it your understanding that slide -- that this slide  
9 depicts a portion of the investment management agreement?

10 A Yes. And this, as opposed to the disclosure, is actually  
11 an operative agreement.

12 Q And is this the agreement that you referred to earlier as  
13 having been assumed by the Debtors' estate?

14 A Yes.

15 Q And is this the provision that the Debtor is relying on  
16 for the authority to enter into the agreement on behalf of  
17 Multi-Strat?

18 A Among others.

19 Q Okay.

20 MR. MORRIS: Let's go to -- and this is Exhibit 69 at  
21 Pages 3 and 4. If we can go to the next slide, please.

22 BY MR. MORRIS:

23 Q And can you describe for the Court what this document is?

24 A This is the Delaware limited partnership agreement. So,  
25 again, where the prior document was the investment management

1 agreement, granting the authority of the Debtor to manage  
2 assets, compromise and settle all suits, and manage the day-  
3 to-day activities of the Fund, this is document that governs  
4 the actual operation of the Fund away from the investment  
5 management agreement.

6 Q Okay. And this is at Exhibit (garbled), Pages 22, 23, and  
7 25. Looking at the bottom box, is there a provision there for  
8 the rights of limited partners?

9 A Yes. Just as in every limited partnership. And this is  
10 done very purposefully. It's not simply to exclude limited  
11 partners from control, because they can't have any control; it  
12 excludes them from liability. So the limited partners may not  
13 take part in any part in the management, control, or operation  
14 of the partnership's business and have no right or authority  
15 to act for the partnership. It's probably basic in every --  
16 in every partnership agreement.

17 Q So, as the CEO of Highland, who is the investment manager  
18 for Multi-Strat, if the limited partners may not take any part  
19 in the management, control, or operation of the partnership's  
20 business, is there anybody other than the investment manager  
21 and the general partner who's authorized to act on behalf of  
22 the limited partnership?

23 A No.

24 Q Okay. So if it's -- so if -- is it fair to say that if  
25 Highland as investment manager didn't have the authority and



1 the right to exercise the control necessary to enter into this  
2 settlement agreement, nobody would?

3 A No, because Highland as general partner would have that  
4 authority.

5 Q Right. But just in those two capacities, right?

6 A Correct.

7 Q Can you think of anybody else in the world, under the  
8 governing documents, who could possibly enter into this  
9 settlement other than the general partner or the investment  
10 manager?

11 A No.

12 Q Okay.

13 MR. MORRIS: Can we call up Exhibit 66, please? And  
14 if we can go to PDF Page 11. Oh, I apologize. Can we go to  
15 the first page? I just want to make sure that everybody  
16 understands what we're looking at here.

17 BY MR. MORRIS:

18 Q Do you see that, Mr. Seery?

19 A Yes.

20 Q Is this the offering memorandum for the Cayman entity in  
21 which Dugaboy has an interest?

22 A Again, I'm not sure that Dugaboy has an interest in the  
23 offshore entity. I just haven't checked, because we treat it  
24 as consolidated. But this is the offshore entity that is  
25 usually used by foreign investors to address certain tax

1 issues.

2 Q When you say that you treat it as a consolidated entity,  
3 what do you mean?

4 A Well, the -- Credit Fund, Limited is required to invest  
5 all of its assets into the Credit Fund, LP. So all of the  
6 interests, notwithstanding their -- where they come from,  
7 whether they're direct LP interests in the LP or they come  
8 through the Credit Fund, have the same rights and the same  
9 recoveries based upon the same assets.

10 Q Okay.

11 MR. MORRIS: Can we go to Page 11, please, PDF Page  
12 11? All right. How about Page 9 of the document, at the  
13 bottom? Yeah, right there. If we could just go -- yeah,  
14 scroll down a little bit.

15 BY MR. MORRIS:

16 Q Do you see where it describes the partnership?

17 A Yes.

18 MR. MORRIS: Okay. Can you go back up? We just want  
19 the partnership. Yeah.

20 BY MR. MORRIS:

21 Q Just take a moment to look at that and describe for the  
22 Court your understanding of what's being described here.

23 A This is a -- remember, this is a PPM for Limited. So it  
24 describes Limited as a limited partners -- limited partner in  
25 the Multi-Strat Credit Fund, LP. And it says that the Fund is

1 a limited partner in the partnership -- that's LP -- and  
2 invests all of its investable assets in and conducts all  
3 investment activities through the partnership.

4 That is what -- what I was referring to as being  
5 hardwired.

6 Q Oh, okay, very well.

7 MR. MORRIS: All right. We can take that down for  
8 the moment.

9 BY MR. MORRIS:

10 Q Let's talk about the \$18-1/2 million for a second. I  
11 think you were asked a number of questions by Mr. Draper as to  
12 how you arrived at that. One question I don't believe he  
13 asked you is whether or not the Court's decision on the 3018  
14 motion was a factor that the Debtor took into account. Was  
15 the Court's decision on the 3018 motion a factor that the  
16 Debtor took into account?

17 A Well, certainly. I mean, we had an independent judge  
18 looking at the claims that UBS brought and making an  
19 assessment -- for voting purposes, but certainly it informs us  
20 as to the third-party validity -- view of the validity based  
21 on that evidence of what those claims might be.

22 Q And I think we heard in Mr. Taylor's questioning some  
23 questions about, you know, the Debtors' view of the strength  
24 of its claims. Did the Debtor present its best case to the  
25 judge when it both sought partial summary judgment and a

1 ruling on the 3018 motion?

2 A We did, and I thought we presented an outstanding case.

3 Q Okay. Can we call up that Sterling report that I think  
4 you were asked about by Mr. Draper? Okay. Do you see the  
5 Sterling report there?

6 A I see it, yes.

7 Q Who -- who obtained -- withdrawn. Can you tell from this  
8 document who the client was, who Sterling's client was?

9 A Highland. HCMLP.

10 Q So is it fair to say, at least based on the document, that  
11 this document was not an independent valuation obtained by  
12 Multi-Strat?

13 A It appears to be just a valuation obtained -- obtained by  
14 HCMLP.

15 To be fair, and obviously it controls every one of these  
16 entities, because they're not -- they're not separate  
17 companies, they're funds, and the manager controls them, just  
18 as we discussed earlier with respect to this settlement.

19 Q Okay. Just before lunch, Mr. Draper had asked you a whole  
20 series of questions, and he was showing you some excerpts from  
21 an expert report. And one of your answers -- let me just ask  
22 the question. Do you have anything to add? I mean, is there  
23 anything about the questioning that Mr. Draper engaged in with  
24 respect to all of those charts in that expert report that you  
25 want to share with the Court?

1 A Sure. I think with respect to that chart, and we could  
2 bring it up, it's a typical Highland company naming exercise.  
3 They had very similar and confusing names and they needed to  
4 change them.

5 It's very clear on that chart that Highland Credit  
6 Opportunities Holding Corporation, which is a Delaware corp,  
7 received a significant amount of assets. Mr. Draper was, I  
8 guess, indicating that Limited got assets. I don't recall  
9 that being something that happened. Because when we sold the  
10 assets, they came out of a specific fund called Highland  
11 Credit Opportunities CDO Asset Management, LP Delaware Limited  
12 Partnership. So that's where they resided in 2020, and that's  
13 where we made representations regarding UBS's claims that --  
14 we had to make representations to the buyer, which  
15 necessitated the settlement with UBS. The buyer didn't want  
16 to buy those assets subject to a potential fraudulent  
17 conveyance claim from UBS. So that's the seller. That's  
18 where the assets were. There's multiple boxes on the chart,  
19 but that's where those -- those assets resided. And they --  
20 and they are listed on the other chart with \$20-something  
21 million of value, I think.

22 Q Okay. Mr. Taylor pointed out in questioning to you that  
23 the total consideration under the settlement exceeds the  
24 amount that the judge estimated for voting purposes. Do you  
25 remember that?



1 A I do.

2 Q Do you know if the Debtor presented any evidence during  
3 the 3018 hearing related to the transfer of assets to  
4 Sentinel?

5 A No, that became -- we became aware of that only after the  
6 fact.

7 Q And --

8 A Go ahead. That was --

9 Q And -- and --

10 A That was hidden from us. We did not know that at the time  
11 we made the presentation to the Court. We did not know. We  
12 represented to the Court that all of the redeemers, the \$90  
13 million, were third-party unrelated. We did not know that  
14 Sentinel, you know, owned by Ellington and Dondero, was  
15 actually a, you know, Cayman offshore structure where they --  
16 they owned -- we just didn't -- we had never been informed,  
17 and in fact, we'd been specifically informed that they were  
18 all unrelated third parties.

19 Q And when you learned of the transfer and the ownership of  
20 that entity, that's what caused the Debtor to agree to a  
21 settlement that was in excess of the amount estimated at the  
22 3018 hearing; is that right?

23 A With respect to the Class 8 and the Class 9 claims. It --  
24 we held firm on the \$18-1/2 million vis-à-vis Multi-Strat.

25 Q And the Debtor didn't try to use the opportunity to use

Seery - Redirect

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1 Multi-Strat to fund some portion of the additional risk that  
2 was identified, did it?

3 A No. We spent a significant amount of time thinking about  
4 Multi-Strat standalone, the risks to Multi-Strat, the ability  
5 to make distributions with UBS's claim hanging out there, and  
6 the merits of UBS's claim against Multi-Strat. So we treated  
7 them separately.

8 Q And so if the Debtor wanted to, though -- withdrawn. I'll  
9 just leave it at that.

10 MR. MORRIS: No further questions.

11 THE COURT: All right. Mr. Clubok, any further  
12 questions?

13 MR. CLUBOK: No, Your Honor.

14 THE COURT: All right. Mr. Draper?

15 MR. DRAPER: Just a few questions.

16 RECROSS-EXAMINATION

17 BY MR. DRAPER:

18 Q Mr. Seery, the redeeming parties, in connection with  
19 Limited or LP, is it your testimony that there was no written  
20 agreement for assets to be frozen for them?

21 MR. MORRIS: Objection to the form of the question.  
22 Beyond the scope of redirect.

23 THE WITNESS: Yeah, I don't -- I don't --

24 THE COURT: Overruled.

25 THE WITNESS: I'm not aware of any written agreement

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1 -- I'm not aware of a written agreement to freeze assets for  
2 them.

3 BY MR. DRAPER:

4 Q If that's the case, why haven't they done anything for  
5 five years?

6 A Well, you're walking into this one, sir. Your client  
7 managed the estate and simply rebuffed these people. They did  
8 make inquiry. They asked if they can transfer their assets.  
9 The Debtor has always just stiffed them. They're  
10 superannuation funds in Australia, mostly, as well as some  
11 Japanese investors, and the Debtor has continually, before the  
12 filing, rebuffed their attempts to get liquidity.

13 Q Couldn't they have filed suit?

14 A They could. And in fact, you probably don't know this,  
15 but a claim of -- of NexBank and their lien was -- actually  
16 came from Alberta Investment Management Company. Alberta also  
17 redeemed, but Alberta couldn't be pushed around, as a hundred  
18 billion dollar plus investor from -- from the -- from Canada,  
19 who could actually show up and do something. So, so the  
20 Debtor, pre-filing, went out and borrowed money to take care  
21 of that redemption. And borrowed, of course, from NexBank,  
22 and secured it. And there are other redeemers who were  
23 smaller and weren't a real threat, didn't -- didn't get paid.

24 Q All right. Now, you talked about the life settlement  
25 policies. If I understand it, your testimony that they

1 belonged to LP is based upon the fact that they were in LP in  
2 2020? You have no information as to where they were in 20 --  
3 2009, 2010, 2011, correct?

4 A Yeah. I'm not aware that they bounced around among the 15  
5 boxes on that page, no.

6 Q So, so in fact, again, your statement that they were LP's  
7 assets is based solely upon your analysis and where they were  
8 in 2020?

9 A Yes. And we did due diligence on that. LP did own them.  
10 The buyer wanted those representations. We did give -- we did  
11 research to make sure we did it.

12 And, in fact, the reason we found out about the issue --  
13 because, frankly, we had just not seen the UBS effective claim  
14 against it; we knew that it was out there, but we didn't think  
15 it would grab the policies -- was that a buyer raised it with  
16 us.

17 Q That's -- my question is a different question. Your  
18 diligence and your analysis is based upon where the assets  
19 were in 2020. You have no -- nothing to dispute the fact that  
20 the assets came back under the unwind agreement in 2019 --  
21 2009 to Limited?

22 A No, I -- I'm not aware that that's -- I don't even know  
23 that to be true because --

24 Q Well, you looked at the document, and the document  
25 specifically is -- the signatory is Limited, not LP?

Seery - Recross

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1 A The signatory with respect to that note and that unwind is  
2 Limited. I don't know that the assets went back there. I  
3 think the assets went to the entity that they were in.

4 Q But you have -- you have no evidence to support that, but  
5 you have a document that says these assets were going into  
6 Limited?

7 A I don't think I have a document that says that, sir, but  
8 -- but, you know, I know where they were and I know that the  
9 buyer traced title and was comfortable, as we were, that when  
10 we sold them out of the subsidiary of LP, that's where they --  
11 they were properly housed.

12 Q Okay.

13 MR. DRAPER: I have nothing further for this witness.

14 THE COURT: All right. Mr. Taylor, anything from  
15 you?

16 MR. TAYLOR: Yes, Your Honor. Just --

17 RECROSS-EXAMINATION

18 BY MR. TAYLOR:

19 Q Mr. Seery, just a very precise question, so if you'll  
20 listen to it carefully and give me a yes or no answer. As we  
21 sit here today, there has been no finding or adjudication that  
22 the Sentinel transaction was a fraudulent conveyance.  
23 Correct?

24 A Correct.

25 Q Thank you.

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Seery - Recross

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1 MR. TAYLOR: No further questions.

2 THE COURT: All right. Final-final opportunity. Any  
3 recross on that last set of questioning, Mr. Morris?

4 MR. MORRIS: No, Your Honor.

5 THE COURT: All right. And I assume nothing from  
6 you, Mr. Clubok?

7 MR. CLUBOK: No, Your Honor. Thank you.

8 THE COURT: All right. Thank you, Mr. Seery. You're  
9 excused from the virtual witness stand.

10 THE WITNESS: Thank you, Your Honor.

11 (The witness is excused.)

12 THE COURT: All right. Mr. Morris, do you rest?

13 MR. MORRIS: Yes, Your Honor. The Debtor rests.

14 THE COURT: Okay. And Mr. Clubok, I presume you do  
15 as well?

16 MR. CLUBOK: Yes, Your Honor. Thank you.

17 THE COURT: All right. Well, Mr. Draper, any further  
18 evidence from the Objectors? (No response.) You're on mute.

19 MR. DRAPER: The sole reason I had a Dugaboy  
20 representative on the list was to establish our ownership in  
21 the LP. I think that's been established by Mr. Seery and that  
22 we do have an active ownership in that entity, so I have  
23 nothing further.

24 THE COURT: All right. Mr. Taylor?

25 MR. TAYLOR: No, Your Honor.

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1 THE COURT: Okay. Why don't we take a 10-minute  
2 break, and we'll come back and have closing arguments.

3 MR. DRAPER: Thank you, Your Honor.

4 THE CLERK: All rise.

5 (A recess ensued from 1:27 p.m. until 1:37 p.m.)

6 THE CLERK: All rise.

7 THE COURT: All right. Please be seated. All right.  
8 We're back on the record in the Highland matter, UBS  
9 compromise. We'll hear closing arguments. Mr. -- is it going  
10 to be Mr. Feinstein or Mr. Morris?

11 MR. FEINSTEIN: It's going to be me, Your Honor.

12 THE COURT: Okay. You may proceed.

13 MR. FEINSTEIN: Thank you.

14 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

15 MR. FEINSTEIN: Your Honor, the settlement agreement  
16 that's before Your Honor accomplishes two things. One, it  
17 compromises and allows UBS's disputed claims, pursuant to Rule  
18 9019. And second, it settles the state court lawsuit claim  
19 that UBS has against Multi-Strat. And as to that, this branch  
20 of the motion is governed by 363(b), where the Debtors asked  
21 for authority to take an action outside the ordinary course of  
22 business as investment manager of Multi-Strat to settle that  
23 claim.

24 So I want to take them each separately, Your Honor. And  
25 let me start with the 9019 branch of this, which actually has

1 gotten very little attention in the hearing today. The 9019  
2 motion aspect of this is to allow two proofs of claim, two  
3 allowed claims to UBS, a Class 8 claim for \$65 million and a  
4 Class 9 claim for \$60 million.

5 The -- I'm sure the Court is well familiar with the  
6 standards for Rule 9019 settlements, but I do want to just  
7 make a few brief comments from Fifth Circuit authorities to  
8 set the table.

9 First, it's well-settled that settlements are favored in  
10 bankruptcy. They minimize litigation expense. They expedite  
11 the administration of the estate. And here, as we've noted,  
12 the resolution of the UBS claim will expedite distributions to  
13 creditors now that the largest disputed claim in the case  
14 would be resolved at fixed amounts.

15 The Fifth Circuit also clearly holds -- I'm citing to the  
16 *AGE Refinery* case, that the Court may approve a settlement if  
17 it's fair and reasonable, in the best interests of the estate,  
18 and that a settlement should be approved unless it falls below  
19 the lowest point in the range of reasonableness based on a  
20 comparison between the terms of a settlement and the costs and  
21 benefits of further litigation.

22 And in evaluating a settlement, the Court -- courts  
23 generally consider a number of factors: the probability of  
24 success in the litigation, with consideration for the  
25 uncertainty of the facts and the law in the case; the

1 complexity and likely duration of the litigation, and any  
2 attendant expense, inconvenience, delay; and -- and, quote,  
3 Other Factors. This is according to the *Cajun Electric* case.  
4 Those Other Factors include the best interests of creditors,  
5 with proper deference to their reasonable views, as well as  
6 the extent to which the settlement is truly the product of  
7 arm's-length bargaining and not of fraud or collusion.

8 Your Honor, we believe that we have easily, readily,  
9 satisfied these standards. The only evidence you heard today  
10 was testimony from Mr. Seery, and it showed beyond doubt, Your  
11 Honor, that the settlement is fair and reasonable, that it's  
12 well above the lowest point on the range of reasonableness,  
13 and it's in the best interest of the estate and the creditors.  
14 And it is so, Your Honor, because it resolves a disputed proof  
15 of claim for over one billion dollars on very favorable terms  
16 and brings about an end to over a decade of contentious and  
17 extremely expensive litigation between UBS and the Debtor,  
18 arising out of events that occurred in 2008 and 2009 and in  
19 subsequent years.

20 And I'd hasten to add, Your Honor, that the projected  
21 expense of continuing to litigate with UBS, were this case not  
22 settled today, would be extraordinary, because not only was it  
23 already an extremely complicated case and one that was very  
24 expensive to litigate over the last 11 or 12 years, but it  
25 became more complicated and more expensive as a result of the

1 revelation of actions that were taken by Mr. Dondero and his  
2 confederates in 2017, which, as I noted before, Your Honor,  
3 fall squarely within UBS's theory of the case, that the Debtor  
4 breached its implied covenant of good faith and fair dealing  
5 because it was orchestrating maneuvers by entities that it  
6 controlled, including those two funds, who were -- judgments  
7 against them, to denude those entities of assets.

8 So the -- were we to litigate the underlying transactions  
9 from 2008, 2009, the alleged fraudulent transfers that -- and  
10 the note unwind, and then going forward, adding to that, the  
11 complexity surrounding this Sentinel transaction with offshore  
12 funds and the like, it became that much more complicated, that  
13 much more expensive to litigate, and we avoid all that by  
14 settling, on terms that we're very pleased with, given that  
15 those revelations about the 2017 transaction upped the *ad*  
16 *damnum* by over a hundred million dollars. And yet we managed  
17 to increase the claims, but only by a modest amount, and hold  
18 on to the settlement.

19 And the settlement is -- really, it does bring about a  
20 complete resolution to the New York State action. It avoids  
21 the Debtor having to return to New York state court. And in  
22 our view, Your Honor, it's a great outcome.

23 Now, it appears that the only objection to the 9019 aspect  
24 of this comes from Mr. Dondero. And there's almost nothing  
25 said there, Your Honor. I mean, the Dugaboy objection is



1 candid that they're not dealing with the UBS claim aspect of  
2 this. They're just focused on Multi-Strat, which I'll deal  
3 with later.

4 But Mr. Dondero, in his objection -- the docket number of  
5 the pleading is 2295 -- there are several paragraphs in there  
6 that I guess come as close to a stated objection as I can  
7 discern from the document. In Paragraph 28, Mr. Dondero says,  
8 through counsel, that the settlement appears to inflate UBS's  
9 claim against the Debtor as a result of claims UBS may have,  
10 which are unproven, against nondebtor entities.

11 He says in the next paragraph that the Movants have not  
12 "sufficiently demonstrated the nexus between the purported  
13 transferred assets and the pending UBS claim and why it should  
14 increase UBS'S recovery against the estate."

15 And then in the next paragraph, Paragraph 30, he -- and  
16 I'm quoting it, not the entire paragraph, but Mr. Dondero  
17 argues that, "Increasing the payment to UBS on these issues  
18 may not be warranted because the payments do not relate to  
19 claims against the estate and it's unclear whether UBS has a  
20 claim against the estate relating to these alleged  
21 allegations."

22 So, Your Honor, you heard testimony today directly linking  
23 the revelation of these 2017 fraudulent transactions to the  
24 underlying complaint. UBS sued the Debtor for breach of  
25 implied covenant for moving assets out of the Funds, away --

1 so that they -- those Funds would not be able to respond to  
2 UBS's contractual claims. They're directly related.

3 So, other than those few statements, I don't think you  
4 heard anything today, Your Honor, by either of the Objectors  
5 that challenges the resolution of the UBS claim, the 9019  
6 branch of this motion.

7 And at the risk of taking up more of Your Honor's time,  
8 I'm happy to march through -- we've briefed all this -- but  
9 march through the application of those factors -- probability  
10 of success, expense and delay -- and the Court can only come,  
11 I think, to the conclusion that this settlement passes muster  
12 under the applicable legal authorities, that there -- that the  
13 underlying claims, that were they to be litigated, there is no  
14 comfort at all that future litigation would end up with claims  
15 in the dollar amounts that are stipulated to in the settlement  
16 agreement. Moreover, further litigation would be extremely  
17 expensive, would be hugely delayed because -- particularly  
18 because of the new evidence. But if we didn't settle,  
19 eventually, we would have to go to trial, either in this Court  
20 or in the state court. And the underlying facts and  
21 circumstances are tremendously complicated and we would be --  
22 and we would be here for months, if not years, and spending  
23 millions and millions of dollars to pursue this dispute  
24 instead of settling it.

25 The other factors that the Court -- courts look to in

1 evaluating settlements are the benefit to creditors and  
2 whether this is a sound exercise of business judgment.

3 In terms of benefit to creditors, even granting for the  
4 sake of argument that Mr. Dondero is a creditor -- again,  
5 Dugaboy has not objected to the 9019 branch; only Mr. Dondero  
6 has. But giving him the grand benefit of the doubt that he's  
7 a creditor, all the other creditors support this. The  
8 Creditors' Committee supports this. No creditor has filed an  
9 objection.

10 And Your Honor can fairly infer that this settlement is  
11 very beneficial to the creditors. It brings the billion-  
12 dollar claim in at a far lower number. It resolves the claim,  
13 which is otherwise a huge disputed claim that would delay  
14 distributions to other creditors. And that's why they didn't  
15 object. This is in their best interest.

16 And finally, is this a sound exercise of business  
17 judgment? You heard Mr. Seery testify the extent to which the  
18 Debtor undertook an intensive investigation of the claims  
19 asserted against the Debtor in the state court litigation.  
20 We've had extensive motion practice before this Court. We  
21 have done as deep a dive as you can do on these claims since  
22 the bankruptcy was filed that I think is possible. And the  
23 judgment that came away from that is that there is material  
24 risk to the estate if this claim is not resolved, and that the  
25 -- ultimately, that the settlement is the product of sound

1 business judgment, extensive input from legal and financial  
2 advisors, and ultimately we get to a number that, again, every  
3 creditor in the case supports except, if he's a creditor, Mr.  
4 Dondero.

5 And you can consider the source and his history of  
6 objecting to everything when you gauge his arguments. But his  
7 arguments are paper thin, Your Honor. It's a few sentences in  
8 his objection. He put on no evidence about the underlying  
9 merits of the claims against the Debtor for breach of implied  
10 covenant, et cetera. It is simply a nonexistent objection.  
11 It's a few lines on a page, backed up by no evidence, and no  
12 real argument, either.

13 So we think there's a compelling case, Your Honor, to  
14 approve the 9019 branch of this motion to resolve the claim.

15 So now let me turn to the Multi-Strat piece of this. As  
16 we've explained, Your Honor, Multi-Strat is a defendant in the  
17 same court -- in the same state court action as the Debtor.  
18 It was sued for a fraudulent transfer in the note unwind. The  
19 Debtor was sued for the same facts and circumstances, for a  
20 breach of implied covenant. Those claims are obviously  
21 intertwined and interrelated. And more so, they're  
22 interrelated because UBS was prepared to settle only on the  
23 basis that it get a full resolution.

24 So it's not like we readily could have settled with UBS on  
25 the Highland piece of this but not the Multi-Strat piece. It

1 was always part and parcel. That makes sense. That's a sound  
2 exercise of business judgment. So we come to the Court with a  
3 request for Your Honor to authorize the Debtor to take action  
4 outside the ordinary course of business.

5 Again, I want to be clear. We're not asking Your Honor to  
6 evaluate the merits of the settlement so much as authorizing  
7 the Debtor to act outside the ordinary course in approving  
8 this settlement. But I do note, Your Honor, that we served  
9 all the limited partners of Multi-Strat. We treated this like  
10 a 9019 in that we put everybody on notice. The only objector,  
11 again, who's affected by this is Dugaboy, and they've been  
12 here and they've been heard.

13 And on the merits, you know, we think this is a good  
14 settlement, despite Mr. Draper's effort to obfuscate which  
15 subsidiary entities were involved in these asset transfers.  
16 We know, as Your Honor does, from the 3018 hearing, that \$25  
17 million were transferred to the Multi-Strat entities -- and  
18 that, with interest, you double that; that's almost \$50  
19 million gone of exposure -- that's being settled for \$18-1/2  
20 million.

21 So, what are the arguments that Dugaboy, and I guess Mr.  
22 Dondero, to make with respect to the Multi-Strat settlement?  
23 I think it's fair to state that they challenge this Court's  
24 jurisdiction. They challenge the Debtors' authority to act on  
25 behalf of Multi-Strat. They allege that the Debtor didn't



1 comply with its fiduciary duty because it has conflicts of  
2 interest. And ultimately argue that, I guess, the \$18-1/2  
3 million was too much.

4 So, let me take them piece by piece. First, jurisdiction.  
5 Undoubtedly, Your Honor has jurisdiction over the Debtor,  
6 Highland Capital Management. Nobody can possibly dispute that  
7 the Court has jurisdiction over the Debtor, and Your Honor  
8 happens to have before it a debtor that has been and is  
9 engaged in the business of investment management. So, in its  
10 capacity as a business operator, managing funds, it has the  
11 authority to take certain actions. You've seen that in the  
12 documents.

13 But by the same -- it's a debtor before this Court that,  
14 in our view, was taking actions that were outside the ordinary  
15 course of business, as Mr. Seery testified. The May 2020  
16 transaction involved the liquidation of assets, sale of  
17 assets. Investment funds buy and sell assets all the time.  
18 So that was not extraordinary or outside the ordinary course  
19 of the normal role that an investment manager plays for a  
20 managed fund.

21 This situation is different, that insofar as we're dealing  
22 with not a sale or transfer of assets but a settlement of very  
23 substantial litigation claims against the managed fund.

24 And as you heard Mr. Seery testify in response to Mr.  
25 Morris's questions, only Highland Capital Management can act

1 for a Multi-Strat in this context. And you saw that, pursuant  
2 to the investment management agreement, Highland Capital is  
3 vested with the managerial authority over these funds. You  
4 also saw, as part of the corporate organizational chart and  
5 the discussion in the private purchase -- placement  
6 memorandum, that, you know, Highland Capital is a majority  
7 owner of Multi-Strat, and through its position as the general  
8 partner of the general -- of the limited partnership, it has  
9 managerial authority under the organic corporate documents, in  
10 addition to the investment management agreement.

11 So, we think, Your Honor, based on all of that, that Your  
12 Honor does have jurisdiction. This is undoubtedly related the  
13 bankruptcy, at the very least, insofar as, you know, Highland  
14 is an investment manager. It is before the Court, asking to  
15 take action outside, you know, its ordinary course of  
16 business.

17 I think an argument can be made that, beyond this being  
18 related to, that this is core because it is intertwined with a  
19 settlement of the claims against the Debtor by UBS, and  
20 certainly those are core matters, beyond dispute.

21 We don't think that there is a credible case here, Your  
22 Honor, that this Court lacks jurisdiction to hear the Debtors'  
23 motion pursuant to 363(b).

24 So, their arguments are jurisdiction, authority, and the  
25 other stuff. So let me turn to authority.

1           It is beyond doubt, Your Honor, when you see the corporate  
2 documents, that -- that -- of the investment management  
3 agreement, that, despite the allegations, I guess, and the  
4 objections about a lack of authority, that the Debtor clearly  
5 does have authority to act as investment manager/general  
6 partner of Multi-Strat to effect this settlement.

7           So, once you get past those sort of gating arguments about  
8 jurisdiction and authority, then you get to other arguments, I  
9 guess, that the Objectors have raised. One which we really  
10 didn't touch on extensively, Your Honor, is the notion that  
11 the Debtor somehow has a conflict of interest here and that  
12 this is something that Dugaboy, as a limited partner, can  
13 raise. So, Your Honor, I want to -- the passage is too long.  
14 It runs five pages. But in the private placement memorandum  
15 that Dugaboy signed -- and, of course, that Mr. Dondero had a  
16 heavy hand in putting together -- there's five pages of  
17 disclosures about the potential for conflicts of interest by  
18 the investment manager, in very specific terms. And rather  
19 than burden the record, I'm just going to ask that, at the  
20 appropriate time, that Your Honor read -- the numeric pages  
21 are 49 to 53 in the private placement memorandum that is the  
22 Debtors' Exhibit No. 55.

23           But on a high level, it says in repeated ways that the  
24 relationship between the investment manager and the fund may  
25 give rise to conflicts of interest, that everybody

1 acknowledges that Highland is not precluded from engaging in  
2 other businesses or owning other assets, managing other  
3 clients' accounts, on and on and on.

4 So, there's -- and again, Mr. Dondero created this regime  
5 such that he would never be accused, in his capacity as  
6 investment manager -- the Debtors' capacity as investment  
7 manager, of doing anything that could ever present an argument  
8 for conflict of interest.

9 In short, the limited partners have essentially  
10 acknowledged that there may well be conflicts, but they're not  
11 in a position to raise them. It's just simply not one of  
12 their rights in their bundle of rights under the limited  
13 partnership agreement.

14 Moreover, Your Honor, and even though they can't raise it,  
15 as a factual matter, there is no actual conflict. And I think  
16 Mr. Seery's final statements, I think, made that very clear.  
17 Probably the best indicator that the Debtor was not using or  
18 leveraging the Multi-Strat settlement claims to improve its  
19 own position is that when -- after the initial agreement in  
20 principle is reached for \$55 million and -- \$50 and \$25  
21 million claims, the revelation about Sentinel came to light  
22 and we all realized that the settlement amounts were going to  
23 have to go up. The Multi-Strat settlement was unchanged. It  
24 remains at \$18-1/2 million. Why? This is not a Multi-Strat  
25 problem. This was a -- this is a Debtor problem because of

1 the breach of implied covenant claim.

2 So the additional consideration to settle this new --  
3 revised claim, if you will, with expanded exposure, came  
4 entirely out of the Highland Capital estate. There was no  
5 sense that Multi-Strat should pay more to try to fill the  
6 hole. These -- and then Mr. Seery testified at some length as  
7 to the analysis that he undertook and that the company  
8 undertook using its advisors to evaluate the claims that UBS  
9 has against the estate as well as the underlying Multi-Strat  
10 -- claim against Multi-Strat by UBS.

11 THE COURT: And Mr. Feinstein, just to make sure I  
12 understood that last point, the discovery, if you will, of the  
13 \$300 million or so of assets that went to Sentinel, those were  
14 from the Funds? Those were from CDO Fund and SOHC Funds?  
15 Those --

16 MR. FEINSTEIN: That's correct, Your Honor.

17 THE COURT: Okay. Okay.

18 MR. FEINSTEIN: That's correct. And this was the  
19 heart of the accusation against the Debtor in connection with  
20 the breach of implied covenant claim.

21 THE COURT: Okay.

22 MR. FEINSTEIN: So, so Your Honor, this was a very  
23 thoughtful approach to the settlement. There was no conflict.  
24 The Debtor has authority to make this decision.

25 So what are we left with in the way of an objection here?



1 Mr. Draper has attempted to make the case that this was -- I  
2 think he said in his opening, this was -- the Debtor got a bad  
3 deal in this settlement.

4 So let's examine that proposition. Because Your Honor  
5 heard testimony -- there was a full-blown hearing on the 3018  
6 motion by UBS -- and Your Honor came away with a -- and made a  
7 determination that the \$25 million that was transferred to  
8 Multi-Strat was handicapped as a fraudulent transfer to the  
9 extent of 90 percent. So that yields a \$23 million principal  
10 liability, and then add to that interest, and now you're at  
11 call it \$46 million. And it's a -- and here's a claim for \$46  
12 million that's being settled for \$18.5 million, without  
13 further litigation expense, without going back to New York  
14 state court where we'd have to be in front of a new judge and  
15 start over.

16 So, you know, the objective -- an objective analysis, Your  
17 Honor, is that that is not only a good settlement, it's an  
18 excellent settlement. And again, it's not a 9019 motion, so  
19 we're not talking about above the lowest point of range of  
20 reasonableness. It would satisfy that standard easily. But  
21 the issue is whether this was a sound exercise of business  
22 judgment. And just given the numbers that I recited, Your  
23 Honor, we think undoubtedly that it is, and that Mr. Draper's  
24 efforts to muddy the water by looking at certain assets that  
25 were in subsidiary funds as opposed to the Multi-Strat entity,

1 Your Honor, which we -- you've heard testimony was treated as  
2 a unit. The foreign feeder fund, the master fund, that's all  
3 Multi-Strat. That -- those entities got the assets in the  
4 note unwind. And now we're going to settle that litigation,  
5 subject to Your Honor verifying that this is a sound exercise  
6 of business judgment by the Debtor.

7 And I have to note, Your Honor, that that \$18-1/2 million  
8 number has been around for a while. At the confirmation  
9 hearing at the beginning of February, the Debtor put that  
10 proposed settlement on the record, and -- and I think that was  
11 February 3rd, 4th, 5th, somewhere in there. So it's now late  
12 May, and we've never heard boo from Mr. Dondero until this  
13 pleading filed last week that he had an issue or takes issue  
14 with the \$18-1/2 million settlement amount.

15 And it's not like Mr. Dondero is shy. Any time the Debtor  
16 does something, we get a letter, we get a motion, we get sued.  
17 So, you know, if there was some issue about \$18-1/2 million,  
18 it is unclear at best why it took him four months to first  
19 raise this issue. We don't think it's credible. And we  
20 continue to point to the underlying potential liability of  
21 nearly \$50 million from Multi-Strat and ask Your Honor to  
22 verify that the determination by the Debtor as an investment  
23 manager of Multi-Strat to settle that claim for \$18-1/2  
24 million constitutes a sound exercise of business judgment.

25 I think that that might cover our arguments, Your Honor.

1 I'm happy to answer any questions. We've obviously briefed  
2 this very extensively. I'm not going to recite all the  
3 underlying case law. But I think that makes our point.

4 THE COURT: All right.

5 MR. FEINSTEIN: I'm happy to answer questions.

6 THE COURT: Thank you. Mr. Clubok, anything more  
7 from you?

8 CLOSING ARGUMENT ON BEHALF OF UBS SECURITIES, LLC

9 MR. CLUBOK: Thank you, Your Honor. I, too, am not  
10 going to repeat all the arguments. As Your Honor well knows,  
11 we're not here today to talk about whether or not we would win  
12 at trial. It probably goes without saying that UBS thinks  
13 that it would. And you know, frankly, hearing the evidence  
14 and reliving the evidence as we've heard it today, and the  
15 statements by Mr. Seery that are now informed by uncovering,  
16 frankly, lies that were told to him and his colleagues  
17 previously by Mr. Dondero and his colleagues, does make it,  
18 you know, let's just say opens up probably some -- some wounds  
19 that certainly does not indicate that this settlement is a bad  
20 settlement for the purpose -- from the perspective of the  
21 Debtor. And so that is the issue here, is whether the  
22 settlement is fair from the perspective of the Debtor. It's  
23 more than fair, if anything.

24 I would like to note, with respect to the Multi-Strat  
25 claim, just to be clear, it actually is a different claim even

1 than you heard. Just to remind everyone, under the New York  
2 Debtor-Creditor Law, Sections 276, 276(a), which involve  
3 actual fraud -- and we have a mountain of evidence that  
4 suggests that the March transfers were actual fraud, not just  
5 -- not just constructive fraud, which they also would have  
6 been because they lacked for fair value and they were from an  
7 insolvent entity -- but under that New York Debtor-Creditor  
8 Law, we're entitled also, if we prevail, to attorneys' fees,  
9 as Your Honor recognized might be the case in the estimation  
10 proceeding. And we'd be entitled potentially to punitive  
11 damages from a jury determination of those claims against  
12 Multi-Strat.

13 So when I hear -- you know, we heard the perspective, and  
14 there was some testimony where Mr. Seery was asked basically,  
15 well, it's \$18-1/2 -- you know, he was -- I think Mr. Seery  
16 testified today that the estimated equity value remaining in  
17 Multi-Strat, other than our claim, after you pay off the  
18 redeemers, and of course our claim comes ahead of those  
19 redeemers, but if you paid off the redeemers and we -- and  
20 absent our claim, there was, I think, an estimate of about \$45  
21 million in equity value. And the issue that was raised in the  
22 examination of Mr. Seery was, well, if you settle for \$18-1/2  
23 million and Dugaboy has about a 2 percent, a little less than  
24 2 percent, let's round up, then we're talking about \$360,000-  
25 some that supposedly Dugaboy is losing because of this

1 settlement.

2 Of course, if we went forward to litigate with Multi-Strat  
3 and we were to prevail on a claim that Your Honor estimated,  
4 and it was just an estimate, but estimated at a 90 percent  
5 chance of success, that in light of the mountain of evidence  
6 we have, including evidence that Mr. Dondero lied repeatedly  
7 under oath when he described that transaction in March 2009,  
8 claiming falsely that it was negotiated by the then-general  
9 counsel and head of compliance, Michael Colvin, who testified  
10 to the contrary -- all of this is in the exhibits that we've  
11 submitted today -- but if we were to prevail on that claim, it  
12 would be \$25 million, plus interest, which is now more than a  
13 hundred percent, because it's been 12 years times 9 percent,  
14 so that's 108 percent, and climbing every day, plus attorneys'  
15 fees, plus punitives. And so you easily could get into that  
16 mid-\$60 million or more range, even without accounting for  
17 punitives, and then Dugaboy's interest would be zero, as would  
18 the estate and every equity holder, because that would -- and  
19 it would actually affect the redeemers as well of Multi-Strat.

20 So this settlement for \$18-1/2 million is not costing  
21 Dugaboy \$360,000 unless you assume, you know, full success on  
22 our claims and zero cost of litigating them, even though we  
23 are, in New York, on the cusp of litigating those claims.  
24 There is -- we are past summary judgment. We're past five --  
25 we're more than half dozen, I think, opinions that relate to



1 every argument in the book from a legal matter that could have  
2 been brought with respect to those claims, all of which were  
3 denied, and the case is otherwise ready for trial with a judge  
4 now that would be very eager to proceed if it was not for this  
5 settlement.

6 So, that's what the Multi-Strat agreement is about. It's  
7 certainly, from just an exercise of business judgment, a  
8 standard that's -- no different than 9019. With respect to  
9 that, it certainly is a smart -- it's a smart move by the  
10 controllers of Multi-Strat right now to settle that claim for  
11 that amount.

12 The other thing I just wanted to remind, you know, there  
13 was a little bit of evidence or a little bit of questioning  
14 with Mr. Draper that seemed to try to cast some doubt, and  
15 there was repeated questions, and even Mr. Seery sometimes,  
16 you know, accepted the premise of the question, that the  
17 transaction that occurred in March of 2009 was an unwind of a  
18 note or even a termination of a note. Your Honor mentioned  
19 last week, I think, or even -- I don't know when. I've lost  
20 track of the days now. But we were talking before about note  
21 litigation. I think Your Honor talked about how note  
22 litigation is some of the easiest litigation when there is an  
23 actual real note and you're just litigating on a note. These  
24 notes were, of course, nothing of the kind. They were equity  
25 infusions, as, again, we have a mountain of evidence that

1 showed, in the fall of 2008, designed to prop of HFP.

2 I'm not going to relitigate all of our claims here, but  
3 suffice it to say that the exhibits that we entered into  
4 evidence today, which are the exhibits that were a part of our  
5 opposition to summary judgment, our response to objections to  
6 our claim, the 9019 exhibits, and those -- certainly, at a  
7 minimum, put a real risk of litigation that that transfer in  
8 March of nine -- of twenty nine -- I'm sorry, that transfer in  
9 March of 2009 cannot possibly be considered an "unwind" of  
10 notes.

11 There was different amounts to different parties, for more  
12 than fair value, from a then-insolvent entity, by the way, all  
13 negotiated by one person, Mr. Dondero, on behalf of every  
14 single party, notwithstanding his testimony under oath that  
15 others had negotiated it, who then later denied that.

16 So, so again, all of that is not to argue that we should  
17 -- Your Honor obviously doesn't have to decide whether I'm  
18 right when I say these things, but it's clear that Your Honor  
19 can recognize and obviously the directors who chose to settle  
20 these claims could recognize the serious, serious litigation  
21 risks to Multi-Strat and to the Debtor, which orchestrated  
22 those transactions at the time.

23 And then, finally, with respect to the overall claim,  
24 again, I just want to end with Your Honor's view of our claim,  
25 and the estimate, and that we all know is just an estimate, in

1 that 9019 stage, at the time we were told that there was only  
2 about \$10 million left between the Funds that we held a  
3 judgment against and that the documents that we had that show  
4 there was something closer to \$70 million back in 2009, and we  
5 kind of lost the trail, that all of that was, you know,  
6 impossible to know what happened to it, it was probably almost  
7 all spent on legal fees, defending against our litigation, and  
8 it was just gone and nothing could be done.

9 And we now know that all of that was based on statements  
10 that were provided by Mr. Dondero's then-associates, the folks  
11 who were at Highland Capital at the time who falsely claimed  
12 that story, when it turns out that those assets we know were,  
13 in fact, transferred to Dondero-affiliated entities, even  
14 though Highland Capital Management had signed an engagement  
15 letter and two other documents that promised that a hundred  
16 percent of losses suffered by UBS would be paid by CDO and  
17 SOHC.

18 Instead, all of their assets have been transferred over  
19 the years, first in March 2009, then later in 2017, and not  
20 one penny to this day, as Mr. Seery acknowledged, has ever  
21 been paid to UBS, notwithstanding the contractual liabilities  
22 dating back to 2008 and the judgment that was received.

23 And this settlement will finally change that, although not  
24 come close to the amounts that we obviously believe that we  
25 would have been able to prevail on if we had been able to go

1 forward with the litigation.

2 Your Honor, in particular, and I'm going to close with  
3 this, said in response to the summary judgment part of the  
4 hearing, said, I think UBS has put summary judgment evidence  
5 in the record that there may be a fact issue here with regard  
6 to those Funds. And this was in response to our claim that,  
7 you know, there was more money in the Funds and we just, you  
8 know, even though all that's supposedly left is \$10 million,  
9 something fishy was going on here. Your Honor said they may  
10 -- they meaning UBS -- may be able to prove, have a potential  
11 theory here that Highland breached the covenant of good faith  
12 and fair dealing by somehow exercising control over CDO Fund  
13 and SOHC and causing them to dissipate those assets and not  
14 pay them to UBS. There might be a theory here.

15 So I hope that it's clear that I did not bring a summary  
16 judgment declaring that UBS is barred from asserting something  
17 more than the \$61 million of March 2009 transfers. That's the  
18 hearing transcript from November 20, 2021 [sic] at Page 212 to  
19 -- 212-21 to 213 to 18. And I think that, you know, with the  
20 recognition that we may well have a better claim for breach of  
21 implied duty of good faith and fair dealing than your  
22 estimation proceeding found. And, of course, Your Honor was  
23 not at the time given the information, nor was Debtor or its  
24 counsel, at least those who control the Debtor or its counsel,  
25 given the information, and indeed there was significant

1 additional evidence to support our breach of duty of implied  
2 good faith and fair dealing that has now come to light that  
3 should have affected even your estimation proceeding, but in  
4 any event is still now being settled at an incredibly good  
5 deal, I would say, for the estate, one that UBS has come to  
6 agree to for all the reasons why settlements make sense for  
7 all parties.

8 Thank you, Your Honor.

9 THE COURT: All right. Thank you. Mr. Draper?

10 MR. DRAPER: Yes, Your Honor. Can you hear me?

11 THE COURT: Yes.

12 MR. DRAPER: Okay. Great.

13 CLOSING ARGUMENT ON BEHALF OF DUGABOY INVESTMENT TRUST

14 MR. DRAPER: Let me start with the first thing, and  
15 that is this whole record -- and I hear this in hearing after  
16 hearing -- is basically there's a lot of noise with respect to  
17 what happened, who did what when, and throwing things at Mr.  
18 Dondero. Let's just focus on the legal issues that are before  
19 the Court. And what my feeling is, that a lot of this is done  
20 to obfuscate what's really going on here.

21 First, the Court's jurisdiction. The Court does not have  
22 jurisdiction. What they're really asking you to do is render  
23 an advisory opinion that authorizes Mr. Seery or Highland to  
24 take action when -- in a fiduciary capacity with respect to a  
25 nondebtor, and the assets that are in fact being paid are



1 nondebtor assets. So the Court has really no jurisdiction  
2 over that. This is an issue, they've repackaged this pig  
3 today different than what they put before the Court and in  
4 their motion papers, but there's a huge jurisdictional issue,  
5 --

6 THE COURT: Okay. Let me --

7 MR. DRAPER: -- no matter how you shape it.

8 THE COURT: Let me stop you right there. Well, there  
9 are a lot of things I wonder about. You know, Mr. Feinstein  
10 says, at a bare minimum, this is related to the bankruptcy  
11 estate being administered. You know, has conceivable effect  
12 on the estate being administered. So there's that issue. But  
13 I guess my real question is how is this different from the  
14 many, many, many, many global settlements this Court approves  
15 involving nondebtor parties?

16 I mean, I approve -- bankruptcy courts approve settlements  
17 all the time that involve, you know, a very large number of  
18 parties. And moreover, we have documents in the record  
19 showing the Debtor controls Multi-Strat. It's the investment-  
20 managing -- the investment manager. It's the general partner.  
21 It has a majority of the limited partnership interests. I  
22 mean, they're -- under your argument, they're darned if they  
23 do, they're darned if they don't, right? If they didn't get  
24 the blessing of the Court, they would get attacked for not  
25 getting the blessing of the Court.

1 I'm very confused. So elaborate on your jurisdictional  
2 argument.

3 MR. DRAPER: Okay. There's two parts. Let's start  
4 with the first premise, that the assets of Multi-Strat, LP do  
5 not do not belong to this Debtor and are not property of the  
6 estate. Do we both agree on that?

7 THE COURT: We both agree on that.

8 MR. DRAPER: Okay. Number two, that you're asking --  
9 that they're asking this Court to bless a settlement between a  
10 nondebtor and a debtor. I mean, a nondebtor -- two  
11 nondebtors. Do we both agree that the Court has no  
12 jurisdiction to bless that?

13 THE COURT: Well, --

14 MR. DRAPER: Notwithstanding the fact that --

15 THE COURT: -- I don't know -- I don't know if it's a  
16 jurisdictional problem or not. I mean, I have to look at, is  
17 there related-to jurisdiction? You know, is there a  
18 conceivable effect on the estate being administered?

19 MR. DRAPER: Well, I --

20 THE COURT: For one thing.

21 MR. DRAPER: Look. I understand the questions you're  
22 asking.

23 THE COURT: Uh-huh.

24 MR. DRAPER: I can tell you that the case law is very  
25 clear that the fact that the value of some related entity to

1 the Debtor is diminished during the course of the case due to  
2 something they do does not make that related-to jurisdiction.

3 And look. You're going to do what you're going to do, and  
4 my ability to convince you I don't think is great. But,  
5 again, my -- I'm asserting my position. You'll take your  
6 issue on jurisdiction.

7 I understand what you're saying about related-to, but I  
8 would tell you, from a case law point of view, starting from  
9 the Bankruptcy Act forward, the value and the assets within a  
10 subsidiary entity of the debtor that's a nondebtor is not  
11 property of the estate and the court has no jurisdiction over  
12 it. And, quite frankly, the court has no jurisdiction to  
13 approve a settlement involving that nondebtor and another  
14 nondebtor.

15 And you start with *In re Beck Enterprise Industries*, which  
16 is a Second Circuit case. You move past that to *In re Tower*  
17 *Automotive* out of New York. There are -- I'd ask you to --

18 THE COURT: I don't know what those facts are. Are  
19 they the similar -- are they similar, where you've got a  
20 debtor, a wholly-controlled sub, if you will, using that term  
21 --

22 MR. DRAPER: Yes.

23 THE COURT: -- loosely, and then other parties, and  
24 they say the court doesn't have jurisdiction to bless the  
25 settlement? I mean, --

1 MR. DRAPER: Yes.

2 THE COURT: -- again, we have settlements all day  
3 long every day involving a myriad of nondebtor parties.

4 MR. DRAPER: Well, all I can say to you is I'm not  
5 involved in those cases and I -- and maybe they didn't raise  
6 the issue. I don't know if -- I haven't seen anything you've  
7 written on that issue. But I'm just saying, from my  
8 perspective and the way I read the case law, I don't think you  
9 have jurisdiction over it.

10 THE COURT: Okay. What Fifth Circuit case is your  
11 best case on this?

12 MR. DRAPER: I have a Second Circuit case with  
13 respect to that. There's also a case, *Walker*, if -- and, you  
14 know, look, again, there -- as we both know, there are how  
15 many bankruptcy judges?

16 THE COURT: 340?

17 MR. DRAPER: Three hundred and some? Right. You  
18 basically, on any given issue, you can probably get 300 on one  
19 side, 40 on the other side, but ultimately some issues go up  
20 to the Fifth Circuit, some don't. Again, my position that I  
21 truly believe, and from what I've researched and what I've  
22 just given you the cases we've cited in our brief and these  
23 two cases, stand for the proposition you don't have  
24 jurisdiction over two nondebtor parties and approving that  
25 settlement.

1 THE COURT: Okay.

2 MR. DRAPER: I don't know what more I can say, and  
3 I'd invite you to research that and look at it. I understand  
4 that, in the normal course, a lot of cases come through. A  
5 lot of joint settlements happen. But that doesn't mean it's  
6 right.

7 Second, let me address the so-called authority that  
8 Highland has. Yes, I agree, number one, that the general  
9 partnership agreement gives it to them. Number two, the -- as  
10 investment manager, they probably have authority over these  
11 two entities.

12 However, where there's a conflict, the -- and the Court's  
13 been made aware of the Investment Adviser Act -- that  
14 overrides that. And so I think it's very clear that Highland  
15 is on multiple sides of this transaction and wears multiple  
16 hats and has multiple interests.

17 And so what should have been done and what the partnership  
18 agreements provide for is go form an advisory opinion with  
19 outside third parties, hire them, give them the report, and  
20 then you have a justification for your action. You cannot  
21 rely on Pachulski to give you a report or to give you an  
22 analysis because they owe a fiduciary duty to the Debtor.  
23 They don't owe a fiduciary duty to Multi-Strat. Multi-Strat,  
24 LP is a completely different entity than Limited. It just --  
25 and the same with Mr. Seery. So, really, there is a procedure



1 to do it.

2 THE COURT: Should I be scratching my head about the  
3 possibility of an estoppel argument here? I mean, okay, with  
4 respect, Mr. Dondero and Dugaboy suddenly have scruples about  
5 conflicts of interest, when they were on every side of this  
6 forever?

7 MR. DRAPER: Well, let me answer that. First of all,  
8 Dugaboy was not on any side of this. Dugaboy is a limited  
9 partner, and there is nothing in the record that says Dugaboy  
10 is Mr. Dondero.

11 THE COURT: Okay. Well, okay.

12 MR. DRAPER: And so --

13 THE COURT: Fair enough.

14 MR. DRAPER: And so you're using an outside view.

15 THE COURT: It's the family trust of Mr. Dondero. It  
16 is a separate entity. But did Dugaboy, throughout the history  
17 of Highland's existence, have problems with Dondero signing  
18 for Highland, Multi-Strat, you name it, --

19 MR. DRAPER: Well, --

20 THE COURT: -- any of the 2,000 entities? I have  
21 seen more than a hundred documents since my time presiding  
22 over this case where Dondero signed for multiple parties in a  
23 transaction or in an agreement.

24 MR. DRAPER: Let's take --

25 THE COURT: It feels kind of like estoppel. I don't

1 know if it is, but it kind of feels like estoppel at this  
2 point, to raise the issue.

3 MR. DRAPER: Well, no, I don't -- I don't think it  
4 is, number one. And if you look at this transaction, the  
5 agreement that I gave you, in fact, there was an independent  
6 third party who looked at the 2008 transaction and said, I  
7 consent to it. It was hired -- yes, Mr. Morris is right, it  
8 was hired by the Debtor, but they went out and got a third-  
9 party opinion to base their reliance on.

10 There's no third-party opinion here. There's no reliance  
11 on something that somebody was retained to go look at it  
12 specifically and look at Dugaboy's interest or look at Multi-  
13 Strat's interest. There's nobody.

14 And so, yes, there are ways to do this and to act properly  
15 and act in accordance with the Investment Advisers Act and act  
16 in accordance with the partnership agreement, the subscription  
17 agreement, and the Investment Managers Act.

18 And, again, that -- you asked for closing argument. That  
19 -- that's -- there are ways that this could have been done.  
20 They weren't done. And that's part of my problem.

21 Next, let's move to this concept of the May 2020  
22 transaction being out -- outside the ordinary -- not -- within  
23 the ordinary course of business, and this one outside the  
24 ordinary course of business. And they justify the first one  
25 by being in the ordinary course of business because investment

1 entities buy and sell assets every day. Well, the truth is  
2 the testimony of Mr. Seery is very clear: this entity hadn't  
3 bought or sold one -- one of these life policies for five  
4 years. How does that make it in the ordinary course of  
5 business and no court authority is required, when this is he's  
6 acting authority again and now he requires Court authority?  
7 What's going on here is basically an effort to shield Highland  
8 from an act and obtain an opinion by this Court. I understand  
9 that. Quite frankly, it could have been done in a whole  
10 different way.

11 Next, there's no evidence that says these two settlement  
12 -- these two transactions are linked. They're in one  
13 document, but there's no reason why they can't be unpacked.  
14 There's no reason why this Debtor can't settle with them. And  
15 quite frankly, if Mr. -- if Highland goes out and obtains a  
16 third-party opinion and gets authority and somebody says it's  
17 right, pay the \$18-1/2 million to UBS and everybody goes down  
18 the road.

19 So, you know, that -- I'm troubled by that, because there  
20 were ways this could have been done.

21 Now let's talk about the settlement itself. And here's  
22 where my problem lies. I don't dispute that this is probably  
23 a good deal. It -- I don't dispute that everybody acted in  
24 good faith. I really don't. I think this has been a hard-  
25 fought negotiation. I've had a few seconds on with Mr.

1 Clubok. Not pleasant. I've been on with Mr. Seery a great  
2 deal. Not very pleasant. Mr. Morris is a little bit better.  
3 But -- thank you. But the real point is these are very good  
4 advocates and know how to articulate a position, stick to the  
5 position, and being able to move them is sort of like moving  
6 the -- some large tower when you just have a handrail. It  
7 doesn't happen.

8 So, look, I get that. My problem with the settlement is  
9 really -- lies in Paragraph -- Page 5, Paragraph C. And it in  
10 essence creates an interminable and unsolvable conflict  
11 between the Debtors' obligations to UBS and the Debtors'  
12 obligations to its constituents and the Debtors' obligation as  
13 investment manager.

14 And let me just read one thing to you, because I think I  
15 could close here and address this conflict. This is Mr.  
16 Seery's statement to me in the deposition. I'd have to -- in  
17 the paragraph in -- totally -- conceive of a number of assets  
18 that were stripped from these entities. If those assets ended  
19 up in the Debtor and they were stripped out, I think we would  
20 have an obligation to return them to the entity against whom  
21 they were stripped from if we had not paid for them.

22 That, in and of itself, tells you that assets of the  
23 estate are going to be returned under Mr. Seery's view of --  
24 of this -- I'm sorry, Mr. Seery's view of this page and what  
25 -- that the intent here is to take any asset that the Debtor

1 -- may be property of the estate, and if it was stripped out  
2 from an entity, to return it to UBS.

3 That is an impermissible plan modification, and, in fact,  
4 should either be taken out or rewritten so that it is either  
5 (a) brought to the Court; or (b) that the Debtor is not faced  
6 with this conflict.

7 And so it's not the settlement is a bad settlement. It's  
8 that some of the obligations that the Debtor is required to  
9 make or do under this settlement may have an adverse effect on  
10 the estate and violate the plan that this Court spent  
11 a-hundred-and-some-odd pages confirming.

12 THE COURT: All right. Thank you. Mr. Taylor?

13 MR. DRAPER: So that --

14 CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

15 MR. TAYLOR: Yes, Your Honor. I won't repeat  
16 anything that Mr. Draper said. I just wanted to point out and  
17 carry on his thought on that last point.

18 If you look at what's happening here, UBS is essentially  
19 getting a double recovery. On the one hand, in Paragraph C on  
20 Page 5 that continues to Page 6 of the settlement agreement,  
21 essentially conveys any claims that the Debtor may have to UBS  
22 and UBS can prosecute those claims. And it's going to be  
23 centered around this Sentinel transaction.

24 Now, we believe it's defensible and there will be no  
25 recovery had, but they're getting that asset.



1           At the same time, there has been testimony from Mr. Seery  
2           that the price of poker went up when they uncovered this  
3           transaction, and that accounts for the approximately -- if you  
4           valued the UBS claim at \$95 million for purposes of voting,  
5           today there's been a \$48 million increase in that number,  
6           approximately. And so they're going to get an increased claim  
7           amount, okay, both Class 8 and Class 9, which, to the extent  
8           that there is ever a recovery generated to ever get back down  
9           to equity, my client, then they have to burn through and pay  
10          all of those. But at the same time, UBS is also getting the  
11          ability to go pursue and recover on those estate assets, which  
12          is an alleged fraudulent transfer claim.

13          So they're getting it twice, and we think that is  
14          improper. We think, based on that alone, Your Honor, that you  
15          can and should deny this motion.

16                 THE COURT: All right. Any final word in rebuttal,  
17          Mr. Feinstein?

18                 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE DEBTORS

19                 MR. FEINSTEIN: Yes, Your Honor, just very briefly.

20                 Mr. Draper, I think it was, tried to distinguish between  
21          Mr. Dondero and Dugaboy, that Dugaboy is just some entity.  
22          But if you look at Exhibit 72, Your Honor, it's the Dugaboy  
23          subscription agreement. You'll never guess who signed it.  
24          Mr. Dondero.

25                 In terms of the language in the cooperation provision that

1 counsel was just focusing on, Your Honor, cooperation  
2 provisions are in written agreements all the time. This is an  
3 unusual set of circumstances, but it's because we keep finding  
4 new frauds and fraudulent transactions that there needs to be  
5 ongoing cooperation, because the independent board is the only  
6 party really that has the best evidence and best records of  
7 what happened to this Debtor and its affiliated entities over  
8 the last 12 years.

9 It is not -- it should be surprising to no one that UBS  
10 wanted the Debtor's cooperation in evaluating whether there  
11 were further transfers and further frauds and in assisting UBS  
12 in recouping assets that were fraudulently transferred away  
13 from its judgment Debtors, SOHC and CDO Fund.

14 So we think that provision is unremarkable. It's not a  
15 plan modification. It's, I mean, it's a typical provision in  
16 a settlement agreement. This was on notice to all parties in  
17 interest. So we think this is just another nonissue, Your  
18 Honor, that the Debtor -- that Mr. Dondero is trying to throw  
19 up to hold up progress in this case. We think that this was a  
20 sound exercise of business judgment by the Debtor as  
21 investment manager of Multi-Strat, and we encourage Your Honor  
22 to make an explicit finding, given the -- just the outright  
23 litigiousness of Mr. Dondero in multiple fronts.

24 We came to this Court for Your Honor's blessing because of  
25 these constant attacks on the Debtor and its management and

1 its professionals by Mr. Dondero. And this is very different  
2 than the monetization of assets that occurred in May '20.  
3 This is a settlement of litigation. This is not the ordinary  
4 course of a manager's -- investment manager's business. We  
5 think it's totally appropriate to come to Your Honor. And as  
6 Your Honor noted, there's -- there is jurisdiction here.

7 So we -- I'll close, Your Honor, and simply ask that Your  
8 Honor approve the motion in all respects. Thank you.

9 THE COURT: All right. And if I was looking away  
10 from you, it's because I did pull up Exhibit 72 to see that  
11 Mr. Dondero signed on behalf of the Dugaboy Trust. We also  
12 have some signatures, or secondary contact information of a  
13 Melissa Schroth on that one, from a Highland employee.

14 But, all right. Well, thank you all for your courtesy and  
15 your presentations today. You gave us a lot, a lot of reading  
16 material that my law clerk and I have endeavored to get on top  
17 of. You know, I've got two stacks. I've got mostly  
18 electronic files, I'm not a dinosaur, but I have two stacks of  
19 paper that deal solely with UBS. Okay? Of all of my  
20 different Highland stacks of paper -- I've accumulated flow  
21 charts and special notes I took in hearings and in reading  
22 pleadings -- because UBS was especially vexing to me from the  
23 beginning. And my notes on my UBS stack, we had a motion to  
24 lift stay early on when UBS wanted to go back to the New York  
25 state court for Part 2 of its litigation. Motion for partial

1 summary judgment. Motion to estimate 3018. They objected  
2 here and there to different things. And, of course, today's  
3 9019. So I have had a lot of education on UBS, the warehouse  
4 agreements, CDO Fund, SOHC, Multi-Strat, Highland Financial  
5 Partners, LP, and the 11, almost 12 years of history there.  
6 It was vexing to me. But I have evolved, let's say, in my  
7 thinking very much over the months of this case.

8 Let's get to the ruling here. This is before the Court,  
9 the Motion to Compromise and Settle the Claims with UBS,  
10 Docket Entry 2199.

11 First, this Court believes it has jurisdiction and  
12 authority to issue a final ruling on this motion pursuant to  
13 28 U.S.C. § 1334 and 157(b), as well as under U.S. Supreme  
14 Court authority. The relevant substantive law here is both  
15 Bankruptcy Rule 9019 as well as a whole host of case authority  
16 setting forth standards bankruptcy courts should use in  
17 evaluating settlements. The case law that is primarily  
18 applicable is the *United States v. AWECO* case from the Fifth  
19 Circuit, *Cajun Electric* from the Fifth Circuit, *Foster*  
20 *Mortgage* from the Fifth Circuit, and, of course, the old *TMT*  
21 *Trailer* case from the U.S. Supreme Court.

22 I look at whether the proposed compromise is fair and  
23 equitable and in the best interest of creditors. And in  
24 evaluating that, I look at such things as the probability of  
25 success in litigation, with due consideration of the

1 uncertainty of certain facts and law, the complexity and  
2 likely duration of future litigation and attendant expenses,  
3 inconvenience and delay, and all other factors.

4 Among those all other factors are the paramount interest  
5 of creditors, giving due deference to any creditors that have  
6 weighed in.

7 All right. So those are the legal standards. But I'm  
8 going to delve into a couple of arguments that have been made.  
9 One, the standing of our only two Objectors, okay? We have  
10 many, many large creditors in this case. We've had a  
11 Creditors' Committee from day one, almost. And none of those  
12 creditors -- whether it be Acis, the Redeemer, or the  
13 transferees of those claims, HarbourVest, Meta-e, Patrick  
14 Daugherty -- of the many, many active creditors we've had  
15 during this case, none of them have objected to the  
16 settlement. The only Objectors we have are Mr. Dondero, the  
17 founder and former CEO of the Debtor, who has filed, I don't  
18 know, one or two proofs of claim. The last I looked, were  
19 contingent and unliquidated. I don't even know if those are  
20 still pending, but they at least were filed. I think they're  
21 still pending. And then the other objector, Dugaboy and Get  
22 Good Trusts, which are the family trusts of Mr. Dondero, they  
23 have filed proofs of claim as well.

24 So, as I've said in other hearings where these parties  
25 have objected, I think they do have standing. It's perhaps



1 very tenuous, as I have said before, but I'm not going to say  
2 they have no standing. They do have technical standing with  
3 these proofs of claim pending, at least because of those.

4 Now, turning to the jurisdictional argument that has been  
5 made by the Dugaboy Trust, I overrule the argument, the  
6 objection of lack of jurisdiction. I agree with Mr. Feinstein  
7 that, at a bare minimum, this is related to the Highland  
8 bankruptcy estate. There is a conceivable effect on the  
9 estate being administered here with regard to this compromise.

10 I'll secondly say that bankruptcy courts all the time,  
11 let's just say frequently, approve global settlements that  
12 involve debtor, creditors, other parties that are nondebtors,  
13 maybe even noncreditors. It happens frequently. It's the  
14 nature of bankruptcy to be a grand compromise. And here, if  
15 the first two comments I've made are not enough to convince  
16 one of jurisdiction, I mean, you have to look at the evidence.  
17 And the evidence, through multiple documents that were put up  
18 on the screen and through the testimony of Mr. Seery, which  
19 were not disputed, were that Highland is the investment  
20 manager, with full authority over Multi-Strat. Highland is  
21 the general partner. There may be levels in between,  
22 indirect, but is the general partner. It has a majority  
23 58-point-something percent interest in the limited  
24 partnerships. The documents show that Highland is in control  
25 of this entity.

1 And so I meant it when I said they were darned if they do,  
2 darned if they don't. If they hadn't sought the Court's  
3 blessing on Highland exercising its control over Multi-Strat  
4 by having it participate in this settlement, someone would  
5 have argued you took an out-of-ordinary-course-of-business  
6 decision without court approval.

7 So I think we have jurisdiction here, and I think this is  
8 an erroneous argument that we don't.

9 Again, the Debtor has convincingly presented to this Court  
10 that it had concern that binding Multi-Strat to this  
11 settlement could be perceived as outside the ordinary course  
12 of business in the Debtor's management of this entity and the  
13 Debtor's control of this nondebtor entity. So I'm blessing  
14 the Debtor's management decision here, and I think I have  
15 jurisdiction to do that.

16 I reserve the right to supplement on that point in a  
17 written ruling.

18 So, getting more into the actual settlement, I do approve  
19 the compromise presented to me and overrule all pending  
20 objections.

21 To reiterate some points on the record here, this  
22 compromise settles two \$1 billion proofs of claim filed by  
23 UBS. These claims were based on litigation that UBS had waged  
24 against the Debtor and affiliates that had been ongoing since  
25 2009. This settlement allows distributions to occur under the

1 plan that the Court has confirmed. Hasn't gone effective yet.  
2 It allows distributions to occur much sooner rather than  
3 later, with such a large, uncertain claim being resolved.

4 Again, I stress that no creditors have objected except for  
5 Mr. Dondero and his family trusts. And in the *Foster Mortgage*  
6 case, the Fifth Circuit has directed bankruptcy courts to give  
7 due deference to the views of the creditor body on  
8 compromises.

9 I will elaborate that these \$1 billion proofs of claim of  
10 UBS were the subject of co-mediation with retired Bankruptcy  
11 Judge Allan Gropper and mediator Sylvia Mayer. So when you  
12 consider the mediation efforts along with the long history of  
13 contentious litigation, the arm's-length nature of the  
14 settlement cannot be credibly questioned. These parties, in  
15 my perception, were bitter enemies for over a decade. So,  
16 again, we have a history of contentiousness. There were co-  
17 mediators involved in the process of ultimately getting to  
18 this settlement.

19 And again, this Court has spent extensive time looking  
20 into these claims at prior hearings on a motion to lift stay,  
21 a motion for partial summary judgment, and a claims estimation  
22 motion. As I said, I have evolved in my thinking, through  
23 hearing all of the arguments and seeing evidence unfold. I  
24 was highly skeptical about UBS's claims directly against the  
25 Debtor, based on the warehouse agreements and the earliest

1 evidence, but again, it's been an evolving process, and we've  
2 heard disturbing evidence along the way that has definitely  
3 made me have a different view about the bona fides of  
4 ultimately potential claims against the estate.

5 I find there's been good faith in reaching this  
6 settlement. And again, I find it's fair and equitable and in  
7 the best interest of creditors and reflects sound and  
8 reasonable business judgment on behalf of the Debtor.

9 A couple of additional points. I do not accept the  
10 argument that the settlement, in effect, creates a plan  
11 modification without going through the steps of 1127. I  
12 looked at Page 5, Paragraph C of the settlement agreement. I  
13 just don't think that's what we have going on here. So I  
14 overrule that.

15 And I guess I'll make one last point on my evolution of  
16 thinking. You know, it wasn't just the evidence I heard at  
17 the claim estimation hearing, and I guess the motion for  
18 partial summary judgment. It was, you know, I've had  
19 recently-revealed evidence, if you will. I had testimony from  
20 Mr. Seery, and no refuting of that evidence, about this \$300  
21 million that, in August 2017, went from these Funds, the  
22 obligors, the judgment debtors to UBS, went from them to  
23 Sentinel Reinsurance, a Cayman Islands entity that Mr. Dondero  
24 allegedly ultimately owns 70 percent of and Scott Ellington  
25 ultimately owns 30 percent of, for reinsurance for after-the-

1 event insurance.

2 Interestingly, one of my law clerks and I are writing an  
3 opinion right now on the Fortuity Doctrine and the Known  
4 Claims Doctrine and how Texas was at the forefront of Texas  
5 courts on that doctrine. The old doctrine that you can't  
6 insure a burning house, okay, that may seem like a third or  
7 fourth or fifth subsidiary issue here compared to, I think,  
8 what is really being a subject of concern. We had litigation  
9 well underway eight years, UBS versus these two Funds, and  
10 then suddenly \$300 million goes out the door. I mean, I know  
11 -- well, this is a game-changer. As someone said, this is a  
12 game-changer.

13 So, am I shocked that the settlement was tweaked so that  
14 UBS is getting a larger Class 8 claim and Class 9 claim? Of  
15 course I'm not shocked. The evidence supported the  
16 reasonableness. Certainly, this is in the range of  
17 reasonableness. And I didn't have any evidence to contradict  
18 that, and I'm kind of not surprised.

19 So, and I reserve the right to supplement and amend in a  
20 more detailed form of order, but I do approve this.

21 Mr. Feinstein, you'll be the scrivener on the order, I  
22 presume?

23 MR. FEINSTEIN: Yes, Your Honor. If it'll help the  
24 Court, we're happy to put together proposed findings of fact,  
25 conclusions of law, and an order, yes.



1 THE COURT: All right. Well, if there's nothing  
2 further, we'll probably see you next week on something. I  
3 think next Tuesday. All right. We're adjourned.

4 MR. FEINSTEIN: Thank you, Your Honor.

5 THE CLERK: All rise.

6 (Proceedings concluded at 2:51 p.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**05/25/2021**

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\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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